

No. _____

In the Supreme Court of the United States

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

Petitioners,

v.

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

Respondents.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF WISCONSIN*

PETITIONERS' APPENDIX

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SUPREME COURT OF WISCONSIN

Case No.: 2020AP2007

Filed 03-14-2024

Complete Title:

Catholic Charities Bureau, Inc., Barron County
Developmental Services, Inc., Diversified Services,
Inc., Black River Industries, Inc. and Headwaters,
Inc.,

Petitioners-Respondents-Petitioners,

v.

State of Wisconsin Labor and Industry Review
Commission,

Respondent-Co-Appellant,

State of Wisconsin Department of Workforce
Development,

Respondent-Appellant.

**REVIEW OF DECISION OF THE
COURT OF APPEALS**

Reported at 406 Wis. 2d 586, 987 N.W.2d 778
(2023 – published)

Opinion Filed: March 14, 2024

Submitted on Briefs:

Oral Argument: September 11, 2023

Source of Appeal:

Court: Circuit

County: Douglas

Judge: Kelly J. Thimm

Justices:

ANN WALSH BRADLEY, J., delivered the majority opinion of the Court, in which DALLET, KAROFSKY, and PROTASIEWICZ, JJ., joined. REBECCA GRASSL BRADLEY, J., filed a dissenting opinion, in which ZIEGLER, C.J., joined with respect to ¶¶110-61 and 163-98. HAGEDORN, J., filed a dissenting opinion.

* * *

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* * *

REVIEW of a decision of the Court of Appeals.
Affirmed.

¶1 **ANN WALSH BRADLEY, J.** The petitioners, Catholic Charities Bureau, Inc. (CCB) and four of its sub-entities, seek an exemption from having to pay unemployment tax to cover their employees. They assert that they are exempt from coverage under Wisconsin's Unemployment Compensation Act because they are operated primarily for religious purposes.

¶2 Accordingly, CCB together with the four sub-entities (Barron County Developmental Services, Inc., Diversified Services, Inc., Black River Industries, Inc., and Headwaters, Inc.) seek review of a court of appeals decision reinstating a decision of the Labor and Industry Review Commission (LIRC) concluding that CCB and the four sub-entities were not “operated primarily for religious purposes” and thus not exempt from making contributions to the state unemployment insurance system.¹ The petitioners specifically contend that they are exempt from unemployment insurance contributions pursuant to Wis. Stat. § 108.02(15)(h)2. (2019-20),² which exempts from the definition of “employment” covered by the Act those “[i]n the employ of an organization operated primarily for religious purposes and operated, supervised, controlled, or principally supported by a church or convention or association of churches.”³

¶3 They assert that they are “operated primarily for religious purposes” because the Diocese of Superior’s motivation is primarily religious, i.e., their charitable works are carried out to operationalize Catholic principles. The petitioners further argue that a contrary interpretation would run afoul of the First Amendment to the United States Constitution and

¹ *Cath. Charities Bureau, Inc. v. LIRC*, 2023 WI App 12, 406 Wis. 2d 586, 987 N.W.2d 778 (reversing the order of the circuit court for Douglas County, Kelly J. Thimm, Judge).

² All subsequent references to the Wisconsin Statutes are to the 2019-20 version unless otherwise indicated.

³ Both parties agree that the first half of the statute is not at issue, that is that CCB is “operated, supervised, controlled, or principally supported by a church or convention or association of churches.”

that as a result it also would violate Article I, Section 18 of the Wisconsin Constitution.⁴

¶4 On the other hand, LIRC advances that it is the organization’s actual activities, and not its motivations, that are paramount in the analysis. Under this formulation, LIRC contends the petitioners do not fulfill the religious purposes exemption because their activities are secular. Such an analysis, in LIRC’s view, does not violate the First Amendment or Article I, Section 18 of the Wisconsin Constitution.

¶5 We determine that in our inquiry into whether an organization is “operated primarily for religious purposes” within the meaning of Wis. Stat. § 108.02(15)(h)2., we must examine both the motivations and the activities of the organization. Applying this analysis to the facts before us, we conclude that the petitioners are not operated primarily for religious purposes within the meaning of § 108.02(15)(h)2. We further conclude that the

⁴ Although CCB and its sub-entities allege a violation of the Wisconsin constitution, they did not develop an argument apart from their assertions under the United States Constitution. They assert in a footnote that if the statute violates the First Amendment, then it must also violate the Wisconsin Constitution. It is true that “[t]he Wisconsin Constitution, with its specific and expansive language, provides much broader protections for religious liberty than the First Amendment.” *Coulee Cath. Schs. v. LIRC*, 2009 WI 88, ¶66, 320 Wis. 2d 275, 768 N.W.2d 868 (citing *State v. Miller*, 202 Wis. 2d 56, 64, 549 N.W.2d 235 (1996)). However, any argument that Wis. Stat. § 108.02(15)(h)2. violates the state constitution specifically is undeveloped. We generally do not address undeveloped arguments, and we will not do so here. *Sw. Airlines Co. v. DOR*, 2021 WI 54, ¶32 n.10, 397 Wis. 2d 431, 960 N.W.2d 384.

application of § 108.02(15)(h)2. as applied to the petitioners does not violate the First Amendment because the petitioners have failed to demonstrate that the statute as applied to them is unconstitutional beyond a reasonable doubt.

¶6 Accordingly, we affirm the decision of the court of appeals.

I

¶7 Each Roman Catholic diocese in Wisconsin has a social ministry arm, referred to as Catholic Charities. As a whole, Catholic Charities' mission "is to provide service to people in need, to advocate for justice in social structures and to call the entire church and other people of good will to do the same."

¶8 The Catholic Charities entity at issue in this case is that of the Diocese of Superior, which we refer to as CCB. Its statement of philosophy indicates that it has "since 1917 been providing services to the poor and disadvantaged as an expression of the social ministry of the Catholic Church in the Diocese of Superior" and that its "purpose . . . is to be an effective sign of the charity of Christ." In its provision of services, CCB assures that "no distinctions are made by race, sex, or religion in reference to clients served, staff employed and board members appointed." CCB aims to provide services that are "significant in quantity and quality" and not duplicative of services provided by other agencies.

¶9 Occupying the top position in CCB's organizational chart is the bishop of the Diocese of Superior, who exercises control over CCB and its sub-entities. The bishop serves as CCB's president and appoints its membership, whose function is to

“provide[] essential oversight to ensure the fulfillment of the mission of Catholic Charities Bureau in compliance with the Principles of Catholic social teaching.” CCB’s code of ethics, which is “displayed prominently in the program office of all affiliate agencies,” likewise sets forth the expectation that “Catholic Charities will in its activities and actions reflect gospel values and will be consistent with its mission and the mission of the Diocese of Superior.”

¶10 Under the umbrella of CCB, there are numerous separately incorporated sub-entities. These sub-entities operate “63 programs of service . . . to those facing the challenges of aging, the distress of a disability, the concerns of children with special needs, the stresses of families living in poverty and those in need of disaster relief.”

¶11 Four sub-entities are involved in this case. The first is Barron County Developmental Services, Inc. (BCDS). BCDS contracts with the Department of Vocational Rehabilitation to provide job placement, job coaching, and an “array of services to assist individuals with disabilities [to] get employment in the community.” Prior to December of 2014, BCDS was not affiliated with the Diocese of Superior, and in fact had no religious affiliation at all. At that time, BCDS reached out and requested to become an affiliate agency of the Diocese. It receives no funding from the Diocese.

¶12 The second sub-entity at issue is Black River Industries, Inc. (BRI). It provides services to people with developmental or mental health disabilities, as well as those with a limited income. These services include home-based, community-based, and facility-based job training and daily living services. Among

BRI's offerings are a food services program, a document shredding program, and a mailing services program. BRI's funding comes largely from county and state government. It does not receive funding directly from the Diocese.

¶13 Diversified Services, Inc. (DSI) is the third sub-entity implicated in this appeal. It provides work opportunities to individuals with developmental disabilities. Additionally, DSI hires individuals without disabilities for production work. It is not funded by the Diocese, instead receiving its funding from Family Care, a Medicaid long-term care program,⁵ and private contracts.

¶14 Finally, the fourth sub-entity involved is Headwaters, Inc., which provides "various support services for individuals with disabilities," "training services related to activities of daily living," "employment related training services" and additional employment-related support. It also provides Head Start home visitation services, and at one time offered birth-to-three services before a different entity took over that aspect of its operations. Like the other sub-entities, Headwaters is funded primarily through government contracts and does not receive funding from the Diocese.

¶15 These four sub-entities are overseen by CCB, which, among other things, provides management services and consultation; establishes and coordinates the missions of the sub-entities; and approves all capital expenditures, certain sales of real property, and investment policies of the sub-entities. In turn, the sub-entities themselves set organizational goals

⁵ See Wis. Admin. Code ch. DHS 10.

and make plans to accomplish those goals, employ staff, set program policies, enter into contracts, raise funds, and assure regulatory compliance.

¶16 Additionally, CCB's executive director supervises the operations of each of the sub-entities. However, neither those employed by nor those receiving services from CCB or the sub-entities are required to be of any particular religious faith. Individuals participating in the programs do not receive any religious training or orientation, and CCB and the sub-entities do not try to "inculcate the Catholic faith with program participants."

¶17 In 1972, the Department of Industry, Labor and Human Relations made a determination that CCB was subject to the unemployment compensation law after CCB submitted a form that self-reported the nature of its operations as "charitable," "educational," and "rehabilitative," not "religious."⁶ CCB has been making unemployment contributions since that time.

¶18 In 2015, the Douglas County Circuit Court determined that a sub-entity of CCB not involved in the present case was "operated primarily for religious purposes" and thus exempt from contributing to the state unemployment system.⁷ The following year, CCB and the sub-entities sought a similar determination that they qualified for the exemption,

⁶ CCB and the sub-entities are exempt from federal income tax pursuant to 26 U.S.C. § 501(c)(3), which provides exemption to, among other entities, those "operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes."

⁷ *Challenge Ctr., Inc. v. LIRC*, Douglas County Case No. 2014CV384 (George L. Glonek, Judge).

bringing their claim first to the Department of Workforce Development (DWD).

¶19 DWD denied the petitioners' request to withdraw from the state system. It stated: "It has been determined these organizations are supervised and controlled by the Roman Catholic Church, but it has not been established they are operated primarily for religious purposes." CCB and the sub-entities appealed DWD's determination, and an administrative law judge (ALJ) reversed. Consequently, DWD petitioned LIRC for review, and LIRC reversed the ALJ, concluding consistent with the original DWD decision that the petitioners are not operated primarily for religious purposes. It observed that "while services may be religiously motivated and manifestations of religious belief, a separate legal entity that provides essentially secular services and engages in activities that are not religious per se . . . falls outside the scope of Wis. Stat. § 108.02(15)(h)2.," regardless of any affiliation the entity may have with a religious organization.

¶20 Subsequently, CCB and the sub-entities sought judicial review in the circuit court and the pendulum swung again, as the circuit court reversed LIRC's decision. DWD and LIRC appealed, and the court of appeals reversed, reinstating LIRC's decision that CCB and the sub-entities did not establish a religious purpose.⁸ *Cath. Charities Bureau, Inc. v. LIRC*, 2023 WI App 12, 406 Wis. 2d 586, 987 N.W.2d

⁸ The court of appeals initially certified the appeal to this court, but we denied the certification. See Wis. Stat. § (Rule) 809.61; *Cath. Charities Bureau, Inc. v. LIRC*, No. 2020AP2007, unpublished certification (Wis. Ct. App. Dec. 7, 2021).

778. The court of appeals concluded that “for an employee’s services to be exempt from unemployment tax the organization must not only have a religious motivation, but the services provided—its activities—must also be primarily religious in nature.” *Id.*, ¶33. Such an analysis, in the court of appeals’ view, does not violate either the federal or state constitution because “focusing on the stated motivations and the organization’s activities allows the reviewing body to conduct an objective, neutral review that is ‘highly fact-sensitive’ without examining religious doctrine or tenets.” *Id.*, ¶54.

¶21 Applying this understanding, the court of appeals determined that “CCB and its sub-entities failed to meet their burden to establish that they are exempt from Wisconsin’s unemployment insurance program and that LIRC properly determined that each of the employers was ‘operated primarily to administer [or provide] social service programs’ that are not ‘primarily for religious purposes.’” *Id.*, ¶55. CCB and the sub-entities petitioned for this court’s review.

II

¶22 In an appeal from a LIRC determination, we review LIRC’s decision rather than that of the circuit court. *Masri v. LIRC*, 2014 WI 81, ¶20, 356 Wis. 2d 405, 850 N.W.2d 298. Our review is limited by statute. See Wis. Stat. § 108.09(7)(c)6. We may either confirm the commission’s order or set it aside on one of three grounds: (1) if the commission acted without or in excess of its powers; (2) if the order was procured by fraud; or (3) if the commission’s findings of fact do not support the order. *Id.* LIRC acts outside of its power when it incorrectly interprets a statute.

DWD v. LIRC, 2018 WI 77, ¶12, 382 Wis. 2d 611, 914 N.W.2d 625.

¶23 We will uphold LIRC’s findings of fact as long as there is substantial and credible evidence to support them. *Friendly Vill. Nursing and Rehab, LLC v. DWD*, 2022 WI 4, ¶13, 400 Wis. 2d 277, 969 N.W.2d 245. We review LIRC’s legal conclusions, i.e., questions of law, independently of the decisions rendered by the circuit court, the court of appeals, and the commission. *Id.*; *Tetra Tech EC, Inc. v. DOR*, 2018 WI 75, ¶84, 382 Wis. 2d 496, 914 N.W.2d 21.

¶24 In our review, we are called upon to interpret Wisconsin statutes. Statutory interpretation presents a question of law that we review independently of the determinations of the circuit court, the court of appeals, and the commission. *Greenwald Fam. Ltd. P’ship v. Village of Mukwonago*, 2023 WI 53, ¶14, 408 Wis. 2d 143, 991 N.W.2d 356; *Tetra Tech EC, Inc.*, 382 Wis. 2d 496, ¶84.

¶25 Additionally, our review is informed by constitutional principles. The application of constitutional principles likewise presents a question of law. *St. Augustine Sch. v. Taylor*, 2021 WI 70, ¶24, 398 Wis. 2d 92, 961 N.W.2d 635.

III

¶26 We begin with a short summary of Wisconsin’s unemployment insurance scheme and then address the competing interpretations of “operated primarily for religious purposes” within the meaning of Wis. Stat. § 108.02(15)(h)2. In examining this question, we address first whether we must look to the purpose of the church in operating the organization or the purpose of the nonprofit organization itself in our

analysis. We address second whether the organization’s motivations, activities, or both, drive the analysis of whether a purpose is “religious” within the meaning of § 108.02(15)(h)2. Next, we apply our interpretation of the statute to the facts before us. Finally, we examine the petitioners’ assertion that such interpretation violates the First Amendment.

A

¶27 The Wisconsin legislature passed the first unemployment compensation law in the nation in 1932.⁹ Then, as now, the law evinces a strong public policy in favor of compensating the unemployed. *Operton v. LIRC*, 2017 WI 46, ¶31, 375 Wis. 2d 1, 894 N.W.2d 426.

¶28 At a macro level, “[t]he system generally provides for collecting limited funds from a large number of employers, particularly during periods of stable employment, then paying out benefits during periods of high unemployment from the funds that have been accumulated.” Maynard G. Sautter, *Employment in Wisconsin* § 12-1 (Matthew Bender 2023). The statutes were enacted “to avoid the risk or hazards that will befall those who, because of employment, are dependent upon others for their livelihood.” *Princess House, Inc. v. DILHR*, 111 Wis. 2d 46, 69, 330 N.W.2d 169 (1983). “Consistent with this policy, Wis. Stat. ch. 108 is ‘liberally construed to effect unemployment compensation coverage for workers who are economically dependent upon others

⁹ See Daniel Nelson, *The Origins of Unemployment Insurance in Wisconsin*, 51 Wis. Mag. Hist. 109, 109 (1967); *Operton v. LIRC*, 2017 WI 46, ¶57, 375 Wis. 2d 1, 894 N.W.2d 426 (Abrahamson, J., concurring).

in respect to their wage-earning status.” *Operton*, 375 Wis. 2d 1, ¶32 (quoting *Princess House*, 111 Wis. 2d at 62).

¶29 The legislature has recognized the social cost of unemployment and the need to share the burden presented by unemployment. See Wis. Stat. § 108.01(1). “In good times and in bad times unemployment is a heavy social cost, directly affecting many thousands of wage earners. Each employing unit in Wisconsin should pay at least a part of this social cost, connected with its own irregular operations, by financing benefits for its own unemployed workers.” *Id.*

¶30 “Generally, any service for pay for a public, private, or nonprofit employer is employment [covered by ch. 108], but the service must be provided in Wisconsin or be provided for an employer with operations in Wisconsin.” Peter L. Albrecht et al., *Wisconsin Employment Law* § 12.3 (8th ed. 2023). However, some services are statutorily exempt from the “employment” services addressed by the unemployment compensation law. *E.g.*, *Wis. Cheese Serv., Inc. v. DILHR*, 108 Wis. 2d 482, 486, 322 N.W.2d 495 (Ct. App. 1982) (examining whether an individual is exempt from the unemployment system as an independent contractor); see Sautter, *Employment in Wisconsin* § 12-3. It is one of those exemptions, which we will refer to as the “religious purposes” exemption, that is at issue in the present case.

¶31 The religious purposes exemption is set forth as part of Wis. Stat. § 108.02(15)(h), which provides in full:

“Employment” as applied to work for a nonprofit organization, except as such organization duly elects otherwise with the department’s approval, does not include service:

1. In the employ of a church or convention or association of churches;
2. In the employ of an organization operated primarily for religious purposes and operated, supervised, controlled, or principally supported by a church or convention or association of churches; or
3. By a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order.

¶32 Specifically, CCB and the sub-entities seek exemption pursuant to subd. 2, which contains two conditions that both must be fulfilled in order for the exemption to apply. First, the subject organization must be “operated primarily for religious purposes.” Second, the organization must be “operated, supervised, controlled, or principally supported by a church or convention or association of churches.” It is undisputed that the second condition is satisfied, as CCB and the sub-entities are without question “operated, supervised, controlled, or principally supported” by the Diocese of Superior. Our inquiry thus focuses on the first condition only: “operated primarily for religious purposes.”

¶33 In addressing the issue presented, we must answer the threshold question of whose purposes we

must examine in our analysis those of the Diocese or those of CCB and the sub-entities. To resolve this inquiry, we look first to the language of Wis. Stat. § 108.02(15)(h)2. *Sw. Airlines Co. v. DOR*, 2021 WI 54, ¶22, 397 Wis. 2d 431, 960 N.W.2d 384 (citing *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110).

¶34 Like the court of appeals, our review of the plain language of Wis. Stat. § 108.02(15)(h)2. leads us to conclude that “the reviewing body is to consider the purpose of the nonprofit organization, not the church’s purpose in operating the organization.” *Cath. Charities Bureau*, 406 Wis. 2d 586, ¶24. There are several textual cues in this language that guide us to our conclusion. We look first to the sentence structure of Wis. Stat. § 108.02(15)(h)2. This structure indicates that the religious purposes exemption applies to “service . . . [i]n the employ” of an “organization,” as opposed to service in the employ of a church. The way the sentence is structured, the phrase “operated primarily for religious purposes” modifies the word “organization,” not the word “church.”

¶35 Such an understanding is confirmed by a look to the surrounding provisions. See *Belding v. Demoulin*, 2014 WI 8, ¶15, 352 Wis. 2d 359, 843 N.W.2d 373. The subdivision directly before the religious purposes exemption, Wis. Stat. § 108.02(15)(h)1., exempts from the definition of “employment” for unemployment compensation purposes service “[i]n the employ of a church.” The subdivision directly after, § 108.02(15)(h)3., exempts service “[b]y a duly ordained, commissioned or licensed minister of a church.” Those employed by a church are thus addressed in subdivisions 1. and 3.,

indicating, as the court of appeals concluded, that “employees who fall under subd. 2. are to be focused on separately in the statutory scheme from employees of a church.” *Cath. Charities Bureau*, 406 Wis. 2d 586, ¶25.

¶36 Thus, a focus on the church’s purpose rather than the organization’s purpose would render a significant portion of Wis. Stat. § 108.02(15)(h)2. surplusage. See *State v. Martin*, 162 Wis. 2d 883, 894, 470 N.W.2d 900 (1991) (“A statute should be construed so that no word or clause shall be rendered surplusage and every word if possible should be given effect.”). To explain, Wis. Stat. § 108.02(15)(h)2. contains two provisions that both must be fulfilled. In order to be exempt, a nonprofit organization must be “operated primarily for religious purposes” and “operated, supervised, controlled, or principally supported by a church.” § 108.02(15)(h)2.

¶37 If we looked to the church’s purpose in operating the organization only, then any religiously affiliated organization would always be exempt. A church’s purpose is religious by nature, and this focus is reflected in all of its work, including any sub-entities it oversees. If the tax-exempt status of a nonprofit organization operating under the umbrella of a church is predicated on the religious purposes of the church, an organization operated or controlled by a church always will automatically satisfy the first condition. In other words, the second condition of Wis. Stat. § 108.02(15)(h)2. would subsume the first. This would cause the first requirement of the statute to be surplusage, a reading we cannot endorse. We therefore will examine the purpose of the nonprofit organization, and not that of the church, in

determining whether a nonprofit organization is “operated primarily for religious purposes.”

B

¶38 Having determined that we look to the purpose of CCB and the sub-entities, and not that of the Catholic Church in operating CCB and the sub-entities, we turn next to another methodological disagreement between the parties. CCB and the sub-entities contend that in our inquiry into whether an organization is “operated primarily for religious purposes” we must look primarily to the organization’s motivations, while LIRC advances that the organization’s activities are paramount.¹⁰

¶39 Specifically, CCB and the sub-entities argue that the court of appeals incorrectly limited the religious purposes exemption to church-controlled entities with both purposes and activities that are

¹⁰ Other jurisdictions have taken varying approaches to similar questions. For example, some jurisdictions have considered the activities of an organization in determining religious purpose. *See, e.g., Samaritan Inst. v. Prince-Walker*, 883 P.2d 3, 8 (Colo. 1994) (concluding that an organization does not “operate primarily for religious purposes” because the “services offered are essentially secular”); *Cathedral Arts Project, Inc. v. Dep’t of Econ. Opportunity*, 95 So. 3d 970, 973 (Fla. Dist. Ct. App. 2012) (determining that although an organization’s motivation may be religious, the organization’s “primary purpose in operating . . . is to give art instruction to underprivileged children” and it is therefore not entitled to the exemption). Conversely, other jurisdictions have granted a religious purpose exemption based on the motivations of the organization. *See, e.g., Dep’t of Emp. v. Champion Bake-NServe, Inc.*, 592 P.2d 1370, 1373 (Idaho 1979) (concluding that a bakery operated by Seventh Day Adventist church was operated primarily for religious purposes despite a commercial aspect).

religious. They assert that the court of appeals' analysis fails to follow the statutory language because the statute refers only to a religious "purpose" and not religious "activities."

¶40 LIRC responds that looking at only an organization's motivation would allow the organization to determine its own status without consideration of its actual function. It advances that such an interpretation would run afoul of the maxim that tax exemptions are to be narrowly construed. In LIRC's view, the court of appeals correctly concluded that the term "operated," which appears in the statute, "connotes an action or activity." See *Cath. Charities Bureau*, 406 Wis. 2d 586, ¶31.

¶41 Again, we begin our analysis with the language of the statute, and in particular the language at the center of this case: "operated primarily for religious purposes." The court of appeals commenced its analysis by examining the key words "operated" and "purposes," and we do likewise.

¶42 An oft-cited dictionary defines "operate" as "to work, perform, or function, as a machine does." Operate, <https://www.dictionary.com/browse/operate> (last visited Feb. 27, 2024), see also Operate, Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/operate> (last visited Feb. 27, 2024) (defining "operate" as "to perform a function"). As the court of appeals concluded, this definition suggests an action being taken—in the context of the statute at issue meaning "what the nonprofit organization does and how it does it." *Cath. Charities Bureau*, 406 Wis. 2d 586, ¶31.

¶43 This same dictionary defines “purpose” as “the reason for which something exists or is done, made, used, etc.” Purpose, <https://www.dictionary.com/browse/purpose> (last visited Feb. 27, 2024). The use of “reason” in this definition implies “motivation,” or as the court of appeals put it, “why the organization acts.” *Cath. Charities Bureau*, 406 Wis. 2d 586, ¶31.

¶44 In examining the meaning of the statute, we must give reasonable effect to every word. *State v. Rector*, 2023 WI 41, ¶19, 407 Wis. 2d 321, 990 N.W.2d 213. We read the statute as a whole. *Belding*, 352 Wis. 2d 359, ¶15. Accordingly, both “operated” and “purposes” must be given full effect. In order to illustrate how to do this, we consider first the consequences if our analysis considered motivations only or activities only in determining whether an organization is operated primarily for religious purposes.

¶45 Considering purposes, i.e., motivations, alone would give short shrift to the word “operated.” In this scenario, an organization could be exempt based purely on its stated reason for doing what it does, but its actual “operations” would not enter the calculus. Conversely, if we were to consider activities only, then “purposes” would be rendered surplusage. A singular focus on the “operations” of the organization at the expense of the “purpose” would lead us to excise from the analysis the connection between the organization’s activities and its religious mission that the statute requires.

¶46 Reading the statute as a whole, the text and structure of Wis. Stat. § 108.02(15)(h)2. indicate that both activities and motivations must be considered in a determination of whether an organization is

“operated primarily for religious purposes.” Such an interpretation is consistent with the unemployment compensation law’s legislatively-recognized purpose. See Wis. Stat. § 108.01; *Princess House*, 111 Wis. 2d at 61 (explaining that in determining liability under the Unemployment Compensation Act, “the act itself should be put in perspective, and the underlying purpose of the act should be given paramount consideration”). The unemployment compensation law addresses an “urgent public problem” and does so by sharing “fairly” the economic burdens of unemployment. Wis. Stat. § 108.01(1)-(2).

¶47 In light of this, we have stated that unemployment compensation law is “remedial in nature and should be liberally construed to effect unemployment compensation coverage for workers who are economically dependent upon others in respect to their wage-earning status.” *Princess House*, 111 Wis. 2d at 62.¹¹ As a corollary to this principle, it

¹¹ Although the United States Supreme Court has in the past applied a similar principle of liberal construction of remedial statutes, see *Peyton v. Rowe*, 391 U.S. 54, 65 (1968), recent cases suggest a potential step back from this approach. See, e.g., *Encino Motorcars, LLC v. Navarro*, 584 U.S. ___, 138 S. Ct. 1134, 1142 (2018). Nevertheless, we follow (and do not overrule) the Wisconsin approach to our Unemployment Compensation Act and our precedent regarding the interpretation of remedial statutes under the Act. See *Operton*, 375 Wis. 2d 1, ¶32; *Princess House, Inc. v. DILHR*, 111 Wis. 2d 46, 62, 330 N.W.2d 169 (1983); see generally *Miller v. Hanover Ins. Co.*, 2010 WI 75, ¶31, 326 Wis. 2d 640, 785 N.W.2d 493; *Stuart v. Weisflog’s Showroom Gallery, Inc.*, 2008 WI 22, ¶21, 308 Wis. 2d 103, 746 N.W.2d 762 (explaining that “remedial statutes must be liberally construed to advance the remedy that the legislature intended to be afforded”). The statutory text confirms the original intent of the legislature

follows that if a statute is liberally construed, then exceptions must be narrowly construed. *McNeil v. Hansen*, 2007 WI 56, ¶10, 300 Wis. 2d 358, 731 N.W.2d 273.

¶48 Correctly demonstrating a narrow construction of the exception, the court of appeals here concluded that looking at an organization's motivations in a vacuum "would cast too broad a net." *Cath. Charities Bureau*, 406 Wis. 2d 586, ¶37. Sole reliance on self-professed motivation would essentially render an organization's mere assertion of a religious motive dispositive.¹² See *Living Faith, Inc. v. Comm'r of Internal Revenue*, 950 F.2d 365, 372 (7th Cir. 1991) ("While we agree with Living Faith that an organization's good faith assertion of an exempt purpose is relevant to the analysis of tax-exempt status, we cannot accept the view that such an assertion be dispositive. Put simply, saying one's purpose is exclusively religious doesn't necessarily make it so.").

¶49 Although the motivations of an organization certainly figure into the analysis, allowing self-definition to drive the exemption would open the exemption to a broad spectrum of organizations based

to provide broad coverage for unemployed workers that is "shared . . . fairly" among employers. See generally Wis. Stat. § 108.01.

¹² The stopping point of the argument presented by CCB and the sub-entities is unclear. For example, at the administrative hearing in the present case, the Archbishop of Milwaukee testified that he is responsible for overseeing numerous grammar schools and high schools, 10 hospitals, and five colleges. Under the petitioners' argument, these entities' employees, numbering in the thousands, would seemingly lack coverage under the state unemployment system.

entirely on a single assertion of a religious motivation.¹³ This would run counter to the direction that we construe the exemption narrowly. Considering the organization’s activities in addition to its motivations is in line with the directive that we follow a narrow construction.

¶50 Our decision in *Coulee Catholic Schools v. LIRC*, 2009 WI 88, 320 Wis. 2d 275, 768 N.W.2d 868, additionally buttresses our conclusion. In that case, the court addressed an issue of whether a teacher’s position in a religious school is “ministerial” such that the First Amendment bars suit under the Wisconsin Fair Employment Act.¹⁴

¹³ The argument advanced by the petitioners did not garner anywhere close to a majority vote when addressed by the United States Supreme Court. At oral argument, Justice Thomas’s concurrences in both *Hosanna-Tabor Evangelical Lutheran Church and Sch. v. Equal Emp. Opportunity Comm’n*, 565 U.S. 171, 196-98 (2012) (Thomas, J., concurring) and *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. ___, 140 S. Ct. 2049, 2069-70 (2020) (Thomas, J., concurring, joined by Gorsuch, J.), were invoked to support the idea that courts must wholly defer to an organization’s good-faith claims instead of examining the activities of the organization. However, this position was not supported by the majority in either case.

¹⁴ The “ministerial exception” recognizes “that the First Amendment protects houses of worship from state interference with the decision of who will teach and lead a congregation.” *Coulee Cath. Schs.*, 320 Wis. 2d 275, ¶39. Premised on the “idea that the ‘introduction of government standards [in]to the selection of spiritual leaders would significantly, and perniciously, rearrange the relationship between church and state,’” the exception “recognizes that ‘perpetuation of a church’s existence may depend upon those whom it selects to preach its values, teach its message, and interpret its doctrines both to its own membership and to the world at large.’” *Id.* (quoting *Rayburn*

¶51 In examining this question, the court applied the two-part “primary duties” test. “The first step is an inquiry into whether the organization in both statement and practice has a fundamentally religious mission.” *Id.*, ¶48. Second, the court inquires “into how important or closely linked the employee’s work is to the fundamental mission of that organization.” *Id.*, ¶49.

¶52 Although the legal issue and context were different in *Coulee*, we agree with the court of appeals that it “provides guidance in understanding the religious purposes exemption here.” *Cath. Charities Bureau*, 406 Wis. 2d 586, ¶43. To explain, the first step of the primary duties test involves an inquiry into an organization’s mission. In analyzing such a question, the *Coulee* court examined both the “statement” and “practice” of the organization. *Coulee Cath. Schs.*, 320 Wis. 2d 275, ¶48. See also *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. ___, 140 S. Ct. 2049, 2067-69 (2020). In other words, it analyzed both the professions and actions of the organization to determine the organization’s “mission.”

¶53 The “mission” inquiry in *Coulee* is analogous to the “purpose” analysis we conduct in the present case. Indeed, mission and purpose are even listed as synonyms by a popular thesaurus. Mission, <https://www.thesaurus.com/browse/mission> (last visited Feb. 27, 2024). The concepts are thus related, and the *Coulee* court’s analysis of two factors, professions and operations, in its “mission” inquiry

v. Gen. Conf. of Seventh-Day Adventists, 772 F.2d 1164, 1168-69 (4th Cir. 1985)).

supports our examination of similar dual considerations in the “purpose” question in the present case. See also *Our Lady of Guadalupe Sch.*, 140 S. Ct. at 2067-69.

¶54 Further, the Seventh Circuit’s decision in *United States v. Dykema*, 666 F.2d 1096 (7th Cir. 1981), lends support to the assertion that the organization’s activities have a role to play in determining the organization’s “purpose.” In *Dykema*, which involved a determination of a pastor’s tax liability, the Seventh Circuit observed that “religious purposes” is a “term of art in tax law” and that the IRS, in order to determine whether such a purpose is present, must examine whether an organization’s “actual activities conform to the requirements which Congress has established as entitling them to tax exempt status.” *Id.* at 1101 (emphasis added).

¶55 The *Dykema* court also emphasized that its inquiry into religious purpose is based on “objective criteria,” which “enable the IRS to make the determination required by the statute without entering into any subjective inquiry with respect to religious truth which would be forbidden by the First Amendment.” *Id.* at 1100. It further charted “[t]ypical activities of an organization operated for religious purposes” as including:

- (a) corporate worship services, including due administration of sacraments and observance of liturgical rituals, as well as a preaching ministry and evangelical outreach to the unchurched and missionary activity in partibus infidelium; (b) pastoral counseling and comfort to members facing grief, illness,

adversity, or spiritual problems; (c) performance by the clergy of customary church ceremonies affecting the lives of individuals, such as baptism, marriage, burial, and the like; (d) a system of nurture of the young and education in the doctrine and discipline of the church, as well as (in the case of mature and well developed churches) theological seminaries for the advanced study and the training of ministers.

Id. We reproduce this list not to create any requirement for an organization to be determined to have a religious purpose, but merely as an illustration. The *Dykema* court's listed hallmarks of a religious purpose are by no means exhaustive or necessary conditions and the listed activities may be different for different faiths.

¶56 We do not adopt a rigid formula for deciding whether an organization is operated primarily for religious purposes. See *Hosanna-Tabor Evangelical Lutheran Church and Sch. v. Equal Emp. Opportunity Comm'n*, 565 U.S. 171, 190 (2012). Instead, we agree with the *Dykema* court that an examination of an organization's activities lends itself to an objective inquiry that does not lead us into a First Amendment quagmire, as will be discussed further below.¹⁵

¹⁵ Our examination of an organization's activities also finds support in a federal law utilizing the same language as the statute we examine here. See 26 U.S.C. § 3309(b)(1)(B). A report of the House Ways and Means Committee on that law sets forth

¶57 We therefore conclude that in determining whether an organization is “operated primarily for religious purposes” within the meaning of Wis. Stat. § 108.02(15)(h)2., we must examine both the motivations and the activities of the organization.

C

¶58 We turn next to apply our statutory interpretation to the facts before us. The burden to establish an exemption is on CCB and the sub-entities. See *Princess House*, 111 Wis. 2d at 66; *Sw. Airlines*, 397 Wis. 2d 431, ¶24 (explaining that “[t]he burden is on the party seeking the exemption to prove its entitlement” and “taxation is the rule and exemption is the exception”).

¶59 CCB and the sub-entities profess to have a religious motivation. Specifically, they state that their services “are based on gospel values and the principles

an example of its application that focuses on an organization’s activities:

Thus, the services of the janitor of a church would be excluded, but services of a janitor for a separately incorporated college, although it may be church related, would be covered. A college devoted primarily to preparing students for the ministry would be exempt, as would a novitiate or a house of study training candidates to become members of religious orders. On the other hand, a church related (separately incorporated) charitable organization (such as, for example, an orphanage or a home for the aged) would not be considered under this paragraph to be operated primarily for religious purposes.

H.R. Rep. No. 91-612, at 44 (1969). Congress thus envisioned that an examination of activities, and not merely motivations, would be undertaken given the language we examine in this case.

of the Catholic Social Teachings.” Indeed, it is part of CCB’s mission to “carry on the redeeming work of our Lord by reflecting gospel values and the moral teaching of the church.” We accept these statements at face value, and LIRC does not argue that these assertions of religious motivation are insincere, fraudulent, or otherwise not credible. Cf. *Holy Trinity Cmty. Sch., Inc. v. Kahl*, 82 Wis. 2d 139, 155, 262 N.W.2d 210 (1978) (indicating that the court is “obliged to accept the professions of the school” as to its affiliation and “to accord them validity without further inquiry” but the court may “look behind such decisions where there is evidence of fraud or collusion”).

¶60 However, accepting an organization’s motivations does not end the inquiry as we must also examine its activities. We look for guidance from prior cases to further the analysis. In *Dykema*, the court’s examination of activities focused on whether an organization participated in worship services, religious outreach, ceremony, or religious education. *Dykema*, 666 F.2d at 1100. Here, such criteria weigh in favor of a determination that CCB’s and the sub-entities’ activities are not “primarily” religious in nature. The record demonstrates that CCB and the sub-entities, which are organized as separate corporations apart from the church itself, neither attempt to imbue program participants with the Catholic faith nor supply any religious materials to program participants or employees. Although not required, these would be strong indications that the activities are primarily religious in nature.

¶61 Our own precedent, albeit in another First Amendment context, further bolsters this conclusion.

In *Coulee Catholic Schools*, 320 Wis. 2d 275, ¶48, we distinguished “one religiously-affiliated organization committed to feeding the homeless [that] has only a nominal tie to religion” from “another religiously-affiliated organization committed to feeding the homeless [that] has a religiously infused mission involving teaching, evangelism, and worship” for purposes of the ministerial exception. CCB and the sub-entities fit into the former category. Both employment with the organizations and services offered by the organizations are open to all participants regardless of religion.

¶62 CCB’s and the sub-entities’ activities are primarily charitable and secular. The sub-entities provide services to individuals with developmental and mental health disabilities. These activities include job training, placement, and coaching, as well as services related to activities of daily living. CCB provides background support and management services for these activities—a wholly secular endeavor. See *supra*, ¶¶10-15.

¶63 Such services can be provided by organizations of either religious or secular motivations, and the services provided would not differ in any sense. This is illustrated by a historical look at one of CCB’s sub-entities, BCDS. As noted by the court of appeals, BCDS was not under the CCB umbrella until 2014, before which it had no affiliation with any religious organization. See *Cath. Charities Bureau*, 406 Wis. 2d 586, ¶59. Yet the services provided before and after BCDS’s partnership with CCB commenced were exactly the same. We agree with the court of appeals that “[t]he fact that the manner in which BCDS carried out its mission did not

change after it became an affiliate of CCB supports our conclusion that BCDS' purpose and operations are not primarily religious." *Id.*

¶64 The other three sub-entities at issue offer services comparable to those offered by BCDS. In other words, they offer services that would be the same regardless of the motivation of the provider, a strong indication that the sub-entities do not "operate primarily for religious purposes."

¶65 This result is further supported with a look to federal law. We observe that Wisconsin's religious purposes exemption contains verbatim language to a provision of federal law, with which Wisconsin's law was enacted to conform. See 26 U.S.C. § 3309(b)(1)(B); 1971 S.B. 330 (noting that the proposed changes to Wisconsin law "will bring Wisconsin's law in line with the 1970 amendments to the federal unemployment tax act" and that "[a]ny less coverage would cost federal tax credits"). A report of the House Ways and Means Committee on that federal law indicates that, identical to Wisconsin's law, it:

excludes services of persons where the employer is a church or convention or association of churches, but does not exclude certain services performed for an organization which may be religious in orientation unless it is operated primarily for religious purposes and is operated, supervised, controlled, or principally supported by a church (or convention or association of churches).

H.R. Rep. No. 91-612, at 44 (1969). Importantly, the House Report continues and provides examples of

employment that would and would not be entitled to the exemption:

Thus, the services of the janitor of a church would be excluded, but services of a janitor for a separately incorporated college, although it may be church related, would be covered. A college devoted primarily to preparing students for the ministry would be exempt, as would a novitiate or a house of study training candidates to become members of religious orders. *On the other hand, a church related (separately incorporated) charitable organization (such as, for example, an orphanage or a home for the aged) would not be considered under this paragraph to be operated primarily for religious purposes.*

Id. (emphasis added).

¶66 Comparing the services offered by CCB and the sub-entities here to the listed examples, the “orphanage” or “home for the aged” is analogous. The services provided by a religiously run orphanage and a secular one do not differ in any meaningful sense. The same is true of a “home for the aged.” And the same principle applies to the developmental services provided by the sub-entities at the center of this case.

¶67 Although CCB and the sub-entities assert a religious motivation behind their work, the statutory language indicates that this is not enough to receive the exemption. An objective examination of the actual activities of CCB and the sub-entities reveals that their activities are secular in nature. We therefore

conclude that CCB and the sub-entities are not operated primarily for religious purposes within the meaning of Wis. Stat. § 108.02(15)(h)2.

IV

¶68 Finally, we examine the petitioners' assertion that the above statutory interpretation violates the First Amendment.¹⁶ Specifically, they advance that such analysis and conclusion creates a conflict with the First Amendment to the United States Constitution by violating both the Establishment Clause and Free Exercise Clause.

¶69 Together referred to as the Religion Clauses, the Establishment and Free Exercise clauses provide in their entirety: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" U.S. Const. amend. I.

¶70 The Establishment Clause protects against three main evils: sponsorship, financial support, and active involvement of the sovereign in religious activity. *Jackson v. Benson*, 218 Wis. 2d 835, 856, 578 N.W.2d 602 (1998) (citing *Walz v. Tax Comm'n*, 397 U.S. 664, 668 (1970)). In other words, it operates to prohibit the government from enacting laws that "aid one religion, aid all religions, or prefer one religion over another." *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 216 (1963) (quoting *Everson v. Bd. of Educ. of Ewing Twp.*, 330 U.S. 1, 15 (1947)).

¹⁶ In full, the First Amendment provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I.

¶71 It further prohibits the excessive entanglement of the state in religious matters, a principle known as the entanglement doctrine. *St. Augustine Sch.*, 398 Wis. 2d 92, ¶42. Excessive entanglement occurs “if a court is required to interpret church law, policies, or practices.” *L.L.N. v. Clauder*, 209 Wis. 2d 674, 687, 563 N.W.2d 434 (1997). Such an inquiry is prohibited by the First Amendment. *Id.* However, “a court may hear an action if it will involve the consideration of neutral principles of law.” *Id.*

¶72 On the other hand, the Free Exercise Clause assures “the right to harbor religious beliefs” by “protecting the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life.” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022). It protects religious organizations’ right “to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Coulee Cath. Schs.*, 320 Wis. 2d 275, ¶37 (quoting *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952)).

¶73 Both Religion Clauses inform a doctrine known as the church autonomy principle, which “is perhaps best understood as marking a boundary between two separate polities, the secular and the religious, and acknowledging the prerogatives of each in its own sphere.” *Korte v. Sebelius*, 735 F.3d 654, 677 (7th Cir. 2013). “The church-autonomy doctrine respects the authority of churches to select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions free from governmental interference.” *Id.* (quoted source omitted). In other words, it protects religious

institutions from “secular control or manipulation.” *Kedroff*, 344 U.S. at 116.

¶74 The Religion Clauses are inherently in tension with each other. We acknowledged this complicated interplay in *State v. Yoder*, 49 Wis. 2d 430, 444, 182 N.W.2d 539 (1971) aff’d *Wisconsin v. Yoder*, 406 U.S. 205 (1972). Indeed, the Religion Clauses are “not the most precisely drawn portions of the Constitution.” *Walz*, 397 U.S. at 668. Both clauses are “cast in absolute terms,” *id.*, and therefore have the tendency to “overlap, can conflict, and cannot always be squared on any strict theory of neutrality.” *Yoder*, 49 Wis. 2d at 444.

¶75 The United States Supreme Court has also acknowledged these tensions, instructing that “[a]dherence to the policy of neutrality” is paramount to prevent “the kind of involvement that would tip the balance toward government control of churches or governmental restraint on religious practice.” *Walz*, 397 U.S. at 669-70. At the same time, it emphasizes that strict adherence is not always feasible:

The course of constitutional neutrality in this area cannot be an absolutely straight line; rigidity could well defeat the basic purpose of these provisions, which is to insure that no religion be sponsored or favored, none commanded, and none inhibited. The general principle deducible from the First Amendment and all that has been said by the Court is this: that we will not tolerate either governmentally established religion or governmental interference with religion. Short of those

expressly proscribed governmental acts there is room for play in the joints productive of a benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference.

Id. at 669.

¶76 A religious institution’s First Amendment rights are not unlimited. Just as there are limitations on First Amendment free speech, i.e., the proverbial prohibition of yelling “fire” in a crowded theater,¹⁷ so too are there limitations here. The challenge is to balance the competing interests. We are assisted in achieving this balance by a review of precedent, and by a review of how other jurisdictions have navigated the challenge.

¶77 An as-applied challenge, such as that brought by CCB and the sub-entities, requires an assessment of the merits of the challenge by considering the facts of the particular case in front of the court.¹⁸ *State v.*

¹⁷ See *Schenck v. United States*, 249 U.S. 47, 52 (1919).

¹⁸ There are two major types of constitutional challenges: facial and as-applied. *State v. Roundtree*, 2021 WI 1, ¶17, 395 Wis. 2d 94, 952 N.W.2d 765. A party challenging a law as unconstitutional on its face must show that the law cannot be constitutionally enforced under any circumstances. *Id.* In contrast, in an as-applied challenge, the court assesses the merits of the challenge by considering the facts of the particular case before it. *Id.*, ¶18. The parties’ briefing was not particularly clear regarding which type of challenge CCB and the sub-entities bring here. Both LIRC and the court of appeals interpreted the petitioners’ challenge to be an as-applied challenge, and we do the same. See *Cath. Charities Bureau*, 406 Wis. 2d 586, ¶47 (“[W]e note that the parties do not argue that the statute itself violates

Hamdan, 2003 WI 113, ¶43, 264 Wis. 2d 433, 665 N.W.2d 785. For an as-applied challenge to succeed, the challenger must demonstrate that the challenger’s constitutional rights were actually violated. *State v. Roundtree*, 2021 WI 1, ¶18, 395 Wis. 2d 94, 952 N.W.2d 765. If such a violation occurred, the operation of the law is void as to the facts presented for the party asserting the claim. *Id.* We presume that the statute is constitutional, and the party raising a constitutional challenge must prove that the challenged statute has been applied in an unconstitutional manner beyond a reasonable doubt. *Id.*; *State v. Christen*, 2021 WI 39, ¶32, 396 Wis. 2d 705, 958 N.W.2d 746; *State v. Wood*, 2010 WI 17, ¶15, 323 Wis. 2d 321, 780 N.W.2d 63.

¶78 With this standard in mind, we turn now to the petitioners’ constitutional claims to determine whether CCB and the sub-entities have made the requisite showing that Wis. Stat. § 108.02(15)(h)2. has been unconstitutionally applied to them beyond a reasonable doubt. CCB and the sub-entities claim that LIRC’s statutory interpretation leads to a violation of the Establishment Clause and the Free Exercise Clause in three ways: (1) by causing an excessive state entanglement with religion, (2) by violating the church autonomy principle, and (3) by discriminating “against religious entities with a more complex polity” and “penalizing CCB for its Catholic beliefs regarding

the First Amendment, meaning that CCB does not assert a facial constitutional challenge.”). In any event, the standard for a facial challenge is more stringent, and if an as-applied challenge fails, then a facial challenge will also necessarily fail because the law can be constitutionally applied in at least one circumstance.

how it must serve those most in need.” We address each argument in turn.

A

¶79 CCB and the sub-entities assert initially that LIRC’s interpretation of the statutory exemption violates the Establishment Clause by occasioning an excessive state entanglement with religion. Specifically, they argue that examination of an organization’s activities “requires Wisconsin courts (and government officials) to conduct an intrusive inquiry into the operations of religious organizations that seek the religious purposes exemption.”

¶80 However, the protection provided by the Establishment Clause is not a blanket protection against any type of governmental inquiry into a religious organization. There are certain instances that require some investigation, including determining tax liability or the applicability of a tax exemption. See *Walz*, 397 U.S. at 675-76. In fact, investigations into tax-exempt status are consistent with a long-standing tradition of treating religious organizations equally under the law. See *id.* at 680. Indeed, both taxation of churches and exemption “occasion[] some degree of involvement with religion.” *Id.* at 674.

¶81 The Establishment Clause does not treat religion as a third rail that courts cannot touch. Rather, it ensures that the inevitable “degree of involvement” in such a determination does not cross into an evaluation of religious dogma. The Supreme Court, in fact, has “upheld government benefits and tax exemptions that go to religious organizations, even though those policies have the effect of advancing

or endorsing religion,” *Am. Legion v. Am. Humanist Ass’n*, 588 U.S. ___, 139 S. Ct. 2067, 2092 (2019) (Kavanaugh, J., concurring).

¶82 Although such an inquiry necessarily links the government with religious organizations, “some degree of involvement” does not offend the First Amendment. *Walz*, 397 U.S. at 674; see also *id.* at 697 n.1 (Harlan, J., concurring). An inquiry evaluating “the scope of charitable activities in proportion to doctrinal pursuits may be difficult,” but such difficulty “does not render it undue interference with religion” as long as it “does not entail judicial inquiry into dogma and belief.” *Id.* at 697 n.1 (Harlan, J., concurring).

¶83 The truth or falsity of a religious belief is not a proper matter for us, or any other court to decide, but courts still must answer “delicate question[s]” to avoid “allowing every person to make his own standards on matters of conduct in which society as a whole has important interests.” *Yoder*, 406 U.S. at 215-16. The key is for any inquiry a court undertakes to remain on the right side of the line and not involve an examination into the religious beliefs, practices, or dogma of an organization. Cf. *St. Augustine Sch.*, 398 Wis. 2d 92, ¶¶4749. For example, in *St. Augustine School*, we observed that an examination of “a school’s professions that are published on its public website or set forth in filings with the state does not necessarily require any investigation or surveillance into the practices of the school.” *Id.*, ¶48. Consideration of “professions” without any surveillance of whether an organization’s practices are consistent with a particular religious dogma ensures that the inquiry remains on the right side of the line. *Id.*, ¶49.

¶84 Such is our challenge here. We begin the inquiry by again looking at the statute at issue. As set forth above, the language of Wis. Stat. § 108.02(15)(h)2. dictates that we examine both the organization’s motivations and activities to determine whether the organization is “operated primarily for religious purposes” and thus is entitled to exemption from unemployment tax.

¶85 Examining both the motivations and activities of the organization requires minimal judicial inquiry into religion, as there is no examination of whether CCB’s or the sub-entities’ activities are consistent or inconsistent with Catholic doctrine. A court need only determine what the nature of the motivations and activities of the organizations are—not whether they are “Catholic” enough to qualify for the exemption.

¶86 Again, this inquiry requires “some degree of involvement” with religion. See *Walz*, 397 U.S. at 674. But rather than necessarily creating a constitutional problem, such an inquiry is inherent in any statutory scheme that offers tax exemption to religious entities. *Id.*; see *id.* at 675 (“There is no genuine nexus between tax exemption and establishment of religion.”). The review we endorse in this case is a neutral and secular inquiry based on objective criteria, examining the activities and motivations of a religious organization. See *St. Augustine Sch.*, 398 Wis. 2d 92, ¶15 (concluding that a “neutral and secular inquiry” into a religious organization is constitutional); *Dykema*, 666 F.2d at 1100 (applying “objective criteria” to an investigation into a religious organization’s activities.)

¶87 Our conclusion is consistent with those of other courts that have examined similarly “delicate” questions. For example, in *Dykema*, the Seventh

Circuit examined an organization's actual activities, just as we do here. *Id.* ("Objective criteria for examination of an organization's activities . . . enable the IRS to make the determination required by the statute without entering into any subjective inquiry with respect to religious truth which would be forbidden by the First Amendment."). Our examination of the motivations and actual activities of an organization here is akin to our consideration of a school's corporate documents, professions with regard to self-identification and affiliation, and website to which we gave a constitutional seal of approval in *St. Augustine School*. 398 Wis. 2d 92, ¶5. This "neutral and secular" inquiry does not intrude on questions of religious dogma. See *id.*

¶88 Further, a look to history strongly supports our consideration of an organization's activities, to which CCB and the sub-entities object. As detailed below, this history establishes two essential principles for our purposes here. First, that an inquiry into "purpose" that examines an organization's actual activities has long been established in statutory enactments and the common law, and second, that courts have embraced, rather than shunned, a judicial inquiry into an organization's actual activities in order to make a determination of "purpose" to inform whether the organization qualifies for exemption. Our decision here is thus consistent with court's historical treatment of similar questions.

¶89 Religious tax exemption has been traced from ancient times through the British common law. See John W. Whitehead, *Tax Exemption and Churches: A Historical and Constitutional Analysis*, 22 Cumb. L. Rev. 521, 524-36 (1992). British common law, and

certain colonial legislatures, widely granted property tax exemptions to church property. John Witte, Jr., *Tax Exemption of Church Property: Historical Anomaly or Valid Constitutional Practice?*, 64 S. Cal. L. Rev. 363, 372-74 (1991). The law of equity, on the other hand, also accorded tax exemption to church properties, but only to those which were devoted to “charitable uses.” *Id.* at 375. Thus, there has historically been some examination of a property’s actual use, not just reliance on an organization’s religious character. In other words, courts have long placed import on what a religious organization does, and not just on what it says.

¶90 As these exemptions evolved, statutory language likewise focused on an organization’s “purpose.” Indeed, from the earliest statutory enactments regarding tax exemption for religious entities, an examination of an organization’s activities has been part and parcel of the inquiry.

¶91 For instance, the Wilson-Gorman Tariff Act of 1894, one of the earliest tax statutes that referenced an exemption for religious purposes, provided a tax exemption to a flat income tax. It stated:

“[N]othing herein contained shall apply to . . . corporations, companies, or associations organized and conducted solely for charitable, religious, or educational purposes, including fraternal beneficiary associations.” Though the law was declared unconstitutional by the Supreme Court in 1895, the exemption language contained in the act would provide the cornerstone for tax legislation involving

charitable organizations for the next century.

Paul Arnsberger, et al., *A History of the Tax-Exempt Sector: An SOI Perspective*, IRS Stat. of Income Bull. 105, 106-07 (Winter 2008), www.irs.gov/pub/irs-soi/tehistory.pdf. Similarly, a subsequent enactment, the Revenue Act of 1909, granted exemption to “any corporation or association organized and operated exclusively for religious, charitable, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual.” *Id.* at 107 (emphasis added).

¶92 The ubiquity of religious tax exemptions and the analytical consequences of such exemptions have been recognized by the United States Supreme Court. Specifically, the *Walz* Court observed that “Congress, from its earliest days, has viewed the Religion Clauses of the Constitution as authorizing statutory real estate tax exemption to religious bodies,” noting several examples from the early 1800’s. *Walz*, 397 U.S. at 677. As stated above, however, the *Walz* court also emphasized that “some degree of involvement” with religion is a necessary consequence of offering tax exemption to religious entities. *Id.* at 674.

¶93 Tax exemptions for entities with a religious “purpose” being well-established in historical enactments, it is paramount that there be a mechanism for determining if an organization qualifies. See *Ecclesiastical Order of Ism of Am, Inc. v. Chasin*, 653 F. Supp. 1200, 1205 (E.D. Mich. 1986) (“Without [an examination of religious activities], it would be difficult to see how any church could qualify as a tax exempt organization ‘for religious

purposes.”). Such an endeavor inherently requires judicial inquiry and has on many occasions throughout the history of both federal and state law resulted in denial of tax exemption where religion is claimed as the basis of the exemption.¹⁹

¶94 For the above reasons, we conclude that CCB and the sub-entities have failed to demonstrate beyond a reasonable doubt an unconstitutional entanglement with religion. The motivations and activities framework dictated by the language of Wis. Stat. § 108.02(15)(h)2. does not require the court to stray from a neutral and secular inquiry to an impermissible examination of religious dogma.

B

¶95 CCB and the sub-entities contend next that LIRC’s interpretation violates the church autonomy principle. Namely, they argue that the church autonomy principle is violated because LIRC’s interpretation penalizes the choice CCB made to structure itself and its sub-entities as corporations separate from the church itself. CCB and the sub-entities advance that the church autonomy principle

¹⁹ See, e.g., *Gibbons v. District of Columbia*, 116 U.S. 404, 407 (1886); *All Saints Par. v. Inhabitants of Town of Brookline*, 59 N.E. 1003, 1004 (Mass. 1901); *Trinity Church v. City of New York*, 10 How. Pr. 138, 140-41 (N.Y. Sup. Ct. 1854); *In re City of Pawtucket*, 52 A. 679, 679 (R.I. 1902); *Frederick Cnty. Comm’rs v. Sisters of Charity of Saint Joseph*, 48 Md. 34, 43 (Md. 1878); see also *Waushara County v. Graf*, 166 Wis. 2d 442, 462-63, 480 N.W.2d 16 (1992); *Midtown Church of Christ, Inc. v. City of Racine*, 83 Wis. 2d 72, 73-74, 264 N.W.2d 281 (1978); John W. Whitehead, *Tax Exemption and Churches: A Historical and Constitutional Analysis*, 22 Cumb. L. Rev. 521, 545 n.184 (1992) (collecting cases both upholding and disallowing property tax exemptions for churches and other religious organizations).

is violated by “divid[ing] up religious bodies according to secular principles.” They point to *Kedroff*, 344 U.S. 94, to assert that the government is thereby “interfering with the Church’s internal governance,” which adversely affects the faith and mission of the church itself.

¶96 *Kedroff* illustrates the type of ecclesiastical governance matters protected by the church autonomy principle. At issue in *Kedroff* was an inter-church controversy over the right to use a Russian Orthodox cathedral in New York City. *Id.* at 96-97. The controversy arose between the North American Russian Orthodox churches, which claimed the right to use the cathedral belonged to an archbishop elected by them, and the Supreme Court Authority, which claimed the right belonged instead to an archbishop appointed by the patriarch in Moscow. *Id.* New York’s highest court ruled in favor of the North American churches, based on a state law requiring every Russian Orthodox church in New York to recognize the determination of the governing body of the North American churches as authoritative. *Id.* at 99 n.3.

¶97 The *Kedroff* Court concluded that the state statute at issue was unconstitutional because it allowed the “power of the state into the forbidden area of religious freedom contrary to the principles of the First Amendment” by “displac[ing] one church administrator with another . . . [thereby] pass[ing] the control of matters strictly ecclesiastical from one church authority to another.” *Id.* at 119. The right to acquire the cathedral was determined to be “strictly a matter of ecclesiastical government.” *Id.* at 115.

¶98 In contrast to the New York statute at issue in *Kedroff*, Wis. Stat. § 108.02(15)(h)2. neither regulates

internal church governance nor mandates any activity. Section 108.02(15)(h)2. defines what employment is for the purposes of unemployment insurance without reference to any religious principles or any attempt to control internal church operations. Put simply, it does not concern matters that are “strictly” or even remotely “ecclesiastical,” which belong to the church alone. See *id.*

¶99 CCB and the sub-entities claim that viewing their motives and activities separate from those of the church penalizes their “choice to be ‘structured as separate corporations’—a religious decision grounded in church polity and internal governance.” On the contrary, the claim that in order to receive the exemption the church is now required to structure itself as a single entity rather than separately incorporated subsidiaries is unpersuasive. The statute at issue dictates that it is the motivation and activities of the nonprofit that determine its tax-exempt status, not its corporate structure.

¶100 It is not difficult to imagine a non-profit organization structured as a separate sub-entity of a church that is “operated primarily for religious purposes,” that is, with both motivations and activities that are religious. For example, if one of the religiously-motivated sub-entities in this case partook in activities such as those cited by the *Dykema* court as indicative of a religious purpose, See *supra*, ¶55, it would have a stronger argument that, despite being incorporated separately from a religious institution, it is nevertheless “operated primarily for religious purposes” within the meaning of Wis. Stat. §

108.02(15)(h)2.²⁰ Thus, CCB and the sub-entities have failed to demonstrate that the church autonomy principle has been violated beyond a reasonable doubt because the statute does not interfere with its internal governance or any ecclesiastical matters.

C

¶101 Next, CCB and the sub-entities claim that LIRC’s proposed interpretation as applied to them abandons “[the] bedrock principle of neutrality among religions” and violates the Free Exercise Clause in at least two ways. First, CCB and the sub-entities advance that it violates the principle of neutrality because “it discriminates against religious entities with a more complex polity.” In other words, CCB and the sub-entities contend that the Catholic Church is penalized under LIRC’s interpretation for “organizing itself as a group of separate corporate bodies—in contrast to other religious entities that include a variety of ministries as part of a single incorporated or unincorporated body.”

¶102 Second, CCB and the sub-entities claim that LIRC’s interpretation is not neutral because it

²⁰ See also *Schwartz v. Unemployment Ins. Comm’n*, 895 A.2d 965, 970 (Me. 2006) (concluding that a nonprofit organization which, in part, provides healthcare to island communities, is operated primarily for religious purposes because of its religious motivations and activities including bringing pastors to island communities, offering Christmas programs, and employing clergy members); *Peace Lutheran Church v. State*, Unemployment Appeals Comm’n, 906 So. 2d 1197, 1199-1200 (Fla. Dist. Ct. App. 2005) (determining that a child care center located at a church was operated primarily for religious purposes because it provided outreach for the church and its “religious purposes pervade all aspects of the school/day care center.”).

penalizes them “for [their] Catholic beliefs regarding how [they] must serve those most in need.” They point to LIRC’s and the court of appeals’ decisions as “identifying [certain²¹] characteristics of CCB’s ministry as factors favoring denial of an otherwise-available exemption.” Such an interpretation, in the petitioners’ view, “flies in the face of Catholic beliefs about care for the poor” and “favors religious groups that require those they serve to adhere to the faith of that group or be subject to proselytization.”

¶103 As a threshold matter, a party making a free exercise challenge must demonstrate that the challenged law burdens their religious exercise in a constitutionally significant way. “[T]he Free Exercise Clause does not require an exemption from a governmental program unless, at a minimum, inclusion in the program actually burdens the claimant’s freedom to exercise religious rights.” *Tony and Susan Alamo Found. v. Sec’y of Labor*, 471 U.S. 290, 303 (1985); see also *Sch. Dist. of Abington Twp.*, 374 U.S. at 223 (“[I]t is necessary in a free exercise case for one to show the coercive effect of the enactment as it operates against him in the practice of his religion.”). If such a burden has been shown, then the analysis proceeds to the second step, where a party may carry its burden of proving a free exercise violation by showing that a governmental entity has

²¹ LIRC and the court of appeals observe that CCB does not engage in any of the following activities: inculcating Catholic faith; teaching the Catholic religion; evangelizing or participating in religious rituals or worship services; requiring employees, participants or board members to be of Catholic faith; requiring attendance at religious training, orientation, or services; and disseminating religious materials.

burdened a sincere religious practice pursuant to a policy that is not “neutral” or “generally applicable.” *Bremerton*, 507 U.S. at 525.

¶104 Importantly for our Free Exercise analysis, LIRC asserts that CCB and the sub-entities have not shown that “the unemployment insurance system burdens their religious beliefs.” In LIRC’s view, “[i]nclusion in the unemployment program is not a constitutionally significant burden.” LIRC’s argument continues: “The commission’s interpretation does not prohibit the Diocese or the employers from engaging in any activity. The employers have participated in the State unemployment insurance program for many years and do not contend that their participation was a significant or substantial burden on their religious practices or beliefs.”

¶105 A look to United States Supreme Court precedent illustrates that LIRC’s position is correct. “[T]o the extent that imposition of a generally applicable tax merely decreases the amount of money appellant has to spend on its religious activities, any such burden is not constitutionally significant.” *Jimmy Swaggart Ministries v. Bd. of Equalization of Cal.*, 493 U.S. 378, 391 (1990). “[T]he very essence of such a tax is that it is neutral and nondiscriminatory on questions of religious belief.” *Id.* at 394; see *Hernandez v. Comm’r of Internal Revenue*, 490 U.S. 680, 699-700 (1989) (concluding that the burden imposed by a provision of the Internal Revenue Code governing charitable deduction was “no different from that imposed by any public tax or fee” and that even a “substantial burden would be justified by the ‘broad public interest in maintaining a sound tax system,’ free of ‘myriad exceptions flowing from a wide variety

of religious beliefs.”) (quoted source omitted); *accord Coulee Cath. Schs.*, 320 Wis. 2d 275, ¶65 (“General laws related to building licensing, taxes, social security, and the like are normally acceptable.”).

¶106 Such is the nature of the unemployment tax at issue here. CCB and the sub-entities have not identified how the payment of unemployment tax prevents them from fulfilling any religious function or engaging in any religious activities. As the United States Supreme Court said, the decrease in the money available for religious or charitable activities that comes with paying a generally applicable tax is not a constitutionally significant burden. *Jimmy Swaggart Ministries*, 493 U.S. at 391. CCB and the sub-entities thus cannot surmount the threshold inquiry to demonstrate a Free Exercise violation. Because CCB and the sub-entities have failed to demonstrate that the statute imposes a constitutionally significant burden on their religious practice, we need not address the petitioners’ argument that the statute violates principles of neutrality.

¶107 Accordingly, we conclude that CCB and the sub-entities have therefore not met their burden under their Free Exercise claim to show that the law as-applied to them is unconstitutional beyond a reasonable doubt.²²

²² To the extent that CCB and the sub-entities argue that Wis. Stat. § 108.02(15)(h)2. is facially unconstitutional, such a challenge also fails. For a facial challenge to be successful, it must be demonstrated that the law cannot be constitutionally enforced under any circumstances. *Roundtree*, 395 Wis. 2d 94, ¶17. Our conclusion that § 108.02(15)(h)2. can be constitutionally enforced under the present circumstances necessarily precludes such an argument.

V

¶108 In sum, we determine that in our inquiry into whether an organization is “operated primarily for religious purposes” within the meaning of Wis. Stat. § 108.02(15)(h)2., we must examine both the motivations and the activities of the organization. Applying this analysis to the facts before us, we conclude that the petitioners are not operated primarily for religious purposes within the meaning of § 108.02(15)(h)2. We further conclude that the application of § 108.02(15)(h)2. as applied to the petitioners does not violate the First Amendment because the petitioners have failed to demonstrate that the statute as applied to them is unconstitutional beyond a reasonable doubt.

¶109 Accordingly, we affirm the decision of the court of appeals.

By the Court.—The decision of the court of appeals is affirmed.

¶110 **REBECCA GRASSL BRADLEY, J.**
(dissenting).

“Render therefore unto Caesar the things which are Caesar’s; and unto God the things that are God’s.”

Matthew 22:21 (King James).

¶111 The State of Wisconsin gives a tax exemption to any nonprofit organization “operated primarily for religious purposes and operated . . . by a church” Wis. Stat. § 108.02(15)(h)2. Catholic Charities Bureau, Inc. and four of its sub-entities (collectively, “Catholic Charities”) are operated primarily for a religious purpose—fulfillment of the command of Jesus Christ himself to serve others—and operated by the Roman Catholic Diocese of Superior, Wisconsin. The majority rewrites the statute to deprive Catholic Charities of the tax exemption, rendering unto the state that which the law says belongs to the church.

¶112 Impermissibly entangling the government in church doctrine, the majority astonishingly declares Catholic Charities are not “operated primarily for religious purposes” because their activities are not “religious in nature.” Majority op., ¶60. The statute, however, requires only that a nonprofit be operated primarily for a religious reason. “The statute is neutral as to the type of service an organization provides; it speaks only in terms of the purpose of the organization.” *Cathedral Arts Project, Inc. v. Dep’t of Econ. Opportunity*, 95 So. 3d 970, 975 (Fla. Dist. Ct. App. 2012) (Swanson, J., dissenting in part, and dissenting from the judgment).

¶113 The majority’s misinterpretation of the exemption renders the statute in violation of the First Amendment of the United States Constitution as well as the Wisconsin Constitution. By focusing on

whether a nonprofit primarily engages in activities that are “religious in nature,” the majority transforms a broad exemption into a denominational preference for Protestant religions and a discriminatory exclusion of Catholicism, Judaism, Islam, Sikhism, Hinduism, Buddhism, Hare Krishna, and the Church of Latter Day Saints, among others. The First Amendment forbids the government from such religious discrimination and commands neutrality among religions in the provision or denial of a government benefit.

¶114 The majority’s misinterpretation also excessively entangles the government in spiritual affairs, requiring courts to determine what religious practices are sufficiently religious under the majority’s unconstitutional test. The majority says secular entities provide charitable services, so such activities aren’t religious at all, even when performed by Catholic Charities. The majority’s determination directly contradicts Catholic Charities’ faith:

The [Catholic] Church’s deepest nature is expressed in her three-fold responsibility: of proclaiming the word of God (kerygma-martyria), celebrating the sacraments (leitourgia), and exercising the ministry of charity (diakonia). These duties presuppose each other and are inseparable. For the Church, charity is not a kind of welfare activity which could equally well be left to others, but is a part of her nature, an indispensable expression of her very being.

Pope Benedict XVI, *Deus Caritas Est*, ¶25 (2005).²³ Courts should be uncomfortable judging matters of faith. Not only does the constitution forbid the exercise, but courts are susceptible to mischaracterizing deeply religious activities, which for some faith traditions include dancing, Bhakti-yoga, and sharing a meal, as *amicus curiae*, International Society for Krishna Consciousness and the Sikh Coalition, informs this court. The majority instead looks through a seemingly Protestant lens to deem works of charity worthy of the exemption only if accompanied by proselytizing—a combination forbidden by Catholicism, Judaism, and many other religions.²⁴

¶115 The majority mangles Wis. Stat. § 108.02(15)(h)2. to reflect its policy preferences, supplanting the law actually enacted by the people’s representatives in the legislature. The majority’s activism renders the exemption unconstitutional. I dissent.²⁵

²³ https://www.vatican.va/content/benedictxvi/en/encyclicals/documents/hf_ben-xvi_enc_20051225_deuscaritas-est.html.

²⁴ *Amicus Br. Professors Douglas Laycock & Thomas C. Berg*, at 15-16 (internal citations omitted) (“Many evangelical Christians view conversion and overt worship as indispensable elements of their charitable activities. But Catholics and Jews view service itself as a distinct mode of worship that should remain separate from proselytizing.”).

²⁵ Continuing its telling trend, the majority refuses to address any arguments against its desired result. *Clarke v. Wis. Elections Comm’n*, 2023 WI 79, ¶206, 410 Wis. 2d 1, 998 N.W.2d 370 (Rebecca Grassl Bradley, J., dissenting) (noting the majority “pretend[ed] the respondents made an argument that [was] easier for the majority to dismiss” instead of addressing the

I. BACKGROUND

¶116 Every Roman Catholic diocese in Wisconsin has a Catholic Charities entity, which is its social ministry arm. Catholic Charities Bureau, Inc. (CCB) is the Catholic Charities entity for the Diocese of Superior, Wisconsin. The purpose of CCB “is to be an effective sign of the charity of Christ” by providing services according to an “[e]cumenical orientation,” meaning the organization makes no distinction on the

parties’ actual argument). This dissent details the majority’s analytical blunders, which lead the majority to absurdly conclude Catholic Charities are purely secular. Justice Brian Hagedorn also dissents, questioning why the majority reads the exemption narrowly in the face of constitutionally protected religious freedom. If the majority sincerely stands behind its analysis, it should explain where the dissents go astray. As Justice Antonin Scalia put it,

When I have been assigned the opinion for the Court in a divided case, nothing gives me as much assurance that I have written it well as the fact that I am able to respond satisfactorily (in my judgment) to all the onslaughts of the dissents or separate concurrences. The dissent or concurrence puts my opinion to the test, providing a direct confrontation of the best arguments on both sides of the disputed points. It’s a cure for laziness, compelling me to make the most of my case.

Antonin Scalia, The Dissenting Opinion, 1994 J. Sup. Ct. Hist. 33, 41 (1994). Pitifully, the majority does not make the most of its case. Generally, when a party fails to respond to the legal arguments advanced in a case, the court considers the arguments conceded. *United Coop. v. Frontier FS Coop.*, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578 (citing *Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994)). By refusing to offer a word of rebuttal in response to the dissents, the majority concedes its analysis lacks legal merit.

basis of race, sex, or religion regarding those served, employed, or who serve on its board. CCB has separately incorporated sub-entities, four of which are parties in this dispute. The bishop of the Diocese of Superior oversees CCB's programs and services and is in charge of Catholic Charities. It is uncontested that Catholic Charities are operated for a religious reason.

¶117 In 2016, Catholic Charities asked to withdraw from the Wisconsin unemployment tax system. The Department of Workforce Development (DWD) denied the request. Catholic Charities appealed, and an administrative law judge reversed DWD's decision. The Labor and Industry Review Commission (LIRC) reversed the administrative law judge's decision.

¶118 LIRC determined Catholic Charities are not "operated primarily for religious purposes" under Wis. Stat. § 108.02(15)(h)2. LIRC decided "[t]he activities, not the religious motivation behind them or the organization's founding principles, determine whether an exemption from participation in the unemployment insurance program is warranted." Although "[Catholic Charities'] services may be religiously motivated and manifestations of religious belief," LIRC decided Catholic Charities' activities are not "religious per se." LIRC determined "the provision of help to the poor and disabled" is "essentially secular," and therefore denied Catholic Charities the exemption. The circuit court reversed LIRC's decision. The court of appeals then reversed the circuit court.

¶119 The court of appeals decided Catholic Charities do not operate primarily for religious purposes—holding that Catholic Charities' activities are not sufficiently "viewed as . . . inherently

religious.” *Cath. Charities Bureau, Inc. v. LIRC*, 2023 WI App 12, ¶45, 406 Wis. 2d 586, 987 N.W.2d 778. The court of appeals held that to receive the exemption under Wis. Stat. § 108.02(15)(h)2., Catholic Charities must have a religious motivation and engage primarily in activities “religious in nature.” *Id.*, ¶34. According to the court of appeals, “a religious motivation does not, by itself, mean that the organization is operated primarily for religious purposes.” *Id.*, ¶62. It is “the type of religious activities engaged in by the organization” that determines its eligibility for the exemption. *Id.*, ¶45. The court of appeals acknowledged Catholic Charities have a religious motivation for conducting their charitable activities. *Id.*, ¶¶56-57. Nevertheless, the court of appeals decided Catholic Charities’ charitable activities “are neither inherently or primarily religious activities”:

CCB and its sub-entities do not operate to inculcate the Catholic faith; they are not engaged in teaching the Catholic religion, evangelizing, or participating in religious rituals or worship services with the social service participants; they do not require their employees, participants, or board members to be of the Catholic faith; participants are not required to attend any religious training, orientation, or services; their funding comes almost entirely from government contracts or private companies, not from the Diocese of Superior; and they do not disseminate any religious material to participants. Nor do CCB and its sub-entities provide

program participants with an “education in the doctrine and discipline of the church.”

Id., ¶58 (quoting *United States v. Dykema*, 666 F.2d 1096, 1100 (7th Cir. 1981)). “While [Catholic Charities’] activities fulfill the Catechism of the Catholic Church to respond in charity to those in need, the activities themselves are not primarily religious in nature.” *Id.*, ¶59. The court of appeals held any “spreading of [the] Catholic faith accomplished” by Catholic Charities’ activities is only “indirect.” *Id.*, ¶61. The court of appeals concluded that although “the Catholic Church’s tenet of solidarity compels it to engage in charitable acts, the religious motives of CCB and its sub-entities appear to be incidental to their primarily charitable functions.” *Id.*, ¶62.

II. STATUTORY INTERPRETATION

¶120 The Wisconsin Unemployment Compensation Act provides temporary benefits to eligible unemployed workers. Employers contribute to a government account via a tax. In 1972, the state exempted certain religious nonprofits from paying the tax. See ch. 53, Laws of 1971. Currently, the law says, “‘Employment’ as applied to work for a nonprofit organization . . . does not include service . . . [i]n the employ of an organization operated primarily for religious purposes and operated, supervised, controlled, or principally supported by a church or convention or association of churches[.]” Wis. Stat. § 108.02(15)(h)2.

¶121 To receive an exemption under Wis. Stat. § 108.02(15)(h)2., a nonprofit must meet two requirements: (1) the organization must be “operated

primarily for religious purposes” and (2) the organization must be “operated, supervised, controlled, or principally supported by a church or convention or association of churches[.]”²⁶ The parties agree Catholic Charities are “operated, supervised, controlled, or principally supported by a church.” The parties dispute whether Catholic Charities are “operated primarily for religious purposes.” An examination of the statute’s language unencumbered by the majority’s policy agenda shows Catholic Charities are operated for religious purposes and entitled to the exemption.

¶122 The goal of statutory interpretation is to ascertain a law’s objective meaning. *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶47, 271 Wis. 2d 633, 681 N.W.2d 110 (quoting *Bruno v. Milwaukee Cnty.*, 2003 WI 28, ¶25, 260 Wis. 2d 633, 660 N.W.2d 656); see *Friends of Black River Forest v. Kohler Co.*, 2022 WI 52, ¶39, 402 Wis. 2d 587, 977 N.W.2d 342 (stating the Kalal framework involves “ascertaining statutory meaning,” not what the legislature or “statute ‘intended’”). Courts are supposed to focus on the text of the statute to derive “the fair meaning [from] the text itself.” *Brey v. State Farm Mut. Auto. Ins. Co.*, 2022 WI 7, ¶11, 400 Wis. 2d 417, 970 N.W.2d 1 (citing *Kalal*, 271 Wis. 2d 633, ¶¶46, 52); *Friends of Black River Forest*, 402 Wis. 2d 587, ¶28 n.13 (In a “textually driven analysis . . . the language of the cited statutes drives the inquiry . . .”). “Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special

²⁶ Cf. *St. Martin Evangelical Lutheran Church v. South Dakota*, 451 U.S. 772, 782 n.12 (1981).

definitional meaning.” *Kalal*, 271 Wis. 2d 633, ¶45 (citations omitted); see also Wis. Stat. § 990.01(1). If a statute’s meaning is plain, the interpretive process ends. *Kalal*, 271 Wis. 2d 633, ¶45 (citations omitted).

¶123 To determine the meaning of a statute, this court consults the text, context, and structure of the statute. *Brey*, 400 Wis. 2d 417, ¶11 (citing *Milwaukee Dist. Council 48 v. Milwaukee Cnty.*, 2019 WI 24, ¶11, 385 Wis. 2d 748, 924 N.W.2d 153). Canons of construction, dictionaries, and the rules of grammar “serve as ‘helpful, neutral guides’” to determine a statute’s meaning. *James v. Heinrich*, 2021 WI 58, ¶23 n.12, 397 Wis. 2d 517, 960 N.W.2d 350 (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 61 (2012)); *State v. Sample*, 215 Wis. 2d 487, 499, 573 N.W.2d 187 (1998) (first citing Wis. Stat. § 990.01(1); and then citing *Swatek v. Cnty. of Dane*, 192 Wis. 2d 47, 61, 531 N.W.2d 45 (1995)) (“For purposes of statutory interpretation or construction, the common and approved usage of words may be established by consulting dictionary definitions.”); Scalia & Garner, *supra*, at 140 (“Words are to be given the meaning that proper grammar and usage would assign them.”); Neil M. Gorsuch, *A Republic, If You Can Keep It* 132 (2019) (noting the rules of grammar “play no favorites” in statutory interpretation). Application of the traditional tools of statutory interpretation inexorably leads to the unremarkable conclusion that a nonprofit is “operated primarily for religious purposes” if it is managed primarily for religious reasons. Ascertaining the meaning of the religious exemption’s first requirement (“operated primarily for religious purposes”) requires a proper understanding of two words—“operated” and “purposes.”

A. Operated

¶124 LIRC argues the word “operated” means “to work, perform, or function.” According to LIRC, the word “operate” “connotes” activity. The majority agrees. Majority op., ¶42. Catholic Charities argue the word means “managed” or “used.” A textual analysis reveals the word “operated,” as used in Wis. Stat. § 108.02(15)(h)2., means “managed.” Basic grammar verifies the correctness of this interpretation.

¶125 “Although drafters, like all other writers and speakers, sometimes perpetrate linguistic blunders, they are presumed to be grammatical in their compositions. They are not presumed to be unlettered.” Scalia & Garner, *supra*, at 140 (footnotes omitted). Courts are supposed to prefer interpretations in accord with the rules of grammar over nongrammatical readings. See *Indianhead Motors v. Brooks*, 2006 WI App 266, ¶9, 297 Wis. 2d 821, 726 N.W.2d 352 (rejecting an interpretation that “defie[d] the rules of grammar”). The word “operated” appears twice in Wis. Stat. § 108.02(15)(h)2. Each time, “operated” is a transitive verb,²⁷ taking the word

²⁷ In its brief, LIRC insists “operated” is an intransitive verb with no direct object. The majority agrees, citing internet dictionary definitions of “operate” in the intransitive sense. See majority op., ¶42. LIRC and the majority are wrong; “operated” is a transitive verb in Wis. Stat. § 108.02(15)(h)2. It is the “organization”—the direct object—that is “operated”— — transitive verb—“primarily for religious purposes” and “operated”—transitive verb—“by a church or convention or association of churches[.]” § 108.02(15)(h)2. Section 108.02(15)(h)2. has a passive construction. See generally Bryan A. Garner, *Garner’s Modern English Usage* 676 (4th ed. 2016). “[O]nly transitive verbs can appear in the passive voice.” C.

“organization” as its direct object. “Operated” should be interpreted in its transitive sense. See *State ex rel. DNR v. Wis. Ct. of Appeals*, Dist. IV, 2018 WI 25, ¶29, 380 Wis. 2d 354, 909 N.W.2d 114. “Managed” is a common definition of “operated” when used as a transitive verb. *E.g.*, Operate, *The Random House Dictionary of the English Language* 1009 (1st unabridged ed. 1966) (defining “operate” in the transitive sense as “[t]o manage or use”; “[t]o put or keep . . . working or in operation”; and “[t]o bring about out, effect, or produce, as by action or the exertion of force or influence”). Other textual clues confirm “operated” means “managed.”

¶126 The whole text of Wis. Stat. § 108.02(15)(h)2. must be considered when interpreting the word “operated.” “Statutory interpretation centers on the ‘ascertainment of meaning,’ not the recitation of words in isolation.” *Brey*, 400 Wis. 2d 417, ¶13 (citation omitted). “Context is a primary determinant of meaning.” Scalia & Garner, *supra*, at 167; see *Clarke v. Wis. Elections Comm’n*, 2023 WI 79, ¶198, 410 Wis. 2d 1, 998 N.W.2d 370 (Rebecca Grassl Bradley, J., dissenting) (citing *Towne v. Eisner*, 245 U.S. 418, 425 (1918)). The word “operated” is used twice in § 108.02(15)(h)2.: “operated primarily for religious purposes and operated, supervised, controlled, or principally supported by a church or convention or association of churches[.]” (Emphasis added.) “[A]bsent textual or structural clues to the contrary[.]” we presume a word used multiple times in a statute bears the same meaning throughout. *DNR*, 380 Wis. 2d 354, ¶30 (citations omitted); *DaimlerChrysler v.*

Edward Good, *A Grammar Book for You and I . . . Oops, Me!* 33 (2002).

LIRC, 2007 WI 15, ¶29, 299 Wis. 2d 1, 727 N.W.2d 311 (quoting *Harnischfeger Corp. v. LIRC*, 196 Wis. 2d 650, 663, 539 N.W.2d 98 (1995)) (“It is a basic rule of construction that we attribute the same definition to a word both times it is used in the same statute or administrative rule.”). The text and structure of § 108.02(15)(h)2. confirm the word “operated” bears the same meaning in both uses. Section 108.02(15)(h)2. uses the word “operated” twice within the same sentence, providing strong evidence the word means the same thing in both instances. *Miss. ex rel. Hood v. AU Optronics Corp.*, 571 U.S. 161, 171 (2014) (quoting *Brown v. Gardner*, 513 U.S. 115, 118 (1994)) (“[T]he ‘presumption that a given term is used to mean the same thing throughout a statute’ is ‘at its most vigorous when a term is repeated within a given sentence.’”). Additionally, the word “operated” is a transitive verb in both uses, sharing the same direct object: “organization.” It is not credible that the word “operated,” which is used twice in the same sentence, sharing the same direct object, means something different in each use. See *United States v. Cooper Corp.*, 312 U.S. 600, 606 (1941) (“It is hardly credible that Congress used the term ‘person’ in different senses in the same sentence.”).

¶127 In its second appearance in Wis. Stat. § 108.02(15)(h)2., the word “operated” is followed by the verbs “supervised, controlled, [and] principally supported.” It is a basic principle of statutory interpretation that the meaning of words should be understood “by reference to their relationship with other associated words or phrases.” *State v. Popenhagen*, 2008 WI 55, ¶46 n.25, 309 Wis. 2d 601, 749 N.W.2d 611. When words “are associated in a context suggesting that the words have something in

common, they should be assigned a permissible meaning that makes them similar. The [associated-words canon] especially holds that ‘words grouped in a list should be given related meanings.’” Scalia & Garner, *supra*, at 195 (citing *Third Nat’l Bank in Nashville v. Impac Ltd., Inc.*, 432 U.S. 312, 322 (1977)). “Managed” is a definition of “operated” that works for both uses of the word “operated” in the statute, and “managed” has a related meaning to “supervised, controlled, [and] principally supported.” § 108.02(15)(h)2. The majority’s proffered interpretation of “operated”—“to work, perform, or function, as a machine does[,]” majority op., ¶42 (quoted source omitted)—is utterly unlike “supervised, controlled, [and] principally supported.” § 108.02(15)(h)2. Because “operated” means “managed” in its second appearance, it most likely means “managed” in its first appearance as well.

¶128 The text, its context, and the canons of construction all support the conclusion that “operated” means “managed” in Wis. Stat. § 108.02(15)(h)2. The definition of “operated” advanced by LIRC and adopted by the majority simply does not work. Both define “operated” to mean “to work, perform, or function” Majority op., ¶42 (citations omitted). Both treat “operated” as a synonym for the word “activity”—an interpretation unsupported by the statutory text. Treating “operated” as a stand in for the noun “activity” either assigns “operated” two different senses in the same sentence, or gives “operated” a meaning oddly dissimilar to the words surrounding it in its second use. See § 108.02(15)(h)2. (requiring the nonprofit to be “operated, supervised, controlled, or principally supported by a church or convention or association of churches”). Additionally,

defining “operated” to mean “activity” transmogrifies a verb, “operated,” into a noun, “activity.” The majority’s interpretation of “operated” violates the “fundamental rule of textual interpretation . . . that neither a word nor a sentence may be given a meaning that it cannot bear.” Scalia & Garner, *supra*, at 31.

B. Purposes

¶129 The majority correctly concludes the word “purposes” means the reasons for which something is done. Majority *op.*, ¶43 (quoting Purpose, <https://www.dictionary.com/browse/purpose> (last visited Feb. 27, 2024)); purpose, *The Random House Dictionary of the English Language* 1167 (1st unabridged ed. 1966) (defining “purpose” as “the reason for which something exists or is done, made, used, etc.”); see also *Brown Cnty. v. Brown Cnty. Taxpayers Ass’n*, 2022 WI 13, ¶38, 400 Wis. 2d 781, 971 N.W.2d 491 (internal quotation marks omitted) (quoting Purpose, *Merriam-Webster Online Dictionary*, <https://www.merriamwebster.com/dictionary/purpose> (last visited Feb. 14, 2022)) (the “common definition” of “purpose” is “the reason why something is done or used” or “the aim or intention of something”). To be “primarily operated for religious purposes,” the nonprofit must be managed primarily for a religious reason.

¶130 LIRC resists this common-sense understanding of “purposes,” insisting “purposes” means “[t]he employers’ business activity, objectives, goals and ends.” LIRC argues this court should not consider the reasons why a nonprofit is operated. LIRC cites a legal dictionary—purpose, *Black’s Law Dictionary* 1493 (11th ed. 2019)—for its conclusion

that “purposes” means “business activity.” Because “purposes” is an ordinary term²⁸, however, we should use ordinary dictionaries to aid our search for its meaning. See *Sanders v. State of Wis. Claims Bd.*, 2023 WI 60, ¶14, 408 Wis. 2d 370, 992 N.W.2d 126 (lead opinion) (internal citations omitted) (“To determine common and approved usage, we consult dictionaries. To determine the meaning of legal terms of art, we consult legal dictionaries.”); see majority op.,

²⁸ In its brief, LIRC tepidly argues the term “religious purposes” is a term of art in tax law, citing *United States v. Dykema*, 666 F.2d 1096 (7th Cir. 1981). The majority gestures at (but does not commit to) the same argument, likewise relying on *Dykema*. Majority op., ¶54. While *Dykema* deemed “religious purposes” a “term of art in tax law,” 666 F.2d at 1101, it did not cite any authority to support its contention; it also failed to explain why it believed the phrase is a term of art. No cases support *Dykema*’s assertion; only two parroted it. The only cases to treat “religious purposes” as a term of art are *Dykema*, 666 F.2d at 1101, *Living Faith, Inc. v. Commissioner*, 950 F.2d 365, 376 (7th Cir. 1991), which cited *Dykema*, and *Catholic Charities Bureau, Inc. v. LIRC*, 2023 WI App 12, ¶39, 406 Wis. 2d 586, 987 N.W.2d 778, the court of appeals decision in this case, which cited only *Dykema*. In reaching its conclusion, the *Dykema* court interpreted 26 U.S.C. § 501(c)(3), which exempts entities operated exclusively for “religious, charitable, scientific, testing for public safety, literary, or educational purposes.” Federal regulations undermine *Dykema*’s characterization of “religious purposes” as a term of art. Regulations define what “charitable,” “educational,” “testing for public safety,” and “scientific” mean. 26 C.F.R. § 1.501(c)(3)-1(d)(2)-(5). Conspicuously absent is any definition of what “religious” means under the statute. *Dykema*’s representation that “religious purposes” is a term of art in tax law is also severely undermined by divergent interpretations of “operated primarily for religious purposes” embraced by state courts. See majority op., ¶38 n.10 (collecting a sample of cases). Neither *Dykema*, LIRC, nor the majority have provided any basis for construing “religious purposes” as a term of art.

¶43 (quoted source omitted). Unless a word or phrase is a legal term of art or statutorily defined, words and phrases are given their “common, ordinary, and accepted meaning.” *Kalal*, 271 Wis. 2d 633, ¶45. “Business activity” is anything but the ordinary meaning of “religious purposes.” LIRC’s assertion that “purposes” means “objectives, goals and ends” does not logically lead to considering only Catholic Charities’ activities, much less whether those activities are inherently religious. An objective, goal, or end cannot be divorced from motives. “Purposes” means the reason something is done, the motivation underlying the action. As a matter of simple logic, “purposes” does not mean the action itself.

C. Applying the Plain Meaning of Wis. Stat. § 108.02(15)(h)2.

¶131 As a matter of statutory construction, common usage of ordinary terms, and basic grammar, “operated primarily for religious purposes” means managed primarily for religious reasons. See, e.g., *Czigler v. Adm’r, Ohio Bureau of Emp. Servs.*, 501 N.E.2d 56, 58 (Ohio Ct. App. 1985). No one disputes that the only reason the Catholic Church operates Catholic Charities is religious. See majority op., ¶59; see also *Cath. Charities Bureau*, 406 Wis. 2d 586, ¶47 (“[N]either DWD nor this court dispute that the Catholic Church holds a sincerely held religious belief as its reason for operating CCB and its sub-entities.”). It’s no surprise the issue is uncontested— Catholic Charities’ *raison d’être* is religious. A court must accept a religious entity’s good faith representations that religious beliefs motivate an operation and the operation furthers a religious mission. *Holy Trinity Cmty. Sch., Inc. v. Kahl*, 82 Wis. 2d 139, 154-55, 262

N.W.2d 210 (1978); See *United States v. Lee*, 455 U.S. 252, 257 (1982); *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 342 (1987) (Brennan, J., concurring in the judgment) (“Determining that certain activities are in furtherance of an organization’s religious mission . . . is . . . a means by which a religious community defines itself.”); See also *Kendall v. Dir. of Div. of Emp. Sec.*, 473 N.E.2d 196, 199 (Mass. 1985); *Hollis Hills Jewish Ctr. v. Comm’r of Lab.*, 461 N.Y.S.2d 555, 556 (N.Y. App. Div. 1983) (stating that an employer’s statement that its operation furthers a religious objective, “made in good faith, must be accepted by civil courts”). That should end the inquiry, and Catholic Charities should receive the tax exemption. Regardless of whose motivations are relevant—Catholic Charities’ or the Diocese of Superior’s—Catholic Charities are managed primarily for religious reasons.

D. Whose Purposes

¶132 Because it is undisputed that the only reason Catholic Charities are operated is religious (no matter whose purposes are relevant under Wis. Stat. § 108.02(15)(h)2.) the majority need not decide whose purposes are relevant. Nevertheless, the majority answers the question, botching the analysis. The answer should be obvious from the statutory text: The purposes of the entity that operates the nonprofit are the relevant purposes under the statute. When trying to figure out why a nonprofit exists, ask the manager, not those managed.

¶133 The majority comes to the opposite conclusion, deeming the nonprofit’s subjective motivations relevant. Majority op., ¶34. The

majority's rationale is unconvincing. As a preliminary matter, the majority relies on a false dichotomy. The majority asks whether—in all cases—the analysis focuses on the church's motivations or the nonprofit's motivations. See *id.*, ¶33. Not all cases, however, will present those two options. The text of Wis. Stat. § 108.02(15)(h)2. indicates it is the operator's motivations that are relevant. A nonprofit could operate itself. Alternatively, a “church or convention or association of churches” could operate the nonprofit. § 108.02(15)(h)2. As a third option, a third party could operate the nonprofit. The statute's language contemplates that a nonprofit may be operated by a third party and the exemption will be available if the nonprofit is “operated primarily for religious purposes” and “supervised, controlled, or principally supported by a church or convention or association of churches[.]” § 108.02(15)(h)2.

¶134 With the majority's false dichotomy discredited, the majority's conclusion collapses. There is no surplusage under a textualist reading. When a church operates a nonprofit, focusing on the church's motivations for doing so will not lead to every religiously affiliated organization “automatically” receiving an exemption because “[a] church's purpose is religious by nature.” See majority op., ¶37. When a nonprofit is self-operated or operated by a third party other than a church, the “operated primarily for religious purposes” requirement still has force.²⁹ The

²⁹ The majority's surplusage argument is additionally flawed because it relies on the false assumption that a church's purposes are by definition religious. *Id.*, ¶37. While that sounds reasonable, it is not universally true. Nothing precludes a church

“operated primarily for religious purposes” requirement is not “pointless,” Scalia & Garner, *supra*, at 176, if the relevant motives are that of the nonprofit’s operator, which could be the nonprofit itself or a third party other than a church. The surplusage canon applies only if an interpretation renders a word or phrase meaningless or redundant. See *id.* That is not the case under a fair reading of Wis. Stat. § 108.02(15)(h)2.

¶135 The majority also argues we should focus on the nonprofit’s motivations because the exemption relates to the services of the employees of a nonprofit, not a church. Majority op., ¶34.³⁰ But whose services are exempt under the statute does not indicate whose purposes are relevant under Wis. Stat. § 108.02(15)(h)2. The majority’s conclusion simply doesn’t follow from its premises. The majority persists with its fallacious analysis, arguing the nonprofit’s motivations are always the relevant motivations because “the phrase ‘operated primarily for religious purposes’ modifies the word ‘organization,’ not the word ‘church’” in § 108.02(15)(h)2. *Id.* No one denies it is the nonprofit that must be operated primarily for religious purposes, not the church. But that doesn’t mean the nonprofit’s motivations control the application of the statute.

from taking an action for a nonreligious reason. Similarly, it is not true that a school’s motivations are by definition educational.

³⁰ The majority similarly argues that “[t]hose employed by a church are . . . addressed in subdivisions 1. and 3. [of Wis. Stat. § 108.02(15)(h)], indicating . . . that ‘employees who fall under subd. 2. are to be focused on separately in the statutory scheme from employees of a church.’” *Id.*, ¶35 (quoting *Cath. Charities Bureau*, 406 Wis. 2d 586, ¶25).

¶136 If (as the majority agrees) “purposes” means one’s subjective reason for doing something, then in determining why a nonprofit is being operated, it is the operator’s motives that matter. According to the majority, however, the court can determine the subjective reason why a nonprofit is operated without examining the motives of the entity operating the nonprofit. The majority’s conclusion refutes itself. Apparently the majority would ask a car why it is being operated rather than asking the driver. If the majority’s analysis seems ridiculous, that’s because it is.

E. The Majority’s Test

¶137 The majority affirms LIRC’s denial of the exemption under Wis. Stat. § 108.02(15)(h)2. using a two-prong test: A nonprofit must (1) operate primarily for a religious reason and (2) primarily engage in activities that are “religious in nature.” Majority op., ¶¶59-67. The majority’s test, however, is unmoored from the text of § 108.02(15)(h)2. The majority insists its test is the only way to “give reasonable effect to every word” in the statute because considering purposes alone would “give short shrift to the word ‘operated.’” *Id.*, ¶¶44-45. But the majority’s reformulation of the text relies on an unreasonable interpretation of § 108.02(15)(h)2., while impermissibly adding words to the statute.

¶138 The majority offends basic rules of grammar by transmuting “operated,” a transitive verb, into a noun— “activity.” It does not address what “operated” means in its second use in Wis. Stat. § 108.02(15)(h)2.; instead, the majority completely ignores the fact that the word is used twice, employing a divide-and-conquer method of statutory interpretation this court

has rebuked many times. *E.g.*, *Brey*, 400 Wis. 2d 417, ¶13 (citing *Kalal*, 271 Wis. 2d 633, ¶47); see also Scalia & Garner, *supra*, at 167; *King v. Burwell*, 576 U.S. 473, 500-01 (2015) (Scalia, J., dissenting) (“[S]ound interpretation requires paying attention to the whole law, not homing in on isolated words or even isolated sections. Context always matters.”).

¶139 The majority completely reimagines the statute. Compare the statute’s actual language to the majority’s remaking of it:

- Wisconsin Stat. § 108.02(15)(h)2.: “‘Employment’ as applied to work for a nonprofit organization . . . does not include service . . . [i]n the employ of an organization operated primarily for religious purposes and operated, supervised, controlled, or principally supported by a church or convention or association of churches[.]”
- Majority’s interpretation: “‘Employment’ as applied to work for a nonprofit organization . . . does not include service . . . [i]n the employ of an organization operated that has primarily for religious purposes and primarily performs activities that are religious in nature, which is and operated, supervised, controlled, or principally supported by a church or convention or association of churches[.]”

The majority’s interpretation violates the “cardinal maxim . . . that courts should not add words to a statute to give it a certain meaning.” *State v. Hinkle*, 2019 WI 96, ¶24, 389 Wis. 2d 1, 935 N.W.2d 271 (quoting *State v. Fitzgerald*, 2019 WI 69, ¶30, 387 Wis. 2d 384, 929 N.W.2d 165) (internal quotation marks

omitted); *State v. Neill*, 2020 WI 15, ¶23, 390 Wis. 2d 248, 938 N.W.2d 521 (quoting *Fond Du Lac Cnty. v. Town of Rosendale*, 149 Wis. 2d 326, 334, 440 N.W.2d 818 (Ct. App. 1989)). Instead of reading words into the statute and rearranging the words to meet a desired result, we must “interpret the words the legislature actually enacted into law.” *Neill*, 390 Wis. 2d 248, ¶23 (quoting *Fitzgerald*, 387 Wis. 2d 384, ¶30).

¶140 Troublingly, the majority’s redefinition of “operated” to mean “activities” does not require a nonprofit to primarily engage in activities that are “religious in nature.” The majority fails to identify the source of its “religious in nature” requirement; it simply declares it and moves on. The majority also fails to explain where—in the text—the majority derives the factors it uses to deny Catholic Charities the exemption.

¶141 With no support for its interpretation in the text of Wis. Stat. § 108.02(15)(h)2., the majority attempts to “buttress[] [its] conclusion” with this court’s decision in *Coulee Catholic Schools*. Majority op., ¶50. But that decision concerned the ministerial exception under the First Amendment, not the statute at issue in this case. *Coulee Cath. Schs. v. LIRC*, 2009 WI 88, 320 Wis. 2d 275, 768 N.W.2d 868. Because *Coulee Catholic Schools* has nothing to say about the meaning of § 108.02(15)(h)2., the case is irrelevant. The majority baldly asserts the decision “provides guidance in understanding the religious purposes exemption here[,]” majority op., ¶52 (quoting *Cath. Charities Bureau*, 406 Wis. 2d 586, ¶43), but fails to explain how *Coulee Catholic Schools* sheds any light on the meaning of § 108.02(15)(h)2., a statute it never mentions.

¶142 The majority also mistakenly relies upon federal cases interpreting 26 U.S.C. § 501(c)(3), which exempts from taxation “[c]orporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes” Cases interpreting and applying this exemption do not support the majority’s conclusion that an exemption under Wis. Stat. § 108.02(15)(h)2. is available only if (1) a nonprofit’s motivations are primarily religious and (2) the actual activities engaged in by the nonprofit are primarily “religious in nature.” The majority relies on a case from the Seventh Circuit, *United States v. Dykema*. But the majority misunderstands *Dykema* and other federal cases interpreting 26 U.S.C. § 501(c)(3).

¶143 To the extent federal courts evaluate an organization’s activities, they do not delve into whether the organization’s activities are “religious in nature,” as the majority does. Instead, some federal courts use activities as evidence of motive in cases interpreting and applying 26 U.S.C. § 501(c)(3). *Dykema* is not an exception. As the court in *Dykema* explained, “it is necessary and proper for the IRS to survey all the activities of the organization, in order to determine whether what the organization in fact does is to carry out a religious mission or to engage in commercial business.” 666 F.2d at 1100 (emphasis added).

¶144 The Seventh Circuit later verified the limited role an organization’s activities might play in the inquiry. As the Seventh Circuit explained in *Living Faith v. Commissioner*, in evaluating “whether [an organization] is ‘operated exclusively’ for exempt

purposes within the meaning of § 501(c)(3)” “[the court] focus[es] on ‘the purposes toward which an organization’s activity are directed, and not the nature of the activities.’” 950 F.2d 365, 370 (7th Cir. 1991) (quoted source omitted). The activities and the “particular manner in which an organization’s activities are conducted” are simply “evidence” used to “determin[e] whether an organization has a substantial nonexempt purpose” because “an organization’s purposes may be inferred from its manner of operations.” *Id.* at 372; *accord Presbyterian & Reformed Publ’g. Co. v. Comm’r*, 743 F.2d 148, 156 (3d Cir. 1984) (stating the “inquiry must remain that of determining the purpose to which the . . . activity is directed”); *B.S.W. Grp., Inc. v. Comm’r*, 70 T.C. 352, 356-57 (1978) (citation omitted) (“[T]he purpose towards which an organization’s activities are directed, and not the nature of the activities themselves, is ultimately dispositive of the organization’s right to be classified as a section 501(c)(3) organization exempt from tax under section 501(a).”); *Golden Rule Church Ass’n v. Comm’r*, 41 T.C. 719, 728 (1964) (first citing *Trinidad v. Sagrada Orden*, 263 U.S. 578, 582 (1924); and then citing *Unity Sch. of Christianity*, 4 B.T.A. 61, 70 (1926)) (“The statute requires, in relevant part, that the committee be organized and operated exclusively for religious purposes. In this requirement, the statutory language treats as a touchstone, not the organization’s activity, but rather the end for which that activity is undertaken.”). Activities serve only as “useful indicia of the organization’s purpose or purposes.” *Living*

Faith, 950 F.2d at 372.³¹ *Dykema*'s list of "[t]ypical activities"³² in which an organization operated for

³¹ See also 26 C.F.R. § 1.501(c)(3)-1(c)(1) (stating "[a]n organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose").

³² *Dykema* provided the following list:

- (a) corporate worship services, including due administration of sacraments and observance of liturgical rituals, as well as a preaching ministry and evangelical outreach to the unchurched and missionary activity in partibus infidelium; (b) pastoral counseling and comfort to members facing grief, illness, adversity, or spiritual problems; (c) performance by the clergy of customary church ceremonies affecting the lives of individuals, such as baptism, marriage, burial, and the like; (d) a system of nurture of the young and education in the doctrine and discipline of the church, as well as (in the case of mature and well developed churches) theological seminaries for the advanced study and the training of ministers.

Dykema, 666 F.2d at 1100.

It is unclear why the majority relies on *Dykema*'s list as heavily as it does. *Dykema* did not cite any legal authority supporting its list of typical religious activities. See *id.* The court simply made it up. Moreover, *Dykema*'s list is not used by other courts. The only published opinions having relied on its list are the court of appeals, below, and this court—in this very case. Moreover, *Dykema*'s list was meant to serve only as a list of "[t]ypical activities" done for a religious purpose. *Id.* Nothing in *Dykema* suggests a nonprofit is "operated primarily for religious purposes" only if the organization engages primarily in activities

religious purposes might engage is just that—a list of typical religious activities. 666 F.2d at 1100. Courts interpreting and applying 26 U.S.C. § 501(c)(3) have acknowledged that religious purposes might be unorthodox or resemble secular purposes. *E.g.*, *Golden Rule Church Ass’n*, 41 T.C. 719 (holding a commercial enterprise was operated for religious purposes because it was created as an illustration of the applicability of a church’s teachings in daily life); *accord Dep’t of Emp. v. Champion Bake-N-Serve, Inc.*, 592 P.2d 1370 (Idaho 1979) (holding a bakery was “operated primarily for religious purposes” under state law because the students at issue worked at the bakery as a part of their religious training); see *Amos*, 483 U.S. at 344 (Brennan, J., concurring in the judgment) (noting “[c]hurches often regard the provision of [community services] as a means of fulfilling religious duty and of providing an example of the way of life a church seeks to foster”).

¶145 Federal cases interpreting 26 U.S.C. § 501(c)(3) do not support the majority’s bifurcated purpose-activities test, under which courts must determine whether an activity is religious or secular in nature. At most, the federal cases support examining an organization’s activities as evidence of motive. Because both LIRC and the majority concede that the reason Catholic Charities are operated is

that are “religious in nature,” as the majority requires. The majority also wrongly asserts that the *Dykema* court “examined an organization’s actual activities.” Majority op., ¶87. The *Dykema* court did no such thing. The court reversed a district court decision denying the enforcement of an IRS summons that called for 14 categories of records belonging to a church. 666 F.2d at 1098, 1104.

religious, federal precedent supplies no support for the majority's faulty conclusion.

¶146 It is unsurprising that no other court has adopted the majority's approach; it is incoherent. The majority's bifurcated purpose-activities test falls apart upon the faintest scrutiny. Most obviously, religious activities cannot be separated from religious purposes. It is the underlying religious motivation that makes an activity religious. See, e.g., *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 715-16 (1981); *Univ. of Great Falls v. N.L.R.B.*, 278 F.3d 1335, 1346 (D.C. Cir. 2002). For example, anyone—religious or irreligious—could use peyote,³³ kill animals,³⁴ grow a 1/2-inch beard,³⁵ or use Saturday as a day of rest.³⁶ One could read the Bible for secular or religious reasons. Cf. *Locke v. Davey*, 540 U.S. 712, 734-35 (2004) (Thomas, J., dissenting) (explaining that “the study of theology does not necessarily implicate religious devotion or faith” since it may be done “from a secular perspective as well as from a religious one”). One could erect a cross to promote a Christian message or honor fallen soldiers. See *Am. Legion v. Am. Humanist Ass'n*, 588 U.S. ___, 139 S. Ct. 2067, 2082 (2019). Such activities are religious activities only if motivated by religious beliefs. See

³³ *Emp. Div., Dep't of Hum. Res. of Or. v. Smith*, 494 U.S. 872 (1990).

³⁴ *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993).

³⁵ *Holt v. Hobbs*, 574 U.S. 352 (2015) (holding a prison's refusal to allow a Muslim to grow a 1/2-inch beard violated the Religious Land Use and Institutionalized Persons Act of 2000).

³⁶ *Sherbert v. Verner*, 374 U.S. 398 (1963).

Holt v. Hobbs, 574 U.S. 352, 360-61 (2015); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 717 n.28 (2014); *Wisconsin v. Yoder*, 406 U.S. 205, 216 (1972) (“A way of life, however virtuous and admirable, may not be interposed as a barrier to reasonable state regulation of education if it is based on purely secular considerations; to have the protection of the Religion Clauses, the claims must be rooted in religious belief.”). Unable to divorce religious activities from religious motivations, the majority’s activities prong swallows the majority’s purposes prong. The only activities that are “religious in nature,” according to the majority, are activities that presuppose a religious purpose—*e.g.*, proselytizing and teaching one’s religious doctrine. Majority op., ¶¶55, 60. The majority’s purposes prong is superfluous.

¶147 The majority’s activities prong doesn’t simply ask whether an activity is religious, it asks whether it is “religious in nature.” But no activities are inherently religious; religious motivation makes an activity religious. The majority actually inquires whether Catholic Charities’ activities are stereotypically religious. Nothing in the text of Wis. Stat. § 108.02(15)(h)2., however, prompts the court to determine what religious activities are sufficiently stereotypical. The majority never explains what an inherently religious activity is, leaving it up to courts to make determinations of religiosity on an ad hoc basis. What is inherently religious will simply reflect what an individual judge subjectively regards as religious enough. The statute does not demand this exercise, and more importantly the constitution bars such an inquiry. *Infra*, ¶¶163-97.

¶148 Further highlighting the deficiencies of the majority’s test, the majority fails to explain why the factors it furnishes make an activity more or less “religious in nature.” For example, why does offering a service to those of a different faith tradition make the activity less “religious in nature”? See majority op., ¶61. Doesn’t this factor conflict with the majority’s statements that religious outreach and evangelism are “religious in nature”? *Id.*, ¶60. The majority asserts that activities resembling secular ones are less “religious in nature.” *Id.*, ¶¶63-64, 66. But the overlap between secular and religious conduct does not make the religious conduct any less religious. As the Court of Appeals for the District of Columbia Circuit explained, “[t]hat a secular university might share some goals and practices with a Catholic or other religious institution cannot render the actions of the latter any less religious.” *Univ. of Great Falls*, 278 F.3d at 1346.

¶149 Incoherency aside, the majority’s primarily-religious-in-nature-activities requirement is highly susceptible to manipulation. “[T]he definition of a particular program can always be manipulated” such that the inquiry may be “reduced to a simple semantic exercise.” See *Agency for Int’l Dev. v. All. for Open Soc’y Int’l, Inc.*, 570 U.S. 205, 215 (2013) (quoting *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 547 (2001)). The activities of Catholic Charities can be characterized as the provision of charitable social services. They can also be characterized as “providing services to the poor and disadvantaged as an expression of the social ministry of the Catholic Church in the Diocese of Superior” and acting as “an effective sign of the charity of Christ.” A religious activity can be described narrowly, making it sound

more secular, or described broadly, making it sound more religious. Baking sounds secular while religious training sounds religious; both characterizations could fit the activities at issue in a case. See *Champion Bake-N-Serve, Inc.*, 592 P.2d 1370. Whether one is entitled to the exemption under Wis. Stat. § 108.02(15)(h)2. cannot turn on word games.

¶150 The court makes meager effort to explain why it considers activities like proselytizing and teaching religious doctrine more religious than religiously motivated charitable services. Many religions consider charity a central religious practice. As one amicus—the Jewish Coalition for Religious Liberty (“the Jewish Coalition”)—explains, it believes each of the commandments in the Torah is a divine obligation.³⁷ One of the obligations is charity, which the Jewish Coalition explains is sometimes connected to religious rituals and sometimes not; regardless, both equally express the Jewish commandments.³⁸

¶151 The majority’s conclusion that Catholic Charities’ activities are not religious because their activities are charitable is unsupportable. In this case, there is no daylight between religious activities and charitable activities. See *St. Augustine’s Ctr. for Am. Indians, Inc. v. Dep’t of Lab.*, 449 N.E.2d 246, 249 (Ill. Ct. App. 1983) (quoting *St. Vincent DePaul Shop v. Garnes*, No. 74AP-76, 1974 WL 184313, *3 (Ohio Ct. App. Sept. 17, 1974) (unpublished opinion)) (alterations in original) (“[T]he terms ‘charitable’ and ‘religious’ are not mutually exclusive and . . . ‘the fact that an organization is charitable does not preclude it

³⁷ Amicus Br. Jewish Coalition for Religious Liberty, at 7.

³⁸ *Id.* at 7-8.

from being religious.”). In their briefs, Catholic Charities explain that charity is a religious activity for Catholics, in which Catholic Charities engages as the Diocese of Superior’s social ministry arm. According to Catholic Charities, “[c]harity is ‘the greatest’ of the Catholic Church’s theological virtues Charity . . . is a ‘constitutive element of the Church’s mission and an indispensable expression of her very being.’” Consistent with Catholic doctrine—as documented in the briefs—“[t]he Catholic Church ‘claims works of charity as its own inalienable duty and right.’” Catholic Charities explains that according to the Catholic faith, charity is a religious duty they must fulfill in an impartial manner, without proselytizing. As Catholic Charities inform us, “the Church’s missionary spirit is not about proselytizing, but the testimony of a life that illuminates the path, which brings hope and love.” Catholic Charities “carr[y] on [the Diocese of Superior’s] good work by providing programs and services that are based on gospel values and principles of the Catholic Social Teachings.” The purpose of Catholic Charities “is to be an effective sign of the charity of Christ[.]” Multiple amici similarly confirm that charity is a religious activity in each of their respective faith traditions. As one court observed, “the concept of acts of charity as an essential part of religious worship is a central tenet of all major religions.” *W. Presbyterian Church v. Bd. of Zoning Adjustment of D.C.*, 862 F. Supp. 538, 544 (D.D.C. 1994).

For example, one of the five Pillars of Islam—the fundamental ritual requirements of worship, including ritual prayer—requires Muslims of sufficient means to give alms to the poor

and other classes of recipients. Also, Hindus belonging to the Brahmin, Ksatriya, and Vaisya castes are required to fulfill five daily obligations of worship, one of which is making offerings to guests, symbolized by giving food to a priest or giving food or aid to the poor. The concept finds its place in Judaism in the form of tendering to the poor clothing for the naked, food for the hungry, and benevolence to the needy.

Id. (internal citations omitted). Reflecting this understanding, an Illinois court³⁹ recently reversed a state agency determination that an organization was not primarily operated for religious purposes, holding the agency “erred by recharacterizing [the provision of meals, homework help, and literacy improvement] as secular activities” when the organization “characterized [those activities] as religious exercises” of the organization. *By The Hand Club for Kids, NFP, Inc. v. Dep’t of Emp. Sec.*, 188 N.E.3d 1196, ¶52 (Ill. Ct. App. 2020). The same is true in this case. Catholic Charities’ charitable activities are a part of their religious exercise, which means those activities are religious. This court belittles Catholic Charities’ faith—and many other faith traditions—by mischaracterizing their religiously motivated charitable activities as “secular in nature,” majority op., ¶67— —that is, not really religious at all.

³⁹ Illinois courts consider the activities of a nonprofit in cases under the Illinois equivalent of Wis. Stat. § 108.02(15)(h)2. *E.g.*, *Concordia Ass’n v. Ward*, 532 N.E.2d 411 (Ill. Ct. App. 1988).

¶152 Ultimately, the majority demolishes its own test, obliquely saying the activities the majority will consider inherently religious “may be different for different faiths.” *Id.*, ¶55. If what constitutes an inherently religious activity might be different for different faiths, the majority must explain why religiously motivated charity is not an inherently religious activity for Catholics. It never does.

¶153 The majority’s erroneous interpretation and application of Wis. Stat. § 108.02(15)(h)2.—which produces the demeaning conclusion that the social ministry arm of the Diocese of Superior is inherently secular—would be baffling but for the majority’s admissions of its results-oriented approach. According to the majority, a plain reading of the statute would be “too broad” a policy, so the majority adopts a contorted construction instead. *Id.*, ¶48 (quoting *Cath. Charities Bureau*, 406 Wis. 2d 586, ¶37). The majority anxiously speculates a plain reading might exempt Catholic colleges, schools, and (gasp) hospitals. *Id.*, ¶48 n.12.⁴⁰ This court has neither the authority nor

⁴⁰ The majority’s footnote expressing indignation at the prospect that religious colleges, schools, and hospitals might be exempt under Catholic Charities’ reading of the exemption appears to prejudge issues not before this court. Amicus curiae, Maranatha Baptist University, et al., comprises a collection of faith-based nonprofits that primarily provide education. Its brief notes that a number of its members currently qualify for the exemption under Wis. Stat. § 108.02(15)(h)2., but would likely lose that exemption if this court upholds the court of appeals. Amicus Br. Maranatha Baptist University, et al., at 5-6. Amicus argues “[t]he federal government has long counted religious schools as being operated primarily for religious purposes.” *Id.* at 9 n.1 (citing Unemployment Insurance Program Letter No. 28-87, U.S. Dept. of Labor (June 10, 1987)) (“The second category of

competency to decide how broad or narrow a policy should be. The legislature decided how broadly the exemption sweeps, and it is not for this court to second-guess that policy decision. *Friends of Frame Park, U.A. v. City of Waukesha*, 2022 WI 57, ¶96, 403 Wis. 2d 1, 976 N.W.2d 263 (Rebecca Grassl Bradley, J., concurring) (“The people of Wisconsin elect judges to interpret the law, not make it.”); See also Scalia & Garner, *supra*, at 21; Antonin Scalia, *A Matter of Interpretation: Federal Courts and the Law* 20 (1997) (“Congress can enact foolish statutes as well as wise ones, and it is not for courts to decide which is which and rewrite the former.”). “Courts decide what the law is, not what it should be. In the course of executing this judicial function, we neither endorse nor condemn the legislature’s policy choices.” See *Sanders*, 408 Wis. 2d 370, ¶44. Judges have no authority to advance their favored policies by expanding or narrowing a

services exempt from the required coverage are those performed in the employ of religious schools and other entities”). The majority simply ignores this argument.

Curiously, the majority’s assumption that Catholic colleges and schools cannot qualify for the exemption exists in tension with the cases upon which it relies. The majority analogizes its test to cases applying the ministerial exception under the First Amendment. In each of the cases the majority cites, however, the religious school received the exception. *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. ___, 140 S. Ct. 2049 (2020); *Coulee Cath. Schs. v. LIRC*, 2009 WI 88, 320 Wis. 2d 275, 768 N.W.2d 868; see also *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171 (2012). The majority neglects to explain why Catholic colleges and schools receive such radically different treatment under the test it employs in this case.

statute’s text beyond what the fair meaning of the statute contemplates.

¶154 To mask its policy-driven reasoning, the majority employs the shibboleth that remedial statutes are liberally construed and exemptions are narrowly construed—a longdiscredited maxim that pawns judicial activism off as legitimate, textual interpretation. See *CTS Corp. v. Waldburger*, 573 U.S. 1, 12 (2014) (stating the remedial statute canon is not “a substitute for a conclusion grounded in the statute’s text and structure”). The majority’s unabashed reliance on the remedial statute canon is troubling given the immense criticism the so-called canon has received. The majority makes clear it is aware of these criticisms, but uses the maxim anyway, without defending it. Majority op., ¶47 n.11. The majority should not employ the maxim so thoughtlessly, since it has been severely criticized and abandoned by many jurists espousing a wide range of judicial philosophies. *E.g.*, *Regions Bank v. Legal Outsource PA*, 936 F.3d 1184, 1195 (11th Cir. 2019) (expressly refusing to apply the so-called remedial statute canon because of its “dubious value”); *Dir., Off. of Workers’ Comp. Programs, Dep’t of Lab. v. Newport News Shipbuilding & Dry Dock Co.*, 514 U.S. 122, 135 (1995) (calling the maxim the “last redoubt of losing causes”); *Keen v. Helson*, 930 F.3d 799, 805 (6th Cir. 2019) (describing the maxim as the least useful of the interpretive tools a judge might use); see also *E. Bay Mun. Util. Dist. v. U.S. Dep’t of Com.*, 142 F.3d 479, 484 (D.C. Cir. 1998) (“express[ing] . . . general doubts about the canon”). Antonin Scalia once compared the canon’s use to Chinese water torture, in which “one’s intelligence [is] strapped down helplessly” as the maxim is repeated as a “ritual error[.]” Antonin

Scalia, *Assorted Canards of Contemporary Legal Analysis*, 40 Case W. Rsrv. L. Rev. 581, 581 (1989) [hereinafter *Assorted Canards*].

¶155 Judges have discarded the remedial statute canon because it has three critical flaws. The first is the canon's "indeterminate coverage." *Regions Bank*, 936 F.3d at 1195. Jurists have been unable to agree on what constitutes a remedial statute. Scalia, *Assorted Canards*, supra, at 583-86; *Ober United Travel Agency, Inc. v. U.S. Dep't of Lab.*, 135 F.3d 822, 825 (D.C. Cir. 1998) ("Although courts have often used the maxim[,] . . . it is not at all apparent just what is and what is not remedial legislation."). This is unsurprising, considering "almost every statute might be described as remedial in the sense that all statutes are designed to remedy some problem." *CTS Corp.*, 573 U.S. at 12; accord Scalia & Garner, supra, at 364 ("Is any statute not remedial? Does any statute not seek to remedy an unjust or inconvenient situation?"); *Keen*, 930 F. 3d at 805 (noting that the canon's "trigger—a 'remedial statute'—is hopelessly vague").

¶156 Second, what constitutes a "liberal" or "strict" construction is unanswerable. Scalia & Garner, supra, at 365. As Antonin Scalia noted, the canon "lay[s] a judicial thumb" "of indeterminate weight" "on one or the other side of the scales" in statutory interpretation. Scalia, *Assorted Canards*, supra, at 582. "How 'liberal' is liberal, and how 'strict' is strict?" *Id.* No one can say.

¶157 Finally, the maxim is "premised on two mistaken ideas: (1) that statutes have a singular purpose and (2) that [the legislature] wants statutes to extend as far as possible in service of that purpose. Instead, statutes have many competing purposes, and

[the legislature] balances these competing purposes by negotiating and crafting statutory text.” *Keen*, 930 F.3d at 805 (citing *Newport News*, 514 U.S. at 135-36); *CTS Corp.*, 573 U.S. at 12 (quoting *Rodriguez v. United States*, 480 U.S. 522, 525–26 (1987) (per curiam)) (“[T]he Court has emphasized that ‘no legislation pursues its purposes at all costs.’”); *Encino Motorcars, LLC v. Navarro*, 584 U.S. ___, 138 S. Ct. 1134, 1142 (2018) (citations omitted). As Richard Posner explained, the maxim is “unrealistic about legislative objectives” and “ignore[s] the role of compromise in the legislative process and, more fundamentally, the role of interest groups, whose clashes blunt the thrust of many legislative initiatives.” Richard A. Posner, *Statutory Interpretation—in the Classroom and in the Courtroom*, 50 U. Chi. L. Rev. 800, 808-09 (1983). The maxim ignores that “limiting provisions . . . are no less a reflection of the genuine ‘purpose’ of the statute than the operative provisions, and it is not the court’s function to alter the legislative compromise.” Scalia & Garner, *supra*, at 21. Those who employ the maxim rarely appreciate that “[t]oo much ‘liberality’ will undermine the statute as surely as too literal an interpretation would.” *In re Erickson*, 815 F.2d 1090, 1094 (7th Cir. 1987).

¶158 In fact, the remedial statute “canon” is not a canon at all. It is “an excuse” to reach a desired result. *Keen*, 930 F.3d at 805; Scalia, *Assorted Canards*, *supra*, at 586 (stating the maxim “is so wonderfully indeterminate” it can always be used to “reach[] the result the court wishes to achieve”). Its vagueness makes it “an open invitation” to ignore the statute’s text and “engage in judicial improvisation” to reach the judge’s preferred outcome. Scalia & Garner, *supra*,

at 365-66. This court should abandon the maxim and return to deciding cases based upon the fair meaning of the text. Instead of reading the exemption strictly, “the court need only determine ‘how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued.’” *United Am., LLC v. DOT*, 2021 WI 44, ¶44, 397 Wis. 2d 42, 959 N.W.2d 317 (Rebecca Grassl Bradley, J., dissenting) (quoting Scalia & Garner, *supra*, at 33). The majority violates the rule that a “strict construction” cannot be “an unreasonable construction.” *Sw. Airlines Co. v. DOR*, 2021 WI 54, ¶25, 397 Wis. 2d 431, 960 N.W.2d 384 (citing *Covenant Healthcare Sys., Inc. v. City of Wauwatosa*, 2011 WI 80, ¶32, 336 Wis. 2d 522, 800 N.W.2d 906); see also *McNeil v. Hansen*, 2007 WI 56, ¶10, 300 Wis. 2d 358, 731 N.W.2d 273 (quoting 82 C.J.S. Statutes § 371 (2006)) (stating exemptions to remedial statutes “should be strictly, and reasonably, construed and extend only as far as their language fairly warrants”). To the extent the maxim delivers any value, it is not even applicable in this case because the statute is unambiguous. *State of Wis. Dep’t of Just. v. DWD*, 2015 WI 114, ¶32, 365 Wis. 2d 694, 875 N.W.2d 545 (quoting *Salazar v. Ramah Navajo Chapter*, 567 U.S. 182, 207 (2012) (Roberts, J., dissenting)).

¶159 The majority compounds its errors by using legislative history to contradict (rather than confirm) the plain meaning of Wis. Stat. § 108.02(15)(h)2. *Kalal*, 271 Wis. 2d 633, ¶51; *State v. Martin*, 162 Wis. 2d 883, 897 n.5, 470 N.W.2d 900 (1991). Legislative history is not the law, and it cannot override the law’s clear meaning. See *State v. Grandberry*, 2018 WI 29, ¶55, 380 Wis. 2d 541, 910 N.W.2d 214 (Kelly, J., concurring) (“[W]e give effect only to what the

legislature does, not what it tried to do.”). In this case, the majority does not even cite state legislative history; instead, it relies upon federal legislative history to contravene the plain meaning of a state law. In so doing, the majority makes another “law’s history superior to the law itself[.]” *Clean Wis., Inc. v. DNR*, 2021 WI 71, ¶91, 398 Wis. 2d 386, 961 N.W.2d 346 (Rebecca Grassl Bradley, J., dissenting). Using long-discredited methodologies, the majority’s interpretation discards the statutory text, ignores its plain meaning, and triggers constitutional quandaries.

III. THE MAJORITY’S INTERPRETATION VIOLATES THE FIRST AMENDMENT AND THE WISCONSIN CONSTITUTION

¶160 The majority’s decision is an egregious example of legislating from the bench. It takes a simple statute and twists its language to narrow its sweep. In so doing, the majority engages in religious discrimination and entangles the state with religion in violation of the First Amendment.⁴¹ Courts sometimes—though inappropriately—warp a statute’s fair meaning to save it from unconstitutionality. See *St. Augustine Sch. v. Taylor*, 2021 WI 70, ¶112, 398 Wis. 2d 92, 961 N.W.2d 635

⁴¹ Any constitutional issues arising from a plain-meaning interpretation of Wis. Stat. § 108.02(15)(h)2. are not before the court. Similarly, the constitutionality of the second prong of § 108.02(15)(h)2., requiring the nonprofit to be “operated, supervised, controlled, or principally supported by a church or convention or association of churches[.]” is not before the court. See, e.g., *Christian Sch. Ass’n of Greater Harrisburg v. Commonwealth, Dep’t of Lab. & Indus.*, 423 A.2d 1340, 1346-47 (Pa. 1980).

(Rebecca Grassl Bradley, J., dissenting) (discussing a particularly egregious example). In this case, the majority bends over backwards to alter the statute’s meaning and create a constitutional violation, turning the canon of constitutional avoidance on its head. *State v. Stenklyft*, 2005 WI 71, ¶8, 281 Wis. 2d 484, 697 N.W.2d 769 (quoting *Panzer v. Doyle*, 2004 WI 52, ¶65, 271 Wis. 2d 295, 680 N.W.2d 666); *Jankowski v. Milwaukee Cnty.*, 104 Wis. 2d 431, 439, 312 N.W.2d 45 (1981) (quoting *Niagara of Wis. Paper Corp. v. DNR*, 84 Wis. 2d 32, 50, 268 N.W.2d 153 (1978)); *Baird v. La Follette*, 72 Wis. 2d 1, 5, 239 N.W.2d 536 (1976) (“Where there is serious doubt of constitutionality, we must look to see whether there is a construction of the statute which is reasonably possible which will avoid the constitutional question.”).

¶161 The First Amendment declares: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .” U.S. Const. amend. I. The Religion Clauses of the First Amendment apply to the states via the Fourteenth Amendment. *Everson v. Bd. of Educ. of Ewing Twp.*, 330 U.S. 1, 15 (1947); *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940).⁴² Catholic Charities claim an inquiry into

⁴² Justice Clarence Thomas of the United States Supreme Court has questioned whether the Establishment Clause properly applies to states. *Zelman v. Simmons-Harris*, 536 U.S. 639, 67879 (2002) (Thomas, J., concurring); *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 45, 49-51 (2004) (Thomas, J., concurring in the judgment); *Van Orden v. Perry*, 545 U.S. 677, 692-93 (2005) (Thomas, J., concurring); *Town of Greece v. Galloway*, 572 U.S. 565, 604-07 (2014) (Thomas, J., concurring in part and concurring in the judgment); *Am. Legion v. Am.*

whether their activities are “religious in nature” violates the First Amendment by discriminating

Humanist Ass’n, 588 U.S. ___, 139 S. Ct. 2067, 2095 (2019) (Thomas, J., concurring in the judgment); *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. ___, 140 S. Ct. 2246, 2263-64 (2020) (Thomas, J., concurring). Justice Thomas has argued the Establishment Clause is a “federalism provision,” *Newdow*, 542 U.S. at 45 (Thomas, J., concurring in the judgment), which merely prohibits Congress “from establishing a national religion” and “interfer[ing] with state establishments.” *Id.* at 50. It does “not protect any individual right.” *Id.* Under this theory, the Establishment Clause, “resists incorporation.” *Id.* at 45. “[A]n incorporated Establishment Clause would prohibit exactly what the text of the Clause seeks to protect: state establishments of religion.” *Am. Legion*, 139 S. Ct. at 2095 (Thomas, J., concurring in the judgment) (citation omitted). Scholars have debated whether the Establishment Clause was meant to be incorporated through the Fourteenth Amendment. Compare Vincent Philip Muñoz, *The Original Meaning of the Establishment Clause and the Impossibility of Its Incorporation*, 8 J. Const. L. 585 (2006), and William K. Lietzau, *Rediscovering the Establishment Clause: Federalism and the Rollback of Incorporation*, 39 DePaul L. Rev. 1191 (1990), with Kurt T. Lash, *The Second Adoption of the Establishment Clause: The Rise of the Nonestablishment Principle*, 27 Ariz. State L.J. 1085 (1995), and Nathan S. Chapman & Michael W. McConnell, *Agreeing to Disagree: How the Establishment Clause Protects Religious Diversity and Freedom of Conscience* 75-84 (2023). Regardless, the Court has held the Establishment Clause applies to the states, and we are duty bound to apply the Court’s decisions interpreting and applying the Establishment Clause. *State v. Jennings*, 2002 WI 44, ¶¶1819, 252 Wis. 2d 228, 647 N.W.2d 142; Cf. *Hutto v. Davis*, 454 U.S. 370, 374 (1982) (per curiam) (“[U]nless we wish anarchy to prevail within the federal judicial system, a precedent of this Court must be followed by the lower federal courts no matter how misguided the judges of those courts may think it to be.”).

against their religious practices and excessively entangling the government in religious affairs.

¶162 The majority improperly stacks the deck against Catholic Charities' claims under the Religion Clauses from the outset, requiring Catholic Charities to prove their First Amendment rights are violated "beyond a reasonable doubt." Majority op., ¶77. "The United States Supreme Court has abandoned the beyond-a-reasonable-doubt standard for assessing the constitutionality of statutory law[,] and this court must follow the Court's pronouncements on issues of federal law. *Winnebago Cnty. v. C.S.*, 2020 WI 33, ¶65, 391 Wis. 2d 35, 940 N.W.2d 875 (Rebecca Grassl Bradley, J., dissenting) (citing Edward C. Dawson, *Adjusting the Presumption of Constitutionality Based on Margin of Statutory Passage*, 16 U. Pa. J. Const. L. 97, 109 (2013)). "No United States Supreme Court case since 1984 has applied a strong presumption of constitutionality in challenges to federal statutes." *Mayo v. Wis. Injured Patients & Fams. Comp. Fund*, 2018 WI 78, ¶78, 383 Wis. 2d 1, 914 N.W.2d 678 (Rebecca Grassl Bradley, J., concurring) (citing Dawson, *supra*, at 109 n.43). Instead, the Court "will strike down statutes upon a 'plain showing' of their unconstitutionality, or when their unconstitutionality is 'clearly demonstrated.'" *Id.*, ¶80. "This court continues to reflexively apply the rule without any acknowledgement of the United States Supreme Court's reformulation of the standard." *Id.* (citations omitted). Conforming to the standards articulated by the Court would end the absurdity of applying the beyond-a-reasonable-doubt standard. The majority does not hold Catholic Charities' First Amendment rights are not violated by its interpretation of Wis. Stat. § 108.02(15)(h)2.; instead, it merely holds

Catholic Charities failed to prove their rights are violated “beyond a reasonable doubt.” See *C.S.*, 391 Wis. 2d 35, ¶67 (Rebecca Grassl Bradley, J., dissenting).

A. Religious Discrimination

¶163 The majority’s interpretation of Wis. Stat. § 108.02(15)(h)2. violates the First Amendment’s Free Exercise Clause and Establishment Clause by discriminating among religious faiths. The majority sidesteps the issue of religious discrimination by declaring Catholic Charities failed to show the law burdens their free exercise of religion. Majority op., ¶¶105-07. The majority, however, misapprehends Catholic Charities’ alleged burden, causing it to erroneously conclude there is no burden on their free exercise at all. Contrary to the majority’s assertions, Catholic Charities do not allege that paying the tax itself burdens their free exercise of religion. See *Id.*⁴³ Catholic Charities never argued the Free Exercise Clause guarantees them an exemption from paying the unemployment tax. Instead, Catholic Charities assert that discriminatorily denying them the exemption under § 108.02(15)(h)2. burdens their free exercise of religion.

⁴³ The majority exclusively relies upon cases in which the litigant argued the Free Exercise Clause required the state to provide an exemption from a generally applicable tax. Majority op., ¶105 (first citing *Jimmy Swaggart Ministries v. Bd. of Equalization of Cal.*, 493 U.S. 378, 391 (1990); and then citing *Hernandez v. Comm’r*, 490 U.S. 680, 699-700 (1989)); see also *United States v. Lee*, 455 U.S. 252 (1982) (rejecting that the Free Exercise Clause requires an exemption from paying social security taxes even if the payment of such taxes violates one’s sincerely held religious beliefs).

¶164 Catholic Charities are correct.⁴⁴ The United States Supreme Court has long held that withholding a benefit or privilege based on religious status or activity may constitute a burden on the free exercise of religion. *Sherbert v. Verner*, 374 U.S. 398, 404 (1963); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 466 (2017) (holding expressly requiring a religious institution to renounce its religious character in order to receive a public benefit imposes a penalty on the free exercise of religion); *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. ___, 140 S. Ct. 2246, 2260 (2020) (quoted source omitted) (noting “precedents have ‘repeatedly confirmed’ the straightforward rule that . . . [w]hen otherwise eligible recipients are disqualified from a public benefit ‘solely because of their religious character,’ we must apply strict scrutiny”); *Carson v. Makin*, 596 U.S. 767, 786-88 (2022) (holding religious status or activity cannot be the basis for denying a benefit or privilege); *Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 449 (1988). As the Supreme Court said long ago, “[i]t is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege.” *Sherbert*, 374 U.S. at 404 (citations omitted).

¶165 Supreme Court precedent has focused on the denial of a “generally available” benefit to those with

⁴⁴ The Free Exercise Clause would not, absent Wis. Stat. § 108.02(15)(h)2., require the state to exempt Catholic Charities from paying the tax. After it creates a religious exemption, however, the state cannot discriminate against certain religions or religious practices in applying the exemption. See *Carson v. Makin*, 596 U.S. 767, 785 (2022); *Golden Rule Church Ass’n v. Comm’r*, 41 T.C. 719, 729 (1964).

a religious status or who engage in certain religious activities. *Carson*, 596 U.S. at 780. For example, in *Sherbert*, an employer fired a member of the Seventh-day Adventist Church because she would not work on Saturdays, and the state later denied her otherwise generally available unemployment benefits because it determined her religious beliefs were not “good cause” to reject other employment. 374 U.S. at 400. The Supreme Court held that denying her unemployment benefits because of her religious practices placed a burden on her free exercise of religion:

Here not only is it apparent that appellant’s declared ineligibility for benefits derives solely from the practice of her religion, but the pressure upon her to forego that practice is unmistakable. The ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship.

Id. at 404. As the court concluded, “to condition the availability of benefits upon this appellant’s willingness to violate a cardinal principle of her

religious faith effectively penalizes the free exercise of her constitutional liberties.” *Id.* at 406.⁴⁵

¶166 In *Trinity Lutheran*, a state offered grants to nonprofits to help finance the purchase of rubber playground surfaces. 582 U.S. at 454. The program awarded grants based on several religiously neutral criteria, such as the level of poverty in the surrounding area and the applicant’s plan to promote recycling. *Id.* at 455. However, the state denied Trinity Lutheran Church Child Learning Center a grant it was otherwise qualified to receive because of the state’s policy to deny grants to any applicant owned or controlled by a church, sect, or religious entity. *Id.* at 455-56. The Court held that denying Trinity Lutheran the otherwise available grant burdened Trinity Lutheran’s free exercise of religion. The Court reasoned a denial based on religion penalizes religious exercise:

[T]he Department’s policy puts Trinity Lutheran to a choice: It may participate in an otherwise available benefit program or remain a religious institution. Of course, Trinity Lutheran is free to continue operating as a church

⁴⁵ See also *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707 (1981) (holding that failure to provide a Jehovah’s Witness unemployment benefits because he quit his job due to his religious objections to making armaments burdened his free exercise); *Hobbie v. Unemployment Appeals Comm’n of Fla.*, 480 U.S. 136 (1987) (holding that failure to provide a member of the Seventh-day Adventist Church unemployment benefits because she was fired after refusing to work from sundown on Friday to sundown on Saturday in accordance with her religious beliefs burdened her free exercise of religion).

. . . . But that freedom comes at the cost of automatic and absolute exclusion from the benefits of a public program for which the Center is otherwise fully qualified. And when the State conditions a benefit in this way, . . . the State has punished the free exercise of religion: “To condition the availability of benefits . . . upon [a recipient’s] willingness to . . . surrender[] his religiously impelled [status] effectively penalizes the free exercise of his constitutional liberties.”

Id. at 462 (some alterations in original) (quoting *McDaniel v. Paty*, 435 U.S. 618, 626 (1978) (plurality opinion)). The Court acknowledged the state’s policy did not constitute direct coercion over religious exercise. *Id.* at 463. But withholding an otherwise available benefit based on religious status creates constitutionally intolerable indirect coercion over, and a penalty on, religious exercise. *Id.* (quoting *Lyng*, 485 U.S. at 450) (“[T]he Free Exercise Clause protects against ‘indirect coercion or penalties on the free exercise of religion, not just outright prohibitions.’”).

¶167 In *Carson*, a state provided tuition assistance to parents who lived in school districts that were unable to operate a secondary school. 596 U.S. at 773. Under the program, parents chose the school they wanted their child to attend and the state school administrative units paid the school. *Id.* at 773-74. In order for a private school to receive the payment, the school needed to meet basic requirements under the state compulsory education law, like offering a course on the history of the state. *Id.* at 774. State law excluded “sectarian” schools from the tuition

reimbursement program. *Id.* The petitioners wished to send their children to schools that were, but for the “nonsectarian” requirement, eligible to receive the tuition assistance. *Id.* at 776.

¶168 The Court held the program’s “nonsectarian” requirement violated the Free Exercise Clause because the law “effectively penalize[d] the free exercise’ of religion” by conditioning the tuition assistance on the school’s religious character. *Id.* at 780. The state argued that lesser scrutiny should apply because it was not discriminating against religious status, but withheld state funds if the school engaged in certain religious activities. *Id.* at 786-87. The Court rejected the status-activities distinction, noting that “[a]ny attempt to give effect to such a distinction by scrutinizing whether and how a religious school pursues its educational mission would . . . raise serious concerns about state entanglement with religion and denominational favoritism.” *Id.* at 787 (citations omitted).

¶169 The exemption in this case is available only to religiously affiliated institutions. See Wis. Stat. § 108.02(15)(h)2. (requiring the nonprofit to be “operated, supervised, controlled, or principally supported by a church or convention or association of churches” in order to receive the tax exemption). Nonetheless, the principles underlying *Sherbert*, *Trinity Lutheran*, and *Carson* have equal force when the alleged discrimination occurs among religious institutions, rather than between religious and secular entities.

¶170 The *Sherbert-Trinity Lutheran-Carson* line of cases prohibit indirect coercion and penalties on religious exercise. *E.g.*, *Carson*, 596 U.S. at 778

(quoting *Lyng*, 485 U.S. at 450); *Thomas*, 450 U.S. at 717-18 (“Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists.”). Failure to provide a benefit, which is otherwise available to any religiously affiliated entity, to a religious institution because of its religious status or religious activities “condition[s] the availability of [a] benefit[] upon [its] willingness to violate a cardinal principle of [its] religious faith[,] effectively penaliz[ing] the free exercise of [its] constitutional liberties.” *Sherbert*, 374 U.S. at 406. Even if a benefit is available only to religiously affiliated organizations, the denial of the benefit still pressures the entity to forego its religious practices, forcing the entity to “choose between following the precepts of [its] religion and forfeiting benefits.” *Id.* at 404. As in *Sherbert*, *Trinity Lutheran*, and *Carson*, such a choice burdens the free exercise of religion.

¶171 At their core, the Religion Clauses prohibit the government from discriminating among religions. “From the beginning, this nation’s conception of religious liberty included, at a minimum, the equal treatment of all religious faiths without discrimination or preference.” *Colo. Christian Univ. v. Weaver*, 534 F.3d 1245, 1257 (10th Cir. 2008). Historically, England privileged the Church of England and penalized non-established religions and practices. In the 16th century, Parliament enacted the Thirty-nine Articles of Faith, which determined the tenets of the Church of England and the liturgy for religious worship. Nathan S. Chapman & Michael W.

McConnell, *Agreeing to Disagree: How the Establishment Clause Protects Religious Diversity and Freedom of Conscience* 12-13 (2023). Additionally, “[t]he Acts of Uniformity of 1549, 1559, and 1662 required all ministers to conform to these requirements, making the Church of England the sole institution for lawful public worship.” *Id.* at 13. “There were also specific ‘Penal Acts’ suppressing the practice of faiths whose tenets were thought to be inimical to the regime.” *Id.* at 14. The practice of establishing churches “of the old world [was] transplanted and . . . thrive[d] in the soil of the new America.” *Everson*, 330 U.S. at 9. In the American colonies religious dissenters were often penalized for their heterodox religious practices. For example, in Connecticut in the 1740s, religious dissenters were fined and imprisoned for preaching and meeting. Philip Hamburger, *Separation of Church and State* 90 (2002). In Virginia, laws “fin[ed] ‘scismaticall persons’ who refused to have their children baptized, prohibit[ed] the immigration of Quakers, and outlaw[ed] Quaker religious assemblies.” Chapman & McConnell, *supra*, at 17.

¶172 “During the Revolution, American establishments lost their severity,” and states tended to abandon direct penalties on non-established religions and religious practices while retaining privileges for the established religion and religious practices of the state. Hamburger, *supra*, at 89-90. By the time the First Amendment was written, “at least ten of the twelve state constitutional free exercise provisions required equal religious treatment and prohibited denominational preferences.” *Colo. Christian Univ.*, 534 F.3d at 1257 (citing Arlin M. Adams & Charles J. Emmerich, *A Heritage of*

Religious Liberty, 137 U. Pa. L. Rev. 1559, 1637–39 (1989)). One of the “essential legal elements of disestablishment” in the states was denominational equality. Chapman & McConnell, *supra*, at 57. The principle that the government cannot prefer one religion over another has “strong historical roots and is often considered one of the most fundamental guarantees of religious freedom.” Jeremy Patrick-Justice, *Strict Scrutiny for Denominational Preferences: Larson in Retrospect*, 8 N.Y.C. L. Rev. 53, 54-55 (2005). The constitutional bar on religious discrimination among faiths emanates from both Religion Clauses. *Larson v. Valente*, 456 U.S. 228, 245 (1982); *Colo. Christian Univ.*, 534 F.3d at 1257.

¶173 The Supreme Court has unwaveringly affirmed the central principle that government cannot prefer one religion over another: “The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.” *Larson* 456 U.S. at 244; *Everson*, 330 U.S. at 15 (stating that under the Establishment Clause, a state cannot “pass laws which . . . prefer one religion over another.”); *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005) (stating religious exemptions must be “administered neutrally among different faiths”); *Zorach v. Clauson*, 343 U.S. 306, 314 (1952) (“The government must be neutral when it comes to competition between sects.”); *Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687, 707 (1994) (“[I]t is clear that neutrality as among religions must be honored.”); *Epperson v. Arkansas*, 393 U.S. 97, 103-04 (1968) (“Government in our democracy . . . must be neutral in matters of religious theory, doctrine, and practice. It may not . . . aid, foster, or promote one religion or religious theory against

another”); see also *Dunn v. Ray*, 139 S. Ct. 661, 662 (2019) (Kagan, J., dissenting from grant of application to vacate stay) (describing denominational neutrality as “the Establishment Clause’s core principle”). “At a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons.” *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993) (citations omitted); *Emp. Div., Dep’t of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 877 (1990). State laws and practices “which happen to have a ‘disparate impact’ upon different religious organizations” resulting from secular criteria do not amount to a denominational preference or religious discrimination, but laws that do not merely incidentally discriminate against certain religions or religious practices receive strict scrutiny. *Larson*, 456 U.S. at 246 n.23; *Smith*, 494 U.S. at 878; *Colo. Christian Univ.*, 534 F.3d at 1257.

¶174 The majority’s primarily-religious-in-nature activities test necessarily and explicitly discriminates among certain religious faiths and religious practices. As the majority construes Wis. Stat. § 108.02(15)(h)2., religious institutions that do not perform sufficiently religious acts to satisfy the court’s subjective conceptions of religiosity will be denied the exemption. The government cannot “discriminate between ‘types of institutions’ on the basis of the nature of the religious practice these institutions are moved to engage in.” *Colo. Christian Univ.*, 534 F.3d at 1259.

¶175 While the application of secular criteria that leads to disparate treatment of religions is not

religious discrimination, the relevant criteria under the majority's test are not secular. The majority denies the exemption to institutions if they do not primarily engage in activities the court deems "religious in nature"—a criterion that can only be described as religious. See *Church of Lukumi*, 508 U.S. at 533 ("A law lacks facial neutrality if it refers to a religious practice without a secular meaning discernable from the language or context."). It includes only a small, and ill-defined, subset of religious activities. The majority employs factors that are similarly not secular. For example, the majority asks whether a nonprofit engages in worship services, religious ceremonies, serves only co-religionists, or imbues program participants with the nonprofit's faith. Such criteria certainly sound religious, not secular.

¶176 The majority declares Catholic Charities ineligible for the exemption because Catholic Charities do not participate in worship services, engage in religious outreach, perform religious ceremonies, provide religious education, "imbue program participants with the Catholic faith[,] []or supply any religious materials to program participants or employees." Majority op., ¶60. Additionally, the majority denies the exemption on the non-secular and discriminatory basis that Catholic Charities employ and serve non-Catholics. *Id.*, ¶61. In the majority's view, Catholic Charities' religious practices resemble secular social services too much. *Id.*, ¶¶63-64, 66. The majority's "test" compares the nonprofit's activities to an arbitrary list of stereotypical religious activities to determine whether the activities are sufficiently religious. *Id.*, ¶100 (explaining that activities like those listed in *Dykema*

are more likely to be “religious in nature” in the eyes of the court).

¶177 The majority’s test overtly discriminates against Catholic Charities because they follow Catholic doctrine. As Catholic Charities explain, Catholic doctrine commands they engage in charity without limiting their assistance to fellow Catholics and bars them from proselytizing when conducting charitable acts. Under the Free Exercise Clause, the state cannot condition a benefit upon the abandonment of religious practices. The majority puts Catholic Charities to a choice: They may receive the tax exemption by violating their religious beliefs or they can conduct their operations in accordance with their faith and forgo the exemption. Conditioning a benefit in this manner burdens the free exercise of religion. *Trinity Lutheran*, 582 U.S. at 462.

¶178 The majority’s primarily-religious-in-nature activities test poses a particular danger for minority faiths. The majority’s conception of what constitutes activities that are “religious in nature” reflects a narrow view of what religious practice looks like. Many amici submitted briefs to this court explaining how a test like the majority’s will discriminate against minority faiths.

¶179 The brief of the International Society for Krishna Consciousness and the Sikh Coalition (“the Coalition”) is particularly illuminating. It notes that government officials are less likely to be familiar with minority faith traditions, and therefore may perceive minority religious practices as less religious in

nature” than the activities of majority religions.⁴⁶ The Coalition identifies many activities central to their faiths but likely to fail the majority’s test, which compares a nonprofit’s activities to a list of stereotypical (and largely Protestant) religious activities, because the list is derived from a “Western” understanding of religion.⁴⁷ For example, adherents of Hare Krishna have a religious practice called “Prasadam,” during which adherents prepare food, offer it to their deity, and distribute it to the general population.⁴⁸ Sikhs have a religious practice of providing a community kitchen, “serving free meals and allowing people of all faiths to break bread together.”⁴⁹ According to the Coalition, this practice is “foundation[al] to the Sikh way of life; it represents the principle of equality among all people regardless of religion”⁵⁰ The Coalition rightly worries that these religious practices will be characterized by courts as “secular in nature” under the majority’s test.

¶180 State actors cannot treat one faith’s religious practices as “religious in nature” and another’s practices as “secular in nature.” Cf. *Fowler v. Rhode Island*, 345 U.S. 67, 70 (1953) (“To call the words which one minister speaks to his congregation a sermon, immune from regulation, and the words of another minister an address, subject to regulation, is merely an indirect way of preferring one religion over

⁴⁶ Amicus Br. International Society for Krishna Consciousness and the Sikh Coalition, at 11.

⁴⁷ *Id.* at 11-13.

⁴⁸ *Id.* at 12-13.

⁴⁹ *Id.* at 13.

⁵⁰ *Id.*

another.”). The United States Supreme Court subjects such overt religious discrimination to strict scrutiny. See, e.g., *Espinoza*, 140 S. Ct. at 2278 (Gorsuch, J., concurring) (stating “any discrimination against religious exercise must meet the demands of strict scrutiny”). A government policy satisfies strict scrutiny only if it “advances ‘interests of the highest order’ and is narrowly tailored to achieve those interests.” *Fulton v. City of Philadelphia*, 593 U.S. 522, 541 (2021) (quoting *Church of Lukumi*, 508 U.S. at 546). “That standard ‘is not watered down’; it ‘really means what it says.’” *Tandon v. Newsom*, 593 U.S. 61, 65 (2021) (per curiam) (quoting *Church of Lukumi*, 508 U.S. at 546). As scholars have noted, however, “[i]t is difficult to imagine the circumstances under which the government would have a compelling need to prefer some religions over others.” Richard F. Duncan, *The Clearest Command of the Establishment Clause: Denominational Preferences, Religious Liberty, and Public Scholarships that Classify Religions*, 55 S.D. L. Rev. 390, 392 (2010) (alteration in original) (quoting Ronald D. Rotunda & John E. Nowak, *Treatise on Constitutional Law: Substance and Procedure* 14 (3d ed. 1999)); see also *Church of Lukumi*, 508 U.S. at 578-80 (Blackmun, J., concurring in the judgment) (arguing a law that discriminates against religion automatically fails strict scrutiny because such a law is not narrowly tailored “by definition”).

¶181 LIRC does not even suggest the state has a compelling interest in denying the exemption under Wis. Stat. § 108.02(15)(h)2. in a manner that discriminates among the various faiths. LIRC, like the majority, misunderstands Catholic Charities’ asserted burden on the free exercise of their religion.

LIRC believes the asserted burden is paying a tax. In response to this misconception of Catholic Charities' claim, LIRC asserts the whole of Wis. Stat. ch. 108 is justified by the compelling interest in "providing broad unemployment insurance access to workers . . ." LIRC then argues the law is narrowly tailored because "it is impossible to construct workable tax laws that account for the 'myriad of religious beliefs.'" LIRC's arguments miss the mark. Under strict scrutiny, LIRC needed to provide a compelling interest justifying the discrimination between religions. See *Fulton*, 593 U.S. at 541; *Colo. Christian Univ.*, 534 F.3d at 1269. LIRC failed to do so. This court cannot invent justifications for the state to save the statute from unconstitutionality. See *Colo. Christian Univ.*, 534 F.3d at 1268 ("We cannot and will not uphold a statute that abridges an enumerated constitutional right on the basis of a factitious governmental interest . . ."); *Redeemed Christian Church of God (Victory Temple) Bowie v. Prince George's Cnty.*, 17 F.4th 497, 510-11 (4th Cir. 2021) (citation omitted) ("To survive strict scrutiny review, the government must show that pursuit of its compelling interest was the actual reason for its challenged action."); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 543 n.8 (2022) (quoting *United States v. Virginia*, 518 U.S. 515, 533 (1996)) (noting "justification[s]' for interfering with First Amendment rights 'must be genuine, not hypothesized or invented post hoc in response to litigation"). In the absence of any compelling interest to justify the state's discrimination among religions, § 108.02(15)(h)2., as interpreted by the majority, cannot survive strict scrutiny.

¶182 This case illustrates the interconnection between the right to free exercise and the Constitution's bar on religious establishments. Citizens are inhibited from freely practicing their faiths when the government doles out benefits or imposes penalties on the basis of religious practice. As Justice Neil Gorsuch explained:

The First Amendment protects religious uses and actions for good reason. What point is it to tell a person that he is free to be Muslim but he may be subject to discrimination for doing what his religion commands, attending Friday prayers, living his daily life in harmony with the teaching of his faith, and educating his children in its ways? What does it mean to tell an Orthodox Jew that she may have her religion but may be targeted for observing her religious calendar? Often, governments lack effective ways to control what lies in a person's heart or mind. But they can bring to bear enormous power over what people say and do. The right to be religious without the right to do religious things would hardly amount to a right at all.

Espinoza, 140 S. Ct. at 2277 (Gorsuch, J., concurring). The "free competition between religions" protected by the Establishment Clause requires "that every denomination . . . be equally at liberty to exercise and propagate its beliefs. But such equality would be impossible in an atmosphere of official denominational preference." *Larson*, 456 U.S. at 245.

The Religion Clauses “make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary” by “sponsor[ing] an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma.” *Zorach*, 343 U.S. at 313. “Free exercise thus can be guaranteed only when legislators—and voters—are required to accord to their own religions the very same treatment given to small, new, or unpopular denominations.” *Larson*, 456 U.S. at 245.

¶183 While the Free Exercise Clause does not require the state to provide a tax exemption to religious nonprofits, “[w]hat benefits the government decides to give, whether meager or munificent, it must give without discrimination against religious conduct.” *Espinoza*, 140 S. Ct. at 2277 (Gorsuch, J., concurring). In our constitutional order, there are no secondclass religions or religious practices. The Religion Clauses bar discrimination against religious status, beliefs, and practices: “Eliminating [religious] discrimination means eliminating all of it.” See *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206 (2023). The majority errs by inventing and operationalizing a test that discriminates against Catholic Charities’ religious practices—and those of many faith traditions going forward.

¶184 The protection against religious preferences embodied in the First Amendment is even more explicit in the Wisconsin Constitution, which bars the state from giving “any preference . . . by law to any

religious establishments or modes of worship.”⁵¹ Wis. Const. art. I, § 18; *Coulee Cath. Schs.*, 320 Wis. 2d 275, ¶60 (explaining the Wisconsin Constitution “provid[es] expansive protections for religious liberty” beyond what the First Amendment provides). As this court proclaimed in *Weiss*, Article I, section 18 of the Wisconsin Constitution, sometimes called the No Preference Clause,⁵² “probably furnished a more complete bar to any preference for, or discrimination against, any religious sect, organization, or society than any other state in the Union.” *State ex rel. Weiss v. Dist. Bd. of Sch. Dist. No. 8 of City of Edgerton*, 76 Wis. 177, 208, 44 N.W. 967 (1890) (Cassoday, J., concurring).⁵³

⁵¹ Article I, section 18 of the Wisconsin Constitution provides in full:

The right of every person to worship Almighty God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend, erect or support any place of worship, or to maintain any ministry, without consent; nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any religious establishments or modes of worship; nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries.

³⁰ *King v. Vill. of Waunakee*, 185 Wis. 2d 25, 61, 517 N.W.2d 671 (1994) (Heffernan, C.J., dissenting).

⁵³ While the discussion appears in the concurring opinion of Justice Cassoday, it was on a subject expressly reserved for his consideration, which makes it the opinion of the court. *State ex rel. Reynolds v. Nusbaum*, 17 Wis. 2d 148, 165 n.3, 115 N.W.2d 761 (1962).

¶185 The majority’s interpretation of Wis. Stat. § 108.02(15)(h)2. blatantly violates the No Preference Clause. In *Weiss*, this court explained that the phrase “modes of worship” is capacious, embracing “any and every mode of worshipping the Almighty God.” *Id.* at 211-12. It includes “the performance of all those external acts, and the observance of those rites and ceremonies, in which men engage with the professed and sole view of honoring God.” *Id.* at 212 (listing additional dictionary definitions). Because the statute, under the majority’s interpretation, provides benefits for religiously affiliated nonprofits that engage in activities the court deems “religious in nature,” it prefers some modes of worship over others. Catholic Charities explained that charitable works are a form of worship for Catholics, who may not proselytize while engaged in acts of charity. The majority denies the exemption to Catholic Charities because they did not engage in other modes of worship, like proselytizing. The majority’s test prefers some types of worship (*e.g.*, proselytizing) over others (*e.g.*, religiously motivated charity).

¶186 Instead of addressing the Wisconsin Constitution’s impact on this case, the majority dodges the issue, dismissing it in a footnote as “undeveloped.” Majority op., ¶3 n.4. But that is not true. The Wisconsin Legislature, as *amicus curiae*, thoroughly explains in its brief why a test like the one employed by the majority violates the No Preference Clause. That clause “operate[s] as a perpetual bar to the state . . . giving . . . any preference by law to any religious sect or mode of worship.” *Weiss*, 76 Wis. at 210-11. The majority’s preference for some religious

practices over others violates the Wisconsin Constitution.⁵⁴

B. Religious Entanglement

¶187 The Establishment Clause provides, “Congress shall make no law respecting an establishment of religion,” U.S. Const. amend. I, and “prohibits the excessive entanglement of the state in religious matters.” *St. Augustine Sch.*, 398 Wis. 2d 92, ¶42 (citing *L.L.N. v. Clauder*, 209 Wis. 2d 674, 686, 563 N.W.2d 434 (1997)). The Establishment Clause precludes the state from making “intrusive judgments regarding contested questions of religious belief or practice.” *Colo. Christian Univ.*, 534 F.3d. at 1261. “[T]he Religion Clauses protect the right of churches and other religious institutions to decide matters of faith and doctrine without government intrusion . . . and any attempt by government to dictate or even to influence such matters . . . constitute[s] one of the central attributes of an establishment of religion.” *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. ___, 140 S. Ct. 2049, 2060 (2020) (internal citations and quotations marks omitted).

¶188 Civil courts may answer only factual and legal questions; they lack any authority or competency to answer theological questions. *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church*, 393 U.S. 440, 445-47, 449-50

⁵⁴ Because the majority dodges the religious discrimination issues presented by its test, litigants likely will bring such claims in the future, forcing the majority to admit its error. “This decision might as well be written on the dissolving paper sold in magic shops.” *Fulton v. City of Philadelphia*, 593 U.S. 522, 551 (2021) (Alito, J., concurring in the judgment).

(1969). As James Madison explained in his Memorial and Remonstrance, the idea that a “Civil Magistrate is a competent Judge of Religious truth . . . is an arrogant pretension” that has been “falsified” by history. James Madison, *Memorial and Remonstrance Against Religious Assessments*, reproduced in Everson, 330 U.S. at 67 (appendix to dissent of Rutledge, J.). The majority’s opinion proves Madison’s thesis. The majority’s interpretation of Wis. Stat. § 108.02(15)(h)2. not only encourages excessive entanglement with religion, it compels such entanglement.

¶189 The majority’s requirement that a nonprofit’s activities be primarily “religious in nature” forces courts to answer debatable theological questions courts have no authority to answer. The majority’s test requires courts to decide what activities are sufficiently religious to qualify as “religious in nature.” The First Amendment bars the government from ranking activities on a scale from least to most religious. See *Thomas*, 450 U.S. at 714 (“The determination of what is a ‘religious’ belief or practice is more often than not a difficult and delicate task However, the resolution of that question is not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.”). “Courts are not arbiters of scriptural interpretation,” and this court cannot choose which religiously motivated actions are, in their essence, religious. *Id.* at 716. A court cannot decide whether an organization primarily conducts activities that are “religious in nature” without violating the First Amendment.

¶190 Determining whether an organization's activities are primarily "religious in nature" will lead to examining the activities performed by nonprofits, which will be forced to prove whether their religiously motivated activities are sufficiently religious. "What makes the application of a religious-secular distinction difficult is that the character of an activity is not self-evident. As a result, determining whether an activity is religious or secular requires a searching case-by-case analysis. This results in considerable ongoing government entanglement in religious affairs." *Amos*, 483 U.S. at 343 (Brennan, J., concurring in the judgment); *Espinosa v. Rusk*, 634 F.2d 477, 481 (10th Cir. 1980), *aff'd*, 456 U.S. 951 (1982).

¶191 For example, religious schools will be forced to defend the religious nature of textbooks, class instruction, examinations, fieldtrips, employees, students, parents, and more. "[T]his sort of detailed inquiry into the subtle implications of in-class examinations and other teaching activities would itself constitute a significant encroachment on the protections of the First and Fourteenth Amendments." *New York v. Cathedral Acad.*, 434 U.S. 125, 132 (1977). "The prospect of church and state litigating in court about what does or does not have religious meaning touches the very core of the constitutional guarantee against religious establishment . . ." *Id.* at 133; *accord Presbyterian Church in U.S.*, 393 U.S. at 449 ("First Amendment values are plainly jeopardized when . . . litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice."). The intrusive inquiries the majority's test demands may recur. While a court initially may deem a

nonprofit's activities primarily "religious in nature," the nonprofit may later lose its exempt status. See *Walz v. Tax Comm'n*, 397 U.S. 664, 673 (1970) ("Qualification for tax exemption is not perpetual or immutable[.]"). The majority gives the state license to monitor whether nonprofits fail to hit the proper ratio of activities that are "religious in nature" to "secular in nature." "[P]ervasive monitoring' for 'the subtle or overt presence of religious matter' is a central danger against which [the Court has] held the Establishment Clause guards." See *Hernandez v. Comm'r*, 490 U.S. 680, 694 (1989) (citations omitted). To force religious entities to repeatedly satisfy the state that their activities are "religious in nature" is anathema to the First Amendment.

¶192 The majority's primarily-religious-in-nature activities test puts state officials and courts in the constitutionally tenuous position of second-guessing the religious significance and character of a nonprofit's actions. Catholic Charities strenuously maintain their charitable activities are religious and central to their faith. Nevertheless, this court rejects Catholic Charities' understanding of the religious significance of their own activities, insisting those activities are actually "secular in nature." The First Amendment forbids such second-guessing and recharacterization of Catholic Charities' activities. *Lyng*, 485 U.S. at 457-58 ("[T]he dissent's approach would require us to rule that some religious adherents misunderstand their own religious beliefs. We think such an approach cannot be squared with the Constitution or with our precedents, and that it would cast the Judiciary in a role that we were never intended to play."); *Thomas*, 450 U.S. at 716 ("[I]t is not within the judicial function and judicial

competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith.”).

¶193 The entanglement occasioned by the impermissible second-guessing of sincere religious claims is compounded by the majority’s claim that what constitutes an activity that is “religious in nature” “may be different for different faiths.” Majority op., ¶55. The majority has already made clear it will not take nonprofits at their word that their activities are “religious in nature.” For what constitutes an activity that is “religious in nature” to change from religion to religion, the court must study the doctrines of the various faiths and decide for itself what religious practices are actually religious. The Constitution bars civil courts from such intrusions into spiritual affairs. *Jones v. Wolf*, 443 U.S. 595, 602 (1979) (stating civil courts are barred from “resolving . . . disputes on the basis of religious doctrine and practice”). “Plainly, the First Amendment forbids civil courts from” “determin[ing] matters at the very core of a religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion.” *Presbyterian Church in U.S.*, 393 U.S. at 450. The majority opinion strikes at the heart of religious autonomy.

¶194 The majority denies Catholic Charities the exemption under Wis. Stat. § 108.02(15)(h)2. in part because they employ and serve those of other religions. This is not a lawful criterion. Courts are not allowed to determine who is and is not a co-religionist. “[W]ho or what is Catholic . . . is an inquiry that the government cannot make.” *Holy Trinity*, 82 Wis. 2d at 150-51. Deciding who is and is not a co-religionist is

plagued with entanglement problems. Are those no longer practicing a faith co-religionists? *Our Lady*, 140 S. Ct. at 2069. Who decides? “Would the test depend on whether the person in question no longer considered himself or herself to be a member of a particular faith? Or would the test turn on whether the faith tradition in question still regarded the person as a member in some sense?” *Id.* “What characteristics, professions of faith, or doctrinal tenets render a [person] part of a particular denomination? The statute doesn’t tell us, and it would be unconstitutional for any state actor, including a court, to resolve the question.” *St. Augustine Sch.*, 398 Wis. 2d 92, ¶138 (Rebecca Grassl Bradley, J., dissenting). Who constitutes a co-religionist is a religious, not legal, question. *Colo. Christian Univ.*, 534 F.3d at 1264-65 (noting such a question “requires [the state] to wade into issues of religious contention”).

¶195 Whether a nonprofit engages in religious education or “imbue[s] program participants with the Catholic faith” presents additional entanglement problems. Majority op., ¶60. The court must decide what constitutes religious education and evangelism— —religious questions whose answers will vary from faith to faith. Does conducting charity as an illustration of the love of one’s deity count? What about engaging in a commercial enterprise to illustrate one’s faith applied to daily life? See *Golden Rule Church Ass’n*, 41 T.C. 719. “What principle of law or logic can be brought to bear to contradict a believer’s assertion that a particular act” educates others about his faith and acts as a form of proselytizing or evangelism? See *Smith*, 494 U.S. at 887. Whether activities are “[religious education]’ or mere ‘education’ depends as much on the observer’s

point of view as on any objective evaluation of the educational activity.” *Colo. Christian Univ.*, 534 F.2d. at 1263. “The First Amendment does not permit government officials to sit as judges of the ‘indoctrination’ quotient” of a nonprofit. *Id.* Similar problems abound with the majority’s declaration that activities involving worship services and religious ceremonies are more “religious in nature.” See *Agudath Israel of Am. v. Cuomo*, 983 F.3d 620, 633-34 (2d Cir. 2020) (“The government must normally refrain from making assumptions about what religious worship requires.”). The majority’s criteria invite the state and courts to make religious determinations and second-guess the sincere assertions of religiosity of those operating nonprofits.

¶196 The majority does not deny its inquiry entangles church and state, but simply asserts that the entanglement occasioned by its misreading of Wis. Stat. § 108.02(15)(h)2. is “inherent in any statutory scheme that offers tax exemption to religious entities”⁵⁵—a preposterous claim in light of the majority’s failure to properly interpret the statute, which simply requires the nonprofit’s motivations be religious.⁵⁶ The majority believes its consideration of whether a nonprofit primarily performs activities “religious in nature” does not unduly entangle

⁵⁵ Majority op., ¶86.

⁵⁶ The majority claims that without an examination of a nonprofit’s activities, it wouldn’t be possible for a nonprofit to qualify for a tax exemption premised on a “religious purposes” requirement. See *id.*, ¶93 (citing *Ecclesiastical Order of Ism of Am, Inc. v. Chasin*, 653 F. Supp. 1200, 1205 (E.D. Mich. 1986)). Of course, the court could simply accept Catholic Charities’ sincere claims that they operate for religious purposes.

government and religion because its inquiry is a “neutral and secular inquiry based on objective criteria.” Majority op., ¶86. But there is nothing neutral, secular, or objective about the majority’s test for whether activities are “religious in nature.” The majority’s test asks whether the activities are similar—in some undefined and arbitrary way—to stereotypical religious activities listed in a Seventh Circuit decision, which made the list up from whole cloth. See *id.*, ¶100 (stating that “if one of the religiously motivated sub-entities in this case partook in activities such as those cited by the *Dykema* court as indicative of a religious purpose” the court would be more likely to decide it is operated primarily for religious purposes). The test does not “rel[y] exclusively on objective, well-established concepts of . . . law familiar to lawyers and judges.” *Jones*, 443 U.S. at 603. Instead, it relies upon each justice’s subjective sense of what is genuinely religious and what is not.

¶197 While the majority does not ask “whether [Catholic Charities] are ‘Catholic’ enough to qualify for the exemption,” majority op., ¶85, the majority improperly entangles itself with religion by asking whether Catholic Charities’ concededly religious activities are sufficiently religious. The majority’s protestation that its decision doesn’t “intrude on questions of religious dogma”⁵⁷ is dystopian— “a manner of Orwellian newspeak by which ‘religious’ means something other than ‘religious.’” *St. Augustine Sch.*, 398 Wis. 2d 92, ¶141 (Rebecca Grassl Bradley, J., dissenting). The majority doesn’t simply answer “‘delicate’ questions,” majority op., ¶87, it treads

⁵⁷ *Id.*, ¶87.

where the Constitution forbids the judiciary from intruding.

IV. CONCLUSION

¶198 The majority’s decision constitutes a profound overreach of the judicial power. The majority radically transforms Wis. Stat. § 108.02(15)(h)2., which provides a tax exemption for nonprofits managed primarily for a religious reason “and operated, supervised, controlled, or principally supported by a church or convention or association of churches[.]” Finding the exemption too broad as a matter of policy, the majority excludes nonprofits it deems insufficiently religious. As newly interpreted, the statute violates the First Amendment and the Wisconsin Constitution. The majority’s primarily-religious-in-nature-activities test embodies an unlawful preference for some religious practices and thereby discriminates against others. The test also requires courts to answer theological questions well beyond the judiciary’s purview. The majority exercises the power of the legislature, rewriting § 108.02(15)(h)2., and proclaims itself the arbiter of what is and is not religious. Whatever authority the majority believes it possesses to assume these roles is not found in the Wisconsin Constitution. I respectfully dissent.

¶199 I am authorized to state that Chief Justice ANNETTE KINGSLAND ZIEGLER joins ¶¶110-61 and ¶¶163-98 of this dissent.

¶200 BRIAN HAGEDORN, J. (*dissenting*). Although I would not reach the constitutional questions and do not sign onto every point in the analysis, I agree with the construction of the statute

in Justice Rebecca Grassl Bradley's thoughtful dissent. I also agree with the excellent discussion of the majority's misplaced reliance on the remedial statute canon. Justice Rebecca Grassl Bradley's dissent, ¶¶154-58. There is no particular reason to assume a statutory exemption in an area like religious freedom—a constitutionally protected category to which the law regularly gives wide latitude—should be construed narrowly. I respectfully dissent.

Remittitur

This cause was a review of the order/decision of the court of appeals.

IT IS ORDERED AND ADJUDGED by this court in an opinion filed on March 14, 2024, that:

The decision of the court of appeals is affirmed.

Panel: Hon. Ziegler
 Hon. Bradley
 Hon. Bradley
 Hon. Dallet
 Hon. Hagedorn
 Hon. Karofsky
 Hon. Protasiewicz

Hon. Ann Walsh Bradley wrote the decision/opinion, 50 pages.

Hon. Annette K. Ziegler joined dissenting opinion.

Hon. Rebecca Grassl Bradley wrote dissenting opinion, 73 pages.

Hon. Brian K. Hagedorn wrote dissenting opinion, 1 pages.

The appeal record is hereby returned to the Clerk of Circuit Court for Douglas County.

I certify that the above is a correct transcript of the original order and judgment of the court as issued by use of the court electronic filing system in the above cause.

Electronically signed by Samuel A. Christensen
Clerk of Supreme Court

* * *

APPEAL from an order of the circuit court for Douglas County: KELLY J. THIMM, Judge. *Reversed.*

Before Stark, P.J., Hruz and Gill, JJ.

¶1 STARK, P.J. This unemployment insurance case requires us to determine the proper interpretation of the religious purposes exemption under WIS. STAT. § 108.02(15)(h)2. (2019-20).¹ The petitioner-respondents are the Catholic Charities Bureau, Inc. (CCB) as well as four of its sub-entities: Barron County Developmental Services, Inc.; Diversified Services, Inc.; Black River Industries, Inc.; and Headwaters, Inc.² CCB asserts that it is exempt from Wisconsin’s Unemployment Compensation Act under § 108.02(15)(h)2. because it is “operated primarily for religious purposes.” In considering whether it is exempt under the statute, CCB argues that the proper consideration is whether it is operated primarily for a religious *motive* or *reason*.

¶2 Conversely, the Department of Workforce Development (DWD) and the Labor and Industry Review Commission (LIRC)³ contend that whether CCB is operated primarily for religious purposes

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

² For ease of reading, we will refer to CCB and its sub-entities collectively as CCB when referring to their arguments made on appeal, unless referring to the sub-entities individually. Otherwise, we refer to them as CCB and its sub-entities.

³ DWD filed a brief in this appeal, and LIRC filed a letter indicating that it concurred with the arguments raised in DWD’s brief and would not be submitting a separate brief. For ease of reading, we will therefore refer to the appellants as DWD throughout, unless referring to LIRC’s decision.

depends on whether its activities are primarily religious in character. The parties also dispute whether the religious purposes exemption is ambiguous and, if so, how that ambiguity should be resolved. Finally, both CCB and DWD argue, albeit for different reasons, that adopting the opposing party's interpretation of the religious purposes exemption will violate the First Amendment to the United States Constitution.

¶3 For the reasons that follow, we conclude that the reviewing body must consider the nonprofit organization's motives and activities to determine whether that organization is "operated primarily for religious purposes" under WIS. STAT. § 108.02(15)(h)2., such that the religious purposes exemption to unemployment taxation applies. We further determine that the First Amendment is not implicated in this case. Given the facts here, we conclude that LIRC correctly determined that CCB and its sub-entities are not organizations operated primarily for religious purposes; thus, employees of the organizations do not perform their services under excluded employment as that is defined under § 108.02(15)(h)2. We therefore reverse the circuit court's order and reinstate LIRC's decision.⁴

BACKGROUND

¶4 The facts of this case are undisputed. Every Roman Catholic diocese in Wisconsin has a Catholic Charities entity that functions as the diocese's social

⁴ This opinion was first released on December 13, 2022. Subsequently, on our own motion, we withdrew our prior opinion on February 9, 2023, which was within the deadline provided under WIS. STAT. RULE 809.24(3).

ministry arm. Catholic Charities' stated mission is "to provide service to people in need, to advocate for justice in social structures and to call the entire church and other people of good will to do the same." During the administrative proceedings in this case, Archbishop Jerome ListECKI testified that this mission is "rooted in scripture," which "mandate[s]" that the Catholic Church "serve the poor." According to Archbishop ListECKI, inherent in the church's teachings is a "demand" that Catholics respond in charity to those in need.

¶5 CCB is the Catholic Charities entity for the Diocese of Superior, Wisconsin. CCB's statement of philosophy provides that the "purpose" of CCB is "to be an effective sign of the charity of Christ" by providing services that are "significant in quantity and quality" and are not duplicative of services already adequately provided by public or private organizations. CCB provides these services according to an "Ecumenical orientation," such that "no distinctions are made by race, sex, or religion in reference to clients served, staff employed and board members appointed."

¶6 Under CCB's umbrella, numerous separately incorporated nonprofit sub-entities operate sixty-three "programs of service," which provide aid "to those facing the challenges of aging, the distress of a disability, the concerns of children with special needs, the stresses of families living in poverty and those in need of disaster relief." As noted above, four of those sub-entities are at issue in this appeal.

¶7 Barron County Developmental Services, Inc. (BCDS) is a "[c]ommunity rehabilitation program providing services to individuals with developmental

disabilities” that focuses “on the development of vocational and social skills that allow a person to reach their highest potential within the community.” BCDS contracts with DWD’s Division of Vocational Rehabilitation (DVR) to perform job placement, job coaching, and other employment services to assist individuals with disabilities to obtain employment in the community. BCDS is funded “primarily” through government funding via DVR, but it also receives some funding from private companies. It receives no funding from the Diocese of Superior. BCDS was formerly known as Barron County Developmental Disabilities Services, but in December 2014, its board of directors “requested to become an affiliate agency” of CCB and its name was changed. Prior to becoming a sub-entity of CCB, BCDS had no religious affiliation. The type of services and programming provided by the organization did not change after it became affiliated with CCB.

¶8 Black River Industries, Inc. (BRI) provides “in-home services, community-based services, and facility-based services” to individuals with developmental disabilities, mental health disabilities, and limited incomes. To serve those in need, BRI works with DVR to provide participants with job training skills; it provides transportation services to disabled adults and seniors; it has a contract with Taylor County to provide mental health services; and it has a food service production facility, a paper shredding program, and a mailing services program to serve the community and provide job training. “[M]uch” of BRI’s funding comes from government organizations, including “county services, Department of Health Services, Long-Term Care Division[,] as well

as” DVR. BRI receives no funding from the Diocese of Superior.

¶9 Diversified Services, Inc. (DSI) provides services to individuals with developmental disabilities. To do so, DSI offers “meaningful employment opportunities” to these individuals and also hires individuals without disabilities to do production work. Most of DSI’s funding comes from Family Care, a Medicaid long-term care program, and from private contracts. DSI receives no funding from the Diocese of Superior.

¶10 Headwaters, Inc., provides “various support services for individuals with disabilities,” including “training services related to activities of daily living,” employment-related training services, and job placement. In addition, Headwaters has work-related contracts for individuals to learn work skills while earning a paycheck; provides Head Start home visitation services to eligible families with children; and provided birth-to-three services before Tri-County Human Services assumed providing those services. The majority of Headwaters’ funding comes from government grants, and it too receives no funding from the Diocese of Superior.

¶11 CCB’s role is to provide management services and consultation to its sub-entities, establish and coordinate the sub-entities’ missions, and approve capital expenditures and investment policies. CCB’s executive director, who is not required to be a Catholic priest, oversees each sub entity’s operations. Nonetheless, CCB’s internal organizational chart establishes that the bishop of the Diocese of Superior oversees CCB in its entirety, including its sub-entities, and is ultimately “in charge of” CCB. New CCB

employees are provided with CCB's mission statement, statement of philosophy, and code of ethics, and they are informed that their employment "is an extension of Catholic Social Teachings and the Catechism of the Church." Employees of CCB and its sub-entities are not required to be members of the Catholic faith, but they are prohibited from engaging in activities that violate Catholic social teachings.

¶12 As noted above, CCB's sub-entities provide services to all people in need, regardless of their religion, pursuant to the Catholic social teaching of "Solidarity," which is a belief that "we are our brothers' and sisters' keepers, wherever they live. We are one human family." Program participants are not required to attend any religious training or orientation to receive the services that CCB's sub-entities provide. Neither CCB nor its sub-entities engage in devotional exercises with their employees or program participants nor do they disseminate religious materials to those individuals, except for providing new hires with the CCB mission statement and code of ethics and philosophy. Neither CCB nor its sub-entities "try to inculcate the Catholic faith with program participants."

¶13 CCB became subject to Wisconsin's Unemployment Compensation Act, WIS. STAT. ch. 108, in 1972, following CCB's submission of an employer's report stating that the nature of its operations was charitable, educational, and rehabilitative.⁵ CCB's sub-entities report their

⁵ CCB and its sub-entities are exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code under a group exemption. The group exemption includes "the agencies

employees under CCB's unemployment insurance account. In 2015, a Douglas County Circuit Court judge ruled that Challenge Center, Inc.—another CCB sub-entity providing services to developmentally disabled individuals—was operated primarily for religious purposes and was therefore exempt from the Unemployment Compensation Act under the religious purposes exemption, WIS. STAT. § 108.02(15)(h)2. CCB and the four sub-entities at issue in this appeal then sought a determination from DWD that they, too, were exempt.

¶14 DWD determined that CCB and the sub-entities did not qualify for the religious purposes exemption. CCB sought administrative review of that determination, and an administrative law judge (ALJ) reversed, concluding that CCB and the sub-entities qualified for the exemption because they were operated primarily for religious purposes. DWD appealed to LIRC, which reversed the ALJ's decision. CCB then sought judicial review, and the circuit court again reversed, agreeing with the ALJ that CCB and the sub-entities qualified for the exemption. DWD appeals.

DISCUSSION

¶15 “Wisconsin’s unemployment compensation statutes embody a strong public policy in favor of compensating the unemployed.” *Operton v. LIRC*, 2017 WI 46, ¶31, 375 Wis. 2d 1, 894 N.W.2d 426. When the Wisconsin Legislature enacted the Unemployment

and instrumentalities and the educational, charitable, and religious institutions operated by the Roman Catholic Church in the United States, its territories, and possessions” that are subordinate to the United States Conference of Catholic Bishops.

Compensation Act, it recognized that unemployment in Wisconsin is “an urgent public problem, gravely affecting the health, morals and welfare of the people of this state. The burdens resulting from irregular employment and reduced annual earnings fall directly on the unemployed worker and his or her family.” WIS. STAT. § 108.01(1). The legislature acknowledged that “[i]n good times and in bad times unemployment is a heavy social cost, directly affecting many thousands of wage earners.” *Id.* As a result, the legislature concluded that “[e]ach employing unit in Wisconsin should pay at least a part of this social cost, connected with its own irregular operations, by financing benefits for its own unemployed workers.” *Id.* “Consistent with this policy, WIS. STAT. ch. 108 is liberally construed to effect unemployment compensation coverage for workers who are economically dependent upon others in respect to their wage-earning status.” *Operton*, 375 Wis. 2d 1, ¶32 (quoting *Princess House, Inc. v. DILHR*, 111 Wis. 2d 46, 62, 330 N.W.2d 169 (1983)).

I. WISCONSIN STAT. § 108.02(15)(h)

¶16 Nevertheless, Wisconsin’s unemployment insurance law exempts some services from the “employment” services that are covered by WIS. STAT. ch. 108.⁶ The issue in this case, then, is whether CCB and its sub-entities qualify under one of those exemptions. WISCONSIN STAT. § 108.02(15)(h) sets forth the statutory formula for the type of exemption

⁶ For purposes of the Unemployment Compensation Act, the term “[e]mployment” means “any service, including service in interstate commerce, performed by an individual for pay.” WIS. STAT. § 108.02(15)(a).

that CCB argues is applicable here. That statute provides:

(h) “Employment” as applied to work for a nonprofit organization, except as such organization duly elects otherwise with the department’s approval, does not include service:

1. In the employ of a church or convention or association of churches;

2. In the employ of an organization operated primarily for religious purposes and operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

3. By a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order.

Sec. 108.02(15)(h). Here, the parties’ dispute is focused on subd. 2., the religious purposes exemption, which has two requirements: (1) the nonprofit organization is “operated primarily for religious purposes”; and (2) the nonprofit organization is “operated, supervised, controlled, or principally supported by a church or convention or association of churches.”⁷ Sec. 108.02(15)(h)2. There is no dispute that CCB and its

⁷ For ease of reading, we will refer to the controlling entity as “a church” throughout this decision rather than as “a church or convention or association of churches.” See WIS. STAT. § 108.02(15)(h)2.

sub-entities are nonprofit organizations and that they are “operated, supervised, controlled, or principally supported by a church.” Thus, the only issue before us is whether CCB and its sub-entities are “operated primarily for religious purposes” and are therefore exempt from paying unemployment tax on behalf of their employees. *See id.*

¶17 To date, no Wisconsin Supreme Court decision or published court of appeals decision has addressed the interpretation of the religious purposes exemption in WIS. STAT. § 108.02(15)(h)2. Our statute, however, is essentially identical to the exemption found in the Federal Unemployment Tax Act (FUTA). See 26 U.S.C. § 3309(b)(1)(B). DWD asserts—and CCB does not dispute—that § 108.02(15)(h)2. was enacted to “conform Wisconsin’s unemployment law with [the] federal law in 26 U.S.C. § 3309(b)(1)(B).” See 1971 Wis. Laws, ch. 53, § 6. Other states have also included religious purposes exemptions in their unemployment insurance laws; however, there is a distinct lack of consensus as to the proper interpretation of the relevant statutory language among these different jurisdictions.⁸ Our task, then, is to determine the statute’s meaning based on its language and relevant legal authority.

II. Standard of Review

¶18 On appeal, we review LIRC’s decision, rather than the decision of the circuit court. *Operton*, 375 Wis. 2d 1, ¶18. Our scope and standard of judicial

⁸ For this reason, we certified the question in this case to our supreme court, but it denied certification. We subsequently held oral argument in this case on August 3, 2022, in Superior, Wisconsin.

review of LIRC's decisions concerning unemployment insurance are established in WIS. STAT. § 108.09(7). We may confirm or set aside LIRC's order, but its decision may be set aside only upon one or more of the following grounds: (1) LIRC acted without or in excess of its powers; (2) the order or award was procured by fraud; and (3) LIRC's findings of fact do not support the order. Sec. 108.09(7)(c)6. An agency acts outside its power, contrary to § 108.09(7)(c)6.a., when it incorrectly interprets a statute. *See DWD v. LIRC*, 2018 WI 77, ¶12, 382 Wis. 2d 611, 914 N.W.2d 625.

¶19 We will uphold LIRC's findings of fact if they are supported by credible and substantial evidence. *Operton*, 375 Wis. 2d 1, ¶18. Whether an employer has proven that it is exempt from coverage under Wisconsin's unemployment system involves the application of facts to a particular legal standard, which is a conclusion of law that we review independently. *See Nottelson v. DILHR*, 94 Wis. 2d 106, 116, 287 N.W.2d 763 (1980). Because the facts of this case are undisputed, the only issue on appeal is the proper interpretation of WIS. STAT. § 108.02(15)(h)2. We are not bound by LIRC's interpretation of a statute. *Operton*, 375 Wis. 2d 1, ¶19.⁹ Therefore, we review LIRC's legal conclusions de

⁹ Relying on *Tetra Tech EC, Inc. v. DOR*, 2018 WI 75, ¶108, 382 Wis. 2d 496, 914 N.W.2d 21, and *Mueller v. LIRC*, 2019 WI App 50, ¶17, 388 Wis. 2d 602, 933 N.W.2d 645, the previous version of this decision suggested that while we no longer defer to administrative agency decisions on questions of law, we may still afford "due weight" to those decisions as a matter of persuasion. Although the parties did not address this question on appeal, on our own motion for reconsideration, we questioned whether "due weight" is appropriately afforded to proceedings

novo. *Mueller v. LIRC*, 2019 WI App 50, ¶17, 388 Wis. 2d 602, 933 N.W.2d 645.

III. Statutory Interpretation

¶20 DWD and CCB have framed this case as a disagreement over whether WIS. STAT. § 108.02(15)(h)2. requires a reviewing body to consider either the activities or the motivations of either the nonprofit organization or the church. In particular, DWD faults the circuit court for defining “purposes” as the “reason something is done” and for holding that it is the religious motivation of the Diocese of Superior in operating CCB and its sub-entities that determines whether the organizations are operated for religious purposes. Instead, DWD argues that the term “religious purposes” requires an examination of an organization’s activities, rather than its motivation, and that the “purpose” we are to examine is that of the nonprofit organization, not the church. Here, DWD asserts, CCB and its sub-entities are engaged in purely secular activities.

¶21 In contrast, CCB argues that an organization is operated primarily for religious purposes when it is operated primarily “for a religious motive or reason.” Thus, motivation is the important consideration, specifically the church’s motive in operating, supervising, controlling, or principally supporting the organizations. According to CCB, CCB and its sub-entities are operated primarily for a

under WIS. STAT. ch. 108, rather than only to general administrative proceedings under WIS. STAT. ch. 227. We need not and do not resolve this issue, however, as our conclusions remain the same whether or not we give “due weight” to LIRC’s interpretation of WIS. STAT. § 108.02(15)(h)2.

religious motive or reason—specifically, to comply with the Catholic Church’s scriptural and doctrinal mandate to serve the poor and respond in charity to those in need.

¶22 We begin, as we must, with the language of the statute. *See State ex rel. Kalal v. Circuit Ct. for Dane Cnty.*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. We give statutory language its common, ordinary, and accepted meaning, except that technical or specially defined words or phrases are given their technical or special definitional meanings. *Id.* We interpret statutory language “in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely related statutes; and reasonably, to avoid absurd or unreasonable results.” *Id.*, ¶46. “If this process of analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning.” *Id.* (citation omitted). If, however, the statute “is capable of being understood by reasonably well-informed persons in two or more senses,” then the statute is ambiguous. *Id.*, ¶47.

¶23 We first consider each word used in the phrase “operated primarily for religious purposes.” Operate means “to work, perform, or function,” “to act effectively; produce an effect; exert force or influence,” or “to perform some process of work or treatment.” Operate, <https://www.dictionary.com/browse/operate> (last visited Dec. 2, 2022). The term “operate” therefore connotes an action or activity. Primarily means “essentially; mostly; chiefly; principally” or “in the first instance; at first; originally.” Primarily, <https://www.dictionary.com/browse/primarily> (last

visited Dec. 2, 2022). The statute’s use of the term “primarily” suggests that there may be other purposes for which an organization operates, and it need not be operated exclusively for religious purposes. Religious means “of, relating to, or concerned with religion.” Religious, <https://www.dictionary.com/browse/religious> (last visited Dec. 2, 2022). And purpose means “the reasons for which something exists or is done, made, used, etc.” or “an intended or desired result; end; aim; goal.” Purpose, <https://www.dictionary.com/browse/purpose> (last visited Dec. 2, 2022). Purpose can also mean “something that one sets before himself [or herself] as an object to be attained” and “an object, effect, or result aimed at, intended, or attained.” Purpose, WEBSTER’S THIRD NEW INT’L DICTIONARY (unabr. 1993). While these terms generally have a plain meaning interpretation, they are not necessarily dispositive of the meaning of the statute as a whole. Instead, they provide guidance in determining the statute’s overall meaning.

a. The Nonprofit Organization’s Purpose Controls

¶24 The first question we must address to determine the statute’s meaning is which entity’s purpose the reviewing body is to consider: the purpose of the nonprofit organization or the purpose of the church in operating, supervising, controlling, or principally supporting the nonprofit organization. In other words, are we to consider “the reasons for which something exists or is done” from the perspective of the nonprofit organization or from the perspective of the church? As noted, the parties disagree on this point. We conclude that the statute is not ambiguous as to this question and that the plain language of WIS.

STAT. § 108.02(15)(h)2. demonstrates that the reviewing body is to consider the purpose of the nonprofit organization, not the church's purpose in operating the organization.

¶25 First and foremost, the religious purposes exemption applies to “service ... [i]n the employ” of the nonprofit organization, not service in the employ of the church. WIS. STAT. § 108.02(15)(h)2. As noted, we must consider the statutory language in the context in which it is used. *See Kalal*, 271 Wis. 2d 633, ¶46. Each of the subdivisions of § 108.02(15)(h) apply to an individual's “service” in a different context: § 108.02(15)(h)1. addresses church employees, § 108.02(15)(h)2. addresses employees of “an organization operated primarily for religious purposes,” and § 108.02(15)(h)3. addresses ministers and members of a religious order. Therefore, considering the context of the surrounding subdivisions, we conclude that employees who fall under subd. 2. are to be focused on separately in the statutory scheme from employees of a church. *Compare* § 108.02(15)(h)1. *with* § 108.02(15)(h)2. The exemption under subd. 2. applies specifically to employees of the organizations, so the focus must be on the organizations.

¶26 Second, under the rules of statutory interpretation, an interpretation that focuses on the church's purpose could render the religious purposes exemption language unnecessary. In order to give meaning to every word in the statute, all words need to be read together. *See, e.g., Kalal*, 271 Wis. 2d 633, ¶46 (“Statutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage.” (citations omitted)); *State v. Martin*, 162

Wis. 2d 883, 894, 470 N.W.2d 900 (1991) (“A statute should be construed so that no word or clause shall be rendered surplusage and every word if possible should be given effect.” (citation omitted)). WISCONSIN STAT. § 108.02(15)(h)2. has two parts. The first part of subd. 2. addresses “religious purposes,” and the second part, which is not at issue in this appeal, provides that the employment must be “for a nonprofit organization” that is “operated, supervised, controlled, or principally supported by a church.” Sec. 108.02(15)(h)2. These distinct requirements are separated by a conjunction—“and” meaning that *both* elements are required. Thus, the analysis of whether a nonprofit organization is “operated primarily for religious purposes” would need to be conducted only where the organization is also “operated, supervised, controlled, or principally supported by a church.” Whatever “religious purposes” the church may have in operating these organizations, for purposes of the unemployment taxation law, the fact that both elements are required means we should focus on the organization, not the “parent” church.

b. Both the Motives and the Activities of the Nonprofit Organization Determine Whether It Is Operated for a Religious Purpose

¶27 The second question we must address is how the reviewing body is to determine whether a nonprofit organization has a religious purpose and whether the organization is being operated primarily for that religious purpose. As noted above, DWD argues that it is the *activities* of the nonprofit that dictate the analysis, while CCB claims that “an enterprise must be created or exist ‘chiefly/mostly for a religious *motive* or reason” in order for it to be operated primarily for a religious purpose. (Emphasis

added.) For the reasons that follow, we conclude that the reviewing body must consider both the organization's activities as well as the motivation behind those activities to determine whether the religious purposes exemption applies.

¶28 We again look first to the plain language of the statute to determine whether the reviewing body must consider the nonprofit organization's motives or its activities. The phrase "religious purposes" is not defined in the statutory scheme, and DWD argues in its reply brief that the language is ambiguous, such that it is not clear from the statute's language how a reviewing body is to determine when a nonprofit organization has a religious purpose. In support of its position, DWD observes that courts in other jurisdictions have interpreted the religious purposes exemption in different ways, with some courts focusing on an organization's activities, others focusing on its motivations, and some considering both.¹⁰

¹⁰ Compare *Concordia Ass'n v. Ward*, 532 N.E.2d 411, 413-14 (Ill. App. Ct. 1988) (concluding cemetery formed by several Lutheran churches not operated primarily for religious purposes because "[b]urial of the dead is a matter of public concern" and "[t]he functions performed by [the cemetery] are no different than those performed in a secular cemetery"); *Terwilliger v. St. Vincent Infirmary Med. Ctr.*, 804 S.W.2d 696, 699 (Ark. 1991) (concluding Catholic hospital not operated primarily for religious purposes because although the hospital's motivation may have been religious in nature, evidence showed it was operated primarily for purpose of providing health care); *Samaritan Inst. v. Prince Walker*, 883 P.2d 3, 7-8 (Colo. 1994) (concluding organization providing administrative support and accreditation for religiously affiliated counseling centers not operated primarily for religious purposes because "[a]n organization that provides

essentially secular services falls outside of the scope of” the religious purposes exemption); *DeSantis v. Board of Rev.*, 372 A.2d 1362, 1364 (N.J. Super. Ct. App. Div. 1977) (concluding Catholic social service agency not operated primarily for religious purposes because provision of “nondenominational community service” for senior citizens was “eleemosynary and not religious”); *Cathedral Arts Project, Inc. v. Department of Econ. Opportunity*, 95 So. 3d 970, 973 (Fla. Dist. Ct. App. 2012) (concluding church-affiliated organization not operated primarily for religious purposes because although motivation may have been religious, primary purpose in operating—i.e., giving art instruction to underprivileged children—was not religious); *St. Augustine’s Ctr. for Am. Indians, Inc. v. Department of Lab.*, 449 N.E.2d 246, 249 (Ill. App. Ct. 1983) (concluding organization providing aide to Native Americans in Chicago not operated primarily for religious purposes, considering the organization’s activities and not its motivation); *Imani Christian Acad. v. Unemployment Comp. Bd. of Rev.*, 42 A.3d 1171, 1175 (Pa. Commw. Ct. 2012) (holding Christian school not operated primarily for religious purposes because no evidence as to the extent of religious underpinnings that pervade curriculum), *with Department of Emp. v. Champion Bake-N-Serve, Inc.*, 592 P.2d 1370, 1371-73 (Idaho 1979) (holding commercial bakery operated by Seventh Day Adventists exempt because students perform work under tenets of religion stressing value of labor and work); *Schwartz v. Unemployment Ins. Comm’n*, 2006 ME 41, ¶¶1-3, 11, 13, 895 A.2d 965 (finding that nondenominational charitable work did not prevent the organization from being operated primarily for religious purposes where mission was to demonstrate “God’s love and compassion to marginalized people in the area [it] serve[s]” (alterations in original)); *Kendall v. Director of Div. of Emp. Sec.*, 473 N.E.2d 196, 198-99 (Mass. 1985) (“The fact that the religious motives of the [Catholic] sisters ... also serve the public good by providing for the education and training of the mentally [handicapped] is hardly reason to deny the Center a religious exemption.”); *Peace Lutheran Church v. Unemployment Appeals Comm’n*, 906 So. 2d 1197 (Fla. Dist. Ct. App. 2005) (concluding child care organization operated by the church, located on the church property, and subsidized by the church exempt because its services and church outreach were religious purposes); *see also By the Hand Club for*

¶29 As previously discussed, a statute is ambiguous if it is capable of being understood by reasonably well-informed persons in two or more senses. *Kalal*, 271 Wis. 2d 633, ¶47. However, “[i]t is not enough that there is a disagreement about the statutory meaning; the test for ambiguity examines the language of the statute ‘to determine whether well informed persons should have become confused, that is, whether the statutory ... language reasonably gives rise to different meanings.’” *Id.* (emphasis added; citation omitted). “An otherwise unambiguous provision is not rendered ambiguous solely because it is difficult to apply the provision to the facts of a particular case.” *Stuart v. Weisflog’s Showroom Gallery, Inc.*, 2008 WI 86, ¶20, 311 Wis. 2d 492, 753 N.W.2d 448.

¶30 Looking at the language of the statute, we disagree that the phrase “operated primarily for religious purposes” is ambiguous. Instead, we conclude that phrase is reasonably susceptible to only one interpretation based on the plain language of the

Kids, NFP, Inc. v. Department of Emp. Sec., 2020 IL App (1st) 181768, ¶¶21, 39, 51-54, 188 N.E.3d 1196 (noting that courts “generally have been ‘quite cautious in attempting to define, for tax [and unemployment insurance] purposes, what is or is not a “religious” activity or organization—for obvious policy and constitutional reasons” and concluding that a court will instead consider “all the facts and circumstances of a particular case in order to decide whether an organization is engaged in primarily religious activities” (alteration in original; citations omitted)); *Community Lutheran Sch. v. Iowa Dep’t of Job Serv.*, 326 N.W.2d 286, 287, 291-92 (Iowa 1982) (finding that religious schools separately incorporated from church were operated primarily for religious purposes, but considering both the school’s activities and statement of purpose).

statute and when viewed in the context of the statutory scheme. *See Kalal*, 271 Wis. 2d 633, ¶¶45-46. That interpretation requires the reviewing body to consider both the nonprofit organization’s motivations and its activities to determine whether the organization qualifies under the religious purposes exemption.

¶31 We first return to the text and structure of the statute to determine its meaning “so that it may be given its full, proper, and intended effect.” *See id.*, ¶44. Here, we note the use of both the words “operated” and “purposes” within the same statutory provision. As recognized above, the word “operated” connotes an action or activity—to act, to work, to perform—meaning *what* the nonprofit organization does and *how* it does it. “Purpose,” in contrast, has been defined to mean “the reasons for which something exists or is done,” *Purpose*, <https://www.dictionary.com/browse/purpose> (last visited Dec. 2, 2022), suggesting that motive should be considered such that we should ask *why* the organization acts. While the appearance of both words in the statute might suggest ambiguity, we conclude that those words reveal the intended effect of the religious purposes exemption.

¶32 In that way, DWD and CCB are not necessarily wrong in their respective plain language analyses. The problem is that each party focuses on different words and fails to read the statute as a whole. For example, if we focus on the word “purposes,” as CCB does, we may conclude that qualification for the exemption is based on the organization’s reason for acting or its motivation, without considering whether the work performed or the services provided are

inherently “religious.” If, however, we focus on the word “operated,” as DWD appears to do, we may conclude that the focus of the exemption is on the actions of the organization, meaning its activities and the work it is performing, without allowing any consideration of whether the work is part of a central mission of a religion. Both words appear in the statute and therefore both must be given meaning.

¶33 The only reasonable interpretation of the statute’s language is that the reviewing body must consider both the *activities* of the organization as well as the organization’s professed *motive* or purpose. Neither consideration alone is sufficient under the statute. If the reviewing body considered only the activities of the nonprofit organization, it would essentially render the word “purposes” superfluous because the organization’s reason for acting, or motivation, would not be a consideration. Given the mandate that statutes are to be “read where possible to give reasonable effect to every word,” *see Kalal*, 271 Wis. 2d 633, ¶46, this interpretation would be unreasonable. Therefore, under a plain language reading of the statute, for an employee’s services to be exempt from unemployment tax the organization must not only have a religious motivation, but the services provided—its activities—must also be primarily religious in nature.

¶34 There are other reasons why an organization’s motivation cannot be the sole determination. Here, again we highlight the use of the term “operated,” this time as it is used in conjunction with “primarily.” Had the legislature intended that the reviewing body focus on only the motives of the organization to determine a religious purpose, there

would be no need to include the phrase “operated primarily.” Instead, those words could have been removed from the statute to provide that an employee’s services are exempt from taxation if they are “in the employ of an organization with religious purposes.” To give effect to the phrase “operated primarily,” rather than render the phrase unnecessary within the statutory scheme, the only reasonable reading of the statute is that the reviewing body should also look to the organization’s operations—its activities, meaning the particular services individuals receive—and determine if they are primarily religious in nature.

¶35 This reading of the religious purposes exemption—considering both the motivations and the activities of the nonprofit organization—is also in line with the rules of statutory interpretation. As DWD argues, the unemployment insurance law is remedial in nature; therefore, the statutes must be “liberally construed” to provide benefits coverage, and exceptions to the law must be interpreted narrowly. See *Princess House*, 111 Wis. 2d at 62; see also *Wisconsin Cheese Serv., Inc. v. DILHR*, 108 Wis. 2d 482, 489, 322 N.W.2d 495 (Ct. App. 1982) (“In order to foster a reduction of both the individual and social consequences of unemployment, courts have construed the statutes broadly.”). “A general rule of statutory construction is that exceptions within a statute ‘should be strictly, and reasonably, construed and extend only as far as their language fairly warrants.’ If a statute is liberally construed, ‘it follows that the exceptions must be narrowly construed.” *McNeil v. Hansen*, 2007 WI 56, ¶10, 300 Wis. 2d 358, 731 N.W.2d 273 (citations omitted); see also *Dominican Nuns v. La Crosse*, 142 Wis. 2d 577, 579, 419 N.W.2d 270 (Ct. App. 1987)

(“Taxation is the rule, and exemption the exception. As a result, ‘[s]tatutes exempting property from taxation are to be strictly construed and all doubts are resolved in favor of its taxability.’” (alteration in original; citation omitted)). “[T]he burden of proving entitlement to [a tax] exemption is on the one seeking the exemption. ‘To be entitled to tax exemption the taxpayer must bring himself [or herself] within the exact terms of the exemption statute.’” *Wauwatosa Ave. United Methodist Church v. City of Wauwatosa*, 2009 WI App 171, ¶7, 321 Wis. 2d 796, 776 N.W.2d 280 (citation omitted).

¶36 Here, DWD argues, and we agree, that a narrow interpretation is appropriate because it protects an employee’s eligibility for benefits. As noted above, WIS. STAT. ch. 108 is “liberally construed to effect unemployment compensation coverage for workers who are economically dependent upon others in respect to their wage-earning status.” *Princess House*, 111 Wis. 2d at 62. The more broadly the religious purposes exemption is read, the more employers are exempt and the larger impact the exemption will have on unemployment compensation coverage for employees of those organizations as well as all employees who are impacted by the reserve fund being depleted. *See* WIS. STAT. §§ 108.02(4)(a) (benefits are dependent on employee’s base period, which is impacted if employer is exempt), 108.18(1) (requiring employer to pay contributions to the unemployment reserve fund based on yearly payroll). Construing the statute broadly ignores the stated public policy purposes of the unemployment insurance compensation program. *See* WIS. STAT. § 108.01.

¶37 For this reason, LIRC’s decision rejected an approach that considered only an organization’s motivations because it would cast too broad a net. As DWD explained, if the reviewing body looked only at motives, “it would allow the organization to determine its own status without regard to its actual function.” This analysis could allow any nonprofit organization affiliated with a church to exempt itself from unemployment insurance by professing a religious motive without being required to provide support for that motive. *See Living Faith, Inc. v. Commissioner*, 950 F.2d 365, 372 (7th Cir. 1991) (noting, in an income tax exemption case, that “[w]hile we agree with Living Faith that an organization’s good faith assertion of an exempt purpose is relevant to the analysis of tax exempt status, we cannot accept the view that such an assertion be dispositive” and further observing that “[p]ut simply, saying one’s purpose is exclusively religious doesn’t necessarily make it so”). Allowing an organization to possibly create its own exemption would effectively render the “operated primarily for religious purposes” language unnecessary and without effect under the law. Such a broad reading of the statute is contrary to the requirement that we must construe the religious purposes exemption narrowly to guarantee that the exemption is applied only when necessary. An interpretation that considers the activities of each individual organization seeking the exemption in addition to its professed motives accomplishes that directive.

¶38 CCB’s response is that “[a]ll Catholic entities (and many other religious entities) operate their own unemployment system(s). The church provides equivalent benefits to CCB employees, more efficiently at lesser cost.” CCB therefore claims,

quoting the circuit court, that “CCB employees are all ‘covered.’” This argument is a nonstarter. Whether an organization provides private unemployment insurance to its employees is not a factor under the religious purposes exemption. CCB has not identified any language in the statute altering the analysis if an employer provides additional or other coverage, and, as DWD argues, considering the availability of such coverage in the analysis would impermissibly add words to the statute. *See State v. Simmelink*, 2014 WI App 102, ¶11, 357 Wis. 2d 430, 855 N.W.2d 437 (a court “should not read into [a] statute language that the legislature did not put in” (citation omitted)). Further, as DWD observes, the religious purposes exemption “cannot be interpreted one way for Catholic entities and another way for entities affiliated with different faiths.” Thus, we decline to rewrite the religious purposes exemption to consider the availability of private unemployment insurance; that fact is therefore immaterial to the statute’s interpretation or application.

¶39 Instead, DWD directs our attention to the Seventh Circuit Court of Appeals’ decision in *United States v. Dykema*, 666 F.2d 1096 (7th Cir. 1981), which we find instructive. The question before the Seventh Circuit in that case was whether a church was an exempt organization under 26 U.S.C. § 501(c)(3), which grants tax exempt status to “[c]orporations ... organized and operated exclusively for religious ... purposes.”¹¹ *Dykema*, 666 F.2d at 1099. In considering

¹¹ As noted previously, CCB and its sub-entities are exempt from federal income tax under 26 U.S.C. § 501(c)(3) under a group exemption. *See supra* note 5. CCB therefore argues in its briefing

the “term ‘religious purposes,’” the court stated that it is “simply a term of art in tax law.” *Id.* at 1101. According to the court, the IRS’s role is “to determine whether [the organization’s] actual activities conform to the requirements which Congress has established as entitling them to tax exempt status.” *Id.* The Seventh Circuit explained:

In connection with this inquiry, it is necessary and proper for the IRS to survey all the activities of the organization, in order to determine whether what the organization in fact does is to carry out a religious mission or to engage in commercial business. Such a survey could be made by observation of the organization’s activities or by the testimony of other persons having knowledge of such

and at oral argument that “[f]ederal law has already decided the issue” in this case as “[p]ursuant to that interpretation by [the] IRS, each CCB entity in this case has been continuously determined by the IRS to be operating ‘exclusively’ for a religious purpose.” (Formatting altered.)

We agree with DWD that CCB’s assertion is not supported by the record. The IRS did not determine that CCB and its sub-entities are operated exclusively for religious purposes. According to the record, the organizations are covered under a group exemption, “[s]ubordinate organizations under a group exemption do not receive individual exemption letters,” and the exemption applies to educational and charitable institutions, not just religious organizations. *See* 26 U.S.C. § 501(c)(3) (“Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes ...”). Thus, the IRS group ruling did not determine that the employers in this case are operated exclusively for religious purposes.

activities, as well as by examination of church bulletins, programs, or other publications, as well as by scrutiny of minutes, memoranda, or financial books and records relating to activities carried on by the organization.

Typical activities of an organization operated for religious purposes would include (a) corporate worship services, including due administration of sacraments and observance of liturgical rituals, as well as a preaching ministry and evangelical outreach to the unchurched and missionary activity in partibus infidelium; (b) pastoral counseling and comfort to members facing grief, illness, adversity, or spiritual problems; (c) performance by the clergy of customary church ceremonies affecting the lives of individuals, such as baptism, marriage, burial, and the like; (d) a system of nurture of the young and education in the doctrine and discipline of the church, as well as (in the case of mature and well developed churches) theological seminaries for the advanced study and the training of ministers.

Id. at 1100. The court also concluded that an objective inquiry into the activities of an organization would not run afoul of the First Amendment, but that entering into a subjective inquiry with respect to the truth of the organization's religious beliefs would "be forbidden." *Id.*

¶40 In summary, the *Dykema* court's decision endorses an interpretation of the religious purposes exemption that considers both motives and activities. The court expressly held that under a similar inquiry

in the federal tax code, “it is necessary and proper for the IRS to survey all the *activities* of the organization, in order to determine whether what the organization in fact does is to carry out a religious *mission*.” *See id.* (emphasis added); *see also Living Faith*, 950 F.2d at 372 (“Put simply, saying one’s purpose is exclusively religious doesn’t necessarily make it so. This [c]ourt and others have consistently held that an organization’s purposes may be inferred from its manner of operations.”). Thus, a review considering both the organization’s activities and its motivations would comport with the *Dykema* court’s analysis, which we conclude is sound.

¶41 DWD also cites our supreme court’s decision in *Coulee Catholic Schools v. LIRC*, 2009 WI 88, 320 Wis. 2d 275, 768 N.W.2d 868, which LIRC relied on in reaching its decision. There, our supreme court held that the Free Exercise Clause of the First Amendment to the United States Constitution and article I, section 18 of the Wisconsin Constitution precluded a teacher who had been laid off from a Catholic school from bringing an age discrimination claim against her former employer under the Wisconsin Fair Employment Act. *Coulee*, 320 Wis. 2d 275, ¶¶1-3. The court explained that the state may not “interfere with the hiring or firing decisions of religious organizations with a religious mission with respect to employees who are important and closely linked to that mission”—a principle that is colloquially called the ministerial exception. *Id.*, ¶¶39, 67.

¶42 In order to determine whether the ministerial exception is applicable, our supreme court explained that courts must conduct a two-part test. *Id.*, ¶¶45, 48. The first part of the test asks whether

the organization “has a fundamentally religious mission” “in both statement and practice.” *Id.*, ¶48. In other words, “does the organization exist primarily to worship and spread the faith?” *Id.* That determination is fact-specific, as

[i]t may be, for example, that one religiously-affiliated organization committed to feeding the homeless has only a nominal tie to religion, while another religiously-affiliated organization committed to feeding the homeless has a religiously infused mission involving teaching, evangelism, and worship. Similarly, one religious school may have some affiliation with a church but not attempt to ground the teaching and life of the school in the religious faith, while another similarly situated school may be committed to life and learning grounded in a religious worldview.

Id. The second part of the ministerial exception test then asks how close an employee’s work is to the organization’s fundamental mission. *Id.*, ¶49. After applying this test, the *Coulee* court determined that the employer in that case—a school committed to the inculcation of the Catholic faith—had a fundamentally religious mission and that the teacher’s position was closely linked to that mission, and it thereafter dismissed her claim. *Id.*, ¶¶72-80.

¶43 The analysis conducted in *Coulee* provides guidance in understanding the religious purposes exemption here. While we acknowledge that *Coulee* is factually and legally distinguishable, we cite the decision as a tool to help further understand the language in WIS. STAT. § 108.02(15)(h)2. In *Coulee*, to determine an organization’s mission, our supreme court considered not only the motives of the organization or its stated purpose, but it also required

that the motive or mission be clear “in both statement and *practice*.” *Id.*, ¶48 (emphasis added). “Practice” means the “actual performance or application.” *Practice*, <https://www.merriam-webster.com/dictionary/practice> (last visited Dec. 2, 2022). Stated differently, practice means the organization’s *activities*. Accordingly, *Coulee* is instructive as to the type of analysis that can inform the meaning of the religious purposes exemption and lends support to an interpretation that considers both an organization’s motives and activities.

¶44 Finally, DWD cites a report of the House Ways and Means Committee (the House Report) pertaining to an amendment to FUTA. DWD claims that the House Report on the bill to amend FUTA informs the interpretation of the Wisconsin statute because WIS. STAT. § 108.02(15)(h)2. was enacted to conform Wisconsin law to 26 U.S.C. § 3309(b)(1)(B).¹² See *Leissring v. DILHR*, 115 Wis. 2d 475, 485-88, 340

¹² CCB challenges DWD’s reliance on the House Report, arguing that these types of reports “have been repeatedly called into question” because “[l]egislative history is a ‘rival text’ created by a group other than the voting legislature, which has no authority.” Thus, CCB argues that it is improper to rely upon any extrinsic source. However, courts may consider an extrinsic source if that source confirms the plain reading of the text, so long as the extrinsic source is not treated as authoritative on the meaning of the text. *United Am., LLC v. DOT*, 2021 WI 44, ¶18, 397 Wis. 2d 42, 959 N.W.2d 317; *State ex rel. Kalal v. Circuit Ct. for Dane Cnty.*, 2004 WI 58, ¶51, 271 Wis. 2d 633, 681 N.W.2d 110. Further, DWD argues that the House Report is a reliable extrinsic source because it was relied on by the United States Supreme Court to discern legislative intent as to 26 U.S.C. § 3309. See *St. Martin Evangelical Lutheran Church v. South Dakota*, 451 U.S. 772, 781 (1981). Accordingly, we see no reason to ignore the House Report.

N.W.2d 533 (1983) (relying on congressional committee reports on bills amending FUTA when interpreting Wisconsin laws enacted to conform with FUTA).

¶45 The House Report explains the federal religious exemption in 26 U.S.C. § 3309(b)(1)(B). It provides, in relevant part, that § 3309(b)(1)(B)

excludes services of persons where the employer is a church or convention or association of churches, but does not exclude certain services performed for an organization which may be religious in orientation unless it is operated primarily for religious purposes and is operated, supervised, controlled, or principally supported by a church (or convention or association of churches). Thus, the services of the janitor of a church would be excluded, but services of a janitor for a separately incorporated college, although it may be church related, would be covered. A college devoted primarily to preparing students for the ministry would be exempt, as would a novitiate or a house of study training candidates to become members of religious orders. On the other hand, a church related (separately incorporated) charitable organization (such as, for example, an orphanage or a home for the aged) would not be considered under this paragraph to be operated primarily for religious purposes.

H.R. Rep. No. 91-612, at 44 (1969). DWD argues, and we agree, that the House Report demonstrates that the religious purposes exemption was not intended to apply to religiously affiliated organizations whose activities are primarily comprised of the provision of what are otherwise viewed as not inherently religious, charitable services, despite the asserted “religious in orientation” or “church related” nature of the

organization. Instead, the House Report is clear that the focus of the religious purposes exemption is on the type of religious activities engaged in by the organization even where the religious motive of the organization is clear.

c. The First Amendment Is Not Implicated

¶46 CCB, however, rejects an interpretation of the religious purposes exemption focusing on activities rather than only motives, arguing that it violates the First Amendment because “[a] determination by the state that CCB is not ‘religiously purposed enough,’ represents a constitutionally impermissible Free Exercise violation.” (Formatting altered.) In essence, CCB argues that considering activities favors those religious entities that engage in proselytizing and provide services only to members of their own religion, which would impermissibly burden CCB’s free exercise of the Catholic tenet of “solidarity”—i.e., “[b]eing ecumenical in social ministry.” As CCB stated during oral argument, we should look at the religious purposes exemption under First Amendment standards, beginning with the requirement that the organization hold a sincerely held religious belief. *See Coulee*, 320 Wis. 2d 275, ¶62; *see also Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421-22 (2022).

¶47 We disagree that the First Amendment is implicated in this case. The First Amendment to the United States Constitution provides in pertinent part: “Congress shall make no law respecting an establishment of religion, or prohibiting the free

exercise thereof.”¹³ U.S. CONST. amend. I. First, we note that the parties do not argue that the statute itself violates the First Amendment, meaning that CCB does not assert a facial constitutional challenge. Second, neither DWD nor this court dispute that the Catholic Church holds a sincerely held religious belief as its reason for operating CCB and its sub-entities. As we addressed previously, however, we do not look to the church to determine “religious purposes” under the statute; we look to the employing organizations themselves.

¶48 Third, and finally, CCB does not develop a proper First Amendment argument aside from its statements at oral argument that it has a sincerely

¹³ “The first portion of this provision contains what is called the ‘Establishment Clause,’ and the second portion is called the ‘Free Exercise Clause.’” *Coulee Cath. Schs. v. LIRC*, 2009 WI 88, ¶35, 320 Wis. 2d 275, 768 N.W.2d 868. The First Amendment has been held applicable to the states under the terms of the Fourteenth Amendment. *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421 (2022) (citing *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940)).

Our state constitution also provides for religious freedom under article I, section 18 of the Wisconsin Constitution, known as the Freedom of Conscience Clauses. *Coulee*, 320 Wis. 2d 275, ¶¶56, 58. Our supreme court “has stated that Article I, Section 18 serves the same dual purposes as the Establishment Clause and Free Exercise Clause of the U.S. Constitution.” *Id.*, ¶60. The rights provided by the Wisconsin Constitution, however, “are far more specific” and “contain[] extremely strong language, providing expansive protections for religious liberty.” *Id.* Although CCB asserted during oral argument that the Wisconsin Constitution offers more protection than the First Amendment, this argument was undeveloped. Accordingly, we will not address this argument further. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

held religious belief and that it is being denied a benefit as a result of that belief. Our review demonstrates, however, that the religious purposes exemption is not a generally available benefit that is being denied to CCB; CCB is simply being treated like every other employer in the state, including other nonprofit organizations operated by a church. To the extent that CCB is arguing that it is *not* being treated the same as other nonprofit organizations operated by churches that condition the availability of their services on adherence to, or instruction in, religious doctrine, that result is what the statute provides, and, as noted, CCB does not assert a facial challenge.

¶49 Further, neither the statute itself nor any purported interpretation of the statute seeks to penalize, infringe, or prohibit any conduct of the organizations based on religious motivations, practice, or beliefs. *See Tony & Susan Alamo Found. v. Secretary of Lab.*, 471 U.S. 290, 303 (1985) (“It is virtually self-evident that the Free Exercise Clause does not require an exemption from a governmental program unless, at a minimum, inclusion in the program actually burdens the claimant’s freedom to exercise religious rights.”); *see also Coulee*, 320 Wis. 2d 275, ¶65 (“We do not mean to suggest that anything interfering with a religious organization is totally prohibited. General laws related to building licensing, taxes, social security, and the like are normally acceptable.”). We see no free exercise concern.

¶50 DWD also raises its own First Amendment argument, asserting that the religious purposes exemption must be interpreted to avoid excessive state entanglement with church matters. According to DWD, any interpretation of the religious purposes

exemption that “requires the state to interpret religious doctrine and examine religious leaders as to their religious motivations risks excessive unconstitutional entanglement of the state and church,” which would violate the First Amendment’s Establishment Clause. Indeed, “[e]xcessive entanglement occurs ‘if a court is required to interpret church law, policies, or practices.’” *St. Augustine Sch. v. Taylor*, 2021 WI 70, ¶43, 398 Wis. 2d 92, 961 N.W.2d 635 (citation omitted).

¶51 DWD argues that its interpretation of the phrase “operated primarily for religious purposes” avoids this concern because it “focuses on an organization’s activities and does not require the state or the court to examine or interpret church canons or internal church policies.” DWD asserts that “[i]n contrast[,] an interpretation focusing on a religious entity’s religious motivation requires an examination of church doctrine and an inquiry into the motivations of the church’s religious leaders.” *See Pritzlaff v. Archdiocese of Milwaukee*, 194 Wis. 2d 302, 326, 533 N.W.2d 780 (1995) (“[T]he First Amendment to the United States Constitution prevents the courts of this state from determining what makes one competent to serve as a Catholic priest since such a determination would require interpretation of church canons and internal church policies and practices.”).

¶52 Conversely, CCB argues that DWD’s interpretation of the religious purposes exemption would result in an Establishment Clause violation because “[b]y allowing exemption to those religions which view ‘proselytizing’ and discriminating against non-adherents in the provision of services as part of their mission, [DWD] is favoring those religions over

Catholicism.” CCB contends the “easiest way” for a reviewing body to “entangle’ itself in religion is to promote one practice (proselytizing, etc.) over another (ecumenical delivery of charity).”

¶53 We conclude that an interpretation considering both the motivations and the activities of the organization appropriately balances an employee’s ability to receive unemployment benefits with a religious organization’s right to be free from state interferences, thereby avoiding excessive entanglement concerns. For support, we again turn to *Dykema*, where the court observed that an analysis considering the activities of an organization was constitutionally appropriate:

Objective criteria for examination of an organization’s activities thus enable the IRS to make the determination required by the statute without entering into any subjective inquiry with respect to religious truth which would be forbidden by the First Amendment. [*United States*] *v. Ballard*, 322 U.S. 78, 86-88 (1944). Likewise there is no “establishment of religion” involved in determining that entitlement to tax exemption has been demonstrated *vel non*. As well said by Chief Justice Burger in *Walz v. Tax Commission*, 397 U.S. 664, 675 (1970): “There is no genuine nexus between tax exemption and establishment of religion.” Indeed, it should be emphasized that no real questions regarding “religion” as referred to in the First Amendment are involved in the case at bar at all; the word “religious” concerns us merely in its statutory meaning as a description of a type of organization which Congress chose to exempt

from taxation, believing that such relief from the tax burden would be beneficial and desirable in the public interest.

Dykema, 666 F.2d at 1100-01 (footnotes omitted); see also *Wisconsin Evangelical Lutheran Synod v. Prairie Du Chien*, 125 Wis. 2d 541, 553-54, 373 N.W.2d 78 (Ct. App. 1985) (“[T]here is no ‘establishment of religion’ involved in determining that a church or religious organization is entitled to a tax exemption,” and “a determination denying a tax exemption is similarly not a violation of the religion clauses of the federal constitution.” (citation omitted)). Thus, the way for a reviewing body to avoid excessive entanglement under the religious purposes exemption is to conduct a neutral review based on objective criteria.

¶54 Based on the foregoing, we conclude that the only reasonable interpretation of the phrase “operated for religious purposes” requires the reviewing body to consider the motivations as well as the activities of the nonprofit organization to determine whether the religious purposes exemption applies. This interpretation is consistent with the plain language of the statute, case law, and extrinsic sources, and it does not run afoul of constitutional considerations. Further, focusing on the stated motivations and the organization’s activities allows the reviewing body to conduct an objective, neutral review that is “highly fact-sensitive” without examining religious doctrine or tenets. See *Coulee*, 320 Wis. 2d 275, ¶48; *Dykema*, 666 F.2d at 1100.

d. CCB and Its Sub-entities at Issue in this Case Are Not Operated Primarily for Religious Purposes

¶55 Having determined the proper interpretation of the religious purposes exemption, our final responsibility is to apply the statutory language to the facts of this case. In doing so, we conclude that CCB and its sub-entities failed to meet their burden to establish that they are exempt from Wisconsin's unemployment insurance program and that LIRC properly determined that each of the employers was "operated primarily to administer [or provide] social service programs" that are not "primarily for religious purposes." We reiterate that there are no factual disputes in this case, and CCB does not challenge LIRC's factual findings. Furthermore, we conclude that the evidence in the record supports LIRC's determination that CCB and its sub-entities at issue in this case are not operated primarily for religious purposes.

¶56 Our first consideration is whether the nonprofit organizations have a professed religious motivation. In other words, do the nonprofit organizations themselves assert that their reason for existing or acting is motivated by a religious purpose? This first step is not demanding, however, as it based on the organization's own words and statements, including its mission statement. If the organization states that it has a religious motive, then the reviewing body must accept that assertion and move on to the next consideration, which is whether the activities of the nonprofit organization are primarily religious.

¶57 As to the first consideration, we conclude that the nonprofit organizations in this case have a professed religious motivation. We acknowledge that the professed reason that CCB and its sub-entities

administer these social service programs is for a religious purpose: to fulfill the Catechism of the Catholic Church. CCB itself is the organization, as the diocese's social ministry arm, with the most clearly professed religiously purposed motivation: "The mission of Catholic Charities is to provide service to people in need, to advocate for justice in social structures, and to call the entire church and other people of good will to do the same." We note, however, that when we look to the motivations of the individual sub-entities of CCB, not the mission of CCB or the church, the religious purpose is less evident. As is clear from the mission statements, as well as from the Form 990 that each organization filed with the IRS, the sub-entities' missions are to provide charitable services to everyone without any reference to religion.¹⁴ While we conclude that the sub-entities do not appear to have an independent professed religious motivation, we acknowledge that there is a professed

¹⁴ For example, Headwaters' mission statement is as follows: "We believe all people deserve the right to achieve their fullest potential. Therefore, we exist for the purpose of providing individualized services that are designed to maximize each person's daily living and vocational skills in order to be integrated into the community to the fullest extent possible." Similarly, BCDS's stated mission "is to provide person-centered services to adults based on the needs of each individual so that they are able to live their lives to the fullest." BRI states that its mission is to "[i]n partnership with the community, provide people with disabilities opportunities to achieve the highest level of independence." Finally, DSI's mission is "[t]o provide a prevocational and vocational program by using real work situations, such as subcontract and other production oriented work, to develop appropriate work behaviors, to maximize earnings and to increase an individual's potential for community employment. To provide employment opportunities for adults with disabilities."

religious motivation for CCB overseeing and supporting these sub-entities and, in turn but to a lesser degree, in those sub-entities' own work.

¶58 As to the second consideration—whether the activities of the organizations are primarily religious—we agree with LIRC that the activities of CCB and its sub-entities are the provision of charitable social services that are neither inherently or primarily religious activities. CCB and its sub-entities do not operate to inculcate the Catholic faith; they are not engaged in teaching the Catholic religion, evangelizing, or participating in religious rituals or worship services with the social service participants; they do not require their employees, participants, or board members to be of the Catholic faith; participants are not required to attend any religious training, orientation, or services; their funding comes almost entirely from government contracts or private companies, not from the Diocese of Superior; and they do not disseminate any religious material to participants. Nor do CCB and its sub-entities provide program participants with an “education in the doctrine and discipline of the church.” *See Dykema*, 666 F.2d at 1100.

¶59 Instead, the work that CCB and its sub-entities engage in is primarily charitable aid to individuals with developmental and mental health disabilities. As noted previously, the employers provide work training programs, life skills training, in-home support services, transportation services, subsidized housing, and supportive living arrangements. While these activities fulfill the Catechism of the Catholic Church to respond in charity to those in need, the activities themselves are

not *primarily* religious in nature. This fact is demonstrated most significantly by one of CCB's sub-entities, BCDS. LIRC found that BCDS—which was not brought under the CCB umbrella until 2014—had “no previous religious affiliation” and that “[t]he type of services and programming provided by the organization did not change” following its affiliation with CCB. The fact that the manner in which BCDS carried out its mission did not change after it became an affiliate of CCB supports our conclusion that BCDS' purpose and operations are not primarily religious.

¶60 Regarding CCB itself, as noted above, we acknowledge the clear religious motivation of CCB in supporting and operating its sub-entities. However, the actual activities in which CCB engages involve providing administrative support for its sub-entities which we have determined do not engage in primarily religious activities. CCB is not separately and directly involved in religiously oriented activities. We are cognizant that the result in this case would likely be different if CCB and its sub-entities were actually run by the church, such that the organizations' employees were employees of the church. *See* WIS. STAT. § 108.02(15)(h)1. Instead, CCB and its sub-entities are structured as separate corporations—and CCB makes no claims to the contrary—so we must view their motives and activities separate from those of the church. The corporate form does make a difference, especially with respect to the statutory scheme we must apply in this case. When considered independent of the church's overarching doctrine and purposes, CCB and its sub-entities are clearly operated to provide services in a manner that is neither inherently nor primarily religious.

¶61 We agree with LIRC’s conclusion that the employers here are “akin to ‘the religiously-affiliated organization committed to feeding the homeless that has only a nominal tie to religion’ recognized by the *Coulee* court.” Like the school in *Coulee*, CCB and its sub-entities are affiliated with the Catholic Church and under the control of the bishop; as LIRC recognized, however, unlike the school in *Coulee*, “CCB and its sub-entities are not operated with a focus on the inculcation of the Catholic faith and worldview and do not operate in a worship-filled environment or with a faith-centered approach to fulfilling their mission.” Any such spreading of Catholic faith accomplished by the organizations providing such services—while genuine in deriving from and adhering to the Catholic Church’s mission—is only indirect and not primarily the service that they provide to individuals. We further observe parallels between CCB and its sub-entities and the example in the House Report of “a church related (separately incorporated) charitable organization (such as, for example, an orphanage or a home for the aged) [that] would not be considered under [the religious purposes exemption] to be operated primarily for religious purposes.” See H.R. Rep. No. 91-612, at 44.

¶62 We recognize that CCB and its sub-entities perform important and vital work in our communities. Nevertheless, the fact that a church operates, supervises, controls, or supports an organization in charity with a religious motivation does not, by itself, mean that the organization is operated primarily for religious purposes. While the Catholic Church’s tenet of solidarity compels it to engage in charitable acts, the religious motives of CCB and its sub-entities appear to be incidental to their primarily charitable functions.

Thus, CCB and its sub-entities have not demonstrated through their activities a primarily religious purpose. Accordingly, we affirm LIRC's decision and reverse the circuit court's order reversing that decision.

By the Court.—Order reversed.

Recommended for publication in the official reports.

169a

**WISCONSIN COURT OF APPEALS
DISTRICT III**

FILED

December 7, 2021

Sheila T. Reiff

Clerk of Supreme Court

Appeal No. 2020AP2007 | Cir. Ct. No. 2019CV324

Catholic Charities Bureau, Inc., Barron County
Developmental Services, Inc., Diversified Services,
Inc., Black River Industries, Inc. and Headwaters,
Inc.,

Petitioners-Respondents,

v.

State of Wisconsin Labor and Industry Review
Commission,

Respondent-Co-Appellant,

State of Wisconsin Department of Workforce
Development,

Respondent-Appellant.

**CERTIFICATION BY WISCONSIN
COURT OF APPEALS**

Before Stark, P.J., Hruz and Gill, JJ.

Pursuant to WIS. STAT. RULE 809.61 (2019-20),¹
this appeal is certified to the Wisconsin Supreme
Court for its review and determination.

¹ All references to the Wisconsin Statutes are to the 2019-20
version unless otherwise noted.

ISSUE

The issue in this case is whether Catholic Charities Bureau, Inc. (CCB) and four of its sub-entities are “operated primarily for religious purposes” and are therefore exempt from Wisconsin’s Unemployment Compensation Act under the religious purposes exemption set forth in WIS. STAT. § 108.02(15)(h)2.² CCB argues that in answering this question, we should focus on whether CCB and its sub-entities are operated primarily for a religious motive or reason. Conversely, the Labor and Industry Review Commission (LIRC) and the Department of Workforce Development (DWD) contend that whether CCB and its sub-entities are operated primarily for religious purposes depends on whether their activities are primarily religious in character.³ The parties also dispute whether the religious purposes exemption is ambiguous, and, if so, how that ambiguity should be resolved.

To date, no Wisconsin Supreme Court decision or published court of appeals decision has addressed the interpretation of the religious purposes exemption in WIS. STAT. § 108.02(15)(h)2. Moreover, while courts in other jurisdictions have interpreted and applied identical religious purposes exemptions in their own

² CCB and the four sub-entities are all respondents in this appeal. However, for ease of reading, we refer to them collectively as “CCB” when discussing arguments made or actions taken in this lawsuit or in the underlying administrative proceedings.

³ The DWD filed a brief in this appeal, and the LIRC filed a letter indicating that it concurred with the arguments raised in the DWD’s brief and would not be submitting a separate brief. For ease of reading, we refer to the appellants in this matter as “the DWD” throughout the remainder of this certification.

unemployment insurance laws, there is no consensus among those courts as to the proper interpretation of the relevant statutory language. In addition, both CCB and the DWD argue that adopting the opposing party's interpretation of the religious purposes exemption will result in violations of the First Amendment.

The parties' arguments in this appeal raise novel legal questions regarding the interpretation of the religious purposes exemption and its constitutional implications. These questions are likely to arise in future cases, and their resolution is of crucial importance to religiously affiliated nonprofit organizations throughout the state, to employees of such organizations, and to the DWD, which must routinely apply the religious purposes exemption to determine whether such organizations are exempt from unemployment insurance coverage. Because of the novel legal issues presented and the statewide importance of those issues, we certify this appeal to the Wisconsin Supreme Court.

BACKGROUND

The facts of this case are essentially undisputed. Every Roman Catholic diocese in Wisconsin has a Catholic Charities entity, which functions as the diocese's social ministry arm. The stated mission of Catholic Charities is "to provide service to people in need, to advocate for justice in social structures and to call the entire church and other people of good will to do the same." During the administrative proceedings in this case, Archbishop Jerome ListECKI testified that this mission is "rooted in scripture," which "mandate[s]" the Catholic Church to "serve the poor." Archbishop ListECKI further explained that inherent in

the church's teachings is a "demand" that Catholics respond in charity to those in need.

CCB is the Catholic Charities entity for the Diocese of Superior, Wisconsin. According to CCB's statement of philosophy, the "purpose" of CCB is "to be an effective sign of the charity of Christ" by providing services that are "significant in quantity and quality" and are not duplicative of services already adequately provided by public or private organizations. CCB provides these services according to an "Ecumenical orientation," such that "no distinctions are made by race, sex, or religion in reference to clients served, staff employed and board members appointed."

CCB has various separately incorporated nonprofit sub-entities that operate sixty-three "programs of service," which provide aid "to those facing the challenges of aging, the distress of a disability, the concerns of children with special needs, the stresses of families living in poverty and those in need of disaster relief." Four of those sub-entities are at issue in this appeal: Barron County Developmental Services, Inc.; Black River Industries, Inc.; Diversified Services, Inc.; and Headwaters, Inc.

As a general matter, the four sub-entities involved in this appeal provide services to individuals with developmental and mental health disabilities, as well as individuals with limited income. These services primarily include providing job training, sheltered employment, and employment placement services. Other services provided by these sub-entities include mental health services, Head Start home visitation services for families with eligible children, and transportation services.

CCB, in turn, provides management services and consultation to its sub-entities, establishes and coordinates their missions, and approves their capital expenditures and investment policies. CCB's executive director, who is not required to be a Catholic priest, oversees each sub-entity's operations. Nonetheless, CCB's internal organizational chart establishes that the bishop of the Diocese of Superior oversees CCB in its entirety, including its sub-entities, and is ultimately "in charge of" CCB.

As noted above, CCB's sub-entities provide services to all people in need, regardless of their religion, pursuant to the Catholic social teaching of "Solidarity," which is a belief that "we are our brothers' and sisters' keepers, wherever they live. We are one human family." Program participants are not required to attend any religious training or orientation to receive the services that CCB's sub-entities provide. Neither CCB nor its sub-entities engage in devotional exercises with their employees or program participants, nor do they disseminate religious materials to those individuals.

CCB's sub-entities are prohibited from engaging in activities that violate Catholic social teachings. New CCB employees are provided with CCB's mission statement, statement of philosophy, and code of ethics, and they are informed that their employment "is an extension of Catholic Social Teachings and the Catechism of the Church." However, employees of CCB and its sub-entities are not required to be members of the Catholic faith.

CCB became subject to Wisconsin's Unemployment Compensation Act, WIS. STAT. ch. 108, in 1972, following CCB's submission of an employer's report

stating that the nature of its operations was charitable, educational, and rehabilitative. CCB's sub-entities report their employees under CCB's unemployment insurance account. In 2015, a Douglas County Circuit Court judge ruled that Challenge Center, Inc.—a different CCB sub-entity that provides services to developmentally disabled individuals—was operated primarily for religious purposes and was therefore exempt from the Unemployment Compensation Act under the religious purposes exemption, WIS. STAT. § 108.02(15)(h)2. CCB and the four sub-entities at issue in this appeal then sought a determination from the DWD that they, too, were exempt from the Unemployment Compensation Act.

The DWD determined that CCB and the sub-entities did not qualify for the religious purposes exemption. CCB sought administrative review of that determination, and an administrative law judge reversed, concluding that CCB and the sub-entities qualified for the exemption because they were operated primarily for religious purposes. The DWD then appealed to the LIRC, which reversed the ALJ's decision. CCB sought judicial review, and the circuit court again reversed, concluding that CCB and the sub-entities were operated primarily for religious purposes and therefore qualified for the religious purposes exemption. The DWD now appeals.

DISCUSSION

When the Wisconsin Legislature enacted the Unemployment Compensation Act, it recognized that unemployment in Wisconsin is “an urgent public problem, gravely affecting the health, morals and welfare of the people of this state.” WIS. STAT. § 108.01(1). The legislature acknowledged that

“[i]n good times and in bad times unemployment is a heavy social cost, directly affecting many thousands of wage earners.” *Id.* As a result, the legislature concluded that “[e]ach employing unit in Wisconsin should pay at least a part of this social cost, connected with its own irregular operations, by financing benefits for its own unemployed workers.” *Id.*

For purposes of the Unemployment Compensation Act, the term “[e]mploying unit” means “any person who employs one or more individuals.” WIS. STAT. § 108.02(14m). “Employment,” in turn, means “any service, including service in interstate commerce, performed by an individual for pay.” Sec. 108.02(15)(a). The religious purposes exemption provides, however, that as applied to work for a nonprofit organization, “employment” does not include service “[i]n the employ of an organization operated primarily for religious purposes and operated, supervised, controlled, or principally supported by a church or convention or association of churches.” Sec. 108.02(15)(h)2. In this case, it is undisputed that CCB and its sub-entities are nonprofit organizations and that they are operated, supervised, controlled, or principally supported by a church or convention or association of churches. The only issue is whether, based upon the undisputed facts, CCB and its sub-entities are operated primarily for religious purposes.

The parties fundamentally disagree as to the meaning of the phrase “operated primarily for religious purposes.” Citing an online dictionary and thesaurus, CCB asserts that the plain meaning of the term “purpose” is “the reason for which something exists or is done, made, used, etc.,” and synonyms include function, intent, objective, and reason.

Purpose, <https://www.dictionary.com/browse/purpose> (last visited Nov. 9, 2021); *Purpose*, <https://www.thesaurus.com/browse/purpose> (last visited Nov. 9, 2021). CCB therefore contends that an organization is operated primarily for religious purposes when it is operated primarily “for a religious motive or reason.” CCB further contends that the undisputed facts of this case show that CCB and its sub-entities are operated primarily for a religious motive or reason—specifically, to comply with the Catholic Church’s scriptural mandate to serve the poor and respond in charity to those in need.

Conversely, the DWD asserts that an organization is operated primarily for religious purposes when its activities are primarily religious in character. While the DWD does not assert that the plain meaning of the term “purpose” supports its interpretation, we note that in addition to the definition cited by CCB, “purpose” can also mean “something that one sets before himself [or herself] as an object to be attained” and “an object, effect, or result aimed at, intended, or attained.” *Purpose*, WEBSTER’S THIRD NEW INT’L DICTIONARY (unabr. 1993). These definitions arguably support the DWD’s interpretation by suggesting that an organization’s “purpose” is the object or result that it seeks to attain, rather than its motivation for seeking that result. Arguably, the object, intention, or goal that CCB and the sub-entities seek to attain is to provide non-religious charitable services to those in need. In other words, CCB’s goal is to perform activities that are charitable, but not religious.

As noted, however, the DWD does not rely on a plain meaning interpretation of the religious purposes

exemption. Instead, citing a Seventh Circuit case, the DWD argues that the term “religious purposes” is a “term of art” in tax law that requires an examination of an organization’s activities, rather than its motivation. *See United States v. Dykema*, 666 F.2d 1096, 1100-01 (7th Cir. 1981).

The issue in *Dykema* was whether a particular organization was exempt from taxation under 26 U.S.C. § 501(c)(3) because it was operated exclusively for religious purposes. *Dykema*, 666 F.2d at 1099 1101. The Seventh Circuit stated that in order to make that determination, it was “necessary and proper” for the IRS “to survey all the activities of the organization, in order to determine whether what the organization in fact does is to carry out a religious mission or to engage in commercial business.” *Id.* at 1100. The court further clarified that such a survey could be made by “observation of the organization’s activities,” by “the testimony of other persons having knowledge of such activities,” or by “examination of church bulletins, programs, or other publications, as well as by scrutiny of minutes, memoranda, or financial books and records relating to activities carried on by the organization.” *Id.* Based on *Dykema*, the DWD argues that we must determine whether CCB and its sub-entities are operated primarily for religious purposes based on their activities—i.e., by considering whether the sub-entities’ activities are primarily religious in character. The DWD further argues that the provision of secular

charitable services does not qualify as religious activity.⁴

In its reply brief, the DWD also argues that the phrase “operated primarily for religious purposes” is ambiguous. In support of that proposition, the DWD notes that courts in other jurisdictions have interpreted identical statutory language in their own unemployment insurance laws in differing ways, with some focusing on an organization’s activities and others focusing on an organization’s motivation. Because the statute is ambiguous, the DWD asserts we should rely on legislative history to resolve the ambiguity. In particular, the DWD cites a report of the House Ways and Means Committee (hereinafter, the House Report) pertaining to an amendment to the Federal Unemployment Tax Act, which added a religious purposes exemption to the federal act that is essentially identical to the exemption found in WIS.

⁴ The *Dykema* court stated that typical activities of an organization operated exclusively for religious purposes include:

- (a) corporate worship services, including due administration of sacraments and observance of liturgical rituals, as well as a preaching ministry and evangelical outreach to the unchurched and missionary activity in partibus infidelium; (b) pastoral counseling and comfort to members facing grief, illness, adversity, or spiritual problems; (c) performance by the clergy of customary church ceremonies affecting the lives of individuals, such as baptism, marriage, burial, and the like; (d) a system of nurture of the young and education in the doctrine and discipline of the church, as well as (in the case of mature and well developed churches) theological seminaries for the advanced study and the training of ministers.

United States v. Dykema, 666 F.2d 1096, 1100 (7th Cir. 1981).

STAT. § 108.02(15)(h)2. *See* 26 U.S.C. § 3309(b)(1)(B); *see also St. Martin Evangelical Lutheran Church v. South Dakota*, 451 U.S. 772, 781 (1981) (noting that § 3309 was added to the federal act in 1970 and relying on the House Report to discern the legislative intent behind that amendment). The DWD asserts—and CCB does not dispute—that § 108.02(15)(h)2. was enacted to “conform Wisconsin’s unemployment law with [the] federal law in 26 U.S.C. § 3309(b)(1)(B).”

The House Report provides, in relevant part, that 26 U.S.C. § 3309(b)(1)

excludes services of persons where the employer is a church or convention or association of churches, but does not exclude certain services performed for an organization which may be religious in orientation unless it is operated primarily for religious purposes and is operated, supervised, controlled, or principally supported by a church (or convention or association of churches). Thus, the services of the janitor of a church would be excluded, but services of a janitor for a separately incorporated college, although it may be church related, would be covered. A college devoted primarily to preparing students for the ministry would be exempt, as would a novitiate or a house of study training candidates to become members of religious orders. *On the other hand, a church related (separately incorporated) charitable organization (such as, for example, an orphanage or a home for the aged) would not be considered under this paragraph to be operated primarily for religious purposes.*

H.R. Rep. No. 91-612, at 44 (1969) (emphasis added). The DWD argues this language shows that the religious purposes exemption was not intended to apply to religiously affiliated organizations—like the ones at issue in this case—whose activities are primarily comprised of the provision of secular charitable services.

In response, CCB argues that we should not rely on the House Report because the religious purposes exemption is not ambiguous and plainly requires us to consider the religious character of an organization’s motivation, not its activities. CCB further argues that reliance on the House Report is inappropriate because some jurists have “called into question” the use of legislative history, and particularly committee reports, when interpreting statutes. The DWD notes, however, that Wisconsin courts routinely consult legislative history when interpreting ambiguous statutes. *See, e.g., Teschendorf v. State Farm Ins. Cos.*, 2006 WI 89, ¶13, 293 Wis. 2d 123, 717 N.W.2d 258 (“[I]f the meaning of a statute is ambiguous after considering all intrinsic sources, we look to extrinsic sources such as legislative history to find legislative intent.”). The DWD also observes that the United States Supreme Court has relied on the House Report when interpreting 26 U.S.C. § 3309(b). *See St. Martin Evangelical Lutheran Church*, 451 U.S. at 781-83. In addition, the DWD notes that the Wisconsin Supreme Court has relied on congressional committee reports when interpreting other provisions of Wisconsin’s Unemployment Compensation Act. *See Leissring v. DILHR*, 115 Wis. 2d 475, 485-88, 340 N.W.2d 533 (1983).

Furthermore, the DWD observes that our supreme court has stated the Unemployment Compensation Act is “remedial in nature and should be liberally construed to effect unemployment compensation coverage for workers who are economically dependent upon others in respect to their wage-earning status.” *Princess House, Inc. v. DILHR*, 111 Wis. 2d 46, 62, 330 N.W.2d 169 (1983), *superseded on other grounds by* WIS. STAT. § 108.02(15)(k)16., *as recognized in* *National Safety Assocs., Inc. v. LIRC*, 199 Wis. 2d 106, 119, 543 N.W.2d 584 (Ct. App. 1995). The supreme court has also stated that “[i]f a statute is liberally construed, ‘it follows that the exceptions must be narrowly construed.’” *McNeil v. Hansen*, 2007 WI 56, ¶10, 300 Wis. 2d 358, 731 N.W.2d 273 (citation omitted). The DWD therefore argues that we must narrowly construe the religious purposes exemption in order to effect the broad, remedial purpose of the Unemployment Compensation Act.

In response, CCB cites *Kendall v. Director of Division of Employment Security*, 473 N.E.2d 196 (Mass. 1985), in which the Supreme Judicial Court of Massachusetts stated: “Although tax exemptions are ‘normally ... given a strict construction with all doubts construed against the taxpayer ... the rule of strict construction is superseded in instances where there is a strong possibility that the statute in question infringes upon a party’s right to the free exercise of religion.” *Id.* at 199 (quoting *Christian Sch. Ass’n of Greater Harrisburg v. Commonwealth Dep’t of Labor and Indus.*, 423 A.2d 1340, 1343 (Pa. Commw. Ct. 1980)). CCB therefore asserts that “[w]hen religious liberties are involved in the interpretation of such a statutory provision, the burden effectively reverses.” CCB does not, however, cite any Wisconsin law

supporting the proposition that we should broadly construe the religious purposes exemption because of its potential effect on religious liberties.

Both CCB and the DWD cite cases from other jurisdictions in support of their respective interpretations of the religious purposes exemption. Those citations do not resolve the issue before us, however, because they merely show that some courts have concluded an organization is operated primarily for religious purposes when its activities are primarily religious,⁵ while others have concluded that an

⁵ See, e.g., *DeSantis v. Board of Rev.*, 372 A.2d 1362, 1364 (N.J. Super. Ct. App. Div. 1977) (concluding a Catholic social service agency was not operated primarily for religious purposes because its provision of “nondenominational community service” for senior citizens was “eleemosynary and not religious”); *Concordia Ass’n v. Ward*, 532 N.E.2d 411, 413-14 (Ill. Ct. App. 1988) (concluding a cemetery association formed by several Lutheran churches was not operated primarily for religious purposes because “[b]urial of the dead is a matter of public concern” and “[t]he functions performed by [the cemetery association] are no different than those performed in a secular cemetery”); *Terwilliger v. St. Vincent Infirmary Med. Ctr.*, 804 S.W.2d 696, 699 (Ark. 1991) (concluding a Catholic hospital was not operated primarily for religious purposes because although the hospital’s motivation may have been religious in nature, the evidence showed that it was operated primarily for the purpose of providing health care); *Samaritan Inst. v. Prince-Walker*, 883 P.2d 3, 7-8 (Colo. 1994) (concluding an organization that provided administrative support and accreditation for religiously affiliated counseling centers was not operated primarily for religious purposes because “[a]n organization that provides essentially secular services falls outside of the scope of” the religious purposes exemption); *Cathedral Arts Project, Inc. v. Department of Econ. Opportunity*, 95 So. 3d 970, 973 (Fla. Ct. App. 2012) (concluding a church-affiliated organization was not operated primarily for religious purposes because although its motivation

organization is operated primarily for religious purposes when its primary motivation for operating is religious.⁶ Moreover, most of the cases from other jurisdictions that CCB and the DWD rely upon do not address the constitutional implications of the opposing interpretations of the religious purposes exemption—a topic that both CCB and the DWD have raised in this appeal.

Specifically, both CCB and the DWD argue that the other party’s interpretation of the religious purposes exemption will result in violations of the First Amendment. The DWD argues that any interpretation of the religious purposes exemption that “requires the state to interpret religious doctrine and examine religious leaders as to their religious motivations risks

may have been religious, its primary purpose in operating—i.e., to give art instruction to underprivileged children—was not religious).

⁶ See, e.g., *Department of Emp. v. Champion Bake-N-Serve, Inc.*, 592 P.2d 1370, 1371-72 (Idaho 1979) (concluding a bakery operated by a Seventh Day Adventists school was operated primarily for religious purposes, at least with respect to the students who were required to work at the bakery as a condition of their education at the school, because the “tenets of the Seventh Day Adventists religion stress the value of labor, and work experience is conceived to be an integral part of the students’ religious training”); *Kendall v. Director of Div. of Emp. Sec.*, 473 N.E.2d 196, 199-200 (Mass. 1985) (concluding a religiously affiliated educational facility for the developmentally disabled was operated primarily for religious purposes, even though it provided services to all, regardless of religion, and even though it did not require participation in religious classes or church services); see also *Cathedral Arts Project*, 95 So.3d at 975-77 (Swanson, J., dissenting) (concluding an organization is operated primarily for religious purposes when its primary motivation is religious, regardless of the nature of its activities).

excessive unconstitutional entanglement of the state and church,” which would violate the First Amendment’s Establishment Clause.⁷ In support, the DWD relies on *Pritzlaff v. Archdiocese of Milwaukee*, 194 Wis. 2d 302, 207, 533 N.W.2d 780 (1995), in which our supreme court concluded that a plaintiff’s claims alleging the negligent hiring, training, supervision, and retention of a priest were barred by the First Amendment. The *Pritzlaff* court reasoned that the First Amendment “prevents the courts of this state from determining what makes one competent to serve as a Catholic priest since such a determination would require interpretation of church canons and internal church policies and practices,” which would risk excessive entanglement between the state and the Catholic Church. *Id.* at 326, 330.

The DWD further cites *Coulee Catholic Schools v. LIRC*, 2009 WI 88, ¶¶1-3, 320 Wis. 2d 275, 768 N.W.2d 868, which held that the Free Exercise Clause of the First Amendment to the United States Constitution and article I, section 18 of the Wisconsin Constitution precluded a teacher who had been laid off from a

⁷ The First Amendment provides, in relevant part: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. CONST. amend. I. “The first portion of this provision contains what is called the ‘Establishment Clause,’ and the second portion is called the ‘Free Exercise Clause.’” *Coulee Cath. Schs. v. LIRC*, 2009 WI 88, ¶35, 320 Wis. 2d 275, 768 N.W.2d 868. “[A] statute does not violate the Establishment Clause if (1) it has a secular legislative purpose; (2) its principal or primary effect neither advances nor inhibits religion; and (3) it does not create excessive entanglement between government and religion.” *Jackson v. Benson*, 218 Wis. 2d 835, 856, 578 N.W.2d 602 (1998) (citing *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971)).

Catholic school from bringing an age discrimination claim against her former employer.⁸ The court explained that the state may not “interfere with the hiring or firing decisions of religious organizations with a religious mission with respect to employees who are important and closely linked to that mission.” *Coulee Cath. Schs.*, 320 Wis. 2d 275, ¶67. A court must therefore first determine whether the organization in question “has a fundamentally religious mission” in both statement and practice. *Id.*, ¶48. That determination is fact-specific, as

[i]t may be, for example, that one religiously-affiliated organization committed to feeding the homeless has only a nominal tie to religion, while another religiously-affiliated organization committed to feeding the homeless has a religiously infused mission involving teaching, evangelism, and worship. Similarly, one religious school may have some affiliation with a church but not attempt to ground the teaching and life of the school in the religious faith, while another similarly situated school may be committed to life and learning grounded in a religious worldview.

Id.

⁸ Although the employee in *Coulee Catholic Schools* argued that the employer’s challenge to her age discrimination claim should be analyzed under the Establishment Clause, the supreme court concluded the employer’s challenge instead implicated the Free Exercise Clause. *Coulee Cath. Schs.*, 320 Wis. 2d 275, ¶¶36-37. Nonetheless, the court acknowledged that the employer’s challenge did, to some extent, implicate the idea of “excessive entanglement with religion.” *Id.*, ¶37.

The DWD also relies on *Dykema*, in which the Seventh Circuit stated: “Objective criteria for examination of an organization’s activities thus enable the IRS to make the determination required by the statute”—i.e., whether the organization was operated exclusively for religious purposes—“without entering into any subjective inquiry with respect to religious truth which would be forbidden by the First Amendment.” *Dykema*, 666 F.2d at 1100. Based on *Dykema*, *Pritzlaff*, and *Coulee Catholic Schools*, the DWD argues that the only way for a court to avoid excessive entanglement when determining whether an organization is operated primarily for religious purposes under WIS. STAT. § 108.02(15)(h)2. is to focus on the organization’s activities, which allows the court to conduct a neutral review based on objective criteria.

CCB, in turn, argues that the DWD’s interpretation of the religious purposes exemption would violate the First Amendment because “[a] determination by the state that CCB is not ‘religiously purposed enough,’ represents a constitutionally impermissible Free Exercise violation.” In essence, CCB argues that the DWD’s interpretation favors those religious entities that engage in proselytizing and provide services only to members of their own religion, which would impermissibly burden the sub-entities’ and CCB’s free exercise of the Catholic tenet of “solidarity”—i.e., “[b]eing ecumenical in social ministry.”

CCB also asserts that the DWD’s interpretation of the religious purposes exemption would result in an Establishment Clause violation because “[b]y allowing exemption to those religions which view ‘proselytizing’

and discriminating against non-adherents in the provision of services as part of their mission, [the DWD] is favoring those religions over Catholicism.” CCB contends the “easiest way” for the DWD to “entangle’ itself in religion is to promote one practice (proselytizing, etc.) over another (ecumenical delivery of charity).”

CONCLUSION

The Wisconsin Supreme Court “has been designated by the constitution and the legislature as a law declaring court.” *State v. Grawien*, 123 Wis. 2d 428, 432, 367 N.W.2d 816 (Ct. App. 1985). Although the court of appeals also serves a law-declaring function, “such pronouncements should not occur in cases of great moment.” *Id.* We believe that this is such a case. The proper interpretation of the religious purposes exemption is highly important to countless religiously affiliated nonprofit organizations throughout the state, which need to know whether they are exempt from the Unemployment Compensation Act. The resolution of this issue is also important to such organizations’ employees, as the exemption determination will affect their eligibility for unemployment benefits. The DWD also has a significant interest in the interpretation of the religious purposes exemption, as it is charged with applying the exemption on a day-to-day basis. Furthermore, the term “religious purposes” appears in various other Wisconsin statutes, and a decision by the supreme court interpreting that term in WIS. STAT. § 108.02(15)(h)2. could provide guidance in interpreting those other statutory provisions.

As noted above, there is no binding Wisconsin case law regarding the interpretation of the religious

purposes exemption, and courts in other jurisdictions are divided as to the proper interpretation. Moreover, CCB and the DWD have raised significant questions regarding: whether the religious purposes exemption is ambiguous; whether we should rely on legislative history when interpreting the exemption; whether the exemption should be interpreted narrowly (due to the remedial purpose of the Unemployment Compensation Act) or broadly (due to the risk that the exemption may infringe on religious liberties); and whether either of the parties' proposed interpretations of the exemption will violate the First Amendment.

Given the dearth of binding case law addressing these questions and the importance of the legal issues presented, we believe this is a case in which it would be appropriate for the supreme court, rather than the court of appeals, to render a decision. A decision by the supreme court "will help develop, clarify or harmonize the law," WIS. STAT. RULE 809.62(1r)(c), thereby providing much needed guidance to religiously affiliated nonprofit organizations throughout Wisconsin, as well as to their employees, the DWD, and Wisconsin attorneys and lower courts.

189a

FILED
10-26-2020
Clerk of Court
Douglas County, WI
2019CV000324

DATE SIGNED: October 23, 2020

Electronically Signed by Kelly J. Thimm
Circuit Court Judge

**STATE OF WISCONSIN
CIRCUIT COURT – DOUGLAS COUNTY**

Catholic Charities Bureau, Inc., Barron County
Developmental Services, Inc., Diversified Services,
Inc., Black River Industries, Inc. and Headwaters,
Inc.

Petitioners-Respondents,

vs.

State of Wisconsin Labor and Industry Review
Commission, State of Wisconsin Department of
Workforce Development

Defendants.

ORDER

This Order pertains to five separate cases, captioned above and identified below, which were consolidated for judicial review under the single Douglas County Court file referenced above, concerning common questions of fact and law, as to whether the Plaintiffs are each an “organization operated primarily for religious purposes” under Wis. Stats. § 108.02(15)(h.)2.

The Court having reviewed the file and record, and Memorandums filed herein and having heard the arguments of Counsel, and being advised in the premises, and for the reasons more fully stated on the record at the hearing on October 22, 2020 and in its oral ruling, findings of fact and conclusions of law at said hearing, which are incorporated herein by reference in their entirety, hereby reverses the Labor and Industry Review Commission's decisions on Hearing Nos. S1700033MW (Headwaters, Inc.), S1700034MW (Diversified Services, Inc.), S1700035MW (Catholic Charities Bureau, Inc.), S1700036MW (Black River Industries, Inc.), and S1700037MW (Barron County Developmental Services, Inc.), as consolidated, and finds that the Plaintiffs are each an "organization operated primarily for religious purposes" under Wis. Stats. § 108.02(15)(h.)(2).

IT IS SO ORDERED.

THIS ORDER IS FINAL FOR THE PURPOSES OF APPEAL.

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FILED
01-19-2021
Clerk of Court
Douglas County, WI
2019CV000324

**STATE OF WISCONSIN
CIRCUIT COURT – DOUGLAS COUNTY
BRANCH 1**

Headwaters, Inc. et al.,

Plaintiff,

vs.

State of Wisconsin, Labor and Industry Review
Commission, and State of Wisconsin, Department of
Workforce Development,

Defendants.

CASE NO. 2019CV324

**TRANSCRIPT OF PROCEEDINGS
ORAL ARGUMENTS and COURT'S DECISION
BEFORE THE HONORABLE KELLY J. THIMM
CIRCUIT COURT JUDGE, PRESIDING
October 22, 2020**

***** via Zoom Videoconferencing *****

APPEARANCES

KYLE HOFF TORVINEN, 823 Belknap Street, Suite 222, Superior, Wisconsin 54880, appearing via Zoom videoconferencing for and on behalf of Plaintiff, Headwaters, Inc.

ANN MARIE MOLITOR, Attorney at Law, 3319 West Beltline Highway, P.O. Box 8126, Madison, Wisconsin 53708, appearing via Zoom videoconferencing for and on behalf of Defendant State of Wisconsin, Labor and Industry Review Commission.

CHRISTINE L. GALINAT, Attorney at Law, P.O. Box 8942, Madison, Wisconsin 53708, appearing via Zoom videoconferencing for and on behalf of the Defendant State of Wisconsin, Department of Workforce Development.

TRACY A. BENNETT, Court Reporter.

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(WHEREUPON, the proceedings on October 22, 2020, commence at 3:31 p.m.)

THE COURT: We'll call Case Number 2019CV324, it's encaptioned Headwaters, Inc. et al. versus State of Wisconsin Labor and Industry Review, et al. Mr. Torvinen appears representing the plaintiff. The defendant (sic), I believe –

Is it Ms. Galinat?

MS. GALINAT: Yes.

THE COURT: And Ms. Molitor, I see. And I think that's all we have.

It's scheduled for oral arguments and decision. I have reviewed the file in its entirety, including all of the exhibits, all of the attachments. I've reviewed everything, if not once, but probably twice on most of it. So I'm very familiar with things.

Mr. Torvinen, it is your -- you are the plaintiff, if you want to go first?

MR. TORVINEN: Sure, Your Honor. Can I proceed?

THE COURT: Yes, go ahead.

MR. TORVINEN: Okay. Judge, I know that you spent a lot of time going through stuff, both historically and in this case. So I'm not going to belabor the point or try to go through all of the points. Obviously, the parties made a number of different arguments and some of them are in the alternative and digesting all of that is something that the Court has already engaged in. So I'm going to focus on something fairly brief and to the point that I think

provides a blueprint to the case and does add a little bit more that wasn't in the briefing.

So, the Court knows this is a case that's about 108.02(15)(h); and, even more specifically, further than that, sub parens (2), which really boils down to whether -- the phrase: "Whether something is operated primarily for religious purposes."

Further, in this case -- and I think it's of great importance -- we're not even arguing about that whole phrase, because on Page 11 of the briefing submitted by LIRC -- and I don't disagree with any of this -- the term "operated" has a general meaning: "To perform a function" and it's fairly straightforward to a plain reading. Primarily -- and this is reading from LIRC's brief at 11: "Primarily" means: "For the most part, chiefly" and acknowledges that something can have multiple purposes. So really, I think, it's stated in that same section of the brief. The crux of the case is the interpretation of "purposes" in the context of the statute. And I agree with that. An interpretation of the word "purposes."

However, there is no harder analysis applied to the term "purposes" than there is to the other two that I just mentioned, "operated" and "primarily." As a matter of fact, the plain reading analysis -- and it's cited in the briefing -- generally you just read it, see if you understand it. You can go to a dictionary if a person likes to. Notably, in this case, same page, Page 11, at Footnotes 35 and 36, LIRC relied on the MerriamWebster.com dictionary. And, notably, they did so for the terms "operated" and "primarily," but they neglected to include what that same dictionary might say regarding the term "purpose."

And so, to the extent that we're interpreting that at all, what Merriam-Webster says about that is the purpose quote: "The reason why something is done." A larger -- Google. Google English dictionary, which is provided by Oxford languages, the world's leading largest dictionary publisher for the last 150 years, says that: The term "purpose" means: "Motive," is one alternative reading; or "the cause" or "the impetus."

And so, I guess, my analysis of this, Your Honor -- and, I'm not reinventing the wheel here because it's consistent with what several courts have done and what Judge Glonek did -- is to simply look at that phrase. We all agree that "operated" and "primarily" can be read simply. And the question is: Can "purposes" also be read simply? And I would submit to the Court it has a very plain, common meaning. And if we use the same dictionary that they use, it effectively disposes of the case.

Now, to try to get past that -- again, this is all on Page 11 -- LIRC poses the question: That is when we read the term "purpose." Should that be interpreted as the functional purpose? And they add language throughout their brief as to what things are supposed to be -- what they kind of wish that the statute did say. But that's the province of the Legislature, Your Honor. And if they had wanted -- if the Legislature wanted it to be functional purpose, they could have said that. They use the term -- the word "purpose" and purpose has a simple meaning. So read that, notwithstanding all of the other arguments that I made, a plain reading analysis of the type employed by Judge Glonek, it can very easily dispose of this case. Trying to add things into the statute tortures plain reading analysis. And there's no reason for it.

All of the case law regarding that -- I know the Court is very familiar with statutory construction. So I'm not going to talk any more about that.

And, you know, there are also alternative arguments that can be made here. Certainly, constitutional arguments and other arguments. But I'm not going to try to reiterate those, other than to alert the Court that the fact that I'm not going to take up the Court and counsels' time reiterating things that have been written, doesn't mean that I feel that they are lesser important or are not independent legs that a decision could stand on. But -- nor the other arguments about the meanings of committee reports and so forth.

Subject to that, Your Honor, I am familiar with some of the cases and so forth. And if the Court has any questions of me, either now or after the presentation of LIRC and DWD, I would be happy to answer those and I'll turn over the mic. Thank you.

THE COURT: Thank you, Mr. Torvinen. I think you answered -- or read my mind and answered my one and only question.

Ms. Molitor, did you want to respond? Obviously --

MS. MOLITOR: I do.

THE COURT: -- I think I appreciate the fact that we're not -- I don't want to rehash what's all in the briefs, but certainly responding to Mr. Torvinen's question -- or not question, but his statement would be appreciated. And anything else that you wanted to highlight. Go ahead.

MS. MOLITOR: Yes. I disagree with the way that the primary issue in this case has been framed

because, um, what was omitted is a very important word that is describing “purposes” and that is “religious.” And so the entire phrase that we’re looking at is: “Whether the organization is operated primarily for religious purposes.” And the entire statute that surrounds that particular provision has to do with churches and ministers and, um, similar entities and roles. And so, you can’t take religious out of the part of the provision that we’re trying to interpret.

And there is quite a bit of guidance and to say that, um, you know, this is plain. Well, it seems plain to me, and I’m sure it seems plain to the other side. But the fact that we disagree on what it actually means makes it ambiguous. And, therefore, we have to look at other sources to help us decide what, in fact, is meant by saying that an organization is operated primarily for religious purposes.

And, you know, there was a lot of case law that was presented where you look at these particular terms and how they are used both, you know, at the federal level in the Federal Unemployment Insurance Tax Act; and, then, in other cases where courts have had to look at these terms and decide what is a religious purpose, what does it mean to operate, what means primarily. “Primarily,” to my mind, means not exclusively. And I think if you look at some of the text and some of the, um, ah, explanations given in the IRS code, they differentiate between an exclusive use and a primary use. And so, by saying “primarily,” it is allowing for some use that is not exclusively one, if that makes sense.

And then, you know, there’s more guidance. And then, in terms of, um, you know, religious purposes, there’s case law that you know directs us on what

these religious purposes are. And it's not just motivation. It is that you have to look at, objectively, what is happening. Because if you don't, and you look at the motivation, then you are running into constitutional issues, because you are looking behind what is being said and you are looking to doctrine and you are looking to tenets to see if everything is consistent and that is not what government is supposed to do.

So, I don't know if you have a specific question that I could answer. I know, in the briefing, there was some question as to whether or not we could rely on federal committee reports. And I would just, you know, remind the Court that the U.S. Supreme Court certainly relied on the same federal report that the Commission did.

And when we're talking about religious, we also have to be cognizant of the fact that, you know, sometimes "charitable" and "religious" are used interchangeably, but they are very different under the law. And, um -- and really what it came down to in this case, I think, is the Commission was saying, you know, these are charitable entities, but they are not operated primarily for a religious purpose because there's no religious activity taking place.

I don't -- I mean, I could go on and on. And I'm sure you don't want me to.

Perhaps, Attorney Galinat, you want to add your two cents in here?

THE COURT: Just a second before you go further. I do have two questions, I think I indicated the last time. And the first question I have is: Can you distinguish the trial court's decision in Catholic

Charities with this particular case? And when I say that, it could be as simple as Judge Glonek was wrong and we didn't appeal it so, first of all, it's not binding; or, if you can distinguish those facts to these facts, whatever you think.

And my second question is: Give me an example of religious purpose if it's not this.

MS. MOLITOR: Okay. Well, in terms of Judge Glonek's decision, um, we -- the Commission and the Department did not believe that it was correctly decided, but, for various reasons, decided not to appeal it. Part of the problem with that decision is that there really was not a lot of analysis that took place indicating how the ultimate decision was made and on what basis other than, you know, kind of like, well, it feels religious so we're going to, you know, say it is.

So, um, in trying to explain what would be typical activities of an organization operated for religious purposes, I would turn to what the 7th Circuit had written in *Dykstra* -- and I forget the second part of the case name -- but typical activities of an organization operated for religious purposes would include: Worship services, including, you know, administration of sacraments, observance of liturgical rituals; as well as preaching ministries and outreach to the unchurched, pastoral counseling; and comfort to members who are facing, um, illness, adversities, other, you know, spiritual or life problems; clergy performing customary church ceremonies that affect the lives of their -- their members, you know, coming to my baptism, marriage, burial things like that; it's also a system of nurturing the younger people in the church and educating them in the doctrine and

discipline of the church, and that goes from, you know, primary school all the way up through seminaries.

THE COURT: How about -- I'll just stop you there. How about feeding those that don't have food? Feeding the hungry?

MS. MOLITOR: Um, that falls within charitable, um, because the actual activities do not have any religious component. They are provided to individuals without respect to, you know, whether, you know, they are Christian or Muslim or, you know, an Atheist.

THE COURT: Well, and that's -- I guess that's kind of part of the trick of the question. If you -- I mean for religion, religion isn't just preaching the good word. If you are -- it's kind of preaching to the choir, right? So if you aren't trying to engage those that are not your religion, then it can't be for a religious purpose; is that what you are saying?

MS. MOLITOR: Um, yes.

THE COURT: Okay. So then bringing it a step further. So if you are not trying to bring people into your religion, you are only preaching to the choir, there can be no outreach such as going to food shelves with your Catholic Church garb on, etcetera, that would not be considered religious purpose?

MS. MOLITOR: Well, I mean it certainly can be, but we're talking specifically about these entities and whether these entities that are involved here, these five businesses corporate entities, are actually engaged in operations for a religious purpose.

THE COURT: So --

MS. MOLITOR: And --

THE COURT: So, again, and I don't mean to interrupt. I just kinda want to get to the crux of it. And I'm never going to not give you a chance to respond if I'm cutting you off. My other kind of follow-up to that is, again, you are focused and your position is focused on not why, but what is actually being done? The why isn't what you are focusing on. I can quote you on that?

MS. MOLITOR: Correct. Because really what we're looking at is a tax -- tax law. And it's a general, you know, tax that applies to everyone. And, then, if there's an entity that believes that they shouldn't be subject to the tax, then they have the burden of establishing that they don't -- or that they meet all the criteria. And, for government entities, like the IRS, or here, the Department of Workforce Development, when they are looking to see what, um, these groups are doing, they have to monitor the function and make sure that their actual activities conform with the requirements that are set as entitling them to a tax exempt status. So, it's the religious component, in this particular sub.(h), in determining what is excluded employment that is really at issue.

THE COURT: All right.

Anything else, Ms. Molitor, before I turn it over to Ms. Galinat?

MS. MOLITOR: Well, I can go on and on, but I'm sure you don't want that.

So go ahead, Ms. Galinat.

THE COURT: Go ahead. You just muted yourself.

MS. GALINAT: I just had a couple points I wanted to make. You had requested, um, just that we distinguish Challenge Center. We did distinguish it.

And I guess our concern with both the Challenge Center decision and the appeal tribunal decision in this case, is that they rely very much in looking at religious tenets and religious doctrine. And that would be a very difficult standard for the Department to implement, because government can't go in and we can't look at an organization -- or a religious organization and look at their doctrine and say: Why are you doing this; does this conform; and make a judgment as to whether their activities conform with their religious doctrine. I mean, that would raise considerable concerns under the entitlement clause.

So as Ms. -- Attorney Molitor was pointing out, we need an objective inquiry. And that's what the 7th Circuit was applying in, I think it was, *Dykstra*, is just you want a neutral examination for the State and the courts to apply. And looking at the activities, looking at what is done, in this case providing aid to those who need it, that's a very objective, just very fact-based inquiry that doesn't rely on religious doctrine.

And then I believe you had also asked about illustrations of what would be religious purposes and I think the *Coulee* court -- the Supreme Court in *Coulee Catholic Schools versus LIRC* gives a -- they had a two-step analysis in determining whether an administrative exception applied. And the first step is to determine whether the organization has a religious -- a fundamental religious mission. And, in that case, they set out -- excuse me -- two separate illustrations as to what would be a religiously-affiliated organization: Feeding the homeless that has only a nominal tie to religion, while another has a religiously-

infused mission involving teaching Evangelism and worship.

And, then, the second example they provided was a religious school. One may have some affiliation with the church, but not attempt to ground the teaching. And life of the school and the religious space, while another situated school may be committed to life and learning in a religious world view. So *Coulee*, I think, provided two good examples of that.

I did not have any other additional comments.

THE COURT: All right. Thank you, Ms. Galinat.

Mr. Torvinen, you are the plaintiff. I'll give you the last say in it. Anything you want to add or respond to?

MR. TORVINEN: Sure. Just a couple points, Your Honor. One of them, *Coulee* has been addressed at length in the briefing. And, of course, that's going to be a factually dissimilar task, because the focus is on the mission and whether somebody is acting as a minister of that church. So that's another situation in determining that, it sounds like there's -- I'm hearing LIRC saying that there's some kind of boogeyman that they are going to follow constitutionally if they have to look at any religious component. Well, *Coulee* is a perfect example where, although it doesn't apply, a test was set out.

Another good example in the materials, and one that I think sort of defeats the argument that they were making before, they cited in their materials, *Fifth Avenue Presbyterian Church of New York City* where the church was allowing homeless people to come on during -- during the evenings. And they said: Well, that's -- that doesn't -- that's not religious

operationally, that's just letting people sleep there. Well, the Court did perform an analysis and admittedly that wasn't this -- that wasn't this case, but it's very analogous in the sense that the Court was trying to determine constitutional concerns.

Another test, that it was a sincerely-held belief. And they said as long as it's a sincerely-held belief, that meets muster. That's grounds for determining that's a religious operation. And so, you know, there are -- it's accurate to say that the government is not to go in and evaluate religions and say: Judaism is better than Catholicism or the reverse or what have you. That's accurate. But the Court has to evaluate things that are -- whether things are religious or border in and out of what religious things are in terms of interpreting sincerely-held beliefs or who was a minister, those types of things happen all the time.

The last thing that I will say is I take umbrage with the attacks on the Challenge Center decision. Obviously, I was part of that decision, too. And throughout the time that that case was argued, I don't -- I don't think -- I think it's a -- I think it's disingenuous and perhaps even unfair to say that it was decided kind of, like, well, it looks like it's a little bit religious so maybe it is. That's not at all what happened in that case. Judge Glonek spent pages and pages analyzing what the words were of the statute. And he clearly performed a plain reading analysis. And I think that that same plain reading analysis can be employed here. That's all I have.

THE COURT: Thank you, Mr. Torvinen.

I can just say -- I'll say at the outset, I'm not Catholic, neither is my wife. So to throw that out there

in case there's any wondering -- or maybe I should have said that at the beginning? I don't -- I'm not involved in Catholic Charities or anything like that, quite frankly.

But, what I can say is I have reviewed Judge Glonek's decision. I've reviewed the decision of ALJ in this case and looked at them quite closely. And I find Judge Glonek's decision absolutely right on point. I think this is a plain reading statute. I don't think that there's anything particularly complex about it. I don't think that there's anything that I have to read into it. I think it's very simple and I think this is a circumstance where looking at it, you know, looking at -- and analyzing the statute, I don't think you have to look very far.

And I think one of the things that's being missed here is, again, one of the -- you look at the tenets. I'm not -- I'm really not swayed at all by this argument, Judge, if you find that this is a religious purpose, then we're going to have to go and analyze every case and make that decision. Well, that -- I'm not the Legislature nor the super Legislature. I didn't make those decisions. The Legislature made those decisions. If they want to change it to something else other than what it is, they can certainly do it. They -- they chose not to, at this point, and maybe there will be a change in the future.

But, as it stands, quite frankly, I'm gonna look at, in my opinion, is this primarily for a religious purpose? And I find that it is. I think that the -- these organizations should qualify for the exemption. And I understand a couple things and I want to highlight some things that I found in looking at this case.

First of all, the factual disputes. There's no factual disputes. The facts are all there. Nobody -- this wasn't some hotly contested factual case. So really what we're looking at is the law and whether -- what the law says. And everybody agrees this isn't something where I'm giving any deference to LIRC because this isn't a case, nor does the case law support deference when looking at the statute. Quite frankly, the case law supports the other -- that this is clearly a de novo review.

So, looking at that, I still -- I think I can take into consideration, first of all, the other branch in Douglas County, Branch 2's decision. And that's one of my starting points. After I was able to review all the materials, the record, reading all the transcripts of the people that testified. But, again, the overarching issue that I see is just kind of a lack of understanding from the defendants, you know, what is religion? And I'm going to go into that a little bit further, but it's not just preaching.

And that's not what the standard says and that's not what 108.02 talks about. You know, it doesn't say preaching. It says: "Primarily for religious purposes." That's what it says. It's clear that the plaintiffs are, you know, subsidiaries of Catholic Charities. And I really don't think that there's much distinction between Catholic Charities and the subsidiaries of -- that we're here today for. Catholic Charities are overseen by the Bishop.

Obviously, there's no dispute they are exempted from federal income tax, because they are operated, supervised or controlled by the Roman Catholic Church. The Bishop appoints the membership and approves the Board of Directors; the committee reports -- I mean, they report to the Bishop; meetings

open with a prayer and include discussion of social ministries; every worker employed must abide by the mission statement and code of ethics. The plaintiff services are provided at the direction and oversight of the Bishop of the Diocese of Superior, pursuant to the ten principles of Catholic social teaching. And the ten principles are: Respect for human life; human dignity; association; participation; preferential protection for the poor and vulnerable; solidarity; stewardship; human equity; and common good. I might have missed one. The ten principles have the roots from the catechism of the Catholic Church. The principles are the bases of the Catholic religion. The Bishop maintains total control, making sure they are operating within the confines of the Catholic religion; the principles are incorporated into the mission statements; employees are provided with a letter that includes the mission statement and code of ethics; employees can be fired for not adhering to these principles; the mission statement comes from that catechism.

While, you know, the principles and teachings could also be considered secular -- and this is kind of the point that I'm making, they are, in fact, indoctrinated into the Catholics through religious instruction. These are things -- being Catholic and being Christian isn't just preaching and spreading your religion, as Mr. Torvinen talked about with his -- with the case -- and I think it was New York City -- it was making sure the poor and vulnerable are protected. And if you look at what's going on here, you know, the aid to the underserved is absolutely the exemplification of what it is, and my reading of it, to be Catholic. And, in fact, one of the tenets of Christianity in general.

The defendants are misplaced with this policy argument, because other -- you know, there's also the argument -- I wanted to respond to about the unemployment insurance. Well, they don't have unemployment insurance and they really need to do that. Well, the Catholic Church does their own. So any policy argument about having it in place, to me, just doesn't make any sense.

And they seem to be hung up on the fact that the plaintiffs don't give any preferential treatment to Catholics, also. I hear that argument, read that argument. It's kind of counterintuitive. Part of I think being Catholic or being Christian, in general, is attempting to set examples and get people to see what you are doing; and, by that, showing them what the religion is and showing by example. And by that reason, by itself, in this argument about there being -- needing to be some preaching or proselytizing, I just don't buy it, because I think part of it by your acting and doing these charitable things, you are doing just that. You are proselytizing. You are acting and showing what it is. And I don't think the people have to be Catholic in order to be -- in order to be part of this. I don't think you have to be preaching to the choir, as I indicated.

So, under those circumstances, I do find that Judge Glonek's opinion -- in my opinion, Judge Glonek's opinion and even the ALJ's opinions are highly persuasive. The argument -- the defendants focus on the arguments that the activities of the organizations -- that the organizations perform and not why the organizations are primarily operated is the key here. If we look at the dictionary, as Mr. Torvinen indicated, and as was my question, I mean, it is the reason why

something is being done. That's what -- purpose. Motive? Why? It's being done because of this religious motive of the Catholic Church of being good stewards, of serving the underserved. That's the reason why, because of it being the Catholic tenets.

There's just this overarching concept of what it is to be Catholic, which is more than preaching, which I indicated. It ignores a fundamental part of being Catholic and that's following tenets.

Being a good person, that's more important than preaching to people that are already Catholic. Being a good person, leading by example and doing things to help the underserved. I mean, those are more important. And that's what's being missed here.

I'm sorry if that's what the Departments are going to have to be looking at further when looking at this exemption, but it isn't -- it isn't as simple as just saying: There's no preaching; therefore, it doesn't apply.

And that's -- in my opinion, again, I just see -- it could be argued that by not giving preferential treatment to Catholics, the entities are attempting to instill Catholic beliefs in non-Catholics, therefore furthering the overall mission of the Catholic Church to proselytize. That's the way I see it.

So, to kind of sum it up with that backdrop of what's going on here, and -- I'm making a finding that the plaintiffs are organizations operated primarily for religious purposes. The test is not -- the test is really why the organizations are operating, not what they are operating. And, as I said, the plain language of "primarily," we've already discussed that. I've made my finding "primarily" is "chiefly."

And then you look at “purposes,” we’ve talked about that. There’s plain language to it and plain meaning. So I just don’t see the reason to go any further looking at any type of history behind it and I don’t think we need to go that far.

The primary goal behind the plaintiffs is to help underserved segments of the population, those less fortunate, help them gain dignity and equity, which is one of the tenets. The plaintiffs do not attempt to achieve -- the plaintiffs do not attempt to achieve their goal while also attempting profit. Which I know that’s looked on, you know, these are organizations, by their very meaning, nonprofit. But I think it’s just important to note, by providing the services, the plaintiffs are carrying out the primary purpose of the Catholic Church by treating others in the way they are treating them.

In my opinion, the plaintiffs meet the primary purpose test and should be exempted. Therefore, the Court reverses the decision of Labor and Industry and Review and Workforce and finds in favor of the plaintiffs and finds the plaintiffs qualify for the exception from the Wisconsin unemployment system because they are operated primarily for religious purposes.

Mr. Torvinen, would you draft an order consistent with this opinion?

MR. TORVINEN: I will, Your Honor. Thank you.

THE COURT: All right. That’s it for today. Thanks, everybody, for making this all work. I think it worked pretty well. And you probably wouldn’t have wanted to come up here with the weather we’re having by the way.

211a

(WHEREUPON, the proceedings on October 22, 2020, conclude at 4:11 p.m.)

STATE OF WISCONSIN

COUNTY OF DOUGLAS

REPORTER'S CERTIFICATE

I, Tracy A. Bennett, Official Court Reporter in and for the State of Wisconsin, do hereby certify that I reported in stenotype the proceedings above on October 22, 2020; that I thereafter caused the same to be transcribed under my supervision and control; and that these 28 pages constitute a full, true and complete transcription of the proceedings to the best of my ability.

Dated: ^

/s/ Tracy A. Bennett
Tracy A. Bennett, RPR, CRR, CRC
Official Court Reporter – Branch I
Douglas County Courthouse
1313 Belknap Street, Room 303
Superior, Wisconsin 54880

**State of Wisconsin
Labor and Industry Review Commission**

BARRON COUNTY DEVELOPMENTAL SERVICES Employer	Unemployment Insurance Contribution Liability Decision¹
Hearing No. S1700137MW	Dated and Mailed: OCT 16 2019

The commission **reverses** the appeal tribunal decision. Accordingly, the employer remains subject to the requirements of the Wisconsin unemployment insurance law.

By the /s/ Michael H. Gillick
Commission: Michael H. Gillick, Chairperson

/s/ David B. Falstad
David B. Falstad, Commissioner

/s/ Georgia E. Maxwell
Georgia E. Maxwell, Commissioner

¹ **Appeal Rights:** See the blue enclosure for the time limit and procedures for obtaining judicial review of this decision. If you seek judicial review, you **must** name the following as defendants in the summons and the complaint: the Labor and Industry Review Commission, all other parties in the caption of this decision or order (the boxed section above), and the Department of Workforce Development. Appeal rights and answers to frequently asked questions about appealing an unemployment insurance decision to circuit court are also available on the commission's website, <http://lirc.wisconsin.gov>.

Procedural Posture

This case is before the commission to determine whether the services of the employees of the employer are excludable under the provisions of the state's unemployment insurance law. An administrative law judge (ALJ) of the Unemployment Insurance Division of the Department of Workforce Development held two hearings and issued a decision in this matter. The commission received a timely petition for commission review. The commission has considered the petition and the briefs submitted, and it has independently reviewed the evidence received at the hearings.

Findings of Fact and Conclusion of Law

1. Every Roman Catholic diocese in Wisconsin has a social ministry arm – a Catholic Charities entity. (T1. 34). “The mission of Catholic Charities is to provide service to people in need, to advocate for justice in social structures and to call the entire church and other people of goodwill to do the same.” (Ex. 1, pp. 1, 5).
2. In the Diocese of Superior, the social ministry arm is called the Catholic Charities Bureau (CCB). (T1. 54-55; Ex. 2, p. 8). The purpose of the CCB “is to be an effective sign of the charity of Christ” by providing services that are significant in quantity and quality to everyone – no distinctions are made by race, sex, or religion in reference to clients served, staff employed, and board members appointed – and that are not duplicative of services already adequately provided by governmental or public agencies or other private agencies. (Ex. 2, p. 8).

3. The bishop of the Diocese of Superior occupies the top spot in the diocese's organizational chart. The bishop effectively has the ability to control all of the various educational, charitable, and religious organizations and entities within the diocese. Some positions within the diocese belong under canon law and may only be filled by religious individuals. (T1. 63-64). The executive director of CCB may be, and is, a layperson. (T1. 65).
4. CCB has separately incorporated sub-entities that operate 63 programs of service to those facing the challenges of aging, the distress of a disability, the concerns of children with special needs, the stresses of families living in poverty, and those in need of disaster relief. (Ex. 2, p. 1).
5. Barron County Developmental Services Inc. (BCDS) is a sub-entity of CCB that provides sheltered employment to developmentally disabled individuals. (T1. 108; Ex. 45). BCDS contracts with the Wisconsin Department of Workforce Development, Division of Vocational Rehabilitation to provide employment assessment and job development services to individuals with disabilities. (T1. 235-236).
6. In December 2014, the board of directors for Barron County Developmental Disabilities Services requested to become an affiliate of CCB. (T1. 233; Ex. 44). The organization had no previous religious affiliation. (T1. 233-234). The type of services and programming provided by the organization did not change. (T1. 236-237).

7. CCB, among other responsibilities, provides management services and consultation to its sub-entities, establishes and coordinates their missions, and approves their capital expenditures and investment policies. (Ex. 12). CCB's executive director oversees the operations of each of the sub-entities. (T1. 125). The bishop of the Diocese of Superior oversees CCB's programs and services. (Ex. 7).
8. CCB's code of ethics sets forth CCB's expectation that its activities and actions "reflect gospel values" and are "consistent with its mission and the mission of the Diocese of Superior." (Ex. 2, p. 10).
9. CCB's mission statement, code of ethics, and statement of philosophy are displayed in the entryway of BCDS. (T1. 226; Ex. 48).
10. No religious doctrine is provided as part of the daily program to participants, and they are not required to attend any religious training or orientation. (T1. 234).
11. Employees of BCDS are not required to have any religious affiliation. (T1. 233). CCB's mission statement, code of ethics, and statement of philosophy are included in BCDS's employee handbook. (T1. 250; Ex. 48).
12. No religious art or religious symbols are displayed in BCDS's facility. (T1. 234).
13. BCDS is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code under a group exemption. (T. 56; Ex. 5). The group exemption applies to "the agencies and

instrumentalities and the educational, charitable, and religious institutions operated by the Roman Catholic Church in the United States, its territories, and possessions” that are subordinate to the United States Conference of Catholic Bishops. (Ex. 5, p. 1).

14. Most of BCDS’s funding comes from the government and private businesses. (T1. 238-239).
15. BCDS does not receive any money from the Diocese of Superior. (T1. 246).
16. CCB became subject to the Wisconsin unemployment insurance law in 1972, following its submission of an employer’s report in which it indicated that the nature of its operation was charitable, education, and rehabilitation. CCB did not indicate that the nature of its operation was religious. (T2. 46; Ex. 63).
17. Sub-entities of CCB report its employees under CCB’s unemployment insurance account. (Ex. 21-27, 55).
18. In 2003, CCB requested to withdraw from coverage under the unemployment insurance law. The department denied CCB’s request, and the department’s determination was upheld on appeal. (Ex. 20).
19. In 2015, a circuit court judge held that a sub-entity of CCB, the Challenge Center, was entitled to an exemption from the requirements of the unemployment insurance law. (Ex. 28).
20. CCB and four sub-entities, including BCDS, subsequently requested department determinations finding that they, too, are entitled

to an exemption from mandated participation in the state's unemployment insurance program. (Ex. 55).

21. BCDS is a non-profit agency operated primarily to provide social services to individuals with disabilities. It is not an organization operated primarily for religious purposes.
22. Employees of BCDS do not perform their services in excluded employment under Wis. Stat. § 108.02(15)(h).
23. BCDS remains subject to the requirements of Wis. Stat. ch. 108.

Memorandum Opinion

Wisconsin's unemployment insurance law embodies a strong public policy in favor of compensating the unemployed. This policy is codified in Wis. Stat. § 108.01, which provides: "In good times and in bad times unemployment is a heavy social cost, directly affecting many thousands of wage earners. Each employing unit in Wisconsin should pay at least a part of this social cost, connected with its own irregular operations, by financing benefits for its own unemployed workers." Consistent with this policy, Wis. Stat. ch. 108 is to be "liberally construed to effect unemployment compensation coverage for workers who are economically dependent upon others in respect to their wage-earning status."² The burden is on an employer to establish its right to an exemption under the law.

² *Operton v. LIRC*, 2017 WI 46, ¶ 32, 375 Wis. 2d 1, 894 N.W.2d 426 (2017), citing *Princess House, Inc. v. DILHR*, 111 Wis.2d 46, 62, 330 N.W.2d 169 (1983).

The federal unemployment insurance law excludes from covered “employment” services performed for certain religious organizations, thus exempting such organizations from taxation to support unemployment insurance benefits.³ Wisconsin Stat. § 108.02(15) sets forth the statutory formula for the exclusion, incorporating the corresponding federal language so as to maintain the coverage required to protect the federal tax credits and federal grants on which the national unemployment insurance system is built.

Wisconsin Stat. § 108.02(15)(h) reads as follows:

(h) “Employment” as applied to work for a nonprofit organization, except as such organization duly elects otherwise with the department’s approval, does not include service:

1. In the employ of a church or convention or association of churches;
2. In the employ of an organization operated primarily for religious purposes and operated, supervised, controlled, or principally supported by a church or convention or association of churches;
or
3. By a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order.

The parties stipulated that the Catholic Charities Bureau (CCB) and its sub-entities are operated, supervised, controlled, or principally supported by a

³ Federal Unemployment Tax Act (FUTA), 26 U.S.C. § 3309(b)(1).

church and that subsecs. 1. and 3. are inapplicable in this case. The key language, the meaning of which the parties dispute, is “operated primarily for religious purposes.”

Whether a religious institution may, with respect to functions other than worship, be afforded privileges or immunities not extended to otherwise similar secular institutions is a complex issue. Courts have been cautious in attempting to define what is or is not a “religious” purpose. There are no court decisions binding on the commission that set forth an all-inclusive definition or specification of what constitutes a religious purpose under the unemployment insurance law.

An appeal tribunal concluded that the services of the employees of CCB and four of its sub-entities – Headwaters Inc., Diversified Services Inc., Black River Industries Inc., and Barron County Developmental Services Inc. – are excludable under the provisions of the Wisconsin unemployment insurance law because the five entities are operated primarily for religious purposes. The department petitioned for commission review, arguing that the services of the employees of the entities are performed in covered employment because, while the underlying motivation to provide services may be religious, the entities are not actually operated primarily for religious purposes.

The resolution of what it means to be “operated primarily for religious purposes” requires statutory interpretation. It is axiomatic that “the purpose of statutory interpretation is to determine what the

statute means so that it may be given its full, proper, and intended effect.”⁴

It is assumed that the legislature’s intent is expressed in the statutory language. Thus, statutory interpretation begins with the language of the statute. If the meaning of the statute is plain, the inquiry typically ends.⁵ “Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning.”⁶

Wisconsin Stat. § 108.02(15)(h)2. is written in ordinary English and creates a simple framework. “Operate” is an ordinary word in everyday language and generally means “to perform a function.”⁷ It connotes activity. “Primarily” is also an ordinary word in everyday language and generally means “for the most part; chiefly.”⁸

Statutory language is also to be interpreted in the context in which it is used, not in isolation, but as part of a whole, in relation to the language of

⁴ *Operton v. LIRC*, 375 Wis. 2d 1, ¶ 27, citing *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, 271 Wis.2d 633, 681 N.W.2d 110.

⁵ *Id.*

⁶ *Id.*

⁷ <https://www.merriam-webster.com/dictionary/operated>.

⁸ <https://www.merriam-webster.com/dictionary/primarily>.

surrounding or closely related statutes, and reasonably to avoid absurd or unreasonable results.⁹

The statutory provisions surrounding Wis. Stat. § 108.02(15)(h)2. state that “employment” does not include services performed by an individual directly for a church, nor does it include services performed by a minister of a church or a member of a religious order.

In resolving what it means for an organization to be “operated primarily for religious purposes,” the commission considered language used by the Wisconsin Supreme Court in *Coulee Catholic Schools v. LIRC*, 2009 WI 88, 320 Wis. 2d 275, 768 N.W.2d 868, wherein a teacher terminated from her teaching position at a Catholic school brought a claim against her employer, alleging discrimination under the Wisconsin Fair Employment Act (WFEA). The question before the court was whether the teacher’s claim was precluded under the freedom of religion clauses in the U.S. and state constitutions because her position was ministerial – that is, a position “important and closely linked to the religious mission of a religious organization.”¹⁰

The court conducted a functional analysis in determining whether the ministerial exception applied. It looked to whether the organization in both statement and fact has a fundamentally religious mission – that is, whether the organization

⁹ *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 271 Wis.2d 633, ¶ 45.

¹⁰ *Coulee Catholic Schools v. LIRC*, 2009 WI 88, ¶ 3, 320 Wis. 2d 275, 768 N.W.2d 868.

existed primarily to worship and spread the faith.¹¹
The court recognized that

[i]t may be, for example, that one religiously-affiliated organization committed to feeding the homeless has only a nominal tie to religion, while another religiously-affiliated organization committed to feeding the homeless has a religiously infused mission involving teaching, evangelism, and worship. Similarly, one religious school may have some affiliation with a church but not attempt to ground the teaching and life of the school in the religious faith, while another similarly situated school may be committed to life and learning grounded in a religious worldview.¹²

The court viewed “quintessentially religious tasks” evincing a close link and importance to an organization’s religious mission to be duties such as teaching, evangelizing, church governance, supervision of a religious order, and overseeing, leading, or participating in religious rituals, worship, and/or worship services.¹³ The court held that the state may not interfere with the hiring or firing decisions of a religious organization with respect to employees who are important and closely linked to its religious mission, but “[g]eneral laws relating to

¹¹ *Id.*, ¶ 48.

¹² *Id.*

¹³ *Id.*, ¶ 49.

building licensing, taxes, social security, and the like are normally acceptable.”¹⁴

The court ultimately found that the teacher’s employer, the Coulee Catholic Schools, was committed to a religious mission – the inculcation of the Catholic faith and worldview – and that the teacher’s position was important and closely linked to that mission. Because the teacher’s claim under the WFEA unconstitutionally impinged upon her employer’s right to religious freedom, her claim was dismissed.

CCB and each separately incorporated sub-entity is akin to “the religiously-affiliated organization committed to feeding the homeless that has only a nominal tie to religion” recognized by the *Coulee* court. Like the teacher’s school in that case, CCB and its sub-entities are affiliated with the Catholic Church and subject to the authority of the bishop. However, unlike the school, CCB and its sub-entities are not operated with a focus on the inculcation of the Catholic faith and worldview and do not operate in a worship-filled environment or with a faith-centered approach to fulfilling their mission.¹⁵

The teachings of the Roman Catholic Church include the demand that a Christian must respond in charity to those in need. (T2. 20). Catholic Charities’ entities historically served as the welfare arm of the state, providing services to the poor and disadvantaged through its religious orders. (T2. 18.)

¹⁴ *Id.*, ¶ 65.

¹⁵ Compare, e.g., *Kube v. Peniel Christian School*, UI Dec. Hearing No. 95002070MD (LIRC Apr. 7, 1998), and *MHS Inc.*, UI Dec. Hearing No. S8852 (LIRC July 12, 1991).

Today, “through the responsible use of the state’s tax dollars,” CCB and its sub-entities service the needs of the state’s citizens and achieve a common good. (T2. 23-24). Their employees perform charitable work – “corporal acts of mercy” – to the public at large. (T2. 30). CCB and its sub-entities are operated for the purpose of improving “the quality of life for the people [they] serve, whether they are elderly, disabled, children with special needs, or families in poverty.” (Ex. 13). While the hope and expectation is that the employees of CCB and its sub-entities act in conformity with Catholic Social Teachings and the Catechism of the Church, they are instructed simply to reach out to those in need with compassion and concern. (Ex. 13.)

Archbishop Listecki of the Archdiocese of Milwaukee, which includes the Diocese of Superior, believes that all Catholics should support any entity that reaches out to the poor and performs tasks for those in need, not just church-affiliated entities. (T2. 23). A recent example of such support is CCB assuming the operations of Barron County Developmental Disabilities Services, a provider of services and programming to developmentally disabled individuals. Although the organization’s name was changed to Barron County Developmental Services, the organization operated the same way and had the same purpose before and after its affiliation with CCB. (T1.270-271). The purpose of the organization’s operations did not transform from secular to religious simply as a result of the business transfer. Providing services to those in need is not intrinsically, necessarily, or uniquely religious in nature.

In resolving what it means for an organization to be “operated primarily for religious purposes,” the commission also reviewed language from a congressional committee report concerning the federal language corresponding to Wis. Stat. § 108.02(15)(h). The report of the House Ways and Means Committee on the Employment Security Amendments of 1970 states, in its explanation of the newly created § 3309(b)(1), that,

this paragraph excludes services of persons where the employer is a church or convention or association of churches, but does not exclude certain services performed for an organization which may be religious in orientation unless it is operated primarily for religious purposes and is operated, supervised, controlled, or principally supported by a church (or convention or association of churches). Thus, the services of the janitor of a church would be excluded, but services of a janitor for a separately incorporated college, although it may be church related, would be covered. A college devoted primarily to preparing students for the ministry would be exempt, as would a novitiate or a house of study training candidates to become members of religious orders. On the other hand, a church related (separately incorporated) charitable organization (such as, for example, an orphanage or a home for the aged) would not be considered under this paragraph to

be operated primarily for religious purposes.¹⁶

The law requires that facts be resolved in favor of coverage, not exemption. Therefore, while services may be religiously motivated and manifestations of religious belief, a separate legal entity that provides essentially secular services and engages in activities that are not religious per se, such as the provision of help to the poor and disabled, falls outside the scope of Wis. Stat. § 108.02(15)(h)2., despite affiliations the entity may have with a religious organization. The tenets of the Catholic Church cannot broaden the statutory exemption.¹⁷

The ALJ attached to her appeal tribunal decision a hearing memorandum issued by a circuit court judge in the 2015 case involving the Challenge Center, another sub-entity of CCB. There, the court found that the Challenge Center, a 501(c)(3) organization which provides services to individuals with a wide range of developmental disabilities, is operated primarily for religious purposes, because it was organized by the bishop as a means to establish dignity for developmentally disabled people as demanded by the Catholic Church's Catechism and Social Doctrine. The court held that the test is not focused on the activities performed but, rather, is

¹⁶ H.R. Rep. No. 91-612, p. 44 (1969). (Emphasis added.) See also S. Rep. No. 91-752, pp. 48-49 (1970) (containing an identical statement).

¹⁷ *Resurrection Cemetery and Mt. Olivet Cemetery, Inc. v. DILHR*, No. 149-083 (Wis. Cir. Ct. Dane Cnty. June 9, 1976), citing *De La Salle Inst. v. United States*, 195 F. Supp. 891, 901 (N.D.Cal.1961). Circuit court decision summary available at http://lirc.wisconsin.gov/ucdecns/resurrection_dgm.htm.

focused on the purpose for which the organization is primarily operated. For the reasons stated above, the commission disagrees.

The department and the commission need not look solely to an entity's stated purpose or its professed beliefs to determine whether it is operated primarily for religious purposes. Such an approach would allow an organization to determine its own status without regard to its actual function. The activities, not the religious motivation behind them or the organization's founding principles, determine whether an exemption from participation in the unemployment insurance program is warranted.¹⁸

¹⁸ See, e.g., *Resurrection Cemetery and Mt. Olivet Cemetery, Inc. v. DILHR*, *supra*.

**State of Wisconsin
Labor and Industry Review Commission**

BLACK RIVER INDUSTRIES INC. Employer Hearing No. S1700136MW	Unemployment Insurance Contribution Liability Decision¹ Dated and Mailed: OCT 16 2019
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The commission **reverses** the appeal tribunal decision. Accordingly, the employer remains subject to the requirements of the Wisconsin unemployment insurance law.

By the /s/ Michael H. Gillick
Commission: Michael H. Gillick, Chairperson

/s/ David B. Falstad
David B. Falstad, Commissioner

/s/ Georgia E. Maxwell
Georgia E. Maxwell, Commissioner

¹ **Appeal Rights:** See the blue enclosure for the time limit and procedures for obtaining judicial review of this decision. If you seek judicial review, you **must** name the following as defendants in the summons and the complaint: the Labor and Industry Review Commission, all other parties in the caption of this decision or order (the boxed section above), and the Department of Workforce Development. Appeal rights and answers to frequently asked questions about appealing an unemployment insurance decision to circuit court are also available on the commission's website, <http://lirc.wisconsin.gov>.

Procedural Posture

This case is before the commission to determine whether the services of the employees of the employer are excludable under the provisions of the state's unemployment insurance law. An administrative law judge (ALJ) of the Unemployment Insurance Division of the Department of Workforce Development held two hearings and issued a decision in this matter. The commission received a timely petition for commission review. The commission has considered the petition and the briefs submitted, and it has independently reviewed the evidence received at the hearings.

Findings of Fact and Conclusion of Law

1. Every Roman Catholic diocese in Wisconsin has a social ministry arm – a Catholic Charities entity. (T1. 34). “The mission of Catholic Charities is to provide service to people in need, to advocate for justice in social structures, and to call the entire church and other people of goodwill to do the same.” (Ex. 1, pp. 1, 5).
2. In the Diocese of Superior, the social ministry arm is called the Catholic Charities Bureau (CCB). (T1. 54-55; Ex. 2, p. 8). The purpose of the CCB “is to be an effective sign of the charity of Christ” by providing services that are significant in quantity and quality to everyone – no distinctions are made by race, sex, or religion in reference to clients served, staff employed, and board members appointed – and that are not duplicative of services already adequately provided by governmental or public agencies or other private agencies. (Ex. 2, p. 8).

3. The bishop of the Diocese of Superior occupies the top spot in the diocese's organizational chart. The bishop effectively has the ability to control all of the various educational, charitable, and religious organizations and entities within the diocese. Some positions within the diocese belong under canon law and may only be filled by religious individuals. (T1. 63-64). The executive director of CCB may be, and is, a layperson. (T1. 65).
4. CCB has separately incorporated sub-entities that operate 63 programs of service to those facing the challenges of aging, the distress of a disability, the concerns of children with special needs, the stresses of families living in poverty, and those in need of disaster relief. (Ex. 2, p. 1).
5. Black River Industries Inc. (BRI) is a sub-entity of CCB that provides in-home services, community-based services, and facility-based services to individuals with developmental disabilities, mental health disabilities, and low income. (T1. 252-253).
6. CCB, among other responsibilities, provides management services and consultation to its sub-entities, establishes and coordinates their missions, and approves their capital expenditures and investment policies. (Ex. 12). CCB's executive director oversees the operations of each of the sub-entities. (T1. 125). The bishop of the Diocese of Superior oversees CCB's programs and services. (Ex. 7).
7. CCB's code of ethics sets forth CCB's expectation that its activities and actions "reflect gospel

values” and are “consistent with its mission and the mission of the Diocese of Superior.” (Ex. 2, p. 10).

8. BRI is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code under a group exemption. (T1. 56; Ex. 5). The group exemption applies to “the agencies and instrumentalities and the educational, charitable, and religious institutions operated by the Roman Catholic Church in the United States, its territories, and possessions” that are subordinate to the United States Conference of Catholic Bishops. (Ex. 5, p. 1).
9. BRI does not receive any funding from the Diocese of Superior. (T1. 273).
10. Neither the employees nor the board members of BRI are required to have any religious affiliation. (T1. 287)
11. No religious doctrine is provided as part of the daily programs for BRI participants, nor are participants required to attend any religious training or orientation. (T1. 288).
12. BRI employees do not receive any religious training. (T1. 288).
13. CCB became subject to the Wisconsin unemployment insurance law in 1972, following its submission of an employer’s report in which it indicated that the nature of its operation was charitable, education, and rehabilitation. CCB did not indicate that the nature of its operation was religious. (T2. 46; Ex. 63).

14. Sub-entities of CCB report their employees under CCB's unemployment insurance account. (Ex. 21-27, 55).
15. In 2003, CCB requested to withdraw from coverage under the unemployment insurance law. The department denied CCB's request, and the department's determination was upheld on appeal. (Ex. 20).
16. In 2015, a circuit court judge held that a sub-entity of CCB, the Challenge Center, was entitled to an exemption from the requirements of the unemployment insurance law. (Ex. 28).
17. CCB and four sub-entities, including BRI, subsequently requested department determinations finding that they, too, are entitled to an exemption from mandated participation in the state's unemployment insurance program. (Ex. 55).
18. BRI is a non-profit agency operated primarily to provide social services to individuals with developmental disabilities, mental health disabilities, and low income. It is not an organization operated primarily for religious purposes.
19. Employees of BRI do not perform their services in excluded employment under Wis. Stat. § 108.02(15)(h).
20. BRI remains subject to the requirements of Wis. Stat. ch. 108.

Memorandum Opinion

Wisconsin's unemployment insurance law embodies a strong public policy in favor of

compensating the unemployed. This policy is codified in Wis. Stat. § 108.01, which provides: “In good times and in bad times unemployment is a heavy social cost, directly affecting many thousands of wage earners. Each employing unit in Wisconsin should pay at least a part of this social cost, connected with its own irregular operations, by financing benefits for its own unemployed workers.” Consistent with this policy, Wis. Stat. ch. 108 is to be “liberally construed to effect unemployment compensation coverage for workers who are economically dependent upon others in respect to their wage-earning status.”² The burden is on an employer to establish its right to an exemption under the law.

The federal unemployment insurance law excludes from covered “employment” services performed for certain religious organizations, thus exempting such organizations from taxation to support unemployment insurance benefits.³ Wisconsin Stat. § 108.02(15) sets forth the statutory formula for the exclusion, incorporating the corresponding federal language so as to maintain the coverage required to protect the federal tax credits and federal grants on which the national unemployment insurance system is built.

Wisconsin Stat. § 108.02(15)(h) reads as follows:

² *Operton v. LIRC*, 2017 WI 46, ¶ 32, 375 Wis. 2d 1, 894 N.W.2d 426 (2017), citing *Princess House, Inc. v. DILHR*, 111 Wis.2d 46, 62, 330 N.W.2d 169 (1983).

³ Federal Unemployment Tax Act (FUTA), 26 U.S.C. § 3309(b)(l).

(h) "Employment" as applied to work for a nonprofit organization, except as such organization duly elects otherwise with the department's approval, does not include service:

1. In the employ of a church or convention or association of churches;
2. In the employ of an organization operated primarily for religious purposes and operated, supervised, controlled, or principally supported by a church or convention or association of churches; or
3. By a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order.

The parties stipulated that the Catholic Charities Bureau (CCB) and its sub-entities are operated, supervised, controlled, or principally supported by a church and that subsecs. 1. and 3. are inapplicable in this case. The key language, the meaning of which the parties dispute, is "operated primarily for religious purposes."

Whether a religious institution may, with respect to functions other than worship, be afforded privileges or immunities not extended to otherwise similar secular institutions is a complex issue. Courts have been cautious in attempting to define what is or is not a "religious" purpose. There are no court decisions binding on the commission that set forth an all-inclusive definition or specification of what constitutes a religious purpose under the unemployment insurance law.

An appeal tribunal concluded that the services of the employees of CCB and four of its sub-entities – Headwaters Inc., Diversified Services Inc., Black River Industries Inc., and Barron County Developmental Services Inc. – are excludable under the provisions of the Wisconsin unemployment insurance law because the five entities are operated primarily for religious purposes. The department petitioned for commission review, arguing that the services of the employees of the entities are performed in covered employment because, while the underlying motivation to provide services may be religious, the entities are not actually operated primarily for religious purposes.

The resolution of what it means to be “operated primarily for religious purposes” requires statutory interpretation. It is axiomatic that “the purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and intended effect.”⁴

It is assumed that the legislature’s intent is expressed in the statutory language. Thus, statutory interpretation begins with the language of the statute. If the meaning of the statute is plain, the inquiry typically ends.⁵ “Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or

⁴ *Operton v. LIRC*, 375 Wis. 2d 1, ¶ 27, citing *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, 271 Wis.2d 633, 681 N.W.2d 110.

⁵ *Id.*

phrases are given their technical or special definitional meaning.”⁶

Wisconsin Stat. § 108.02(15)(h)2. is written in ordinary English and creates a simple framework. “Operate” is an ordinary word in everyday language and generally means “to perform a function.”⁷ It connotes activity. “Primarily” is also an ordinary word in everyday language and generally means “for the most part; chiefly.”⁸

Statutory language is also to be interpreted in the context in which it is used, not in isolation, but as part of a whole, in relation to the language of surrounding or closely related statutes, and reasonably to avoid absurd or unreasonable results.⁹

The statutory provisions surrounding Wis. Stat. § 108.02(15)(h)2. state that “employment” does not include services performed by an individual directly for a church, nor does it include services performed by a minister of a church or a member of a religious order.

In resolving what it means for an organization to be “operated primarily for religious purposes,” the commission considered language used by the Wisconsin Supreme Court in *Coulee Catholic Schools v. LIRC*, 2009 WI 88, 320 Wis. 2d 275, 768 N.W.2d 868,

⁶ *Id.*

⁷ <https://www.merriam-webster.com/dictionary/operated>.

⁸ <https://www.merriam-webster.com/dictionary/primarily>.

⁹ *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 271 Wis.2d 633, ¶ 45.

wherein a teacher terminated from her teaching position at a Catholic school brought a claim against her employer, alleging discrimination under the Wisconsin Fair Employment Act (WFEA). The question before the court was whether the teacher's claim was precluded under the freedom of religion clauses in the U.S. and state constitutions because her position was ministerial – that is, a position “important and closely linked to the religious mission of a religious organization.”¹⁰

The court conducted a functional analysis in determining whether the ministerial exception applied. It looked to whether the organization in both statement and fact has a fundamentally religious mission – that is, whether the organization existed primarily to worship and spread the faith.¹¹ The court recognized that

[i]t may be, for example, that one religiously-affiliated organization committed to feeding the homeless has only a nominal tie to religion, while another religiously-affiliated organization committed to feeding the homeless has a religiously infused mission involving teaching, evangelism, and worship. Similarly, one religious school may have some affiliation with a church but not attempt to ground the teaching and life of the school in the religious faith, while another similarly

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¹¹ *Id.*, ¶ 48.

situated school may be committed to life and learning grounded in a religious worldview.¹²

The court viewed “quintessentially religious tasks” evincing a close link and importance to an organization’s religious mission to be duties such as teaching, evangelizing, church governance, supervision of a religious order, and overseeing, leading, or participating in religious rituals, worship, and/or worship services.¹³ The court held that the state may not interfere with the hiring or firing decisions of a religious organization with respect to employees who are important and closely linked to its religious mission, but “[g]eneral laws relating to building licensing, taxes, social security, and the like are normally acceptable.”¹⁴

The court ultimately found that the teacher’s employer, the Coulee Catholic Schools, was committed to a religious mission – the inculcation of the Catholic faith and worldview – and that the teacher’s position was important and closely linked to that mission. Because the teacher’s claim under the WFEA unconstitutionally impinged upon her employer’s right to religious freedom, her claim was dismissed.

CCB and each separately incorporated sub-entity is akin to “the religiously-affiliated organization committed to feeding the homeless that has only a nominal tie to religion” recognized by the *Coulee*

¹² *Id.*

¹³ *Id.*, ¶ 49.

¹⁴ *Id.*, ¶ 65.

court. Like the teacher's school in that case, CCB and its sub-entities are affiliated with the Catholic Church and subject to the authority of the bishop. However, unlike the school, CCB and its sub-entities are not operated with a focus on the inculcation of the Catholic faith and worldview and do not operate in a worship-filled environment or with a faith-centered approach to fulfilling their mission.¹⁵

The teachings of the Roman Catholic Church include the demand that a Christian must respond in charity to those in need. (T2. 20). Catholic Charities' entities historically served as the welfare arm of the state, providing services to the poor and disadvantaged through its religious orders. (T2. 18.) Today, "through the responsible use of the state's tax dollars," CCB and its sub-entities service the needs of the state's citizens and achieve a common good. (T2. 23-24). Their employees perform charitable work – "corporal acts of mercy" – to the public at large. (T2. 30). CCB and its sub-entities are operated for the purpose of improving "the quality of life for the people [they] serve, whether they are elderly, disabled, children with special needs, or families in poverty." (Ex. 13). While the hope and expectation is that the employees of CCB and its sub-entities act in conformity with Catholic Social Teachings and the Catechism of the Church, they are instructed simply to reach out to those in need with compassion and concern. (Ex. 13.)

¹⁵ Compare, e.g., *Kube v. Peniel Christian School*, UI Dec. Hearing No. 95002070MD (LIRC Apr. 7, 1998), and *MHS Inc.*, UI Dec. Hearing No. S8852 No. S8852 (LIRC July 12, 1991).

Archbishop Listecki of the Archdiocese of Milwaukee, which includes the Diocese of Superior, believes that all Catholics should support any entity that reaches out to the poor and performs tasks for those in need, not just church-affiliated entities. (T2. 23). A recent example of such support is CCB assuming the operations of Barron County Developmental Disabilities Services, a provider of services and programming to developmentally disabled individuals. Although the organization's name was changed to Barron County Developmental Services, the organization operated the same way and had the same purpose before and after its affiliation with CCB. (T1. 270-271). The purpose of the organization's operations did not transform from secular to religious simply as a result of the business transfer. Providing services to those in need is not intrinsically, necessarily, or uniquely religious in nature.

In resolving what it means for an organization to be "operated primarily for religious purposes," the commission also reviewed language from a congressional committee report concerning the federal language corresponding to Wis. Stat. § 108.02(15)(h). The report of the House Ways and Means Committee on the Employment Security Amendments of 1970 states, in its explanation of the newly created § 3309(b)(1), that,

this paragraph excludes services of persons where the employer is a church or convention or association of churches, but does not exclude certain services performed for an organization which may be religious in orientation

unless it is operated primarily for religious purposes and is operated, supervised, controlled, or principally supported by a church (or convention or association of churches). Thus, the services of the janitor of a church would be excluded, but services of a janitor for a separately incorporated college, although it may be church related, would be covered. A college devoted primarily to preparing students for the ministry would be exempt, as would a novitiate or a house of study training candidates to become members of religious orders. On the other hand, a church related (separately incorporated) charitable organization (such as, for example, an orphanage or a home for the aged) would not be considered under this paragraph to be operated primarily for religious purposes.¹⁶

The law requires that facts be resolved in favor of coverage, not exemption. Therefore, while services may be religiously motivated and manifestations of religious belief, a separate legal entity that provides essentially secular services and engages in activities that are not religious per se, such as the provision of help to the poor and disabled, falls outside the scope of Wis. Stat. § 108.02(15)(h)2., despite affiliations the entity may have with a religious

¹⁶ H.R. Rep. No. 91-612, p. 44 (1969). (Emphasis added.) *See also* S. Rep. No. 91-752, pp. 48-49 (1970) (containing an identical statement).

organization. The tenets of the Catholic Church cannot broaden the statutory exemption.¹⁷

The ALJ attached to her appeal tribunal decision a hearing memorandum issued by a circuit court judge in the 2015 case involving the Challenge Center, another sub-entity of CCB. There, the court found that the Challenge Center, a 501(c)(3) organization which provides services to individuals with a wide range of developmental disabilities, is operated primarily for religious purposes, because it was organized by the bishop as a means to establish dignity for developmentally disabled people as demanded by the Catholic Church's Catechism and Social Doctrine. The court held that the test is not focused on the activities performed but, rather, is focused on the purpose for which the organization is primarily operated. For the reasons stated above, the commission disagrees.

The department and the commission need not look solely to an entity's stated purpose or its professed beliefs to determine whether it is operated primarily for religious purposes. Such an approach would allow an organization to determine its own status without regard to its actual function. The activities, not the religious motivation behind them or the organization's founding principles, determine

¹⁷ *Resurrection Cemetery and Mt. Olivet Cemetery, Inc. v. DILHR*, No. 149-083 (Wis. Cir. Ct. Dane Cnty. June 9, 1976), citing *De La Salle Inst. v. United States*, 195 F. Supp. 891, 901 (N.D.Cal.1961). Circuit court decision summary available at http://lirc.wisconsin.gov/ucdecns/resurrection_dgm.htm.

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whether an exemption from participation in the unemployment insurance program is warranted.¹⁸

¹⁸ See, e.g., *Resurrection Cemetery and Mt. Olivet Cemetery, Inc. v. DILHR*, *supra*.

**State of Wisconsin
Labor and Industry Review Commission**

CATHOLIC CHARITIES BUREAU INC. Employer	Unemployment Insurance Contribution Liability Decision¹
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The commission **reverses** the appeal tribunal decision. Accordingly, the employer remains subject to the requirements of the Wisconsin unemployment insurance law.

By the /s/ Michael H. Gillick
Commission: Michael H. Gillick, Chairperson

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Procedural Posture

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the various educational, charitable, and religious organizations and entities within the diocese. Some positions within the diocese belong under canon law and may only be filled by religious individuals. (T1. 63-64). The executive director of CCB may be, and is, a layperson. (T1. 65).

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United States, its territories, and possessions” that are subordinate to the United States Conference of Catholic Bishops. (Ex. 5, p. 1).

8. CCB became subject to the Wisconsin Unemployment Insurance law in 1972, following its submission of an employer’s report in which it indicated that the nature of its operation was charitable, education, and rehabilitation. CCB did not indicate that the nature of its operation was religious. (T2. 46; Ex. 63).
9. Sub-entities of CCB report their employees under CCB’s unemployment insurance account. (Ex. 21-27, 55).
10. In 2003, CCB requested to withdraw from coverage under the unemployment insurance law. The department denied CCB’s request. The department’s determination was upheld on appeal. (Ex. 20).
11. In 2015, a circuit court judge held that a sub-entity of CCB, the Challenge Center, was entitled to an exemption from the requirements of the unemployment insurance law. (Ex. 28).
12. CCB and four sub-entities – Headwaters Inc., Diversified Services Inc., Black River Industries Inc., and Barron County Developmental Services Inc. – subsequently requested department determinations finding that they, too, are entitled to an exemption from mandated participation in the state’s unemployment insurance program. (Ex. 55).
13. CCB is a non-profit agency operated primarily to administer social service programs. It is not an

organization operated primarily for religious purposes.

14. Employees of CCB do not perform their services in excluded employment under Wis. Stat. § 108.02(15)(h).
15. CCB remains subject to the requirements of Wis. Stat. ch. 108.

Memorandum Opinion

Wisconsin's unemployment insurance law embodies a strong public policy in favor of compensating the unemployed. This policy is codified in Wis. Stat. § 108.01, which provides: "In good times and in bad times unemployment is a heavy social cost, directly affecting many thousands of wage earners. Each employing unit in Wisconsin should pay at least a part of this social cost, connected with its own irregular operations, by financing benefits for its own unemployed workers." Consistent with this policy, Wis. Stat. ch. 108 is to be "liberally construed to effect unemployment compensation coverage for workers who are economically dependent upon others in respect to their wage-earning status."² The burden is on an employer to establish its right to an exemption under the law.

The federal unemployment insurance law excludes from covered "employment" services performed for certain religious organizations, thus exempting such organizations from taxation to support unemployment

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insurance benefits.³ Wisconsin Stat. § 108.02(15) sets forth the statutory formula for the exclusion, incorporating the corresponding federal language so as to maintain the coverage required to protect the federal tax credits and federal grants on which the national unemployment insurance system is built.

Wisconsin Stat. § 108.02(15)(h) reads as follows:

(h) “Employment” as applied to work for a nonprofit organization, except as such organization duly elects otherwise with the department’s approval, does not include service:

1. In the employ of a church or convention or association of churches;
2. In the employ of an organization operated primarily for religious purposes and operated, supervised, controlled, or principally supported by a church or convention or association of churches; or
3. By a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order.

The parties stipulated that the Catholic Charities Bureau (CCB) and its sub-entities are operated, supervised, controlled, or principally supported by a church and that subsecs. 1. and 3. are inapplicable in this case. The key language, the meaning of which the parties dispute, is “operated primarily for religious purposes.”

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Whether a religious institution may, with respect to functions other than worship, be afforded privileges or immunities not extended to otherwise similar secular institutions is a complex issue. Courts have been cautious in attempting to define what is or is not a “religious” purpose. There are no court decisions binding on the commission that set forth an all-inclusive definition or specification of what constitutes a religious purpose under the unemployment insurance law.

An appeal tribunal concluded that the services of the employees of CCB and four of its sub-entities – Headwaters Inc., Diversified Services Inc., Black River Industries Inc., and Barron County Developmental Services Inc. – are excludable under the provisions of the Wisconsin unemployment insurance law because the five entities are operated primarily for religious purposes. The department petitioned for commission review, arguing that the services of the employees of the entities are performed in covered employment because, while the underlying motivation to provide services may be religious, the entities are not actually operated primarily for religious purposes.

The resolution of what it means to be “operated primarily for religious purposes” requires statutory interpretation. It is axiomatic that “the purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and intended effect.”⁴

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It is assumed that the legislature's intent is expressed in the statutory language. Thus, statutory interpretation begins with the language of the statute. If the meaning of the statute is plain, the inquiry typically ends.⁵ "Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning."⁶

Wisconsin Stat. § 108.02(15)(h)2. is written in ordinary English and creates a simple framework. "Operate" is an ordinary word in everyday language and generally means "to perform a function."⁷ It connotes activity. "Primarily" is also an ordinary word in everyday language and generally means "for the most part; chiefly."⁸

Statutory language is also to be interpreted in the context in which it is used, not in isolation, but as part of a whole, in relation to the language of surrounding or closely related statutes, and reasonably to avoid absurd or unreasonable results.⁹

The statutory provisions surrounding Wis. Stat. § 108.02(15)(h)2. state that "employment" does not include services performed by an individual

⁵ *Id.*

⁶ *Id.*

⁷ <https://www.merriam-webster.com/dictionary/operated>.

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directly for a church, nor does it include services performed by a minister of a church or a member of a religious order.

In resolving what it means for an organization to be “operated primarily for religious purposes,” the commission considered language used by the Wisconsin Supreme Court in *Coulee Catholic Schools v. LIRC*, 2009 WI 88, 320 Wis. 2d 275, 768 N.W.2d 868, wherein a teacher terminated from her teaching position at a Catholic school brought a claim against her employer, alleging discrimination under the Wisconsin Fair Employment Act (WFEA). The question before the court was whether the teacher’s claim was precluded under the freedom of religion clauses in the U.S. and state constitutions because her position was ministerial – that is, a position “important and closely linked to the religious mission of a religious organization.”¹⁰

The court conducted a functional analysis in determining whether the ministerial exception applied. It looked to whether the organization in both statement and fact has a fundamentally religious mission – that is, whether the organization existed primarily to worship and spread the faith.¹¹ The court recognized that

[i]t may be, for example, that one religiously-affiliated organization committed to feeding the homeless has only a nominal tie to religion, while

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another religiously-affiliated organization committed to feeding the homeless has a religiously infused mission involving teaching, evangelism, and worship. Similarly, one religious school may have some affiliation with a church but not attempt to ground the teaching and life of the school in the religious faith, while another similarly situated school may be committed to life and learning grounded in a religious worldview.¹²

The court viewed “quintessentially religious tasks” evincing a close link and importance to an organization’s religious mission to be duties such as teaching, evangelizing, church governance, supervision of a religious order, and overseeing, leading, or participating in religious rituals, worship, and/or worship services.¹³ The court held that the state may not interfere with the hiring or firing decisions of a religious organization with respect to employees who are important and closely linked to its religious mission, but “[g]eneral laws relating to building licensing, taxes, social security, and the like are normally acceptable.”¹⁴

The court ultimately found that the teacher’s employer, the Coulee Catholic Schools, was committed to a religious mission – the inculcation of the Catholic faith and worldview – and that the

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¹³ *Id.*, ¶ 49.

¹⁴ *Id.*, ¶ 65.

teacher's position was important and closely linked to that mission. Because the teacher's claim under the WFEA unconstitutionally impinged upon her employer's right to religious freedom, her claim was dismissed.

CCB and each separately incorporated sub-entity is akin to "the religiously-affiliated organization committed to feeding the homeless that has only a nominal tie to religion" recognized by the *Coulee* court. Like the teacher's school in that case, CCB and its sub-entities are affiliated with the Catholic Church and subject to the authority of the bishop. However, unlike the school, CCB and its sub-entities are not operated with a focus on the inculcation of the Catholic faith and worldview and do not operate in a worship-filled environment or with a faith-centered approach to fulfilling their mission.¹⁵

The teachings of the Roman Catholic Church include the demand that a Christian must respond in charity to those in need. (T2. 20). Catholic Charities' entities historically served as the welfare arm of the state, providing services to the poor and disadvantaged through its religious orders. (T2. 18.) Today, "through the responsible use of the state's tax dollars," CCB and its sub-entities service the needs of the state's citizens and achieve a common good. (T2. 23-24). Their employees perform charitable work – "corporal acts of mercy" – to the public at large. (T2. 30). CCB and its sub-entities are operated for the

¹⁵ Compare, e.g., *Kube v. Peniel Christian School*, UI Dec. Hearing No. 95002070MD (LIRC Apr. 7, 1998), and *MHS Inc.*, UI Dec. Hearing No. S8852 No. S8852 (LIRC July 12, 1991).

purpose of improving “the quality of life for the people [they] serve, whether they are elderly, disabled, children with special needs, or families in poverty.” (Ex. 13). While the hope and expectation is that the employees of CCB and its sub-entities act in conformity with Catholic Social Teachings and the Catechism of the Church, they are instructed simply to reach out to those in need with compassion and concern. (Ex. 13.)

Archbishop ListECKI of the Archdiocese of Milwaukee, which includes the Diocese of Superior, believes that all Catholics should support any entity that reaches out to the poor and performs tasks for those in need, not just church-affiliated entities. (T2. 23). A recent example of such support is CCB assuming the operations of Barron County Developmental Disabilities Services, a provider of services and programming to developmentally disabled individuals. Although the organization’s name was changed to Barron County Developmental Services, the organization operated the same way and had the same purpose before and after its affiliation with CCB. (T1. 270-271). The purpose of the organization’s operations did not transform from secular to religious simply as a result of the business transfer. Providing services to those in need is not intrinsically, necessarily, or uniquely religious in nature.

In resolving what it means for an organization to be “operated primarily for religious purposes,” the commission also reviewed language from a congressional committee report concerning the federal language corresponding to Wis. Stat. § 108.02(15)(h). The report of the House Ways and

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Means Committee on the Employment Security Amendments of 1970 states, in its explanation of the newly created § 3309(b)(1), that,

this paragraph excludes services of persons where the employer is a church or convention or association of churches, but does not exclude certain services performed for an organization which may be religious in orientation unless it is operated primarily for religious purposes and is operated, supervised, controlled, or principally supported by a church (or convention or association of churches). Thus, the services of the janitor of a church would be excluded, but services of a janitor for a separately incorporated college, although it may be church related, would be covered. A college devoted primarily to preparing students for the ministry would be exempt, as would a novitiate or a house of study training candidates to become members of religious orders. On the other hand, a church related (separately incorporated) charitable organization (such as, for example, an orphanage or a home for the aged) would not be considered under this paragraph to

be operated primarily for religious purposes.¹⁶

The law requires that facts be resolved in favor of coverage, not exemption. Therefore, while services may be religiously motivated and manifestations of religious belief, a separate legal entity that provides essentially secular services and engages in activities that are not religious per se, such as the provision of help to the poor and disabled, falls outside the scope of Wis. Stat. § 108.02(15)(h)2., despite affiliations the entity may have with a religious organization. The tenets of the Catholic Church cannot broaden the statutory exemption.¹⁷

The ALJ attached to her appeal tribunal decision a hearing memorandum issued by a circuit court judge in the 2015 case involving the Challenge Center, another sub-entity of CCB. There, the court found that the Challenge Center, a 501(c)(3) organization which provides services to individuals with a wide range of developmental disabilities, is operated primarily for religious purposes, because it was organized by the bishop as a means to establish dignity for developmentally disabled people as demanded by the Catholic Church's Catechism and Social Doctrine. The court held that the test is not focused on the activities performed but, rather, is

¹⁶ H.R. Rep. No. 91-612, p. 44 (1969). (Emphasis added.) See also S. Rep. No. 91-752, pp. 48-49 (1970) (containing an identical statement).

¹⁷ *Resurrection Cemetery and Mt. Olivet Cemetery, Inc. v. DILHR*, No. 149-083 (Wis. Cir. Ct. Dane Cnty. June 9, 1976), citing *De La Salle Inst. v. United States*, 195 F. Supp. 891, 901 (N.D.Cal.1961). Circuit court decision summary available at http://lirc.wisconsin.gov/ucdecns/resurrection_dgm.htm.

focused on the purpose for which the organization is primarily operated. For the reasons stated above, the commission disagrees.

The department and the commission need not look solely to an entity's stated purpose or its professed beliefs to determine whether it is operated primarily for religious purposes. Such an approach would allow an organization to determine its own status without regard to its actual function. The activities, not the religious motivation behind them or the organization's founding principles, determine whether an exemption from participation in the unemployment insurance program is warranted.¹⁸

¹⁸ See, e.g., *Resurrection Cemetery and Mt. Olivet Cemetery, Inc. v. DILHR*, *supra*.

**State of Wisconsin
Labor and Industry Review Commission**

DIVERSIFIED SERVICES, INC. Employer Hearing No. S1700134MW	Unemployment Insurance Contribution Liability Decision¹ Dated and Mailed: OCT 16 2019
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The commission **reverses** the appeal tribunal decision. Accordingly, the employer remains subject to the requirements of the Wisconsin unemployment insurance law.

By the /s/ Michael H. Gillick
Commission: Michael H. Gillick, Chairperson

/s/ David B. Falstad
David B. Falstad, Commissioner

/s/ Georgia E. Maxwell
Georgia E. Maxwell, Commissioner

¹ **Appeal Rights:** See the blue enclosure for the time limit and procedures for obtaining judicial review of this decision. If you seek judicial review, you **must** name the following as defendants in the summons and the complaint: the Labor and Industry Review Commission, all other parties in the caption of this decision or order (the boxed section above), and the Department of Workforce Development. Appeal rights and answers to frequently asked questions about appealing an unemployment insurance decision to circuit court are also available on the commission's website, <http://lirc.wisconsin.gov>.

Procedural Posture

This case is before the commission to determine whether the services of the employees of the employer are excludable under the provisions of the state's unemployment insurance law. An administrative law judge (ALJ) of the Unemployment Insurance Division of the Department of Workforce Development held two hearings and issued a decision in this matter. The commission received a timely petition for commission review. The commission has considered the petition and the briefs submitted, and it has independently reviewed the evidence received at the hearings.

Findings of Fact and Conclusion of Law

1. Every Roman Catholic diocese in Wisconsin has a social ministry arm – a Catholic Charities entity. (T1. 34). “The mission of Catholic Charities is to provide service to people in need, to advocate for justice in social structures, and to call the entire church and other people of goodwill to do the same.” (Ex. 1, pp. 1, 5).
2. In the Diocese of Superior, the social ministry arm is called the Catholic Charities Bureau (CCB). (T1. 54-55; Ex. 2, p. 8). The purpose of the CCB “is to be an effective sign of the charity of Christ” by providing services that are significant in quantity and quality to everyone – no distinctions are made by race, sex, or religion in reference to clients served, staff employed, and board members appointed – and that are not duplicative of services already adequately provided by governmental or public agencies or other private agencies. (Ex. 2, p. 8).

3. The bishop of the Diocese of Superior occupies the top spot in the diocese's organizational chart. The bishop effectively has the ability to control all of the various educational, charitable, and religious organizations and entities within the diocese. Some positions within the diocese belong under canon law and may only be filled by religious individuals. (T1. 63-64). The executive director of CCB may be, and is, a layperson. (T1. 65).
4. CCB has separately incorporated sub-entities that operate 63 programs of service to those facing the challenges of aging, the distress of a disability, the concerns of children with special needs, the stresses of families living in poverty, and those in need of disaster relief. (Ex. 2, p. 1).
5. Diversified Services Inc. (DSI) is a sub-entity of CCB that provides services to individuals with developmental disabilities. (T1. 220; Ex. 47).
6. CCB, among other responsibilities, provides management services and consultation to its sub-entities, establishes and coordinates their missions, and approves their capital expenditures and investment policies (Ex. 12). CCB's executive director oversees the operations of each of the sub-entities. (T1. 125). The bishop of the Diocese of Superior oversees CCB's programs and services. (Ex. 7)
7. CCB's code of ethics sets forth CCB's expectation that its activities and actions "reflect gospel values" and are "consistent with its mission and the mission of the Diocese of Superior." (Ex. 2, p. 10).

8. CCB's mission statement, code of ethics, and statement of philosophy are displayed in the entryway of DSI. (T1. 226; Ex. 43).
9. DSI is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code under a group exemption. (T. 56; Ex. 5). The group exemption applies to "the agencies and instrumentalities and the educational, charitable, and religious institutions operated by the Roman Catholic Church in the United States, its territories, and possessions" that are subordinate to the United States Conference of Catholic Bishops. (Ex. 5, p. 1).
10. Most of DSI's funding comes from Family Care, a long-term care program, from the Wisconsin Department of Workforce Development, Division of Vocational Rehabilitation, and from private contracts. (T1. 227-228, 246).
11. DSI does not receive any money from the Diocese of Superior. (T1. 246).
12. No religious doctrine is provided as part of the daily program to participants, and they are not required to attend any religious training or orientation. (T1. 234).
13. Employees of DSI are not required to have any religious affiliation. (T1. 233).
14. No religious art or religious symbols are displayed in DSI's facility. (T1. 234).
15. CCB became subject to the Wisconsin unemployment insurance law in 1972, following its submission of an employer's report in which it indicated that the

nature of its operation was charitable, education, and rehabilitation. CCB did not indicate that the nature of its operation was religious. (T2. 46; Ex. 63).

16. Sub-entities of CCB report their employees under CCB's unemployment insurance account. (Ex. 21-27, 55).
17. In 2003, CCB requested to withdraw from coverage under the unemployment insurance law. The department denied CCB's request, and the department's determination was upheld on appeal. (Ex. 20).
18. In 2015, a circuit court judge held that a sub-entity of CCB, the Challenge Center, was entitled to an exemption from the requirements of the unemployment insurance law. (Ex. 28).
19. CCB and four sub-entities, including DSI, subsequently requested department determinations finding that they, too, are entitled to an exemption from mandated participation in the state's unemployment insurance program. (Ex. 55).
20. DSI is a non-profit agency operated primarily to provide social services to individuals with developmental disabilities. It is not an organization operated primarily for religious purposes.
21. Employees of DSI do not perform their services in excluded employment under Wis. Stat. § 108.02(15)(h).
22. DSI remains subject to the requirements of Wis. Stat. ch. 108.

Memorandum Opinion

Wisconsin's unemployment insurance law embodies a strong public policy in favor of compensating the unemployed. This policy is codified in Wis. Stat. § 108.01, which provides: "In good times and in bad times unemployment is a heavy social cost, directly affecting many thousands of wage earners. Each employing unit in Wisconsin should pay at least a part of this social cost, connected with its own irregular operations, by financing benefits for its own unemployed workers." Consistent with this policy, Wis. Stat. ch. 108 is to be "liberally construed to effect unemployment compensation coverage for workers who are economically dependent upon others in respect to their wage-earning status."² The burden is on an employer to establish its right to an exemption under the law.

The federal unemployment insurance law excludes from covered "employment" services performed for certain religious organizations, thus exempting such organizations from taxation to support unemployment insurance benefits.³ Wisconsin Stat. § 108.02(15) sets forth the statutory formula for the exclusion, incorporating the corresponding federal language so as to maintain the coverage required to protect the federal tax credits and federal grants on which the national unemployment insurance system is built.

² *Operton v. LIRC*, 2017 WI 46, ¶ 32, 375 Wis. 2d 1, 894 N.W.2d 426 (2017), citing *Princess House, Inc. v. DILHR*, 111 Wis.2d 46, 62, 330 N.W.2d 169 (1983).

³ Federal Unemployment Tax Act (FUTA), 26 U.S.C. § 3309(b)(1).

Wisconsin Stat. § 108.02(15)(h) reads as follows:

(h) “Employment” as applied to work for a nonprofit organization, except as such organization duly elects otherwise with the department’s approval, does not include service:

1. In the employ of a church or convention or association of churches;
2. In the employ of an organization operated primarily for religious purposes and operated, supervised, controlled, or principally supported by a church or convention or association of churches;
or
3. By a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order.

The parties stipulated that the Catholic Charities Bureau (CCB) and its sub-entities are operated, supervised, controlled, or principally supported by a church and that subsecs. 1. and 3. are inapplicable in this case. The key language, the meaning of which the parties dispute, is “operated primarily for religious purposes.”

Whether a religious institution may, with respect to functions other than worship, be afforded privileges or immunities not extended to otherwise similar secular institutions is a complex issue. Courts have been cautious in attempting to define what is or is not a “religious” purpose. There are no court decisions binding on the commission that set forth an all-inclusive definition or specification of what constitutes

a religious purpose under the unemployment insurance law.

An appeal tribunal concluded that the services of the employees of CCB and four of its sub-entities – Headwaters Inc., Diversified Services Inc., Black River Industries Inc., and Barron County Developmental Services Inc. – are excludable under the provisions of the Wisconsin unemployment insurance law because the five entities are operated primarily for religious purposes. The department petitioned for commission review, arguing that the services of the employees of the entities are performed in covered employment because, while the underlying motivation to provide services may be religious, the entities are not actually operated primarily for religious purposes.

The resolution of what it means to be “operated primarily for religious purposes” requires statutory interpretation. It is axiomatic that “the purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and intended effect.”⁴

It is assumed that the legislature’s intent is expressed in the statutory language. Thus, statutory interpretation begins with the language of the statute. If the meaning of the statute is plain, the inquiry typically ends.⁵ “Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are

⁴ *Operton v. LIRC*, 375 Wis. 2d 1, ¶ 27, citing *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, 271 Wis.2d 633, 681 N.W.2d 110.

⁵ *Id.*

given their technical or special definitional meaning.”⁶

Wisconsin Stat. § 108.02(15)(h)2. is written in ordinary English and creates a simple framework. “Operate” is an ordinary word in everyday language and generally means “to perform a function.”⁷ It connotes activity. “Primarily” is also an ordinary word in everyday language and generally means “for the most part; chiefly.”⁸

Statutory language is also to be interpreted in the context in which it is used, not in isolation, but as part of a whole, in relation to the language of surrounding or closely related statutes, and reasonably to avoid absurd or unreasonable results.⁹

The statutory provisions surrounding Wis. Stat. § 108.02(15)(h)2. state that “employment” does not include services performed by an individual directly for a church, nor does it include services performed by a minister of a church or a member of a religious order.

In resolving what it means for an organization to be “operated primarily for religious purposes,” the commission considered language used by the Wisconsin Supreme Court in *Coulee Catholic Schools v. LIRC*, 2009 WI 88, 320 Wis. 2d 275, 768 N.W.2d

⁶ *Id.*

⁷ <https://www.merriam-webster.com/dictionary/operated>.

⁸ <https://www.merriam-webster.com/dictionary/primarily>.

⁹ *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 271 Wis.2d 633, ¶ 45.

868, wherein a teacher terminated from her teaching position at a Catholic school brought a claim against her employer, alleging discrimination under the Wisconsin Fair Employment Act (WFEA). The question before the court was whether the teacher's claim was precluded under the freedom of religion clauses in the U.S. and state constitutions because her position was ministerial – that is, a position “important and closely linked to the religious mission of a religious organization.”¹⁰

The court conducted a functional analysis in determining whether the ministerial exception applied. It looked to whether the organization in both statement and fact has a fundamentally religious mission – that is, whether the organization existed primarily to worship and spread the faith.¹¹ The court recognized that

[i]t may be, for example, that one religiously-affiliated organization committed to feeding the homeless has only a nominal tie to religion, while another religiously-affiliated organization committed to feeding the homeless has a religiously infused mission involving teaching, evangelism, and worship. Similarly, one religious school may have some affiliation with a church but not attempt to ground the teaching and life of the school in the religious faith, while another similarly

¹⁰ *Coulee Catholic Schools v. LIRC*, 2009 WI 88, ¶ 3, 320 Wis. 2d 275, 768 N.W.2d 868.

¹¹ *Id.*, ¶ 48.

situated school may be committed to life and learning grounded in a religious worldview.¹²

The court viewed “quintessentially religious tasks” evincing a close link and importance to an organization’s religious mission to be duties such as teaching, evangelizing, church governance, supervision of a religious order, and overseeing, leading, or participating in religious rituals, worship, and/or worship services.¹³ The court held that the state may not interfere with the hiring or firing decisions of a religious organization with respect to employees who are important and closely linked to its religious mission, but “[g]eneral laws relating to building licensing, taxes, social security, and the like are normally acceptable.”¹⁴

The court ultimately found that the teacher’s employer, the Coulee Catholic Schools, was committed to a religious mission – the inculcation of the Catholic faith and worldview – and that the teacher’s position was important and closely linked to that mission. Because the teacher’s claim under the WFEA unconstitutionally impinged upon her employer’s right to religious freedom, her claim was dismissed.

CCB and each separately incorporated sub-entity is akin to “the religiously-affiliated organization committed to feeding the homeless that has only a nominal tie to religion” recognized by the *Coulee*

¹² *Id.*

¹³ *Id.*, ¶ 49.

¹⁴ *Id.*, ¶ 65.

court. Like the teacher's school in that case, CCB and its sub-entities are affiliated with the Catholic Church and subject to the authority of the bishop. However, unlike the school, CCB and its sub-entities are not operated with a focus on the inculcation of the Catholic faith and worldview and do not operate in a worship-filled environment or with a faith-centered approach to fulfilling their mission.¹⁵

The teachings of the Roman Catholic Church include the demand that a Christian must respond in charity to those in need. (T2. 20). Catholic Charities' entities historically served as the welfare arm of the state, providing services to the poor and disadvantaged through its religious orders. (T2. 18.) Today, "through the responsible use of the state's tax dollars," CCB and its sub-entities service the needs of the state's citizens and achieve a common good. (T2. 23-24). Their employees perform charitable work – "corporal acts of mercy" – to the public at large. (T2. 30). CCB and its sub-entities are operated for the purpose of improving "the quality of life for the people [they] serve, whether they are elderly, disabled, children with special needs, or families in poverty." (Ex. 13). While the hope and expectation is that the employees of CCB and its sub-entities act in conformity with Catholic Social Teachings and the Catechism of the Church, they are instructed simply to reach out to those in need with compassion and concern. (Ex. 13.)

¹⁵ Compare, e.g., *Kube v. Peniel Christian School*, UI Dec. Hearing No. 95002070MD (LIRC Apr. 7, 1998), and *MHS Inc.*, UI Dec. Hearing No. S8852 No. S8852 (LIRC July 12, 1991).

Archbishop Listecki of the Archdiocese of Milwaukee, which includes the Diocese of Superior, believes that all Catholics should support any entity that reaches out to the poor and performs tasks for those in need, not just church-affiliated entities. (T2. 23). A recent example of such support is CCB assuming the operations of Barron County Developmental Disabilities Services, a provider of services and programming to developmentally disabled individuals. Although the organization's name was changed to Barron County Developmental Services, the organization operated the same way and had the same purpose before and after its affiliation with CCB. (T1. 270-271). The purpose of the organization's operations did not transform from secular to religious simply as a result of the business transfer. Providing services to those in need is not intrinsically, necessarily, or uniquely religious in nature.

In resolving what it means for an organization to be "operated primarily for religious purposes," the commission also reviewed language from a congressional committee report concerning the federal language corresponding to Wis. Stat. § 108.02(15)(h). The report of the House Ways and Means Committee on the Employment Security Amendments of 1970 states, in its explanation of the newly created § 3309(b)(1), that,

this paragraph excludes services of persons where the employer is a church or convention or association of churches, but does not exclude certain services performed for an organization which may be religious in orientation

unless it is operated primarily for religious purposes and is operated, supervised, controlled, or principally supported by a church (or convention or association of churches). Thus, the services of the janitor of a church would be excluded, but services of a janitor for a separately incorporated college, although it may be church related, would be covered. A college devoted primarily to preparing students for the ministry would be exempt, as would a novitiate or a house of study training candidates to become members of religious orders. On the other hand, a church related (separately incorporated) charitable organization (such as, for example, an orphanage or a home for the aged) would not be considered under this paragraph to be operated primarily for religious purposes.¹⁶

The law requires that facts be resolved in favor of coverage, not exemption. Therefore, while services may be religiously motivated and manifestations of religious belief, a separate legal entity that provides essentially secular services and engages in activities that are not religious per se, such as the provision of help to the poor and disabled, falls outside the scope of Wis. Stat. § 108.02(15)(h)2., despite affiliations the entity may have with a religious organization. The

¹⁶ H.R. Rep. No. 91-612, p. 44 (1969). (Emphasis added.) *See also* S. Rep. No. 91-752, pp. 48-49 (1970) (containing an identical statement).

tenets of the Catholic Church cannot broaden the statutory exemption.¹⁷

The ALJ attached to her appeal tribunal decision a hearing memorandum issued by a circuit court judge in the 2015 case involving the Challenge Center, another sub-entity of CCB. There, the court found that the Challenge Center, a 501(c)(3) organization which provides services to individuals with a wide range of developmental disabilities, is operated primarily for religious purposes, because it was organized by the bishop as a means to establish dignity for developmentally disabled people as demanded by the Catholic Church's Catechism and Social Doctrine. The court held that the test is not focused on the activities performed but, rather, is focused on the purpose for which the organization is primarily operated. For the reasons stated above, the commission disagrees.

The department and the commission need not look solely to an entity's stated purpose or its professed beliefs to determine whether it is operated primarily for religious purposes. Such an approach would allow an organization to determine its own status without regard to its actual function. The activities, not the religious motivation behind them or the organization's founding principles, determine

¹⁷ *Resurrection Cemetery and Mt. Olivet Cemetery, Inc. v. DILHR*, No. 149-083 (Wis. Cir. Ct. Dane Cnty. June 9, 1976), citing *De La Salle Inst. v. United States*, 195 F. Supp. 891, 901 (N.D.Cal.1961). Circuit court decision summary available at http://lirc.wisconsin.gov/ucdecns/resurrection_dgm.htm.

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whether an exemption from participation in the unemployment insurance program is warranted.¹⁸

¹⁸ See, e.g., *Resurrection Cemetery and Mt. Olivet Cemetery, Inc. v. DILHR*, *supra*.

**State of Wisconsin
Labor and Industry Review Commission**

HEADWATERS INC. Employer Hearing No. S1700133MW	Unemployment Insurance Contribution Liability Decision¹ Dated and Mailed: OCT 16 2019
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The commission **reverses** the appeal tribunal decision. Accordingly, the employer remains subject to the requirements of the Wisconsin unemployment insurance law.

By the /s/ Michael H. Gillick
Commission: Michael H. Gillick, Chairperson

/s/ David B. Falstad
David B. Falstad, Commissioner

/s/ Georgia E. Maxwell
Georgia E. Maxwell, Commissioner

¹ **Appeal Rights:** See the blue enclosure for the time limit and procedures for obtaining judicial review of this decision. If you seek judicial review, you **must** name the following as defendants in the summons and the complaint: the Labor and Industry Review Commission, all other parties in the caption of this decision or order (the boxed section above), and the Department of Workforce Development. Appeal rights and answers to frequently asked questions about appealing an unemployment insurance decision to circuit court are also available on the commission's website, <http://lirc.wisconsin.gov>.

Procedural Posture

This case is before the commission to determine whether the services of the employees of the employer are excludable under the provisions of the state's unemployment insurance law. An administrative law judge (ALJ) of the Unemployment Insurance Division of the Department of Workforce Development held two hearings and issued a decision in this matter. The commission received a timely petition for commission review. The commission has considered the petition and the briefs submitted, and it has independently reviewed the evidence received at the hearings.

Findings of Fact and Conclusion of Law

1. Every Roman Catholic diocese in Wisconsin has a social ministry arm – a Catholic Charities entity. (T1. 34). “The mission of Catholic Charities is to provide service to people in need, to advocate for justice in social structures, and to call the entire church and other people of goodwill to do the same.” (Ex. 1, pp. 1, 5).
2. In the Diocese of Superior, the social ministry arm is called the Catholic Charities Bureau (CCB). (T1. 54-55; Ex. 2, p. 8). The purpose of the CCB “is to be an effective sign of the charity of Christ” by providing services that are significant in quantity and quality to everyone – no distinctions are made by race, sex, or religion in reference to clients served, staff employed, and board members appointed – and that are not duplicative of services already adequately provided by governmental or public agencies or other private agencies. (Ex. 2, p. 8).

3. The bishop of the Diocese of Superior occupies the top spot in the diocese's organizational chart. The bishop effectively has the ability to control all of the various educational, charitable, and religious organizations and entities within the diocese. Some positions within the diocese belong under canon law and may only be filled by religious individuals. (T1. 63-64). The executive director of CCB may be, and is, a layperson. (T1. 65).
4. CCB has separately incorporated sub-entities that operate 63 programs of service to those facing the challenges of aging, the distress of a disability, the concerns of children with special needs, the stresses of families living in poverty, and those in need of disaster relief. (Ex. 2, p. 1).
5. Headwaters Inc. is a sub-entity of CCB that provides various support services for individuals with disabilities. (T1. 184) Individuals are referred to Headwaters from long-term care service funding agencies. (T1. 185). Headwaters also contracts with the Wisconsin Department of Workforce Development, Division of Vocational Rehabilitation to provide employment assessment and job development services to individuals who do not have a disability diagnosis, (T1. 200-201), and provides Head Start home visitation services to families with eligible children. (T1. 209).
6. CCB, among other responsibilities, provides management services and consultation to its sub-entities, establishes and coordinates their missions, and approves their capital expenditures and investment policies (Ex. 12). CCB's executive director oversees the operations of each of the sub-entities. (T1. 125). The bishop of the Diocese of

Superior oversees CCB's programs and services.
(Ex. 7)

7. CCB's code of ethics sets forth CCB's expectation that its activities and actions "reflect gospel values" and are "consistent with its mission and the mission of the Diocese of Superior." (Ex. 2, p. 10).
8. CCB's mission statement, code of ethics, and statement of philosophy are posted in the entryway of Headwaters. (T1. 190; Ex. 37).
9. Individuals served by Headwaters are not provided with any paperwork that references the Catechism or social teachings of the Catholic Church. (T1. 186).
10. Employees of Headwaters are not provided with any paperwork that references the social teachings of the Catholic Church, but they are given copies of CCB's mission and code of ethics and philosophy. (T1. 187).
11. Employees are not required to be Catholic or affiliated with any religion. They do not partake in any religious services or practices. (T1. 187-188).
12. The board members of Headwaters are not required to have any religious affiliation. (T1. 220).
13. Headwaters is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code under a group exemption. (T. 56; Ex. 5). The group exemption applies to "the agencies and instrumentalities and the educational, charitable, and religious institutions operated by

the Roman Catholic Church in the United States, its territories, and possessions” that are subordinate to the United States Conference of Catholic Bishops. (Ex. 5, p. 1).

14. Most of Headwaters’ funding comes from government grants and contracts. (T1. 204; Ex. 38).
15. Headwaters does not receive any funding from the Diocese of Superior. (T1. 205).
16. Headwaters took over the provision of day care services for the disabled from Tri-County Human Services. (T1. 208). Tri-County Human Services took over providing birth-to-three services from Headwaters. (T1. 205).
17. CCB became subject to the Wisconsin unemployment insurance law in 1972, following its submission of an employer’s report in which it indicated that the nature of its operation was charitable, education, and rehabilitation. CCB did not indicate that the nature of its operation was religious. (T2. 46; Ex. 63).
18. Sub-entities of CCB report their employees under CCB’s unemployment insurance account. (Ex. 21-27, 55).
19. In 2003, CCB requested to withdraw from coverage under the unemployment insurance law. The department denied CCB’s request, and the department’s determination was upheld on appeal. (Ex. 20).
20. In 2015, a circuit court judge held that a sub-entity of CCB, the Challenge Center, was

entitled to an exemption from the requirements of the unemployment insurance law. (Ex. 28).

21. CCB and four sub-entities, including Headwaters, subsequently requested department determinations finding that they, too, are entitled to an exemption from mandated participation in the state's unemployment insurance program. (Ex. 55).
22. Headwaters is a non-profit agency operated primarily to provide social services to individuals with disabilities and other individuals in need. It is not an organization operated primarily for religious purposes.
23. Employees of Headwaters do not perform their services in excluded employment under Wis. Stat. § 108.02(15)(h).
24. Headwaters remains subject to the requirements of Wis. Stat. ch. 108.

Memorandum Opinion

Wisconsin's unemployment insurance law embodies a strong public policy in favor of compensating the unemployed. This policy is codified in Wis. Stat. § 108.01, which provides: "In good times and in bad times unemployment is a heavy social cost, directly affecting many thousands of wage earners. Each employing unit in Wisconsin should pay at least a part of this social cost, connected with its own irregular operations, by financing benefits for its own unemployed workers." Consistent with this policy, Wis. Stat. ch. 108 is to be "liberally construed to effect unemployment compensation coverage for workers who are economically dependent upon others in

respect to their wage-earning status.”² The burden is on an employer to establish its right to an exemption under the law.

The federal unemployment insurance law excludes from covered “employment” services performed for certain religious organizations, thus exempting such organizations from taxation to support unemployment insurance benefits.³ Wisconsin Stat. § 108.02(15) sets forth the statutory formula for the exclusion, incorporating the corresponding federal language so as to maintain the coverage required to protect the federal tax credits and federal grants on which the national unemployment insurance system is built.

Wisconsin Stat. § 108.02(15)(h) reads as follows:

(h) “Employment” as applied to work for a nonprofit organization, except as such organization duly elects otherwise with the department’s approval, does not include service:

1. In the employ of a church or convention or association of churches;
2. In the employ of an organization operated primarily for religious purposes and operated, supervised, controlled, or principally supported by a church or convention or association of churches; or
3. By a duly ordained, commissioned or licensed minister of a church in the exercise of his or her

² *Operton v. LIRC*, 2017 WI 46, ¶ 32, 375 Wis. 2d 1, 894 N.W.2d 426 (2017), citing *Princess House, Inc. v. DILHR*, 111 Wis.2d 46, 62, 330 N.W.2d 169 (1983).

³ Federal Unemployment Tax Act (FUTA), 26 U.S.C. § 3309(b)(1).

ministry or by a member of a religious order in the exercise of duties required by such order.

The parties stipulated that the Catholic Charities Bureau (CCB) and its sub-entities are operated, supervised, controlled, or principally supported by a church and that subsecs. 1. and 3. are inapplicable in this case. The key language, the meaning of which the parties dispute, is “operated primarily for religious purposes.”

Whether a religious institution may, with respect to functions other than worship, be afforded privileges or immunities not extended to otherwise similar secular institutions is a complex issue. Courts have been cautious in attempting to define what is or is not a “religious” purpose. There are no court decisions binding on the commission that set forth an all-inclusive definition or specification of what constitutes a religious purpose under the unemployment insurance law.

An appeal tribunal concluded that the services of the employees of CCB and four of its sub-entities – Headwaters Inc., Diversified Services Inc., Black River Industries Inc., and Barron County Developmental Services Inc. – are excludable under the provisions of the Wisconsin unemployment insurance law because the five entities are operated primarily for religious purposes. The department petitioned for commission review, arguing that the services of the employees of the entities are performed in covered employment because, while the underlying motivation to provide services may be religious, the entities are not actually operated primarily for religious purposes.

The resolution of what it means to be “operated primarily for religious purposes” requires statutory interpretation. It is axiomatic that “the purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and intended effect.”⁴

It is assumed that the legislature’s intent is expressed in the statutory language. Thus, statutory interpretation begins with the language of the statute. If the meaning of the statute is plain, the inquiry typically ends.⁵ “Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning.”⁶

Wisconsin Stat. § 108.02(15)(h)2. is written in ordinary English and creates a simple framework. “Operate” is an ordinary word in everyday language and generally means “to perform a function.”⁷ It connotes activity. “Primarily” is also an ordinary word in everyday language and generally means “for the most part; chiefly.”⁸

⁴ *Operton v. LIRC*, 375 Wis. 2d 1, 1 27, citing *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, 271 Wis.2d 633, 681 N.W.2d 110.

⁵ *Id.*

⁶ *Id.*

⁷ <https://www.merriam-webster.com/dictionary/operated>.

⁸ <https://www.merriam-webster.com/dictionary/primarily>.

Statutory language is also to be interpreted in the context in which it is used, not in isolation, but as part of a whole, in relation to the language of surrounding or closely related statutes, and reasonably to avoid absurd or unreasonable results.⁹

The statutory provisions surrounding Wis. Stat. § 108.02(15)(h)2. state that “employment” does not include services performed by an individual directly for a church, nor does it include services performed by a minister of a church or a member of a religious order.

In resolving what it means for an organization to be “operated primarily for religious purposes,” the commission considered language used by the Wisconsin Supreme Court in *Coulee Catholic Schools v. LIRC*, 2009 WI 88, 320 Wis. 2d 275, 768 N.W.2d 868, wherein a teacher terminated from her teaching position at a Catholic school brought a claim against her employer, alleging discrimination under the Wisconsin Fair Employment Act (WFEA). The question before the court was whether the teacher’s claim was precluded under the freedom of religion clauses in the U.S. and state constitutions because her position was ministerial – that is, a position “important and closely linked to the religious mission of a religious organization.”¹⁰

The court conducted a functional analysis in determining whether the ministerial exception applied. It looked to whether the organization in

⁹ *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 271 Wis.2d 633, ¶ 45.

¹⁰ *Coulee Catholic Schools v. LIRC*, 2009 WI 88, ¶ 3, 320 Wis. 2d 275, 768 N.W.2d 868.

both statement and fact has a fundamentally religious mission – that is, whether the organization existed primarily to worship and spread the faith.¹¹ The court recognized that

[i]t may be, for example, that one religiously-affiliated organization committed to feeding the homeless has only a nominal tie to religion, while another religiously-affiliated organization committed to feeding the homeless has a religiously infused mission involving teaching, evangelism, and worship. Similarly, one religious school may have some affiliation with a church but not attempt to ground the teaching and life of the school in the religious faith, while another similarly situated school may be committed to life and learning grounded in a religious worldview.¹²

The court viewed “quintessentially religious tasks” evincing a close link and importance to an organization’s religious mission to be duties such as teaching, evangelizing, church governance, supervision of a religious order, and overseeing, leading, or participating in religious rituals, worship, and/or worship services.¹³ The court held that the state may not interfere with the hiring or firing decisions of a religious organization with respect to

¹¹ *Id.*, ¶ 48.

¹² *Id.*

¹³ *Id.*, ¶ 49.

employees who are important and closely linked to its religious mission, but “[g]eneral laws relating to building licensing, taxes, social security, and the like are normally acceptable.”¹⁴

The court ultimately found that the teacher’s employer, the Coulee Catholic Schools, was committed to a religious mission – the inculcation of the Catholic faith and worldview – and that the teacher’s position was important and closely linked to that mission. Because the teacher’s claim under the WFEA unconstitutionally impinged upon her employer’s right to religious freedom, her claim was dismissed.

CCB and each separately incorporated sub-entity is akin to “the religiously-affiliated organization committed to feeding the homeless that has only a nominal tie to religion” recognized by the *Coulee* court. Like the teacher’s school in that case, CCB and its sub-entities are affiliated with the Catholic Church and subject to the authority of the bishop. However, unlike the school, CCB and its sub-entities are not operated with a focus on the inculcation of the Catholic faith and worldview and do not operate in a worship-filled environment or with a faith-centered approach to fulfilling their mission.¹⁵

The teachings of the Roman Catholic Church include the demand that a Christian must respond in charity to those in need. (T2. 20). Catholic Charities’ entities historically served as the welfare

¹⁴ *Id.*, ¶ 65.

¹⁵ Compare, e.g., *Kube v. Peniel Christian School*, UI Dec. Hearing No. 95002070MD (LIRC Apr. 7, 1998), and *MHS Inc.*, UI Dec. Hearing No. S8852 (LIRC July 12, 1991).

arm of the state, providing services to the poor and disadvantaged through its religious orders. (T2. 18.) Today, “through the responsible use of the state’s tax dollars,” CCB and its sub-entities service the needs of the state’s citizens and achieve a common good. (T2. 23-24). Their employees perform charitable work – “corporal acts of mercy” – to the public at large. (T2. 30). CCB and its sub-entities are operated for the purpose of improving “the quality of life for the people [they] serve, whether they are elderly, disabled, children with special needs, or families in poverty.” (Ex. 13). While the hope and expectation is that the employees of CCB and its sub-entities act in conformity with Catholic Social Teachings and the Catechism of the Church, they are instructed simply to reach out to those in need with compassion and concern. (Ex. 13.)

Archbishop ListECKI of the Archdiocese of Milwaukee, which includes the Diocese of Superior, believes that all Catholics should support any entity that reaches out to the poor and performs tasks for those in need, not just church-affiliated entities. (T2. 23). A recent example of such support is CCB assuming the operations of Barron County Developmental Disabilities Services, a provider of services and programming to developmentally disabled individuals. Although the organization’s name was changed to Barron County Developmental Services, the organization operated the same way and had the same purpose before and after its affiliation with CCB. (T1.270-271). The purpose of the organization’s operations did not transform from secular to religious simply as a result of the business transfer. Providing services to those in need is not

intrinsically, necessarily, or uniquely religious in nature.

In resolving what it means for an organization to be “operated primarily for religious purposes,” the commission also reviewed language from a congressional committee report concerning the federal language corresponding to Wis. Stat. § 108.02(15)(h). The report of the House Ways and Means Committee on the Employment Security Amendments of 1970 states, in its explanation of the newly created § 3309(b)(1), that,

this paragraph excludes services of persons where the employer is a church or convention or association of churches, but does not exclude certain services performed for an organization which may be religious in orientation unless it is operated primarily for religious purposes and is operated, supervised, controlled, or principally supported by a church (or convention or association of churches). Thus, the services of the janitor of a church would be excluded, but services of a janitor for a separately incorporated college, although it may be church related, would be covered. A college devoted primarily to preparing students for the ministry would be exempt, as would a novitiate or a house of study training candidates to become members of religious orders. On the other hand, a church related (separately incorporated) charitable organization

(such as, for example, an orphanage or a home for the aged) would not be considered under this paragraph to be operated primarily for religious purposes.¹⁶

The law requires that facts be resolved in favor of coverage, not exemption. Therefore, while services may be religiously motivated and manifestations of religious belief, a separate legal entity that provides essentially secular services and engages in activities that are not religious per se, such as the provision of help to the poor and disabled, falls outside the scope of Wis. Stat. § 108.02(15)(h)2., despite affiliations the entity may have with a religious organization. The tenets of the Catholic Church cannot broaden the statutory exemption.¹⁷

The ALJ attached to her appeal tribunal decision a hearing memorandum issued by a circuit court judge in the 2015 case involving the Challenge Center, another sub-entity of CCB. There, the court found that the Challenge Center, a 501(c)(3) organization which provides services to individuals with a wide range of developmental disabilities, is operated primarily for religious purposes, because it was organized by the bishop as a means to establish dignity for developmentally disabled people as

¹⁶ H.R. Rep. No. 91-612, p. 44 (1969). (Emphasis added.) See also S. Rep. No. 91-752, pp. 48-49 (1970) (containing an identical statement).

¹⁷ *Resurrection Cemetery and Mt. Olivet Cemetery, Inc. v. DILHR*, No. 149-083 (Wis. Cir. Ct. Dane Cnty. June 9, 1976), citing *De La Salle Inst. v. United States*, 195 F. Supp. 891, 901 (N.D.Cal.1961). Circuit court decision summary available at http://lirc.wisconsin.gov/ucdecns/resurrection_dgm.htm.

demanded by the Catholic Church's Catechism and Social Doctrine. The court held that the test is not focused on the activities performed but, rather, is focused on the purpose for which the organization is primarily operated. For the reasons stated above, the commission disagrees.

The department and the commission need not look solely to an entity's stated purpose or its professed beliefs to determine whether it is operated primarily for religious purposes. Such an approach would allow an organization to determine its own status without regard to its actual function. The activities, not the religious motivation behind them or the organization's founding principles, determine whether an exemption from participation in the unemployment insurance program is warranted.¹⁸

¹⁸ See, e.g., *Resurrection Cemetery and Mt. Olivet Cemetery, Inc. v. DILHR*, *supra*.

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APPEAL TRIBUNAL DECISION

State of Wisconsin
Department of Workforce Development
Unemployment Insurance

Milwaukee Hearing Office
818 N. 6th Street, Room 382
Milwaukee, WI 53203

* * *

Hearing No. S1700133MW

****FILE COPY****

In the matter of:

Employer: HEADWATERS INC
APPELLANT

* * *

APPEAL RIGHTS

THIS DECISION WILL BECOME FINAL UNLESS A WRITTEN PETITION FOR REVIEW BY THE LABOR AND INDUSTRY REVIEW COMMISSION IS RECEIVED OR POSTMARKED WITHIN 21 DAYS FROM THE DATE OF THIS DECISION (SEE DATE BELOW). THE REQUIRED PROCEDURES TO FILE A PETITION FOR COMMISSION REVIEW ARE DESCRIBED ON THE BACK OF THIS PAGE. THE COMMISSION WILL REVIEW THE EVIDENCE ALREADY PRESENTED AT THE HEARING TO MAKE A

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DECISION. NO FURTHER HEARING WILL BE HELD UNLESS THE COMMISSION SO ORDERS. DECISION: SEE ATTACHED DECISION WHICH REVERSES THE INITIAL DETERMINATION.

Appearances

Employer 1: Kyle Torvinen, Attorney

Employer 2:

Department: Christine Galinat, Attorney

Administrative Law Judge Heidi Galvan
Dated and Mailed May 15, 2018
Petition Must Be Received or Postmarked By June 5, 2018

* * *

Decision mailed to:

HEADWATERS INC, PO BOX 618, 1441 E TIMBER DR, RHINELANDER, WI 54501-0618 KYLE H TORVINEN, TORVINEN, JONES, ROUTH, TORVINEN &, SAUNDERS, SC, 823 BELKNAP DEPT. ATTORNEY: CHRISTINE GALINAT, PO BOX 8942, MADISON, WI 53708

APPEAL TRIBUNAL DECISION INFORMATION

APPEAL RIGHTS

The attached decision will become final unless a written petition for commission review (PCR) is **received or postmarked** within 21 days from the date of this decision (see “Petition Must Be Received or Postmarked By” date on the front of this decision). You may mail, fax, or deliver your PCR to the Labor and Industry Review Commission (LIRC). File on LIRC website at http://lirc.wisconsin.gov/ui_appeal.htm, by fax to (608) 267-4409, by mail to LIRC, P.O. Box 8126, Madison, WI 53708, or in person at the commission’s office at 3319 W. Beltline Highway, 2nd Floor, Madison, WI. PCR’s cannot be filed by email. If the petition is timely, the commission will review the evidence already presented at the hearing to make a decision. No further hearing will be held unless the commission so orders.

FAILURE TO APPEAR AT HEARING:

A party who failed to appear but who desires another opportunity for a hearing must, within 21 days after the date of this decision, show to the appeal tribunal a satisfactory explanation for such failure. The request for rescheduling must be in writing, must explain the reason for failing to appear, and should be mailed immediately to the UI hearing office listed on the front of this form. If you do not understand the procedure, call the UI hearing office for assistance.

REISSUED DECISION:

A reissued decision is issued and mailed when a previous decision was not mailed to the last-known

address of one of the parties. A reissued decision may be appealed (see appeal rights above).

WITHDRAWAL DECISION:

The appellant may submit a request to retract the withdrawal and to reinstate the prior request for hearing. This request must be in writing, must be received within 21 days from the date of the withdrawal decision, and must include the reasons for the retraction.

HEARING RECORDS:

You may request a copy of the hearing recording(s) from the Bureau of Legal Affairs by calling (608) 266-3174.

PAYMENT OF LIABILITY DUE:

Any taxes, interest, and penalties due as a result of this decision should be paid immediately. Make your check payable to DWD and mail it to the UI Division, P.O. Box 8914, Madison, WI 53708. If payment cannot be made in full, immediately call the Collections Section (608) 266-9700 to make other arrangements for payment.

If you have any questions as to the effect of this decision, you may contact the hearing office listed on the front of the decision.

THE DEPARTMENT'S DETERMINATION HELD: that the services of the employees of Headwaters Inc. were not excludable under the provisions of the Wisconsin Unemployment Insurance Law. As a result, Headwaters Inc. continued to be an employer subject to the provisions of the Wisconsin Unemployment Insurance Law as set forth in the

initial determination dated May 11, 2017. Headwaters Inc. filed a timely appeal.

Based on the applicable records and evidence in this case, the appeal tribunal makes the following

**FINDINGS OF FACT and CONCLUSIONS
OF LAW**

Headwaters Inc., hereinafter appellant, is a non-profit organization that is a social service branch for the Roman Catholic Church in the Diocese of Superior, Wisconsin. The appellant is controlled by the Bishop of the Diocese, the Vicar and Executive Director (the first two positions can only be filled by Catholic Priests). The appellant's executive director is a lay person that can only be appointed by the Bishop, and the executive director oversees the Board of Directors. The Board and executive director report to the Bishop of the Diocese of Superior and ultimately to Archbishop Jerome Listecky. It is within the Archbishop and Bishop's purview to determine whether the operations of the appellant comply with the religious social teachings of the Catholic Church, and such, whether such organization continues to operate.

The appellant operates and supervises programs to people with intellectual disabilities, physical disabilities, and children with special needs in Northern Wisconsin. More specifically, services such as: independent living skills, employment and vocational services, Headstart programming and transportation are provided in geographic areas where such services are not provided and/or there is an unmet need for services, which is consistent with the appellant's mission. This organization is one of

Catholic Charities Bureau Inc.'s sub-entities who oversees various charitable programs including that of the appellant.

The appellant's mission is derived from the Catholic Church's catechism and doctrine which requires that the church and its members to provide such social services to those in need regardless of their religion or beliefs. Board of Directors meetings are opened with a prayer and are held to ensure that the program's operations comply with the mission set forth in the *Catechism of the Catholic Church*. The *Catechism of the Catholic Church* identifies the Ten Principles of Catholic Social Teaching, which are: Respect for human life; human dignity; association, participation; preferential protection for the poor and vulnerable; solidarity; stewardship; subsidiarity; human equality; and common good. These principles are incorporated in the appellant's Mission Statement, Code of Ethics, and Catholic Charities Bureau Inc. Statement of Philosophy which are displayed at every site where services are offered for all those participating in services to physically see. All the employees hired by the appellant are sent a letter that includes the Mission Statement and Code of Ethics, and the employee handbook also includes the Mission Statement. Consistent with the appellants adherence to Catholic doctrine, the employees and individuals who use the services provided by the by the appellant, are not required to be Catholic and they are not required to participate in mass or any sort of religious activity.

The issue to be decided is whether the employees of the appellant may be excluded from coverage of the

Wisconsin Unemployment Insurance Law as set forth in the initial determination.

Wisconsin Stat. §108.02(15)(h) provides:

(h) “Employment” as applied to work for a nonprofit organization, except as such organization duly elects otherwise with the department’s approval, does not include service:

1. In the employ of a church or convention or association of churches;
2. In the employ of an organization operated primarily for religious purposes and operated, supervised, controlled, or principally supported by a church or convention or association of churches; or
3. By a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order.

The department and appellant agree and stipulated to subsections 1 and 3. The remaining issue is whether the appellant is “operated primarily for religious purposes.” The department contended that it is not. That contention cannot be sustained.

The appellant cited to *Kendall v. Dir. of the Division of Employment Sec.*, 473 N.E.2d 196, (Mass.1985) a decision in which the Massachusetts Court found that a center for mentally challenged children which was operated by Catholic nuns was exempt from unemployment taxation because, although the children were not required to be Catholic and the services were not to teach or indoctrinate into

the religion, that the organization qualified because of its purpose to promote the welfare of disabled children. The tribunal finds this case akin to the present case and is aware that this issue has not been addressed in any Appellate Court in Wisconsin or published Circuit Court decision in Wisconsin. As such, the tribunal addresses the limited decisions that it is aware of regarding this issue from Wisconsin.

In *Challenge Center Inc. v. State of Wisconsin Labor and Industry Review Comm. et. al*, 2014CV000384 (Douglas County November 18, 2015), the court held that Challenge Center Inc., a non-profit charitable organization, met the statutory definition of an organization operated “primarily for religious purposes.” Although the decision is not published the tribunal cites to this circuit decision for persuasive value, as the facts are almost identical to that of the present case (a copy of the decision is attached).¹

¹ Wisconsin Statute §809.23 (3) CITATION OF UNPUBLISHED OPINIONS.

- (a) An unpublished opinion may not be cited in any court of this state as precedent or authority, except to support a claim of claim preclusion, issue preclusion, or the law of the case, and except as provided in par. (b).
- (b) In addition to the purposes specified in par. (a), an unpublished opinion issued on or after July 1, 2009, that is authored by a member of a three-judge panel or by a single judge under s. 752.31 (2) may be cited for its persuasive value. A per curiam opinion, memorandum opinion, summary disposition order, or other order is not an authored opinion for purposes of this subsection. Because an unpublished opinion cited for its persuasive value is not precedent, it is not binding on any court of this state. A court need not distinguish or otherwise

In the *Challenge Center Inc.* case, the court held that the organization, which provides services to individuals with developmental disabilities, was consistent with its mission to serve individuals with developmental disabilities, the elderly, children, and those who are economically disadvantaged in geographic areas where such services are not provided or there is an unmet need for such services. Moreover, the court held that the “proper test requires the Court to consider why the organization is operating (by using the words “for” and “purposes”), and whether it operates primarily for that purpose. The use of work “primarily” acknowledges that an organization can have more than one purpose.” See *Challenge Center, Inc., v. State of Wisconsin Labor and Industry Review Commission et. al* at p.7.

The appellant’s mission is to provide services to individuals with developmental and intellectual disabilities, in geographic areas where such services are not provided and/or there is an unmet need for services. This was the same mission of the Challenge Center, and the same mission set forth in turn Catholic social teaching.

In contrast, the department’s position is that emphasis should be on the “what” not the “why?” In making this argument the department has relied on the forms the appellant has filed with the State of Wisconsin and Internal Revenue Service (IRS). More specifically, the department reviewed the appellant’s

discuss an unpublished opinion and a party has no duty to research or cite it.

- (c) A party citing an unpublished opinion shall file and serve a copy of the opinion with the brief or other paper in which the opinion is cited.

Form 990 which was a form filed with Internal Revenue Service for their tax exemption status. Question #1 of the form asked the appellant to provide a description of its mission. The appellant wrote “serving the developmentally disabled citizens of Oneida, Forest, and Vilas counties, Wisconsin.” This brief response was given for business purposes and not meant as an all-inclusive description of the appellant’s operations.

The department further argued that because the appellant has no religious programming and does not proselytize to its’ employees or those individuals who uses its services that it is not operated primarily for religious purposes. This argument is contrary to the tenants of the Catholic Church’s social ministry in that there is no distinction in services provided based on an employee’s or client’s religion. The appellant does not proselytize because of this tenant and contends that to be required to do so in order to meet the requirements of the department is an infringement on their freedom to practice their religion.

This tenant, the openness to serve individuals regardless of their religion was addressed in the case of *MHS. Inc.*, UI Dec. Hearing No. 8852, S (LIRC July 12, 1991). Both the department and appellant use this case to support their opposing positions. The department’s position is that in order to qualify for the exemption an organization needs to exclude people of a different religion or require participation in Catholic religious programming. This position runs afoul from the appellant’s religious doctrine and mission. Furthermore, in its decision the Labor and Industry Review Commission ultimately focused on the mission

of the high school which is to follow the Catholic tradition, not the just the services provided, which is same analysis that should be applied in the present case.

Moreover, the department neglects the fact that the appellant's operations themselves are funded in a manner consistent with Catholic Doctrine which is another factor that supports the conclusion that the appellant operates primarily for religious purposes. The Bishop almost ceased the operation of Catholic Charities and that of its sub-entities when the affordable care act was passed because some of the appellants funding was derived from it and the act would have required the appellant to provide a health insurance plan that would cover abortion which goes against Catholic social teaching. The affordable care act ultimately provided for a religious exemption that the appellant used, but this example demonstrates that the appellant will not accept or cease its operations if, the funding source (state and federal grants) does not comport with Catholic social teachings.

Finally, the appellant argues that the services it provides are distinct from that of other service providers in the area because they focus on meeting an unmet need, and in doing so, this also satisfies the religious purpose exemption. That is, that the services provided and why they are provided are one in the same because the clients benefiting are either elderly, children, poor and/or disabled which is consistent with Catholic social teachings and the whole reason the appellant runs its operations. There is no distinction between the motive and services because they are essentially the same and therefore operated for

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“primarily religious purposes.” The tribunal sustains this argument.

The appeal tribunal therefore finds that the appellant is a non-profit organization operated, supervised, controlled or principally supported by a church or convention or association of churches operated primarily religious purposes, within the meaning of Wis. Stat. § 108.02(15)(h)(2).

DECISION

The department’s determination is reversed. Accordingly, Headwaters Inc. is not subject to the requirements of the Wisconsin Unemployment Insurance Law as of May 11, 2017 as set forth in the initial determination.

APPEAL TRIBUNAL

By: /s/ Heidi E. Galvan
Heidi E. Galvan
Administrative Law Judge

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APPEAL TRIBUNAL DECISION

State of Wisconsin
Department of Workforce Development
Unemployment Insurance

Milwaukee Hearing Office
818 N. 6th Street, Room 382
Milwaukee, WI 53203

* * *

Hearing No. S1700134MW

****FILE COPY****

In the matter of:

Employer: DIVERSIFIED SERVICES
APPELLANT

* * *

APPEAL RIGHTS

THIS DECISION WILL BECOME FINAL UNLESS A WRITTEN PETITION FOR REVIEW BY THE LABOR AND INDUSTRY REVIEW COMMISSION IS RECEIVED OR POSTMARKED WITHIN 21 DAYS FROM THE DATE OF THIS DECISION (SEE DATE BELOW). THE REQUIRED PROCEDURES TO FILE A PETITION FOR COMMISSION REVIEW ARE DESCRIBED ON THE BACK OF THIS PAGE. THE COMMISSION WILL REVIEW THE EVIDENCE ALREADY PRESENTED AT THE HEARING TO MAKE A

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DECISION. NO FURTHER HEARING WILL BE HELD UNLESS THE COMMISSION SO ORDERS.

DECISION: SEE ATTACHED DECISION WHICH REVERSES THE INITIAL DETERMINATION.

Appearances

Employer 1: Kyle Torvinen, Attorney

Employer 2:

Department: Christine Galinat, Attorney

Administrative Law Judge Heidi Galvan
Dated and Mailed May 15, 2018
Petition Must Be Received or Postmarked By June 5, 2018

* * *

Decision mailed to:

DIVERSIFIED SERVICES-0501ORPORATED, PO
BOX 501, SIREN, WI 54872
KYLE H TORVINEN, TORVINEN, JONES, ROUTH,
TORVINEN &, SAUNDERS, SC, 823 BELKNAP
DEPT. ATTORNEY: CHRISTINE GALINAT, PO BOX
8942, MADISON, WI 53708

APPEAL TRIBUNAL DECISION INFORMATION

APPEAL RIGHTS:

The attached decision will become final unless a written petition for commission review (PCR) is **received or postmarked** within 21 days from the date of this decision (see “Petition Must Be Received or Postmarked By” date on the front of this decision). You may mail, fax, or deliver your PCR to the Labor and Industry Review Commission (LIRC). File on LIRC website at http://lirc.wisconsin.gov/ui_appeal.htm, by fax to (608) 267-4409, by mail to LIRC, P.O. Box 8126, Madison, WI 53708, or in person at the commission’s office at 3319 W. Beltline Highway, 2nd Floor, Madison, WI. PCR’s cannot be filed by email. If the petition is timely, the commission will review the evidence already presented at the hearing to make a decision. No further hearing will be held unless the commission so orders.

FAILURE TO APPEAR AT HEARING:

A party who failed to appear but who desires another opportunity for a hearing must, within 21 days after the date of this decision, show to the appeal tribunal a satisfactory explanation for such failure. The request for rescheduling must be in writing, must explain the reason for failing to appear, and should be mailed immediately to the UI hearing office listed on the front of this form. If you do not understand the procedure, call the UI hearing office for assistance.

REISSUED DECISION:

A reissued decision is issued and mailed when a previous decision was not mailed to the last-known

address of one of the parties. A reissued decision may be appealed (see appeal rights above).

WITHDRAWAL DECISION:

The appellant may submit a request to retract the withdrawal and to reinstate the prior request for hearing. This request must be in writing, must be received within 21 days from the date of the withdrawal decision, and must include the reasons for the retraction.

HEARING RECORDS:

You may request a copy of the hearing recording(s) from the Bureau of Legal Affairs by calling (608) 266-3174.

PAYMENT OF LIABILITY DUE:

Any taxes, interest, and penalties due as a result of this decision should be paid immediately. Make your check payable to DWD and mail it to the UI Division, P.O. Box 8914, Madison, WI 53708. If payment cannot be made in full, immediately call the Collections Section (608) 266-9700 to make other arrangements for payment.

If you have any questions as to the effect of this decision, you may contact the hearing office listed on the front of the decision.

THE DEPARTMENT'S DETERMINATION HELD: that the services of the employees of Diversified Services Inc. were not excludable under the provisions of the Wisconsin Unemployment Insurance Law. As a result, Diversified Services Inc. continued to be an employer subject to the provisions of the Wisconsin Unemployment Insurance Law as set

forth in the initial determination dated May 11, 2017. Diversified Services Inc. filed a timely appeal.

Based on the applicable records and evidence in this case, the appeal tribunal makes the following

**FINDINGS OF FACT and CONCLUSIONS
OF LAW**

Diversified Services Inc., hereinafter appellant, is a non-profit organization that is a social service branch for the Roman Catholic Church in the Diocese of Superior, Wisconsin. The appellant is controlled by the Bishop of the Diocese, the Vicar and Executive Director (the first two positions can only be filled by Catholic Priests). The appellant's executive director is a lay person that can only be appointed by the Bishop, and the executive director oversees the Board of Directors. The Board and executive director report to the Bishop of the Diocese of Superior and ultimately to Archbishop Jerome ListECKI. It is within the Archbishop and Bishop's purview to determine whether the operations of the appellant comply with the religious social teachings of the Catholic Church, and such, whether such organization continues to operate.

The appellant operates and supervises charitable programs in geographic areas where such services are not provided and/or there is an unmet need for services, which is consistent with the appellant's mission. The appellant, provides work opportunities to persons with disabilities in rural Wisconsin. The appellant is a sub-entity of Catholic Charities Bureau Inc.

The appellant's mission is derived from the Catholic Church's catechism and doctrine which

requires that the church and its members to provide such social services to those in need regardless of their religion or beliefs. Board of Directors meetings are opened with a prayer and are held to ensure that the program's operations comply with the mission set forth in the *Catechism of the Catholic Church*. The *Catechism of the Catholic Church* identifies the Ten Principles of Catholic Social Teaching, which are: Respect for human life; human dignity; association, participation; preferential protection for the poor and vulnerable; solidarity; stewardship; subsidiarity; human equality; and common good. These principles are incorporated in the appellant's Mission Statement, Code of Ethics, and Catholic Charities Bureau Statement of Philosophy which are displayed at every site where services are offered for all those participating in services to physically see. All the employees hired by the appellant are sent a letter that includes the Mission Statement and Code of Ethics, and the employee handbook also includes the Mission Statement. Consistent with the appellants adherence to Catholic doctrine, the employees and individuals who use the services provided by the charitable organizations overseen by the appellant, are not required to be Catholic and they are not required to participate in mass or any sort of religious activity.

The issue to be decided is whether the employees of the appellant may be excluded from coverage of the Wisconsin Unemployment Insurance Law as set forth in the initial determination.

Wisconsin Stat. §108.02(15)(h) provides:

- (h) "Employment" as applied to work for a nonprofit organization, except as such organization duly elects otherwise with the

department's approval, does not include service:

1. In the employ of a church or convention or association of churches;
2. In the employ of an organization operated primarily for religious purposes and operated, supervised, controlled, or principally supported by a church or convention or association of churches; or
3. By a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order.

The department and appellant agree and stipulated to subsections 1 and 3. The remaining issue is whether the appellant is "operated primarily for religious purposes." The department contended that it is not. That contention cannot be sustained.

The appellant cited to *Kendall v. Dir. of the Division of Employment Sec.*, 473 N.E.2d 196, (Mass.1985) a decision in which the Massachusetts Court found that a center for mentally challenged children which was operated by Catholic nuns was exempt from unemployment taxation because, although the children were not required to be Catholic and the services were not to teach or indoctrinate into the religion, that the organization qualified because of its purpose to promote the welfare of disabled children. The tribunal finds this case akin to the present case and is aware that this issue has not been addressed in any Appellate Court in Wisconsin or published Circuit Court decision in Wisconsin. As

such, the tribunal addresses the limited decisions that it is aware of regarding this issue from Wisconsin.

In *Challenge Center Inc. v. State of Wisconsin Labor and Industry Review Comm. et. al*, 2014CV000384 (Douglas County November 18, 2015), the court held that Challenge Center Inc., a non-profit charitable organization, met the statutory definition of an organization operated “primarily for religious purposes.” Although the decision is not published the tribunal cites to this circuit decision for persuasive value, as the facts are almost identical to that of the present case (a copy of the decision is attached).¹

¹ Wisconsin Statute §809.23 (3) CITATION OF UNPUBLISHED OPINIONS.

- (a) An unpublished opinion may not be cited in any court of this state as precedent or authority, except to support a claim of claim preclusion, issue preclusion, or the law of the case, and except as provided in par. (b).
- (b) In addition to the purposes specified in par. (a), an unpublished opinion issued on or after July 1, 2009, that is authored by a member of a three-judge panel or by a single judge under s. 752.31 (2) may be cited for its persuasive value. A per curiam opinion, memorandum opinion, summary disposition order, or other order is not an authored opinion for purposes of this subsection. Because an unpublished opinion cited for its persuasive value is not precedent, it is not binding on any court of this state. A court need not distinguish or otherwise discuss an unpublished opinion and a party has no duty to research or cite it.
- (c) A party citing an unpublished opinion shall file and serve a copy of the opinion with the brief or other paper in which the opinion is cited.

In the *Challenge Center Inc.* case, the court held that the organization, which provides services to individuals with developmental disabilities, was consistent with its mission to serve individuals with developmental disabilities, the elderly, children, and those who are economically disadvantaged in geographic areas where such services are not provided or there is an unmet need for such services. Moreover, the court held that the “proper test requires the Court to consider why the organization is operating (by using the words “for” and “purposes”), and whether it operates primarily for that purpose. The use of work “primarily” acknowledges that an organization can have more than one purpose.” See *Challenge Center, Inc., v. State of Wisconsin Labor and Industry Review Commission et. al* at p.7.

The appellant’s mission is to provide services to individuals with developmental disabilities in geographic areas where such services are not provided and/or there is an unmet need for services. This was the same mission of the Challenge Center, and the same mission set forth in tum Catholic social teaching.

In contrast, the department’s position is that emphasis should be on the “what” not the “why?” In making this argument the department has relied on the forms the appellant has filed with the Internal Revenue Service (IRS). More specifically, the department has reviewed the appellant’s Form 990 which was a form filed with Internal Revenue Service for their tax exemption status. Question # 1 of the form asked the appellant to provide a description of its mission. The appellant wrote, “The mission of Diversified Services, Inc. is to provide employment opportunities to individuals with disabilities. The goal

is to help each individual achieve their highest level of independence in a facility based and/or community base setting.” This brief response was given for business purposes and not meant as an all-inclusive description of the appellant’s operations.

The department further argued that because the appellant has no religious programming and does not proselytize to its’ employees or those individuals who uses its services that it is not operated primarily for religious purposes. This argument is contrary to the tenants of the Catholic Church’s social ministry in that there is no distinction in services provided based on an employee’s or client’s religion. The appellant does not proselytize because of this tenant and contends that to be required to do so in order to meet the requirements of the department is an infringement on their freedom to practice their religion.

This tenant, the openness to serve individuals regardless of their religion was addressed in the case of *MHS. Inc.*, UI Dec. Hearing No. 8852, S (LIRC July 12, 1991). Both the department and appellant use this case to support their opposing positions. The department’s position is that in order to qualify for the exemption an organization needs to exclude people of a different religion or require participation in Catholic religious programming. This position runs afoul from the appellant’s religious doctrine and mission. Furthermore, in its decision the Labor and Industry Review Commission ultimately focused on the mission of the high school which is to follow the Catholic tradition, not just the services provided, which is same analysis that should be applied in the present case.

Moreover, the department neglects the fact that the appellant's operations themselves are funded in a manner consistent with Catholic Doctrine which is another factor that supports the conclusion that the appellant operates primarily for religious purposes. The Bishop almost ceased the operation of Catholic Charities and that of its sub-entities when the affordable care act was passed because some of the appellants funding was derived from it and the act would have required the appellant to provide a health insurance plan that would cover abortion which goes against Catholic social teaching. The affordable care act ultimately provided for a religious exemption that the appellant used, but this example demonstrates that the appellant will not accept or cease its operations if, the funding source (state and federal grants) does not comport with Catholic social teachings.

Finally, the appellant argues that the services it provides are distinct from that of other service providers in the area because they focus on meeting an unmet need, and in doing so, this also satisfies the religious purpose exemption. That is, that the services provided and why they are provided are one in the same because the clients benefiting are either elderly, children, poor and/or disabled which is consistent with Catholic social teachings and the whole reason the appellant runs its operations. There is no distinction between the motive and services because they are essentially the same and therefore operated for "primarily religious purposes." The tribunal sustains this argument.

The appeal tribunal therefore finds that the appellant is a non-profit organization operated,

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supervised, controlled or principally supported by a church or convention or association of churches operated primarily religious purposes, within the meaning of Wis. Stat. § 108.02(15)(h)(2).

DECISION

The department's determination is reversed. Accordingly, Diversified Services Inc. is not subject to the requirements of the Wisconsin Unemployment Insurance Law as of May 11, 2017 as set forth in the initial determination.

APPEAL TRIBUNAL

By: /s/ Heidi E. Galvan

Heidi E. Galvan

Administrative Law Judge

315a

APPEAL TRIBUNAL DECISION

State of Wisconsin
Department of Workforce Development
Unemployment Insurance

FILED 01-30-2020
Clerk of Court
Douglas County, WI
2019CV000324

MILWAUKEE HEARING OFFICE
819 N. 6th Street, Room 382
Milwaukee, WI 53203

* * *

Hearing No. S1700135MW

****FILE COPY****

In the matter of:

Employer: THE CATHOLIC CHARITIES BUR INC
APPELLANT

* * *

APPEAL RIGHTS

THIS DECISION WILL BECOME FINAL UNLESS A WRITTEN PETITION FOR REVIEW BY THE LABOR AND INDUSTRY REVIEW COMMISSION IS RECEIVED OR POSTMARKED WITHIN 21 DAYS FROM THE DATE OF THIS DECISION (SEE DATE BELOW). THE REQUIRED PROCEDURES TO FILE A PETITION FOR COMMISSION REVIEW ARE DESCRIBED ON

THE BACK OF THIS PAGE. THE COMMISSION WILL REVIEW THE EVIDENCE ALREADY PRESENTED AT THE HEARING TO MAKE A DECISION. NO FURTHER HEARING WILL BE HELD UNLESS THE COMMISSION SO ORDERS. **DECISION:** SEE ATTACHED DECISION WHICH REVERSES THE INITIAL DETERMINATION.

Appearances

Employer 1: KYLE TORVINEN, ATTORNEY

Employer 2:

Department: CHRISTINE GALINAT, ATTORNEY

Administrative Law Judge HEIDI GALVAN
Dated and Mailed MAY 15, 2018
Petition Must Be Received or Postmarked By JUNE 5, 2018

* * *

Decision mailed to:

THE CATHOLIC CHARITIES BUREAU INC, 1416 CUMMING AVE, SUPERIOR, WI 54880-1720
KYLE H TORVINEN, TORVINEN, JONES, ROUTH, TORVINEN &, SAUNDERS, SC, 823 BELKNAP DEPT. ATTORNEY: CHRISTINE GALINAT, PO BOX 8942, MADISON, WI 53708

APPEAL INFORMATION	TRIBUNAL	DECISION
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APPEAL RIGHTS

The attached decision will become final unless a written petition for commission review (PCR) is **received or postmarked** within 21 days from the date of this decision (see “Petition Must Be Received or Postmarked By” date on the front of this decision). You may mail, fax, or deliver your PCR to the Labor and Industry Review Commission (LIRC). File on LIRC website at http://lirc.wisconsin.gov/ui_appeal.htm, by fax to (608) 267-4409, by mail to LIRC, P.O. Box 8126, Madison, WI 53708, or in person at the commission’s office at 3319 W. Beltline Highway, 2nd Floor, Madison, WI. PCR’s cannot be filed by email. If the petition is timely, the commission will review the evidence already presented at the hearing to make a decision. No further hearing will be held unless the commission so orders.

FAILURE TO APPEAR AT HEARING:

A party who failed to appear but who desires another opportunity for a hearing must, within 21 days after the date of this decision, show to the appeal tribunal a satisfactory explanation for such failure. The request for rescheduling must be in writing, must explain the reason for failing to appear, and should be mailed immediately to the UI hearing office listed on the front of this form. If you do not understand the procedure, call the UI hearing office for assistance.

REISSUED DECISION:

A reissued decision is issued and mailed when a previous decision was not mailed to the last-known address of one of the parties. A reissued decision may be appealed (see appeal rights above).

WITHDRAWAL DECISION:

The appellant may submit a request to retract the withdrawal and to reinstate the prior request for hearing. This request must be in writing, must be received within 21 days from the date of the withdrawal decision, and must include the reasons for the retraction.

HEARING RECORDS:

You may request a copy of the hearing recording(s) from the Bureau of Legal Affairs by calling (608) 266-3174.

PAYMENT OF LIABILITY DUE:

Any taxes, interest, and penalties due as a result of this decision should be paid immediately. Make your check payable to DWD and mail it to the UI Division, P.O. Box 8914, Madison, WI 53708. If payment cannot be made in full, immediately call the Collections Section (608) 266-9700 to make other arrangements for payment.

If you have any questions as to the effect of this decision, you may contact the hearing office listed on the front of the decision.

THE DEPARTMENT'S DETERMINATION HELD: that the services of the employees of Catholic Charities Bureau Inc. were not excludable under the provisions of the Wisconsin Unemployment Insurance Law. As a result, Catholic Charities Inc. continued to

be an employer subject to the provisions of the Wisconsin Unemployment Insurance Law as set forth in the initial determination dated May 11, 2017. Catholic Charities Inc. filed a timely appeal.

Based on the applicable records and evidence in this case, the appeal tribunal makes the following

**FINDINGS OF FACT and CONCLUSIONS
OF LAW**

Catholic Charities Inc., hereinafter appellant, is a non-profit organization that is a social service branch for the Roman Catholic Church in the Diocese of Superior, Wisconsin. The appellant is controlled by the Bishop of the Diocese, the Vicar and Executive Director (the first two positions can only be filled by Catholic Priests). The appellant's executive director is a lay person that can only be appointed by the Bishop, and the executive director oversees the Board of Directors. The Board and executive director report to the Bishop of the Diocese of Superior and ultimately to Archbishop Jerome ListECKI. It is within the Archbishop and Bishop's purview to determine whether the operations of the appellant comply with the religious social teachings of the Catholic Church, and such, whether such organization continues to operate.

The appellant operates and supervises charitable programs in geographic areas where such services are not provided and/or there is an unmet need for services, which is consistent with the appellant's mission. The various charitable programs overseen by the appellant, provide services specifically for individuals with developmental disabilities, the elderly, children, and those who are economically

disadvantaged. The appellant oversees programs that provide in-home health care, senior programs, housing for seniors and the disabled, daycare, and services for the disabled.

The appellant's mission is derived from the Catholic Church's catechism and doctrine which requires that the church and its members to provide such social services to those in need regardless of their religion or beliefs. Board of Directors meetings are opened with a prayer and are held to ensure that the program's operations comply with the mission set forth in the *Catechism of the Catholic Church*. The *Catechism of the Catholic Church* identifies the Ten Principles of Catholic Social Teaching, which are: Respect for human life; human dignity; association, participation; preferential protection for the poor and vulnerable; solidarity; stewardship; subsidiarity; human equality; and common good. These principles are incorporated in the appellant's Mission Statement, Code of Ethics, and Catholic Charities Bureau Statement of Philosophy which are displayed at every site where services are offered for all those participating in services to physically see. All the employees hired by the appellant are sent a letter that includes the Mission Statement and Code of Ethics, and the employee handbook also includes the Mission Statement. Consistent with the appellants adherence to Catholic doctrine, the employees and individuals who use the services provided by the charitable organizations overseen by the appellant, are not required to be Catholic and they are not required to participate in mass or any sort of religious activity.

The issue to be decided is whether the employees of the appellant may be excluded from coverage of the

Wisconsin Unemployment Insurance Law as set forth in the initial determination.

Wisconsin Stat. §108.02(15)(h) provides:

- (h) “Employment” as applied to work for a nonprofit organization, except as such organization duly elects otherwise with the department’s approval, does not include service:
1. In the employ of a church or convention or association of churches;
 2. In the employ of an organization operated primarily for religious purposes and operated, supervised, controlled, or principally supported by a church or convention or association of churches; or
 3. By a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order.

The department and appellant agree and stipulated to subsections 1 and 3. The remaining issue is whether the appellant is “operated primarily for religious purposes.” The department contended that it is not. That contention cannot be sustained.

The appellant cited to *Kendall v. Dir. of the Division of Employment Sec.*, 473 N.E.2d 196, (Mass.1985) a decision in which the Massachusetts Court found that a center for mentally challenged children which was operated by Catholic nuns was exempt from unemployment taxation because, although the children were not required to be Catholic and the services were not to teach or indoctrinate into

the religion, that the organization qualified because of its purpose to promote the welfare of disabled children. The tribunal finds this case akin to the present case and is aware that this issue has not been addressed in any Appellate Court in Wisconsin or published Circuit Court decision in Wisconsin. As such, the tribunal addresses the limited decisions that it is aware of regarding this issue from Wisconsin.

In *Challenge Center Inc. v. State of Wisconsin Labor and Industry Review Comm. et. al*, 2014CV000384 (Douglas County November 18, 2015), the court held that Challenge Center Inc., a non-profit charitable organization, which is a subentity of the appellant's, met the statutory definition of an organization operated "primarily for religious purposes." Although the decision is not published the tribunal cites to this circuit decision for persuasive value, as the facts are almost identical to that of the present case (a copy of the decision is attached).¹

¹ Wisconsin Statute §809.23 (3) CITATION OF UNPUBLISHED OPINIONS.

- (a) An unpublished opinion may not be cited in any court of this state as precedent or authority, except to support a claim of claim preclusion, issue preclusion, or the law of the case, and except as provided in par. (b).
- (b) In addition to the purposes specified in par. (a), an unpublished opinion issued on or after July 1, 2009, that is authored by a member of a three-judge panel or by a single judge under s. 752.31 (2) may be cited for its persuasive value. A per curiam opinion, memorandum opinion, summary disposition order, or other order is not an authored opinion for purposes of this subsection. Because an unpublished opinion cited for its persuasive value is not precedent, it is not binding on any court of

In the Challenge Center Inc. case, the court held that the organization, which provides services to individuals with developmental disabilities, was consistent with its mission to serve individuals with developmental disabilities, the elderly, children, and those who are economically disadvantaged in geographic areas where such services are not provided or there is an unmet need for such services. Moreover, the court held that the “proper test requires the Court to consider why the organization is operating (by using the words “for” and “purposes”), and whether it operates primarily for that purpose. The use of work “primarily” acknowledges that an organization can have more than one purpose.” See Challenge Center, Inc., v. State of Wisconsin Labor and Industry Review Commission et. al at p.7.

The appellant’s mission is to provide services to individuals with developmental disabilities, the elderly, children, and those who are economically disadvantaged in geographic areas where such services are not provided and/or there is an unmet need for services. This was the same mission of the Challenge Center, and the same mission set forth in turn Catholic social teaching.

In contrast, the department’s position is that emphasis should be on the “what” not the “why?” In making this argument the department has relied on the forms the appellant has filed with the State of

this state. A court need not distinguish or otherwise discuss an unpublished opinion and a party has no duty to research or cite it.

- (c) A party citing an unpublished opinion shall file and serve a copy of the opinion with the brief or other paper in which the opinion is cited.

Wisconsin and Internal Revenue Service (IRS). More specifically, the department has reviewed the *Report of Business Transfer form* that was completed by the appellant. Question #10 on the form asks, “What specific business activity was transferred?” The appellant wrote “Services to the Developmentally Disabled.” Similarly, the department reviewed the appellant’s Form 990 which was a form filed with Internal Revenue Service for their tax exemption status. Question # 1 of the form asked the appellant to provide a description of its mission. The appellant wrote “to alleviate human suffering by sponsoring direct service programs for the poor, the disadvantaged, the disabled, the elderly, and children with special needs.” Both of these brief responses were given for business purposes and not meant as an all-inclusive description of the appellant’s operations.

The department further argued that because the appellant has no religious programming and does not proselytize to its’ employees or those individuals who uses its services that it is not operated primarily for religious purposes. This argument is contrary to the tenants of the Catholic Church’s social ministry in that there is no distinction in services provided based on an employee’s or client’s religion. The appellant does not proselytize because of this tenant and contends that to be required to do so in order to meet the requirements of the department is an infringement on their freedom to practice their religion.

This tenant, the openness to serve individuals regardless of their religion was addressed in the case of *MHS, Inc.*, UI Dec. Hearing No. 8852, S (LIRC July 12, 1991). Both the department and appellant use this

case to support their opposing positions. The department's position is that in order to qualify for the exemption an organization needs to exclude people of a different religion or require participation in Catholic religious programming. This position runs afoul from the appellant's religious doctrine and mission. Furthermore, in its decision the Labor and Industry Review Commission ultimately focused on the mission of the high school which is to follow the Catholic tradition, not just the services provided, which is same analysis that should be applied in the present case.

Moreover, the department neglects the fact that the appellant's operations themselves are funded in a manner consistent with Catholic Doctrine which is another factor that supports the conclusion that the appellant operates primarily for religious purposes. The Bishop almost ceased the operation of Catholic Charities and that of its sub-entities when the affordable care act was passed because some of the appellants funding was derived from it and the act would have required the appellant to provide a health insurance plan that would cover abortion which goes against Catholic social teaching. The affordable care act ultimately provided for a religious exemption that the appellant used, but this example demonstrates that the appellant will not accept or cease its operations if, the funding source (state and federal grants) does not comport with Catholic social teachings.

Finally, the appellant argues that the services it provides are distinct from that of other service providers in the area because they focus on meeting an unmet need, and in doing so, this also satisfies the religious purpose exemption. That is, that the services

provided and why they are provided are one in the same because the clients benefiting are either elderly, children, poor and/or disabled which is consistent with Catholic social teachings and the whole reason the appellant runs its operations. There is no distinction between the motive and services because they are essentially the same and therefore operated for “primarily religious purposes.” The tribunal sustains this argument.

The appeal tribunal therefore finds that the appellant is a non-profit organization operated, supervised, controlled or principally supported by a church or convention or association of churches operated primarily religious purposes, within the meaning of Wis. Stat. § 108.02(15)(h)(2).

DECISION

The department’s determination is reversed. Accordingly, Catholic Charities Inc. is not subject to the requirements of the Wisconsin Unemployment Insurance Law as of May 11, 2017 as set forth in the initial determination.

APPEAL TRIBUNAL

By: /s/ Heidi E. Galvan
Heidi E. Galvan
Administrative Law Judge

327a

APPEAL TRIBUNAL DECISION

State of Wisconsin
Department of Workforce Development
Unemployment Insurance

Milwaukee Hearing Office
818 N. 6th Street, Room 382
Milwaukee, WI 53203

* * *

Hearing No. S1700136MW

****FILE COPY****

In the matter of:

Employer: BLACK RIVER INDUSTRIES INC
APPELLANT

* * *

APPEAL RIGHTS

THIS DECISION WILL BECOME FINAL UNLESS A WRITTEN PETITION FOR REVIEW BY THE LABOR AND INDUSTRY REVIEW COMMISSION IS RECEIVED OR POSTMARKED WITHIN 21 DAYS FROM THE DATE OF THIS DECISION (SEE DATE BELOW). THE REQUIRED PROCEDURES TO FILE A PETITION FOR COMMISSION REVIEW ARE DESCRIBED ON THE BACK OF THIS PAGE. THE COMMISSION WILL REVIEW THE EVIDENCE ALREADY PRESENTED AT THE HEARING TO MAKE A

DECISION. NO FURTHER HEARING WILL BE HELD UNLESS THE COMMISSION SO ORDERS. **DECISION:** SEE ATTACHED DECISION WHICH REVERSES THE INITIAL DETERMINATION.

Appearances

Employer 1: Kyle Torvinen, Attorney

Employer 2:

Department: Christine Galinat, Attorney

Administrative Law Judge Heidi Galvan
Dated and Mailed May 15, 2018
Petition Must Be Received or Postmarked By June 5, 2018

* * *

Decision mailed to:

BLACK RIVER INDUSTRIES INC, 650 JENSEN DR,
MEDFORD, WI 54451-1665
KYLE H TORVINEN, TORVINEN, JONES, ROUTH,
TORVINEN &, SAUNDERS, SC, 823 BELKNAP
DEPT. ATTORNEY: CHRISTINE GALINAT, PO BOX
8942, MADISON, WI 53708

APPEAL TRIBUNAL DECISION INFORMATION

APPEAL RIGHTS:

The attached decision will become final unless a written petition for commission review (PCR) is **received or postmarked** within 21 days from the date of this decision (see “Petition Must Be Received or Postmarked By” date on the front of this decision). You may mail, fax, or deliver your PCR to the Labor and Industry Review Commission (LIRC). File on LIRC website at http://lirc.wisconsin.gov/ui_appeal.htm, by fax to (608) 267-4409, by mail to LIRC, P.O. Box 8126, Madison, WI 53708, or in person at the commission’s office at 3319 W. Beltline Highway, 2nd Floor, Madison, WI. PCR’s cannot be filed by email. If the petition is timely, the commission will review the evidence already presented at the hearing to make a decision. No further hearing will be held unless the commission so orders.

FAILURE TO APPEAR AT HEARING:

A party who failed to appear but who desires another opportunity for a hearing must, within 21 days after the date of this decision, show to the appeal tribunal a satisfactory explanation for such failure. The request for rescheduling must be in writing, must explain the reason for failing to appear, and should be mailed immediately to the UI hearing office listed on the front of this form. If you do not understand the procedure, call the UI hearing office for assistance.

REISSUED DECISION:

A reissued decision is issued and mailed when a previous decision was not mailed to the last-known

address of one of the parties. A reissued decision may be appealed (see appeal rights above).

WITHDRAWAL DECISION:

The appellant may submit a request to retract the withdrawal and to reinstate the prior request for hearing. This request must be in writing, must be received within 21 days from the date of the withdrawal decision, and must include the reasons for the retraction.

HEARING RECORDS:

You may request a copy of the hearing recording(s) from the Bureau of Legal Affairs by calling (608) 266-3174.

PAYMENT OF LIABILITY DUE:

Any taxes, interest, and penalties due as a result of this decision should be paid immediately. Make your check payable to DWD and mail it to the UI Division, P.O. Box 8914, Madison, WI 53708. If payment cannot be made in full, immediately call the Collections Section (608) 266-9700 to make other arrangements for payment.

If you have any questions as to the effect of this decision, you may contact the

THE DEPARTMENT'S DETERMINATION HELD: that the services of the employees of Black River Industries Inc. were not excludable under the provisions of the Wisconsin Unemployment Insurance Law. As a result, Black River Industries Inc. continued to be an employer subject to the provisions of the Wisconsin Unemployment Insurance Law as set

forth in the initial determination dated May 11, 2017. Black River Industries Inc. filed a timely appeal.

Based on the applicable records and evidence in this case, the appeal tribunal makes the following

**FINDINGS OF FACT and CONCLUSIONS
OF LAW**

Black River Industries Inc., hereinafter appellant, is a non-profit organization that is a social service branch for the Roman Catholic Church in the Diocese of Superior, Wisconsin. The appellant is controlled by the Bishop of the Diocese, the Vicar and Executive Director (the first two positions can only be filled by Catholic Priests). The appellant's executive director is a lay person that can only be appointed by the Bishop, and the executive director oversees the Board of Directors. The Board and executive director report to the Bishop of the Diocese of Superior and ultimately to Archbishop Jerome ListECKI. It is within the Archbishop and Bishop's purview to determine whether the operations of the appellant comply with the religious social teachings of the Catholic Church, and such, whether such organization continues to operate.

The appellant operates and supervises charitable programs in geographic areas where such services are not provided and/or there is an unmet need for services, which is consistent with the appellant's mission. The various charitable programs overseen by the appellant, provide services specifically for individuals with disabilities, such as, sheltered employment, supportive home care, vocational rehabilitation programs, daily living programs and transportation in Taylor County, Wisconsin. The

appellant is a sub-entity of Catholic Charities Bureau Inc.

The appellant's mission is derived from the Catholic Church's catechism and doctrine which requires that the church and its members to provide such social services to those in need regardless of their religion or beliefs. Board of Directors meetings are opened with a prayer and are held to ensure that the program's operations comply with the mission set forth in the *Catechism of the Catholic Church*. The *Catechism of the Catholic Church* identifies the Ten Principles of Catholic Social Teaching, which are: Respect for human life; human dignity; association, participation; preferential protection for the poor and vulnerable; solidarity; stewardship; subsidiarity; human equality; and common good. These principles are incorporated in the appellant's Mission Statement, Code of Ethics, and Catholic Charities Bureau Inc. Statement of Philosophy which are displayed at every site where services are offered for all those participating in services to physically see. All the employees hired by the appellant are sent a letter that includes the Mission Statement and Code of Ethics, and the employee handbook also includes the Mission Statement. Consistent with the appellants adherence to Catholic doctrine, the employees and individuals who use the services provided by the charitable organizations overseen by the appellant, are not required to be Catholic and they are not required to participate in mass or any sort of religious activity.

The issue to be decided is whether the employees of the appellant may be excluded from coverage of the

Wisconsin Unemployment Insurance Law as set forth in the initial determination.

Wisconsin Stat. §108.02(15)(h) provides:

- (h) “Employment” as applied to work for a nonprofit organization, except as such organization duly elects otherwise with the department’s approval, does not include service:
1. In the employ of a church or convention or association of churches;
 2. In the employ of an organization operated primarily for religious purposes and operated, supervised, controlled, or principally supported by a church or convention or association of churches; or
 3. By a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order.

The department and appellant agree and stipulated to subsections 1 and 3. The remaining issue is whether the appellant is “operated primarily for religious purposes.” The department contended that it is not. That contention cannot be sustained.

The appellant cited to *Kendall v. Dir. of the Division of Employment Sec.*, 473 N.E.2d 196, (Mass.1985) a decision in which the Massachusetts Court found that a center for mentally challenged children which was operated by Catholic nuns was exempt from unemployment taxation because, although the children were not required to be Catholic and the services were not to teach or indoctrinate into the religion, that the organization qualified because of

its purpose to promote the welfare of disabled children. The tribunal finds this case akin to the present case and is aware that this issue has not been addressed in any Appellate Court in Wisconsin or published Circuit Court decision in Wisconsin. As such, the tribunal addresses the limited decisions that it is aware of regarding this issue from Wisconsin.

In *Challenge Center Inc. v. State of Wisconsin Labor and Industry Review Comm. et. al*, 2014CV000384 (Douglas County November 18, 2015), the court held that Challenge Center Inc., a non-profit charitable organization, met the statutory definition of an organization operated “primarily for religious purposes.” Although the decision is not published the tribunal cites to this circuit decision for persuasive value, as the facts are almost identical to that of the present case (a copy of the decision is attached).¹

¹ Wisconsin Statute §809.23 (3) CITATION OF UNPUBLISHED OPINIONS.

- (a) An unpublished opinion may not be cited in any court of this state as precedent or authority, except to support a claim of claim preclusion, issue preclusion, or the law of the case, and except as provided in par. (b).
- (b) In addition to the purposes specified in par. (a), an unpublished opinion issued on or after July 1, 2009, that is authored by a member of a three-judge panel or by a single judge under s. 752.31 (2) may be cited for its persuasive value. A per curiam opinion, memorandum opinion, summary disposition order, or other order is not an authored opinion for purposes of this subsection. Because an unpublished opinion cited for its persuasive value is not precedent, it is not binding on any court of this state. A court need not distinguish or otherwise

In the *Challenge Center Inc.* case, the court held that the organization, which provides services to individuals with developmental disabilities, was consistent with its mission to serve individuals with developmental disabilities, the elderly, children, and those who are economically disadvantaged in geographic areas where such services are not provided or there is an unmet need for such services. Moreover, the court held that the “proper test requires the Court to consider why the organization is operating (by using the words “for” and “purposes”), and whether it operates primarily for that purpose. The use of work “primarily” acknowledges that an organization can have more than one purpose.” See *Challenge Center, Inc., v. State of Wisconsin Labor and Industry Review Commission et. al* at p.7.

The appellant’s mission is to provide services to individuals with disabilities in geographic areas where such services are not provided and/or there is an unmet need for services. This was the same mission of the Challenge Center, and the same mission set forth in tum Catholic social teaching.

In contrast, the department’s position is that emphasis should be on the “what” not the “why?” In making this argument the department has relied on the forms the appellant has filed with the Internal Revenue Service (IRS). More specifically, the department has reviewed the appellant’s Form 990

discuss an unpublished opinion and a party has no duty to research or cite it.

- (c) A party citing an unpublished opinion shall file and serve a copy of the opinion with the brief or other paper in which the opinion is cited.

which was a form filed with Internal Revenue Service for their tax exemption status. Question #1 of the form asked the appellant to provide a description of its mission. The appellant wrote “In partnership with the community to provide people with disabilities opportunities to achieve the highest level of independence.” This brief response was given for business purposes and not meant as an all-inclusive description of the appellant’s operations.

The department further argued that because the appellant has no religious programming and does not proselytize to its’ employees or those individuals who uses its services that it is not operated primarily for religious purposes. This argument is contrary to the tenants of the Catholic Church’s social ministry in that there is no distinction in services provided based on an employee’s or client’s religion. The appellant does not proselytize because of this tenant and contends that to be required to do so in order to meet the requirements of the department is an infringement on their freedom to practice their religion.

This tenant, the openness to serve individuals regardless of their religion was addressed in the case of *MHS, Inc.*, UI Dec. Hearing No. 8852, S (LIRC July 12, 1991). Both the department and appellant use this case to support their opposing positions. The department’s position is that in order to qualify for the exemption an organization needs to exclude people of a different religion or require participation in Catholic religious programming. This position runs afoul from the appellant’s religious doctrine and mission. Furthermore, in its decision the Labor and Industry Review Commission ultimately focused on the mission

of the high school which is to follow Catholic tradition, not just the services provided, which is same analysis that should be applied in the present case.

Moreover, the department neglects the fact that the appellant's operations themselves are funded in a manner consistent with Catholic Doctrine which is another factor that supports the conclusion that the appellant operates primarily for religious purposes. The Bishop almost ceased the operation of Catholic Charities and that of its sub-entities when the affordable care act was passed because some of the appellants funding was derived from it and the act would have required the appellant to provide a health insurance plan that would cover abortion which goes against Catholic social teaching. The affordable care act ultimately provided for a religious exemption that the appellant used, but this example demonstrates that the appellant will not accept or cease its operations if, the funding source (state and federal grants) does not comport with Catholic social teachings.

Finally, the appellant argues that the services it provides are distinct from that of other service providers in the area because they focus on meeting an unmet need, and in doing so, this also satisfies the religious purpose exemption. That is, that the services provided and why they are provided are one in the same because the clients benefiting are disabled which is consistent with Catholic social teachings and the whole reason the appellant runs its operations. There is no distinction between the motive and services because they are essentially the same and therefore operated for "primarily religious purposes." The tribunal sustains this argument.

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The appeal tribunal therefore finds that the appellant is a non-profit organization operated, supervised, controlled or principally supported by a church or convention or association of churches operated primarily religious purposes, within the meaning of Wis. Stat. § 108.02(15)(h)(2).

DECISION

The department's determination is reversed. Accordingly, Black River Industries Inc. is not subject to the requirements of the Wisconsin Unemployment Insurance Law as of May 11, 2017 as set forth in the initial determination.

APPEAL TRIBUNAL

By: /s/ Heidi E. Galvan
Heidi E. Galvan
Administrative Law Judge

339a

APPEAL TRIBUNAL DECISION

State of Wisconsin

Department of Workforce Development

Unemployment Insurance

Milwaukee Hearing Office
818 N. 6th Street, Room 382
Milwaukee, WI 53203

* * *

Hearing No. S1700137MW

****FILE COPY****

In the matter of:

Employer: BARRON COUNTY
DEVELOPMENTAL SERVICES,

APPELLANT

* * *

APPEAL RIGHTS

THIS DECISION WILL BECOME FINAL UNLESS A WRITTEN PETITION FOR REVIEW BY THE LABOR AND INDUSTRY REVIEW COMMISSION IS RECEIVED OR POSTMARKED WITHIN 21 DAYS FROM THE DATE OF THIS DECISION (SEE DATE BELOW). THE REQUIRED PROCEDURES TO FILE A PETITION FOR COMMISSION REVIEW ARE DESCRIBED ON THE BACK OF THIS PAGE. THE COMMISSION WILL REVIEW THE EVIDENCE ALREADY

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PRESENTED AT THE HEARING TO MAKE A
DECISION. NO FURTHER HEARING WILL BE
HELD UNLESS THE COMMISSION SO ORDERS.

DECISION: SEE ATTACHED DECISION WHICH
REVERSES THE INITIAL DETERMINATION.

Appearances

Employer 1: Kyle Torvinen, Attorney

Employer 2:

Department: Christine Galinat, Attorney

Administrative Law Judge Heidi Galvan
Dated and Mailed May 15, 2018
Petition Must Be Received or Postmarked By June 5, 2018

* * *

Decision mailed to:

BARRON COUNTY DEVELOPMENTAL SERVICES
INC, 175 N LAKE ST, BARRON, WI 54812-9042

KYLE H TORVINEN, TORVINEN, JONES, ROUTH,
TORVINEN &, SAUNDERS, SC, 823 BELKNAP

DEPT. ATTORNEY: CHRISTINE GALINAT, PO
BOX 8942, MADISON, WI 53708

APPEAL TRIBUNAL DECISION INFORMATION

APPEAL RIGHTS

The attached decision will become final unless a written petition for commission review (PCR) is **received or postmarked** within 21 days from the date of this decision (see “Petition Must Be Received or Postmarked By” date on the front of this decision). You may mail, fax, or deliver your PCR to the Labor and Industry Review Commission (LIRC). File on LIRC website at http://lirc.wisconsin.gov/ui_appeal.htm, by fax to (608) 267-4409, by mail to LIRC, P.O. Box 8126, Madison, WI 53708, or in person at the commission’s office at 3319 W. Beltline Highway, 2nd Floor, Madison, WI. PCR’s cannot be filed by email. If the petition is timely, the commission will review the evidence already presented at the hearing to make a decision. No further hearing will be held unless the commission so orders.

FAILURE TO APPEAR AT HEARING:

A party who failed to appear but who desires another opportunity for a hearing must, within 21 days after the date of this decision, show to the appeal tribunal a satisfactory explanation for such failure. The request for rescheduling must be in writing, must explain the reason for failing to appear, and should be mailed immediately to the UI hearing office listed on the front of this form. If you do not understand the procedure, call the UI hearing office for assistance.

REISSUED DECISION:

A reissued decision is issued and mailed when a previous decision was not mailed to the last-known

address of one of the parties. A reissued decision may be appealed (see appeal rights above).

WITHDRAWAL DECISION:

The appellant may submit a request to retract the withdrawal and to reinstate the prior request for hearing. This request must be in writing, must be received within 21 days from the date of the withdrawal decision, and must include the reasons for the retraction.

HEARING RECORDS:

You may request a copy of the hearing recording(s) from the Bureau of Legal Affairs by calling (608) 266-3174.

PAYMENT OF LIABILITY DUE:

Any taxes, interest, and penalties due as a result of this decision should be paid immediately. Make your check payable to DWD and mail it to the UI Division, P.O. Box 8914, Madison, WI 53708. If payment cannot be made in full, immediately call the Collections Section (608) 266-9700 to make other arrangements for payment.

If you have any questions as to the effect of this decision, you may contact the hearing office listed on the front of the decision.

THE DEPARTMENT'S DETERMINATION HELD: that the services of the employees of Barron County Development Services Inc. were not excludable under the provisions of the Wisconsin Unemployment Insurance Law. As a result, Barron County Development Services Inc. continued to be an employer subject to the provisions of the Wisconsin Unemployment Insurance Law as set forth in the

initial determination dated May 11, 2017. Barron County Development Services Inc. filed a timely appeal.

Based on the applicable records and evidence in this case, the appeal tribunal makes the following

**FINDINGS OF FACT and CONCLUSIONS
OF LAW**

Barron County Development Services Inc., hereinafter appellant, is a non-profit organization that is a social service branch for the Roman Catholic Church in the Diocese of Superior, Wisconsin. The appellant is controlled by the Bishop of the Diocese, the Vicar and Executive Director (the first two positions can only be filled by Catholic Priests). The appellant's executive director is a lay person that can only be appointed by the Bishop, and the executive director oversees the Board of Directors. The Board and executive director report to the Bishop of the Diocese of Superior and ultimately to Archbishop Jerome ListECKI. It is within the Archbishop and Bishop's purview to determine whether the operations of the appellant comply with the religious social teachings of the Catholic Church, and such, whether such organization continues to operate.

The appellant operates a charitable program that provides sheltered employment for developmentally disabled people in a rural area of northern Wisconsin where such services are not provided and/or there is an unmet need for services, which is consistent with the appellant's mission. The appellant is a sub-entity of Catholic Charities Bureau Inc. which oversees various charitable programs that provide services specifically for individuals with developmental

disabilities, the elderly, children, and those who are economically disadvantaged. The appellant oversees programs that provide training and employment to the developmentally disabled in a geographic area where there is very limited demand or services for such type of employees.

The appellant's mission is derived from the Catholic Church's catechism and doctrine which requires that the church and its members to provide such social services to those in need regardless of their religion or beliefs. Board of Directors meetings are opened with a prayer and are held to ensure that the program's operations comply with the mission set forth in the *Catechism of the Catholic Church*. The *Catechism of the Catholic Church* identifies the Ten Principles of Catholic Social Teaching, which are: Respect for human life; human dignity; association, participation; preferential protection for the poor and vulnerable; solidarity; stewardship; subsidiarity; human equality; and common good. These principles are incorporated in the appellant's Mission Statement, Code of Ethics, and Catholic Charities Bureau Inc. Statement of Philosophy which are displayed at every site where services are offered for all those participating in services to physically see. All the employees hired by the appellant are sent a letter that includes the Mission Statement and Code of Ethics, and the employee handbook also includes the Mission Statement. Consistent with the appellants adherence to Catholic doctrine, the employees and individuals who use the services provided by the charitable organizations overseen by the appellant, are not required to be Catholic and they are not required to participate in mass or any sort of religious activity.

The issue to be decided is whether the employees of the appellant may be excluded from coverage of the Wisconsin Unemployment Insurance Law as set forth in the initial determination.

Wisconsin Stat. §108.02(15)(h) provides:

- (i) “Employment” as applied to work for a nonprofit organization, except as such organization duly elects otherwise with the department’s approval, does not include service:
 1. In the employ of a church or convention or association of churches;
 2. In the employ of an organization operated primarily for religious purposes and operated, supervised, controlled, or principally supported by a church or convention or association of churches; or
 3. By a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order.

The department and appellant agree and stipulated to subsections 1 and 3. The remaining issue is whether the appellant is “operated primarily for religious purposes.” The department contended that it is not. That contention cannot be sustained.

The appellant cited to *Kendall v. Dir. of the Division of Employment Sec.*, 473 N.E.2d 196, (Mass.1985) a decision in which the Massachusetts Court found that a center for mentally challenged children which was operated by Catholic nuns was exempt from unemployment taxation because, although the children were not required to be Catholic and the services were not to teach or indoctrinate into

the religion, that the organization qualified because of its purpose to promote the welfare of disabled children. The tribunal finds this case akin to the present case and is aware that this issue has not been addressed in any Appellate Court in Wisconsin or published Circuit Court decision in Wisconsin. As such, the tribunal addresses the limited decisions that it is aware of regarding this issue from Wisconsin.

In *Challenge Center Inc. v. State of Wisconsin Labor and Industry Review Comm. et. al*, 2014CV000384 (Douglas County November 18, 2015), the court held that Challenge Center Inc., a non-profit charitable organization, which is another sub-entity overseen by Catholic Charities Bureau Inc., met the statutory definition of an organization operated “primarily for religious purposes.” Although the decision is not published the tribunal cites to this circuit decision for persuasive value, as the facts are almost identical to that of the present case (a copy of the decision is attached).¹

¹ Wisconsin Statute §809.23 (3) CITATION OF UNPUBLISHED OPINIONS.

- (a) An unpublished opinion may not be cited in any court of this state as precedent or authority, except to support a claim of claim preclusion, issue preclusion, or the law of the case, and except as provided in par. (b).
- (b) In addition to the purposes specified in par. (a), an unpublished opinion issued on or after July 1, 2009, that is authored by a member of a three-judge panel or by a single judge under s. 752.31 (2) may be cited for its persuasive value. A per curiam opinion, memorandum opinion, summary disposition order, or other order is not an authored opinion for purposes of this subsection. Because an unpublished opinion cited for its persuasive

In the *Challenge Center Inc.* case, the court held that the organization, which provides services to individuals with developmental disabilities, was consistent with its mission to serve individuals with developmental disabilities, the elderly, children, and those who are economically disadvantaged in geographic areas where such services are not provided or there is an unmet need for such services. Moreover, the court held that the “proper test requires the Court to consider why the organization is operating (by using the words “for” and “purposes”), and whether it operates primarily for that purpose. The use of work “primarily” acknowledges that an organization can have more than one purpose.” See *Challenge Center, Inc., v. State of Wisconsin Labor and Industry Review Commission et. al* at p.7.

The appellant’s mission is to provide services to individuals with developmental disabilities, in geographic areas where such services are not provided and/or there is an unmet need for services. This was the same mission of the Challenge Center, and the same mission set forth in turn Catholic social teaching.

In contrast, the department’s position is that emphasis should be on the “what” not the “why?” In making this argument the department has relied on the forms the appellant has filed with the State of

value is not precedent, it is not binding on any court of this state. A court need not distinguish or otherwise discuss an unpublished opinion and a party has no duty to research or cite it.

- (c) A party citing an unpublished opinion shall file and serve a copy of the opinion with the brief or other paper in which the opinion is cited.

Wisconsin and Internal Revenue Service (IRS). More specifically, the department has reviewed the *Report of Business Transfer form* that was completed by the appellant. Question #10 on the form asks, "What specific business activity was transferred?" The appellant wrote "sheltered employment for developmentally disabled people." Similarly, the department reviewed the appellant's Form 990 which was a form filed with Internal Revenue Service for their tax exemption status. Question #1 of the form asked the appellant to provide a description of its mission. The appellant wrote "Community rehabilitation program providing services to individuals with developmental disabilities. We focus on the development of vocational and social skills that allow a person to reach their highest potential within the community." Both of these brief responses were given for business purposes and not meant as an all-inclusive description of the appellant's operations.

The department further argued that because the appellant has no religious programming and does not proselytize to its' employees or those individuals who uses its services that it is not operated primarily for religious purposes. This argument is contrary to the tenants of the Catholic Church's social ministry in that there is no distinction in services provided based on an employee's or client's religion. The appellant does not proselytize because of this tenant and contends that to be required to do so in order to meet the requirements of the department is an infringement on their freedom to practice their religion.

This tenant, the openness to serve individuals regardless of their religion was addressed in the case

of *MHS. Inc.*, UI Dec. Hearing No. 8852, S (LIRC July 12, 1991). Both the department and appellant use this case to support their opposing positions. The department's position is that in order to qualify for the exemption an organization needs to exclude people of a different religion or require participation in Catholic religious programming. This position runs afoul from the appellant's religious doctrine and mission. Furthermore, in its decision the Labor and Industry Review Commission ultimately focused on the mission of the high school which is to follow the Catholic tradition, not just the services provided, which is same analysis that should be applied in the present case.

Moreover, the department neglects the fact that the appellant's operations themselves are funded in a manner consistent with Catholic Doctrine which is another factor that supports the conclusion that the appellant operates primarily for religious purposes. The Bishop almost ceased the operation of Catholic Charities and that of its sub-entities when the affordable care act was passed because some of the appellants funding was derived from it and the act would have required the appellant to provide a health insurance plan that would cover abortion which goes against Catholic social teaching. The affordable care act ultimately provided for a religious exemption that the appellant used, but this example demonstrates that the appellant will not accept or cease its operations if, the funding source (state and federal grants) does not comport with Catholic social teachings.

Finally, the appellant argues that the services it provides are distinct from that of other service providers in the area because they focus on meeting an

unmet need, and in doing so, this also satisfies the religious purpose exemption. That is, that the services provided and why they are provided are one in the same because the clients benefiting are disabled which is consistent with Catholic social teachings and the whole reason the appellant runs its operations. There is no distinction between the motive and services because they are essentially the same and therefore operated for “primarily religious purposes.” The tribunal sustains this argument.

The appeal tribunal therefore finds that the appellant is a non-profit organization operated, supervised, controlled or principally supported by a church or convention or association of churches operated primarily religious purposes, within the meaning of Wis. Stat. § 108.02(15)(h)(2).

DECISION

The department’s determination is reversed. Accordingly, Barron County Development Services Inc. is not subject to the requirements of the Wisconsin Unemployment Insurance Law as of May 11, 2017 as set forth in the initial determination.

APPEAL TRIBUNAL

By: /s/ Heidi E. Galvan
Heidi E. Galvan
Administrative Law Judge

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Department of Workforce Development
Unemployment Insurance Division
Employer Service Team
P.O. Box 7942
Madison, WI 53707-7942

Telephone: (608) 261-6700

Fax: (608) 267-1400

Email: taxnet@dwd.wisconsin.gov

Headwaters Inc.
% Kyle Torvinen
823 Belknap Street, Suite 222
Superior WI 54880

Mailing Date: May 25, 2017

Final Appeal Date: June 1, 2017

Account #: [REDACTED]

**Initial Determination
Unemployment Insurance Account Status**

This is a legally binding document. If you disagree with this determination, you may appeal. The procedure is on bottom of this letter. You must appeal on or before the final appeal date.

Your request to withdraw Headwaters Inc. from the Wisconsin State Unemployment Tax system is denied.

It has been previously established that this entity is a nonprofit organizations subject to the Wisconsin Unemployment Insurance law. Section 108.02 (13)(i) states in part, *An employer's coverage may be terminated whenever the employer ceased to exist, transferred its entire business, or would not otherwise*

be subject. Accordingly, a nonprofit employer who has not had four or more employees working for some portion of a day on at least twenty different calendar weeks during a calendar year is eligible to be closed. Based on the information on file this condition does not apply, therefore, the account must remain open.

In addition, Wis Stats 108.02 (15)(h)(2) has not been met. Two separate conditions must be satisfied; “operated, supervised, controlled or principally supported by a church or convention or association of churches” and “operated primarily for religious purposes.” It has been determined these organizations are supervised and controlled by the Roman Catholic Church, but it has *not* been established they are operated primarily for religious purposes. Therefore, this entity remains subject under Wisconsin’s Unemployment Insurance law Chapter 108.

If you have questions, please contact Pam Zlarnik at 608-267-4874 or email pam.zlarnik@dwd.wisconsin.gov.

Appeal Procedure

If you disagree with this decision, you must request a hearing. Your request must:

- Be made in writing
- Clearly state the reason for your objection
- Be received or postmarked on or before the final appeal date.

* * *

353a

Department of Workforce Development
Unemployment Insurance Division
Employer Service Team
P.O. Box 7942
Madison, WI 53707-7942

Telephone: (608) 261-6700
Fax: (608) 267-1400
Email: taxnet@dwd.wisconsin.gov

Headwaters Inc.
% Kyle Torvinen
823 Belknap Street, Suite 222
Superior WI 54880

Mailing Date: May 11, 2017
Final Appeal Date: June 1, 2017
Account #: [REDACTED]

**Initial Determination
Unemployment Insurance Account Status**

This is a legally binding document. If you disagree with this determination, you may appeal. The procedure is on bottom of this letter. You must appeal on or before the final appeal date.

Your request to withdraw Headwaters Inc. from the Wisconsin State Unemployment Tax system is denied.

It has been previously established that this entity is a nonprofit organizations subject to the Wisconsin Unemployment Insurance law. Section 108.02 (13)(i) states in part, *An employer's coverage may be terminated whenever the employer ceased to exist, transferred its entire business, or would not otherwise*

be subject. Accordingly, a nonprofit employer who has not had four or more employees working for some portion of a day on at least twenty different calendar weeks during a calendar year is eligible to be closed. Based on the information on file this condition does not apply, therefore, the account must remain open.

In addition, Wis Stats 108.02 (15)(h)(2) has not been met. Two separate conditions must be satisfied; “operated, supervised, controlled or principally supported by a church or convention or association of churches” and “operated primarily for religious purposes.” It has been determined these organizations are supervised and controlled by the Roman Catholic Church, but it has *not* been established they are operated primarily for religious purposes. Therefore, this entity remains subject under Wisconsin’s Unemployment Insurance law Chapter 108.

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Appeal Procedure

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* * *

355a

Department of Workforce Development
Unemployment Insurance Division
Employer Service Team
P.O. Box 7942
Madison, WI 53707-7942

Telephone: (608) 261-6700

Fax: (608) 267-1400

Email: taxnet@dwd.wisconsin.gov

Diversified Services Inc.
% Kyle Torvinen
823 Belknap Street, Suite 222
Superior WI 54880

Mailing Date: May 25, 2017

Final Appeal Date: June 1, 2017

Account #: [REDACTED]

**Initial Determination
Unemployment Insurance Account Status**

This is a legally binding document. If you disagree with this determination, you may appeal. The procedure is on bottom of this letter. You must appeal on or before the final appeal date.

Your request to withdraw Diversified Services Inc. from the Wisconsin State Unemployment Tax system is denied.

It has been previously established that this entity is a nonprofit organizations subject to the Wisconsin Unemployment Insurance law. Section 108.02 (13)(i) states in part, *An employer's coverage may be terminated whenever the employer ceased to exist,*

transferred its entire business, or would not otherwise be subject. Accordingly, a nonprofit employer who has not had four or more employees working for some portion of a day on at least twenty different calendar weeks during a calendar year is eligible to be closed. Based on the information on file this condition does not apply, therefore, the account must remain open.

In addition, Wis Stats 108.02 (15)(h)(2) has not been met. Two separate conditions must be satisfied; “operated, supervised, controlled or principally supported by a church or convention or association of churches” and “operated primarily for religious purposes.” It has been determined these organizations are supervised and controlled by the Roman Catholic Church, but it has not been established they are operated primarily for religious purposes. Therefore, this entity remains subject under Wisconsin’s Unemployment Insurance law Chapter 108.

If you have questions, please contact Pam Zlarnik at 608-267-4874 or email pam.zlarnik@dwd.wisconsin.gov.

Appeal Procedure

If you disagree with this decision, you must request a hearing. Your request must:

- Be made in writing
- Clearly state the reason for your objection
- Be received or postmarked on or before the final appeal date.

* * *

357a

Department of Workforce Development
Unemployment Insurance Division
Employer Service Team
P.O. Box 7942
Madison, WI 53707-7942

Telephone: (608) 261-6700
Fax: (608) 267-1400
Email: taxnet@dwd.wisconsin.gov

Diversified Services Inc.
% Kyle Torvinen
823 Belknap Street, Suite 222
Superior WI 54880

Mailing Date: May 11, 2017
Final Appeal Date: June 1, 2017
Account #: [REDACTED]

**Initial Determination
Unemployment Insurance Account Status**

This is a legally binding document. If you disagree with this determination, you may appeal. The procedure is on bottom of this letter. You must appeal on or before the final appeal date.

Your request to withdraw Diversified Services Inc. from the Wisconsin State Unemployment Tax system is denied.

It has been previously established that this entity is a nonprofit organizations subject to the Wisconsin Unemployment Insurance law. Section 108.02 (13)(i) states in part, *An employer's coverage may be terminated whenever the employer ceased to exist,*

transferred its entire business, or would not otherwise be subject. Accordingly, a nonprofit employer who has not had four or more employees working for some portion of a day on at least twenty different calendar weeks during a calendar year is eligible to be closed. Based on the information on file this condition does not apply, therefore, the account must remain open.

In addition, Wis Stats 108.02 (15)(h)(2) has not been met. Two separate conditions must be satisfied; “operated, supervised, controlled or principally supported by a church or convention or association of churches” and “operated primarily for religious purposes.” It has been determined these organizations are supervised and controlled by the Roman Catholic Church, but it has not been established they are operated primarily for religious purposes. Therefore, this entity remains subject under Wisconsin’s Unemployment Insurance law Chapter 108.

If you have questions, please contact Pam Zlarnik at 608-267-4874 or email pam.zlarnik@dwd.wisconsin.gov.

Appeal Procedure

If you disagree with this decision, you must request a hearing. Your request must:

- Be made in writing
- Clearly state the reason for your objection
- Be received or postmarked on or before the final appeal date.

* * *

359a

Department of Workforce Development
Unemployment Insurance Division
Employer Service Team
P.O. Box 7942
Madison, WI 53707-7942

Telephone: (608) 261-6700
Fax: (608) 267-1400
Email: taxnet@dwd.wisconsin.gov

Catholic Charities Bureau Inc.
% Kyle Torvinen
823 Belknap Street, Suite 222
Superior WI 54880

Mailing Date: May 24, 2017
Final Appeal Date: June 1, 2017
Account #: [REDACTED]

**Initial Determination
Unemployment Insurance Account Status**

This is a legally binding document. If you disagree with this determination, you may appeal. The procedure is on bottom of this letter. You must appeal on or before the final appeal date.

Your request to withdraw The Catholic Charities Bureau Inc. from the Wisconsin State Unemployment Tax system is denied.

It has been previously established that this entity is a nonprofit organizations subject to the Wisconsin Unemployment Insurance law. Section 108.02 (13)(I) states in part, *An employer's coverage may be terminated whenever the employer ceased to exist,*

transferred its entire business, or would not otherwise be subject. Accordingly, a nonprofit employer who has not had four or more employees working for some portion of a day on at least twenty different calendar weeks during a calendar year is eligible to be closed. Based on the information on file this condition does not apply, therefore, the account must remain open.

In addition, Wis Stats 108.02 (15)(h)(2) has not been met. Two separate conditions must be satisfied; “operated, supervised, controlled or principally supported by a church or convention or association of churches” and “operated primarily for religious purposes.” It has been determined these organizations are supervised and controlled by the Roman Catholic Church, but it has not been established they are operated primarily for religious purposes. Therefore, this entity remains subject under Wisconsin’s Unemployment Insurance law Chapter 108.

If you have questions, please contact Pam Zlarnik at 608-267-4874 or email Pam.Zlarnik@dwd.wisconsin.gov.

Appeal Procedure

If you disagree with this decision, you may request a hearing. Your request must:

- Be made in writing
- Clearly state the reason for your objection
- Be received or postmarked on or before the final appeal date.

* * *

361a

Department of Workforce Development
Unemployment Insurance Division
Employer Service Team
P.O. Box 7942
Madison, WI 53707-7942

Telephone: (608) 261-6700
Fax: (608) 267-1400
Email: taxnet@dwd.wisconsin.gov

Catholic Charities Bureau Inc.
% Kyle Torvinen
823 Belknap Street, Suite 222
Superior WI 54880

Mailing Date: May 11, 2017
Final Appeal Date: June 1, 2017
Account #: [REDACTED]

**Initial Determination
Unemployment Insurance Account Status**

This is a legally binding document. If you disagree with this determination, you may appeal. The procedure is on bottom of this letter. You must appeal on or before the final appeal date.

Your request to withdraw The Catholic Charities Bureau Inc. from the Wisconsin State Unemployment Tax system is denied.

It has been previously established that this entity is a nonprofit organizations subject to the Wisconsin Unemployment Insurance law. Section 108.02 (13)(i) states in part, *An employer's coverage may be terminated whenever the employer ceased to exist,*

transferred its entire business, or would not otherwise be subject. Accordingly, a nonprofit employer who has not had four or more employees working for some portion of a day on at least twenty different calendar weeks during a calendar year is eligible to be closed. Based on the information on file this condition does not apply, therefore, the account must remain open.

In addition, Wis Stats 108.02 (15)(h)(2) has not been met. Two separate conditions must be satisfied; “operated, supervised, controlled or principally supported by a church or convention or association of churches” and “operated primarily for religious purposes.” It has been determined these organizations are supervised and controlled by the Roman Catholic Church, but it has not been established they are operated primarily for religious purposes. Therefore, this entity remains subject under Wisconsin’s Unemployment Insurance law Chapter 108.

If you have questions, please contact Pam Zlarnik at 608-267-4874 or email Pam.Zlarnik@dwd.wisconsin.gov.

Appeal Procedure

If you disagree with this decision, you may request a hearing. Your request must:

- Be made in writing
- Clearly state the reason for your objection
- Be received or postmarked on or before the final appeal date.

* * *

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Department of Workforce Development
Unemployment Insurance Division
Employer Service Team
P.O. Box 7942
Madison, WI 53707-7942

Telephone: (608) 261-6700

Fax: (608) 267-1400

Email: taxnet@dwd.wisconsin.gov

Black River Industries Inc.
% Kyle Torvinen
823 Belknap Street, Suite 222
Superior WI 54880

Mailing Date: May 25, 2017

Final Appeal Date: June 1, 2017

Account #: [REDACTED]

**Initial Determination
Unemployment Insurance Account Status**

This is a legally binding document. If you disagree with this determination, you may appeal. The procedure is on bottom of this letter. You must appeal on or before the final appeal date.

Your request to withdraw Black River Industries Inc. from the Wisconsin State Unemployment Tax system is denied.

It has been previously established that this entity is a nonprofit organizations subject to the Wisconsin Unemployment Insurance law. Section 108.02 (13)(i) states in part, *An employer's coverage may be terminated whenever the employer ceased to exist,*

transferred its entire business, or would not otherwise be subject. Accordingly, a nonprofit employer who has not had four or more employees working for some portion of a day on at least twenty different calendar weeks during a calendar year is eligible to be closed. Based on the information on file this condition does not apply, therefore, the account must remain open.

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* * *

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Department of Workforce Development
Unemployment Insurance Division
Employer Service Team
P.O. Box 7942
Madison, WI 53707-7942

Telephone: (608) 261-6700
Fax: (608) 267-1400
Email: taxnet@dwd.wisconsin.gov

Black River Industries Inc.
% Kyle Torvinen
823 Belknap Street, Suite 222
Superior WI 54880

Mailing Date: May 11, 2017
Final Appeal Date: June 1, 2017
Account #: [REDACTED]

**Initial Determination
Unemployment Insurance Account Status**

This is a legally binding document. If you disagree with this determination, you may appeal. The procedure is on bottom of this letter. You must appeal on or before the final appeal date.

Your request to withdraw Black River Industries Inc. from the Wisconsin State Unemployment Tax system is denied.

It has been previously established that this entity is a nonprofit organizations subject to the Wisconsin Unemployment Insurance law. Section 108.02 (13)(i) states in part, *An employer's coverage may be terminated whenever the employer ceased to exist,*

transferred its entire business, or would not otherwise be subject. Accordingly, a nonprofit employer who has not had four or more employees working for some portion of a day on at least twenty different calendar weeks during a calendar year is eligible to be closed. Based on the information on file this condition does not apply, therefore, the account must remain open.

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- Be received or postmarked on or before the final appeal date.

* * *

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Department of Workforce Development
Unemployment Insurance Division
Employer Service Team
P.O. Box 7942
Madison, WI 53707-7942

Telephone: (608) 261-6700
Fax: (608) 267-1400
Email: taxnet@dwd.wisconsin.gov

Barron County Development Services Inc.
% Kyle Torvinen
823 Belknap Street, Suite 222
Superior WI 54880

Mailing Date: May 24, 2017
Final Appeal Date: June 1, 2017
Account #: [REDACTED]

**Initial Determination
Unemployment Insurance Account Status**

This is a legally binding document. If you disagree with this determination, you may appeal. The procedure is on bottom of this letter. You must appeal on or before the final appeal date.

Your request to withdraw Barron County Developmental Services Inc. from the Wisconsin State Unemployment Tax system is denied.

It has been previously established that this entity is a nonprofit organizations subject to the Wisconsin Unemployment Insurance law. Section 108.02 (13)(i) states in part, *An employer's coverage may be terminated whenever the employer ceased to exist,*

transferred its entire business, or would not otherwise be subject. Accordingly, a nonprofit employer who has not had four or more employees working for some portion of a day on at least twenty different calendar weeks during a calendar year is eligible to be closed. Based on the information on file this condition does not apply, therefore, the account must remain open.

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If you have questions, please contact Pam Zlarnik at 608-267-4874 or email pam.zlarnik@dwd.wisconsin.gov.

Appeal Procedure

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- Be made in writing
- Clearly state the reason for your objection
- Be received or postmarked on or before the final appeal date.

* * *

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Department of Workforce Development
Unemployment Insurance Division
Employer Service Team
P.O. Box 7942
Madison, WI 53707-7942

Telephone: (608) 261-6700
Fax: (608) 267-1400
Email: taxnet@dwd.wisconsin.gov

Barron County Development Services Inc.
% Kyle Torvinen
823 Belknap Street, Suite 222
Superior WI 54880

Mailing Date: May 11, 2017
Final Appeal Date: June 1, 2017
Account #: [REDACTED]

**Initial Determination
Unemployment Insurance Account Status**

This is a legally binding document. If you disagree with this determination, you may appeal. The procedure is on bottom of this letter. You must appeal on or before the final appeal date.

Your request to withdraw Barron County Developmental Services Inc. from the Wisconsin State Unemployment Tax system is denied.

It has been previously established that this entity is a nonprofit organizations subject to the Wisconsin Unemployment Insurance law. Section 108.02 (13)(i) states in part, *An employer's coverage may be terminated whenever the employer ceased to exist,*

transferred its entire business, or would not otherwise be subject. Accordingly, a nonprofit employer who has not had four or more employees working for some portion of a day on at least twenty different calendar weeks during a calendar year is eligible to be closed. Based on the information on file this condition does not apply, therefore, the account must remain open.

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If you have questions, please contact Pam Zlarnik at 608-267-4874 or email pam.zlarnik@dwd.wisconsin.gov.

Appeal Procedure

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- Be made in writing
- Clearly state the reason for your objection
- Be received or postmarked on or before the final appeal date.

* * *

**GUIDING PRINCIPLES OF GOVERNANCE
FOR THE SOCIAL MINISTRY OF CATHOLIC
CHARITIES BUREAU IN THE
DIOCESE OF SUPERIOR**

INTRODUCTION BY
JAMES P. POWERS, BISHOP
DIOCESE OF SUPERIOR

“We must regain the conviction that we need one another, that we have a shared responsibility for others... it is our responsibility to proclaim the message of Jesus, For the source of our Joy is an endless desire to show mercy.”

Pope Francis

In our American society today there is a continuing dialogue as to how our nation can best protect the dignity of each person and continue to address the needs of its most vulnerable citizens... the poor and the disadvantaged.

The U.S. Conference of Catholic Bishops stated in one of their pastoral letters, “Charity and justice are complimentary, independent and divinely inspired.” We know the Lord Jesus Christ who loves each one of us unconditionally in spite of our shortcomings is inviting us to carry some portion of our “brother’s burden” knowing that we will not be alone in this endeavor.

The Catholic Charities Bureau, as the social ministry arm of the Diocese of Superior, carries on its good work by providing programs and services that are based on gospel values and the principles of the Catholic Social Teachings, Catholic Charities Bureau has been a beacon of hope for individuals and families in

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need of our care and concern. It has provided, through its 63 programs of service located in 74 different diocesan communities, a helping hand to those facing the challenges of aging, the distress of a disability, the concerns of children with special needs, the stresses of families living in poverty and those in need of disaster relief.

As we reflect upon these accomplishments we are most grateful to our Lord Jesus Christ for our many friends and benefactors who have helped create hope for those who came to us for help in finding solutions in their lives.

/s/ James P. Powers

The Most Reverend James P. Powers
Bishop of Superior

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LETTER FROM CATHOLIC
CHARITIES BUREAU
EXECUTIVE DIRECTOR, ALAN ROCK

Dear Friends of Catholic Charities Bureau:

Catholic Charities Bureau celebrated its 100th year of service to the people of the Diocese of Superior in 2017. With the pastoral leadership of our Membership and with the vision and commitment of the Catholic Charities Bureau Board of Directors and the 80 volunteers who serve as board directors of our affiliated organizations, we look forward to expanding our services and extending the good work of our agencies to people in need in communities throughout the diocese. We believe that our daily work is a visible sign of the love of Christ for all his people.

This document, the Social Ministry of Catholic Charities Bureau, is a compilation of the guiding principles of the governance and administration of programs, services and volunteer organizations. The Social Ministry of Catholic Charities Bureau is based upon the Principles of Catholic Social Teaching, including the Principle of Subsidiarity, which holds that the work of our organization should be directed and guided by those people closest to the families in need, people with disabilities, elderly and children with special needs who require our assistance.

We believe that our work should be directed to achieving the Common Good, a principle of Catholic Social Teaching which we believe promotes an environment where each individual can achieve their highest potential. To achieve the Common Good, we strictly adhere to the Church's teachings regarding Respect

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for Human life, Human Equality, and the Stewardship of the resources entrusted to us.

To put our Mission and our goals into action, we have compiled this document as a guide to the organization, administration, and implementation of our programs and services which provide help and create hope for people in need who come to us for assistance. It is by operating our programs within an environment based on mutual respect, understanding and trust that we can truly assist these deserving people and establish the Common Good.

With Warmest Regards,

/s/ Alan Rock

Executive Director

TEN PRINCIPLES OF CATHOLIC
SOCIAL TEACHING

1. **The Principle of Respect for Human Life** - Every person, from the moment of conception to natural death, has inherent dignity and a right to live consistent with that dignity.

2. **The Principle of Human Dignity** - Every human being is created in the image of God and redeemed by Jesus Christ, and therefore is invaluable and worthy of respect as a member of the human family.

3. **The Principle of Association** - The Catholic tradition proclaims that the person is not only sacred but also special. How we organize our society in economics, politics, in law and policy directly affects human dignity and the capacity of individuals to grow in community.

4. **The Principle of Participation** - We believe people have a right and duty to participate in society, seeking together the common good and well-being of all, especially the poor and vulnerable.

5. **The Principle of Preferential Protection for the Poor and Vulnerable** - In a society marred by deepening divisions between rich and poor, our tradition recalls the story of the last judgment and instructs us to put the needs of the poor and vulnerable first.

6. **The Principle of Solidarity** - Catholic social teaching proclaims that we are our brothers' and sisters' keepers, wherever they live. We are one human family. Learning to practice the virtue of solidarity

means learning the “love our neighbor” has global dimensions in an independent world.

7. **The Principle of Stewardship** - The Catholic tradition insists that we show our respect for the Creator by our stewardship.

8. **The Principle of Subsidiarity** - This principle deals chiefly with the responsibilities and limits of government, and the essential roles of voluntary associations.

9. **The Principle of Human Equality** - Equality for all persons is essential to their dignity. While differences in talents are part of God’s plan, social and cultural discrimination in fundamental rights, are not compatible with God’s design.

10. **The Principle of Common Good** - The common good is understood as the social conditions that allow people to reach their full human potential and to realize their human dignity.

SEVEN THEMES OF CATHOLIC SOCIAL TEACHING

Life and Dignity of the Human Person

The Catholic Church proclaims that human life is sacred and that the dignity of the human person is the foundation of a moral vision for society. This belief is the foundation of all the principles of our social teaching. In our society human life is under direct attack from abortion and euthanasia. The value of human life is being threatened by cloning, embryonic stem cell research, and the use of the death penalty. The intentional targeting of civilians in war or terrorist attacks is always wrong. Catholic teaching also calls on us to work to avoid war. Nations must protect the right to life by finding increasingly effective ways to prevent conflicts and resolve them by peaceful means. We believe that every person is precious, that people are more important than things, and that the measure of every institution is whether it threatens or enhances the life, and dignity of the human person.

Call to Family, Community, and Participation

The person is not only sacred but also social. How we organize our society — in economics and politics, in law and policy — directly affects human dignity and the capacity of individuals to grow in community. Marriage and the family are the central social institutions that must be supported and strengthened, not undermined. We believe people have a right and a duty to participate in society, seeking together the common good and well-being of all, especially the poor and vulnerable.

Rights and Responsibilities

The Catholic tradition teaches that human dignity can be protected and a healthy community can be achieved only if human rights are protected and responsibilities are met. Therefore, every person has a fundamental right to life and a right to those things required for human decency. Corresponding to these rights are duties and responsibilities—to one another, to our families, and to the larger society.

Option for the Poor and Vulnerable

A basic moral test is how our most vulnerable members are faring. In a society marred by deepening divisions between rich and poor, our tradition recalls the story of the Last Judgment (Mt 25:31-46) and instructs us to put the needs of the poor and vulnerable first.

The Dignity of Work and the Rights of Workers

The economy must serve people, not the other way around. Work is more than a way to make a living, it is a form of continuing participation in God's creation. If the dignity of work is to be protected, then the basic rights of workers must be respected—the right to productive work, to decent and fair wages, to the organization and joining of unions, to private property, and to economic initiative.

Solidarity

We are one human family whatever our national, racial, ethnic, economic, and ideological differences. We are our brothers and sisters keepers, wherever they may be. Loving our neighbor has global dimensions in a shrinking world. At the core of the virtue of solidarity is the pursuit of justice and peace. Pope Paul

VI taught that if you want peace, work for justice. The Gospel calls us to be peacemakers. Our love for all our sisters and brothers demands that we promote peace in a world surrounded by violence and conflict.

Care for God's Creation

We show our respect for the Creator by our stewardship of creation. Care for the earth is not just an Earth Day slogan, it is a requirement of our faith. We are called to protect people and the planet, living our faith in relationship with all of Gods Creation This environmental challenge has fundamental moral and ethical dimensions that cannot be ignored.

MISSION STATEMENT
DIOCESE OF SUPERIOR

We, the people of the Catholic Diocese of Superior, believe we are called together by God to be the Church of Jesus Christ in the rural, forest, lake and urban regions of Northern Wisconsin. We are commissioned to go out to the whole world and to proclaim the Good News to all creation (Mark 16:15), witnessing to the divine presence and goodness through worship and ministry to one another and our local communities. Through the sacraments of initiation we are united into a Eucharistic community and are empowered by the Holy Spirit to carry on the redeeming work of Our Lord and Savior under the pastoral leadership of our diocesan bishop in communion with Christ's Vicar on earth.

Because of our constant need for conversion of heart, the renewal of self and our relationships, and growth in holiness, we devote ourselves to prayer and penance. We profess the dignity of each person as a creation of God capable of reflecting the divine image. We make this truth the foundation of our great respect and live for every individual as well as of our total dedication to justice and peace,

Our faith vision is for us to be good stewards of the gifts of personhood, race, culture and of all resources available to us as we build the Kingdom of God on earth.

We believe it to be our duty to discern and reflect upon the critical issues of our society and to utilize our gifts and resources to meet them. We are also to heal the wounds that divide people and to cooperate with all people of good will to alleviate human suffering.

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Finally, our intention is to translate our call and vision into goals, commitments and action.

Raphael M. Fliss

/s/ Raphael M. Fliss

Most Reverend Raphael M. Fliss

Bishop Emeritus

Diocese of Superior

November 23, 1986

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MISSION STATEMENT OF CATHOLIC
CHARITIES BUREAU
DIOCESE OF SUPERIOR

It is the mission of Catholic Charities under the pastoral leadership of our Diocesan Bishop:

To carry on the redeeming work of our Lord by reflecting gospel values and the moral teaching of the church.

To meet the critical needs and issues of our society through the use of our gifts and resources by mobilizing the Christian community in partnership with private and public enterprise.

To collaborate with all people of goodwill to alleviate human suffering by sponsoring direct service programs for the poor, the disadvantaged, the disabled, the elderly and children with special needs.

To create an environment of human dignity based on justice, mutual respect, understanding and trust. We profess the dignity of each person as a creation of God. This truth becomes the foundation of our great respect and love of each individual.

To translate our mission and vision into goals, commitments and action.

Adopted by Catholic Charities Bureau Membership
January 18, 1989

CATHOLIC CHARITIES BUREAU
STATEMENT OF PHILOSOPHY

Catholic Charities has since 1917 been providing services to the poor and disadvantaged as an expression of the social ministry of the Catholic Church in the Diocese of Superior.

Accordingly, the purpose of the Catholic Charities Bureau is to be an effective sign of the charity of Christ. To this end. Catholic Charities:

1. Provides services that are significant in quantity and quality.
2. Assures an Ecumenical orientation exists in that no distinctions are made by race, sex, or religion in reference to clients served, staff employed and board members appointed.
3. Avoids unnecessary duplication of services already adequately provided by governmental or public organizations and other private agencies. Our programs are intended to complement the efforts of others.

CODE OF ETHICS

This Code of Ethics was adopted by the Membership of Catholic Charities Bureau on January 16, 1991 and subsequently by the Boards of Directors and all agencies and programs of Catholic Charities Bureau. This Code of Ethics is displayed prominently in the program office of all affiliate agencies.

CODE OF ETHICS
CATHOLIC CHARITIES BUREAU, INC.
DIOCESE OF SUPERIOR

Preamble: The purpose of the Code of Ethics is to set forth expectations for Catholic Charities Bureau and its affiliate board members, volunteers, administrators and staff members regarding how we are to conduct our transactions with one another and the people we serve. Catholic Charities will in its activities and actions reflect gospel values and will be consistent with its mission and the mission of the Diocese of Superior.

Code I: We will support the sanctity and dignity of human life and recognize the central role of the family in our society. We will respect and protect the dignity of the individual.

Code II: We will give first consideration in the provision of our service to assist those members of the community who are most vulnerable and least able to help themselves.

Code III: We will practice the virtues of charity and justice in our relationships with one another and with the people we serve as well as in our dealings with the community at large.

Code IV: We will utilize our personal talents, training and experience for the benefit of enriching the lives of the people we serve.

Code V: We will respect and conform to civil law and its governance. We will also seek to peacefully change those civil practices that adversely affect the well-being of the people we serve.

Code VI: We will as faithful stewards assure organizational integrity by exercising prudent judgment in the utilization of the resources that are entrusted to us.

Code VII: We will engage in activities that promote the well-being of the organization and will not participate in actions that are intended to serve personal or private interests.

Code VIII: We will guarantee confidentiality as a living principle within the organization and establish policies and procedures to protect the interests of the people we serve, our governing boards and our personnel.

Code IX: We will expect all persons affiliated with Catholic Charities to conduct themselves in a professional manner that brings credibility to the organization.

Code X: We will collaborate with individuals, groups and other people of good will to achieve the fullest measure of charity and justice and strive to meet the highest standards of program excellence.

Adopted January 16, 1991

Catholic Charities Bureau Membership

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Internal Revenue Service
Department of the Treasury
P.O. Box 2508 Cincinnati, OH 45201

Date: June 2, 2017

United States Conference of Catholic Bishops
3211 4th Street. NE
Washington, DC 20017-1194

* * *

Dear Sir/Madam:

This responds to your June 2, 2017, request for information regarding the status of your group tax exemption.

Our records indicate that you were issued a determination letter in March 1946, that you are currently exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, and are not a private foundation within the meaning of section 509(a) of the Code because you are described in sections 509(a)(1) and 170(b)(1)(A)(i).

With your request, you provided a copy of the *Official Catholic Directory for 2017*, which includes the names and addresses of the agencies and instrumentalities and the educational, charitable, and religious Institutions operated by the Roman Catholic Church in the United States, its territories, and possessions that are subordinate organizations under your group tax exemption. Your request indicated that each subordinate organization is a non-profit organization, that no part of the net earnings thereof inures to the benefit of any individual and that no substantial part of their activities is for promotion of legislation. You have further represented that none of your subordinate

organizations is a private foundation under section 509(a), although all subordinates do not all share the same sub-classification under section 509(a). Based on your representations, the subordinate organizations in the *Official Catholic Directory for 2017* are recognized as exempt under section 501(c)(3) of the Code under [REDACTED]

Donors may deduct contributions to you and your subordinate organizations as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to them or for their use are deductible for federal estate and gifts tax purposes if they meet the applicable provisions of section 2055, 2106, and 2522 of the Code.

Subordinate organizations under a group exemption do not receive individual exemption letters. Most subordinate organizations are not separately listed in Publication 73 or the EO Business Master File. Donors may verify that a subordinate organization is included in your group exemption by consulting the *Official Catholic Directory*, the official subordinate listing approved by you, or by contacting you directly. IRS does not verify the inclusion of subordinate organizations under your group exemption. See IRS Publication 4573, *Group Exemption*, for additional information about group exemptions.

Each subordinate organization covered in a group exemption should have its own FIN. Each subordinate organization must use its own EIN, not the EIN of the central organization, in all filings with IRS.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

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Sincerely,

/s/ Stephen A. Martin

Stephen A. Martin

Director, Exempt Organizations

Rulings and Agreements

Office of the General Counsel

3211 FOURTH STREET, NE
WASHINGTON, DC 9.0017-1194
202-541'3300 FAX 209 341-3337

June 8, 2017

TO: Subordinate Organizations under USCCB Group Ruling [REDACTED]

SUBJECT: 2017 Group Ruling

FROM: Anthony Picarello, General Counsel
(Staff: Matthew Giuliano, Assistant General Counsel)

This memorandum relates to the annual Group Ruling determination letter issued to the United States Conference of Catholic Bishops (“USCCB”) by the Internal Revenue Service (“IRS”), the most recent of which is dated June 2, 2017. with respect to the federal tax status of subordinate organizations listed in the 2017 edition of the Official Catholic Directory (“OCD1”).¹ As explained in greater detail below, this 2017 Group Ruling determination letter is important for establishing;

- (1) exemption of subordinate organizations under the USCCB Group Ruling from federal income tax; and
- (2) deductibility of contributions to such organizations for federal income, gift, and estate tax purposes.

¹ A copy of the most recent Group Ruling determination letter and this memo may be found on the USCCB website at www.usccb.org/about/general-counsel/ under “Tax and Group Ruling.”

The 2017 Group Ruling determination letter is the latest in a series that began with the original determination letter of March 25, 1946. In the original 1946 letter, the Treasury Department affirmed the exemption from federal income tax of all Catholic institutions listed in the OCD for that year. Each year since 1946, in a separate letter, the 1946 ruling has been reaffirmed with respect to subordinate organizations listed in the current edition of the OCD.² The annual group ruling letter clarifies important tax consequences for Catholic institutions listed in the OCD, and should be retained for ready reference. Group Ruling letters from prior years establish tax consequences with respect to transactions occurring during those years.

Responsibilities under Group Ruling. Diocesan officials who compile OCD information for submission to the OCD publisher are responsible for the accuracy of such information. They must ensure that only qualified organizations are listed, that organizations are listed under their correct legal names, that organizations that cease to qualify are deleted promptly, and that newly-qualified organizations are listed as soon as possible.

EXPLANATION

1. Exemption from Federal Income Tax. The latest Group Ruling determination letter reaffirms that the agencies and instrumentalities and educational, charitable, and religious institutions operated, supervised

² Catholic organizations with independent IRS exemption determination letters are listed in the 2017 OCD with an asterisk (*), which indicates that such organizations are not included in the Group Ruling.

or controlled by or in connection with the Roman Catholic Church in the United States, its territories or possessions that appear in the 2017 OCD and are subordinate organizations under the Group Ruling are recognized as exempt from federal income tax and described in section 501(c)(3) of the Code. The Group Ruling determination letter does not cover organizations listed with asterisks or any foreign organizations listed in the 2017 OCD.

Verification of Exemption under Group Ruling. The latest Group Ruling determination letter indicates that most subordinate organizations under a group tax exemption are not separately listed in Exempt Organizations Select Check (“EO Select Check”) or the Exempt Organization Business Master File extract (“EO BMF”), both of which are available on www.irs.gov. As a result, many subordinate organizations included in the USCCB Group Ruling are not included in various online databases (e.g., GuideStar) that are derived from the EO BMF. This does not mean that subordinate organizations included in the Group Ruling are not tax exempt, that contributions to them are not deductible, or that they are not eligible for grant funding from corporations, private foundations, sponsors of donor-advised funds or other donors that rely on online databases for verification of tax-exempt status. It does mean that a Group Ruling subordinate may have to make an extra effort to document its eligibility to receive charitable contributions. The Group Ruling determination letter states that donors may verify that a subordinate organization is included in the Group Ruling by consulting the Official Catholic Directory or by contacting the USCCB directly. It also states that the IRS does not verify inclusion of subordinate organizations under the Group Ruling. Accordingly, neither

subordinate organizations nor donors should contact the IRS to verify inclusion under the Group Ruling.

Subordinate organizations should refer donors, including corporations, private foundations and sponsors of donor-advised funds, to the specific language in the Group Ruling determination letter regarding verification of tax-exempt status, and to IRS Publication 4573, *Group Exemptions*, available on the IRS website at www.irs.gov.³ Publication 4573 explains that: (1) the IRS does not determine which organizations are included in a group exemption; (2) subordinate organizations exempt under a group exemption do not receive their own IRS determination letters; (3) exemption under a group ruling is verified by reference to the official subordinate listing (e.g., the Official Catholic Directory); and (4) it is not necessary for an organization included in a group exemption to be listed in EO Select Check or the EO BMF. Although not required, organizations in the Group Ruling may be included in the EO BMF, and consequently, online databases derived from it.

2. Public Charity Status. The latest Group Ruling determination letter recognizes that subordinate organizations included in the 2017 OCD are public charities and not private foundations under section 509(a) of the Code, but that all subordinate organizations do not share the same public charity status under section 509(a). Therefore, although the USCCB is classified as a public charity under sections 509(a)(1) and

³ For an illustration of how exemption verification works, refer to Information for Donors and Grantmakers on the USCCB website at www.usccb.org/about/general-counsel/ under “Tax and Group Ruling.”

170(b)(1)(A)(i), that public charity status does not automatically extend to subordinate organizations covered under the Group Ruling.

Verification of Public Charity Status. Each subordinate organization in the Group Ruling must establish its own public charity status under section 509(a)(1), 509(a)(2) or 509(a)(3) as a condition to inclusion in the Group Ruling. Certain types of subordinate organizations included in the Group Ruling qualify as public charities by definition under the Code. These are:

- churches and conventions or associations of churches under sections 509(a)(1) and 170(b)(1)(A)(ii) (generally limited to dioceses, parishes and religious orders);
- elementary and secondary schools, colleges and universities under sections 509(a)(1) and 170(b)(1)(A)(ii); and
- hospitals under sections 509(a)(1) and 170(b)(1)(A)(iii).

Other subordinate organizations covered under the Group Ruling may qualify under the public support tests of either sections 509(a)(1) and 170(b)(1)(A)(vi) or section 509(a)(2). Verification of public charity classification under either of the support tests generally can be established by providing a written declaration of the applicable classification signed by an officer of the organization, along with a reasoned written opinion of counsel and a copy of Schedule A of Form 990/EZ, if applicable. Large institutional donors, such as private foundations and sponsors of donor-advised funds, may require this verification prior to making a contribution or grant to be assured that the grantee is not a Type III non-functionally integrated supporting

organization.⁴ A subordinate organization included in the Group Ruling may want to file Form 8940, Request for Miscellaneous Determination, with the IRS to request a determination whether it is a publicly supported charity described in sections 509(a)(1) and 170(b)(J)(A)(vi) or section 509(a)(2), or is a Type I or II supporting organization, in order to satisfy private foundations and sponsors of donor-advised funds regarding its public charity status.

3. Deductibility of Contributions. The latest Group Ruling determination letter assures donors that contributions to subordinate organizations listed in the 2017 OCD are deductible for federal income, gift, and estate tax purposes.

4. Unemployment Tax. As section 501(c)(3) organizations, subordinate organizations covered by the Group Ruling are exempt from federal unemployment tax. However, individual states may impose unemployment tax on subordinate organizations even though they are exempt from federal unemployment tax. Please consult a local tax advisor about any state unemployment tax questions.

5. Social Security Tax. All section 501(c)(3) organizations, including churches, are required to withhold and pay taxes under the Federal Insurance Contributions Act (FICA) for each employee.⁵ However, services performed by diocesan priests in the exercise of their ministry are not considered “employment” for FICA

⁴ See Notice 2014-4 2014-2 I.R.B (January 6, 2014).

⁵ Section 3121(w) of the Code permits certain church-related organizations to make an irrevocable election to avoid payment of FICA taxes, but only if such organizations are opposed for religious reasons to payment of social security taxes.

(Social Security) purposes.⁶ PICA should not be withheld from their salaries. *For Social Security purposes*, diocesan priests are subject to self-employment tax (“SECA”) on their salaries as well as on the value of meals and housing or housing allowances provided to them.⁷ Neither FICA nor income tax withholding is required on remuneration paid directly to religious institutes for members who are subject to vows of poverty and obedience and are employed by organizations included in the Official Catholic Directory.⁸

6. **Federal Excise Tax.** Inclusion in the Group Ruling has no effect on a subordinate organization’s liability for federal excise taxes. Exemption from these taxes is very limited. Please consult a local tax advisor about any excise tax questions,

7. **State/Local Taxes.** Inclusion in the Group Ruling does not automatically establish a subordinate organization’s exemption from state or local income, sales or property taxes. Typically, separate exemptions must be obtained from the appropriate state or local tax authorities in order to qualify for any applicable exemptions. Please consult a local tax advisor about any state or local tax exemption questions.

8. **Form 990/EZ/N.** All subordinate organizations included in the Group Ruling must file Form 990, Return of Organization Exempt from Income Tax, Form

⁶ I.R.C. § 3121(b)(8)(A).

⁷ I.R.C. § 1402(a)(8).

⁸ Rev. Rul. 77-290, 1977-2 C.B. 26. *See also* OGC/LRCR Memorandum on Compensation of Religious, www.usccb.org/about/general-counsel/compensation-of-religious.cfm (September 11, 2006).

990-EZ, Short Form Return of Organization Exempt From Income Tax, or Form 990-N, e-Postcard, *unless* they are eligible for a mandatory or discretionary exception to this filing requirement. ***There is no automatic exemption from the Form 990/EZIN filing requirement simply because an organization is included in the Group Ruling or listed in the OCD.*** Subordinate organizations must use their own ETN to file Form 990/EZJN. Do not use the BIN of the USCCB or an affiliated parish, diocese or other organization to file a return. Form 990/EZ/N is due by the 15th day of the fifth month after the close of an organization's fiscal year.⁹ The following organizations are not required to file Form 990/EZ/N: (i) churches and conventions or associations of churches; (ii) integrated auxiliaries;¹⁰ (iii) the exclusively religious activities of religious orders; and (iv) schools below college level affiliated with a church or operated by a religious order.¹¹ Organizations should exercise caution if they choose not to file a Form 990/EZ/N because they believe they are not required to do so. If IRS records indicate that the organization should file a Form 990/EZ/N each year (for example, the organization may appear on the auto-revocation list

⁹ The penalty for failure to file the Form 990/EZ is \$20 for each day the failure continues, up to a maximum of \$10,000 or 5 percent of the organization's gross receipts, whichever is less. However, organizations with annual gross receipts in excess of \$1 million are subject to penalties of \$100 per day, up to a maximum of \$50,000. I.R.C. § 6652(c)(1)(A). There is no monetary penalty for failing to file or filing late a Form 990-N.

¹⁰ I.R.C. § 6033(a)(4)(A)(i); Treas. Reg. § 1.6033-2(h).

¹¹ Treas. Reg. § 1.6033-2(g)(1)(vii).

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notwithstanding its claim to being exempt from the filing requirement.

Which form an organization is required to file usually depends on the organization's gross receipts or the fair market value of its assets.

Gross receipts or fair market value of assets	Return required
Gross receipts normally not more than \$50,000 (regardless of total assets)	990-N (but may file a Form 990 or 990-EZ)
Gross receipts < \$200,000, <i>and</i> Total assets < 500,000	990-EZ (but may file a Form 990)
Gross receipts ≥ \$200,000, <i>or</i> Total assets ≥ \$500,000	990

Special Rules for Section 509(a)(3) Supporting Organizations. Every supporting organization described in section 509(a)(3) included in the Group Ruling must file a Form 990 or Form 990-EZ (and not Form 990-N) each year, unless (i) the organization can establish that it is an integrated auxiliary of a church within the meaning of Treas. Reg. § 1.6033-2(h) (in which case the organization need not file Form 990/EZ *or* Form 990-N); or (ii) the organization's gross receipts are normally not more than \$5,000, in which case, the religious supporting organization may file Form 990-N in lieu of a Form 990 or Form 990-EZ.

Automatic Revocation for Failure to File a Required Form 990/EZ/N. Any organization that does not file a required Form 990/EZ/N for three consecutive years automatically loses its tax-exempt status under section 6033(j). If an organization loses its tax-exempt status under section 6033(j), it must file an application (Form 1023 or Form 1023-EZ) with the IRS to reinstate its tax-exempt status. See the IRS website (charities and non-profits) at www.irs.gov/Charities-&-Non-Profits/ for information on automatic revocation, including the current list of revoked organizations and guidance about reinstatement of exemption.

Public Disclosure and Inspection. Subordinate organizations required to file Form 990/EZ¹² must upon request make a copy of the form and its schedules (other than contributor lists) and attachments available for public inspection during regular business hours at the organization's principal office and at any regional or district offices having three or more employees. Form 990/EZ for a particular year must be made available for a three year period beginning with the due date of the return.¹³ In addition, any organization that files Form 990/EZ must comply with written or in-person requests for copies of form. The organization may impose no fees other than a reasonable fee to cover copying and mailing costs. If requested, copies of the forms for the past three years must be provided.

¹² Form 990-N is available for public inspection at no cost through the IRS website at www.irs.gov.

¹³ The penalty for failure to permit public inspection of the Form 990 is \$20 for each day during which such failure continues, up to a maximum of \$10,000. I.R.C. § 6652(c)(1)(C).

In-person requests must be satisfied on the same day. Written requests must be satisfied within 30 days.¹⁴

Public Disclosure of Form 990-T. Form 990-T, Exempt Organization Unrelated Business Income Tax Return. for organizations exempt under section 501(c)(3) (which includes all organizations in the USCCB Group Ruling) is subject to rules similar to those for public inspection and copying of Forms 990/EZ.¹⁵

Group Returns. USCCB does not file a group return Form 990 on behalf of any organizations in the Group Ruling. In addition, no subordinate organization under the Group Ruling is authorized to file a group return for its own affiliated group of organizations.

For more information, refer to *Annual Filing Requirements/or Catholic Organizations*, available at

¹⁴ I.R.C. § 6104(d). Generally, a copy of an organization's exemption application and supporting documents must also be provided on the same basis. However, since organizations included in the Group Ruling do not file exemption applications with the IRS, nor did the USCCB, organizations included in the Group Ruling should respond to requests for public inspection and written or in-person requests for copies by providing a copy of the page of the current OCD on which they are listed. If a covered organization does not have a copy of the current OCD, it has two weeks within which to make it available for inspection and to comply with in-person requests for copies. Written requests must be satisfied within the general time limits.

¹⁵ Only the Form 990-T itself, and any schedules, attachments, and supporting documents that relate to the imposition of tax on the unrelated business income of the organization, are required to be made available for public inspection.

www.usccb.org/about/general-counsel/ under “Tax and Group Ruling.”

9. Certification of Racial Nondiscrimination by Private Schools in Group Ruling. Revenue Procedure 75-50¹⁶ sets forth notice, publication, and recordkeeping requirements regarding racially nondiscriminatory policies with which private schools, including church-related schools, must comply as a condition of establishing and maintaining exempt status under section 501(c)(3) of the Code. Under Rev. Proc. 75-50 private schools are required to file an annual certification of racial nondiscrimination with the IRS. For private schools not required to file Form 990, the annual certification must be filed on Form 5578, Annual Certification of Racial Nondiscrimination for a Private School Exempt from Federal Income Tax. This form is available at www.irs.gov. Form 5578 must be filed by the 15th day of the fifth month following the close of the fiscal year. Form 5578 may be filed by an individual school or by the diocese on behalf of all schools operated under diocesan auspices. The requirements of Rev. Proc. 75-50 remain in effect and must be complied with by all schools listed in the OCD. ***Diocesan or school officials should ensure that the requirements of Rev. Proc. 75-50 are met since failure to do so could jeopardize the tax-exempt status of the school and, in the case of a school not legally separate from the church, the tax-exempt status of the church itself.*** For more information, refer to *Annual Filing Requirements for Catholic Organizations*, available at

¹⁶ 1975-2 C.B. 587.

www.usccb.org/about/general-counsel/ under “Tax and Group Ruling.”

10. Lobbying Activities. Subordinate organizations under the Group Ruling may lobby for changes in the law, provided such lobbying is not more than an insubstantial part of their total activities. Attempts to influence legislation both directly and through grassroots lobbying are subject to this restriction. The term “lobbying” includes activities in support of or in opposition to referenda, constitutional amendments, and similar ballot initiatives. There is no distinction between lobbying activity that is related to a subordinate organization’s exempt purposes and lobbying that is not. There is no fixed percentage that constitutes a safe harbor for “insubstantial” lobbying. Please consult a local tax advisor about any lobbying activity questions. For more information, refer to *Political Activity and Lobby Guidelines for Catholic Organizations*, available at www.usccb.org/about/general-counsel/ under “Tax and Group Ruling.”

11. Political Activities. ***Subordinate organizations under the Group Ruling may not participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office. Violation of the prohibition against political campaign intervention can jeopardize the organization’s tax-exempt status.*** In addition to revoking tax- exempt status, IRS may also impose excise taxes on an exempt organization and its managers on account of political expenditures. Where there has been a flagrant violation, the IRS has authority to seek an injunction against the exempt organization and immediate assessment of taxes due. Please consult a local tax advisor about any political

campaign intervention questions. For more information, refer to *Political Activity and Lobby Guidelines for Catholic Organizations*, available at www.usccb.org/about/general-counsel/ under “Tax and Group Ruling.”

12. Group Exemption Number (“GEN”). The group exemption number or GEN assigned to the USCCB Group Ruling is [REDACTED]. *This number must be included on each Form 990/EZ, Form 990-T, and Form 5578 required to be filed but a subordinate organization under the Group Ruling.*¹⁷ We advise against using [REDACTED] on Form SS-4, Request for Employer Identification Number, because in the past this has resulted in the IRS improperly including the USCCB as part of the subordinate organization’s name in IRS records.

13. Employer Identification Numbers (“EINs”). Each subordinate organization under the Group Ruling must have and use its own EIN. **Do not** use the EIN of the USCCB or an affiliated parish, diocese or other organization in any filings with IRS (*e.g.*, Forms 941, W-2, 1099, or 990/EZ) or other financial documents. Subordinate organizations may *not* use USCCB’s EIN in order to qualify for online donations, grants or matching gifts.

¹⁷ The IRS has expressed concern about organizations covered under the Group Ruling that fail to include the group exemption number [REDACTED] on their Form 990/EZ/T filings, particularly the initial filing.

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[B] HOMES FOR AGED

SUPERIOR. *St. Francis Home Inc.*, 1416 Cummings Ave., 54880. Tel: 715-394-6617; Fax: 715-394-5951. Alan Rock, Acting CEO.

MERRILL. Bell Tower Residence, Inc., 1500 O'Day St., Merrill, 54453. Tel: 715-536-5676; Fax: 715-536-1765; Email: secretary@belltowerresidence.org; Web: www.belltowerresidence.org. Kristina McGarigle. Admin. Assisted Living residences for the elderly. Boc Capacity 90; Tot Asst. Annually 85; Total in Residence 85; Total Staff 90.

WOODRUFF. Dr. Kate Newcomb Convalescent Center, Inc., P.O. Box 470. Woodruff, 54568-0470. Tel: 715-856-8000; Fax: 715-356-6097. Sandra L. Anderson, Pres. Sponsored by Ascension Health Ministries (Ascension Sponsor) Assisted living & low income housing apartments. Bed Capacity 15; Total Staff 20.

[C] CONVENTS AND RESIDENCES FOR SISTERS

HUDSON. Carmel of the Sacred Heart. 430 Laurel Ave., Hudson, 54016. Tel: 715-386-2156; Email: carmelite@presenter.com; Web: www.presenter.com/-carmelit/. Sr. Lucia LaMontagne, O. Carm., Prioress. Sisters 5.

LADYSMITH. Servants of Mary, 1000 College Ave. W., P.O. Box 389, Ladysmith 54848-0389. Tel: 920-698-1142. Ext. 906; Email: info@servitesisters.org; Web: www.servitesisters.org. Sr. Theresa Sandok, O.S.M., Pres. Sisters 40.

MERRILL. Sisters of Mercy of the Holy Cross, 1400 O'Day St., Merrill, 54452-3617. Tel: 715-539-1460; Email: provincialoffices@holycrosssisters.org; Web: www.holycrosssisters.org. Sr. Patricia E. Cormack, S.C.S.C., Prov. Sisters 27.

[D] CATHOLIC CHARITIES BUREAU

SUPERIOR. Catholic Charities Bureau, Inc., 1416 Cummings Ave., 54880. Tel: 715-394-6617; Fax: 715-394-5951. Web: ccbsuperior.org. Alan Rock, Exec. Dir.

Catholic Community Services, Inc., 1416 Cummings Ave., 54880. Tel: 715-394-6617; Fax: 715-394-5951. Alan Rock, Exec. Dir.

Challenge Center, Inc., 39 N. 25th St E ,54880. Tel: 715-394 -2771; Fax: 715-394-2100. Benjamin Wright, Dir.

Challenge Center A, Inc., 3105 Cummings Ave., 54880. Tel: 715-394-2771; Fax: 715-394-2100.

Cypress Group Home, 1415 Cypress, 54880. Tel: 715-394-2771. Fax: 715-394-2100. Benjamin Wright, Dir.

The Dove, Inc., 1416 Cumming Ave., 54880. Tel: 715-394-3133; Fax: 715-394-3190. Web: thedovesuperior.org. Greg Leiviska, Admin.

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The Dove Agency, Inc., 1416 Cumming Ave., 54880.
Tel: 715-394-3133; Fax: 715-394-3190. Web: the-
dovesuperior.org. Greg Leiviska, Admin.

Foster Grandparent Program (NW W), NE MN), 1416
Cumming Ave., 54880 Tel: 715-394-5384; Fax: 715-
394-6961. Kate Paine, Dir.

Harborview Group Home, 190 E 5th St., 54880. Tel:
715-394-2771. Fax: 715-394-2100. Benjamin
Wright, Dir.

McKenzie Manor, 3917 N. 21st St., 54880. Tel: 715-
394-2771. Fax: 715-394-2100. Benjamin Wright,
Dir.

Missouri Garden Adult Family Home, 2347 Missouri
Ave., 54880. Tel: 715-394-2771; Fax: 715- 394-
2100. Benjamin Wright, Dir.

Mountain Group Home, 3319 N. 16th St., 54880. Tel:
715-394-2771; Fax: 715-394-2100. Benjamin
Wright, Dir.

Phoenix Villa, Inc., 1100 Weeks Ave., 54880. Tel: 715-
394-2012; Fax: 715-394-5518. Amanda Cooksey,
Mgr.

Phoenix Villa, Inc., 1020 Weeks Ave., 54880. Tel: Tel:
715-394-2012; Fax: 715-394-5518. Amanda
Cooksey, Mgr.

Phoenix Villa Superior, Inc., 1112 John Ave., 54880.
Tel: Tel: 715-394-2012; Fax: 715-394-5518.
Amanda Cooksey, Mgr.

Retired Senior Volunteer Program, 1416 Cumming
Ave., 54880. Tel: 715-394-4125; Fax: 715-394-
6961. Kate Paine, Dir.

Westbay, Inc., 1104 John Ave., 54880. Tel: Tel: 715-394-2012; Fax: 715-394-5518. Amanda Cooksey, Mgr.

Woodview Family Home, 6001 E. Third St., 54880. Tel: 715-394-2771; Fax: 715-394-2100 Benjamin Wright, Dir.

AMERY. Apple River, Inc., 401 Minneapolis Ave, S., Amery, 54001. Tel: 715-925-2015; Fax: 715-925-2014. Mailing Address: 1416 Cumming Ave., 54880. Pamela Kohnen, Mgr.

CHETEK. Phoenix Villa, Inc., 707 Tainter St., Chetek, 54728. Tel: 715-925-2015; Fax: 715-925-2014. Mailing Address: 1416 Cumming Ave., 54880. Pamela Kohnen, Mgr.

CRANDON. Phoenix Villa Inc., 508 W. Washington, Crandon, 54520. Tel: 715-369-2130. Fax: 715-360-5957 Mailing Address: 1416 Cumming Ave., 54880. Amber Krouze, Mgr.

DULUTH. Northfield Apartments, Inc., 2713 W. Superior St., Duluth, MN. 55806. Tel: 715-394-2012; Fax: 715-394-6518. Mailing Address: 1416 Cumming Ave, 54880. Amanda Cooksey, Mgr.

HAYWARD. Phoenix Villa, Inc., 15869 Muriel St., Hayward, 54843. Tel. 715-236-2366. Fax: 715-236-3161. Mailing Address: 1416 Cumming Ave., 54880. Mark Adamak, Mgr.

HUDSON. United Day Care, Inc., 824 Fourth St., Hudson, 54016. Tel: 715-386-5912; Fax: 715-386-1467. Mailing Address: 1416 Cumming Ave., 54880. Judy Brekke, Dir.

IRON RIVER. Phoenix Villa, Inc., 68155 County Rd. H, Iron River, 54847. Tel: 715-394-2012; Fax: 715-

407a

394-5518. Mailing Address: 1416 Cumming Ave., 54880. Amanda Cooksey, Mgr.

LAKE NEBAGAMON. Phoenix Villa, Inc., 6850 S. Fitch Ave., Lake Nebagamon, 54849. Tel: 715-394-2012. Fax: 715-394-5618. Mailing Address: 1416 Cumming Ave., 54880. Amanda Cooksey, Mgr.

MEDFORD. Black River Industries, Inc., 650 Jensen Dr., Medford, 54451. Tel: 715-748-2950; Fax: 715-748-6363; Web: www.blackriverindustries.org Mailing Address: 1416 Cumming Ave., 54880. Amber Fallos, Dir.

Eastwood Apartments, Inc., 741-755 Del Rae Ct., Medford, 54451. Tel: 715-369-2550; Fax: 715-368-5857. Mailing Address: 1416 Cumming Ave., 54880. Bonnie Brunner, Mgr.

Phoenix Villa, Inc., 521 Lemke Ave., Medford, 54451. Tel: 715-369-6962; Fax: 715-369-5371. Mailing Address: 1416 Cumming Ave., 54880. Bonnie Brunner, Mgr.

MINONG. Phoenix Villa, Inc., 405 2nd St., Minong, 54859. Tel: 715-236-2366; Fax: 715-236-3161. Mailing Address: 1416 Cumming Ave., 54880, Mark Adamak, Mgr.

PLOVER. Phoenix Villa, Inc., 2601 Madison Ave., Plover, 54467. Tel: 715-341-7616; Fax: 715-712-0387. Mailing Address: 1416 Cumming Ave., 54880. Teri Obermeier, Mgr.

RHINELANDER. Headwaters, Inc., 1441 E. Timber Dr., P.O. Box 618, Rhinelander, 54501. Tel: 715-369-1337, Fax. 715-369-1793; Web: www.headwatersinc.org Mailing Address: 1416 Cumming Ave., 54880, Jenny Felty, Dir.

Phoenix Villa, Inc., 1011 Mason St., Rhinelander, 54501. Tel: 715-369-2550, Fax: 716-369-5857. Mailing Address: 1416 Cumming Ave., 54880. Amber Krouze, Mgr.

Phoenix Villa, Inc., 880 E. Timber Dr., Rhinelander, 54501. Tel: 715-369-2550. Fax: 715-369-5857. Mailing Address: 1416 Cumming Ave, 54880. Amber Krouze, Mgr.

Retired Senior Volunteer Program, 1835 N. Stevens St., Ste. 22. Rhinelander, 54501. Tel: 715-369-1919. Mailing Address: 1416 Cumming Ave., 54880
Lori Bushong, Dir.

Sumac Trail Apartments, Inc., 1313 Phillip St., Rhinelander, 54501. Tel: 715-369-2550; Fax: 715-369-5857. Mailing Address: 1416 Cumming Ave., 54880. Gary Valley, Amber Krouze, Mgr.

RICE LAKE. Rice Valley, Inc., 1310 N. Wisconsin Ave., Rice Lake, 54868. Tel. 715-236-2366; Fax: 715-236-3161. Mailing Address: 1416 Cumming Ave., 54880. Mark Adamak, Mgr.

Phoenix Villa, Inc., 1305 N. Wisconsin St., Rice Lake, 54868 Tel. 715-236-2366; Fax: 715-236-3161. Mailing Address: 1416 Cumming Ave., 54880. Mark Adamak, Mgr.

SHELL LAKE Phoenix Villa, Inc., 797 N. Lake Dr., Shell Lake, 54871. Tel: 715-236-2366; Fax: 715-236-3161. Mailing Address: 1416 Cumming Ave., 54880. Mark Adamak, Mgr.

SIREN. Diversified Services Center, Inc., 7649 Tower Rd., P.O. Box 501, Siren 54872. Tel: 715-349-5724; Fax: 715-349-5505; Web: www.dsisiren.com.

Mailing Address: 1416 Cumming Ave, 54880. Joe Wacek, Dir.

Lilac Grove Apartments, Inc., 24116 1st Ave., Siren, 54872. Tel: 715-325-2015; Fax: 716-925-2014; Email: pkohnen@ccbsuperior.org. Mailing Address: 1416 Cumming Ave, 54880. Pamela Kohnen, Mgr.

Phoenix Villa, Inc., 24121 Fourth St. , Siren, 54972. Tel: 715-325-2015. Fax: 715-925-2014. Mailing Address: 1416 Cumming Ave, 54880. Pamela Kohnen, Mgr.

WINTER. Winterhaven Apartments, Inc., 5038 N. Ellen St., Winter, 54896. Tel: 715-236-2366; Fax: 715-236-3161. Mailing Address: 1416 Cumming Ave, 54880. Mark Adamak, Mgr.

WISCONSIN RAPIDS. Phoenix Villa, Inc., 2721 Tenth St. S., Wisconsin Rapids, 54494. Tel: 716-421-0080; Fax: 715-712-0387. Mailing Address: 1416 Cumming Ave, 54880. Teri Obermeier, Mgr.

[E] RETREAT HOUSES

ARBOR VITAE. Marymount Franciscan Spirituality Center (FSPA) 3560 Hwy. 51 N., Arbor Vitae, 54568-9538. Tel: 715-385-3750; Email: marywood.center@gmail.com; Web: www.marywoodsc.org. Sr. Elizabeth Amman, O.P., Dir.

[F] NEWMAN CENTERS

SUPERIOR. Superior UW. 323 N. 16th St., 54880. Email: superiornewmancenter@gmail.com Newman Center Ministry to Young Adults.

RIVER FALLS. St. Thomas More Newman Center, 423 B. Cascade, River Falls, 64022. Tel: 715-425-7234. Fax: 715-425-6959; Email:

thomas.j.weiss@uwrlain; Web: uwrfnewman.org.
Deacon Thomas J. Weiss, Coord. For Newman Min.

[G] ASSOCIATION OF THE FAITHFUL

LUCK HERMITS OF MT. CARMEL, 913 250th Ave.,
Luck, 54869. Tel: 715-472-2570; Email: mount-
carmelhermitage@gmail.com. Sr. Kristine Hangan,
O.C.D.H., Coord.

[H] MISCELLANEOUS

SUPERIOR. St. Augustine Seminarian Foundation,
Inc., Mailing Address: P.O. Box 969, 54880.

Challenge Center Foundation Inc., 1416 Cumming
Ave., 54880. Society of St. Vincent de Paul Sacred
Heart of Jesus Conference of Superior, WI, 1416
Cumming Ave., 54880. Tel: 715-998-4019. Eliza-
beth Gaynor, Pres.

Superior Retired Priest Health Care Foundation, Inc.,
Mailing Address: P.O. Box 969, 54880.

LADYSMITH. Servants of Mary Continuing Care
Charitable Trust, 1000 College Ave. W., P.O. Box
389, Ladysmith, 54848-0389. Tel: 920-698-1142.
Ext. 906. Rev. Scott Wallenfelsz, S.D.S. Dir. & Con-
tact Person.

Mary Bradley Corporation, 1000 College Ave. W., P.O.
Box 989, Ladysmith, 54858-0389. Tel: 920- 898-
1148. Ext. 306. St. Theresa Sandok, O.S.M., Pres.

Servants of Mary Continuing Care Charitable Trust,
1000 College Ave., W., P.O. Box 389, Ladysmith,
54848-0389. Tel: 920-889-1142. Ext. 300; Email:
emueller@lakeosla.org. Rev. Scott Wallenfelsz,
S.D.S., OSM. Fin. Dir.

LUCK. Mount Carmel Hermitage, 913 250th Ave., Luck, 54853. Tel: 715-472-2670; Email: mount-carmelhermitage@gmail.com Sr. Kristina Haugen, O.C.D.H., Coord

MERRILL. Good Samaritan Health Center Foundation of Merrill, Wisconsin, Inc., A not for profit corporation for the purpose of soliciting and receiving contributions for the benefit of Good Samaritan Health Center of Merrill, WI, Inc. 601 S. Center Ave., Merrill, 54452. Tel: 715-638-5511; Fax: 715-539-2170. Jane Bentz, Pres. Corporate Sponsor: Ascension Health Ministries.

Sisters of Mercy of the Holy Cross Community Support Charitable Trust, 1400 O'Day St., Merrill, 54452-3417. Tel: 715-539-1350; Fax: 715-539-1458; Email: dniemann@holycrosssisters.org. Sisters Dorothy Niemann, S.C.S.C., Trustee, Ross Jochmann, O.S.F., Trustee; Craig Niemann, Trustee; John Tortoloni, Trustee; William Wolf, Trustee

RHINELANDER. Headwaters Foundation. 1441 E. Timber Dr., P.O. Box 618, Rhineland, 54501. Ministry Medical Group, Inc., 2251 N. Shore Dr., Rhineland, 54501. Tel: 715-361-4779; Fax: 715-361-4877; Email: Katherine.Richards-Bess@ministryhealth.org; Web:www.ministryhealth.org. Kathy Richards-Bess; Regl. Admin. Corporate Sponsor; Ministry Health Care, Inc., Milwaukee, WI.

Ministry Weight Mgmt., St. Mary's Hospital, 2251 N. Shore Dr., Rhineland, 54501. Tel: 715-361-2000; Fax: 715-361-2011. Sandra L. Anderson, Pres; Kay Anderson, Dir.

SPOONER. Maple Ridge Care Center, 510 First St., Spooner, 54801. Tel: 715-635-1415; Fax: 715-635-7498.

WEBSTER. Thomas More Center for Preaching and Prayer, Inc., 27781 Leaf Rd, Webster, 54893. Tel: 715-386-7436; Web: www.thomasmorecenter.org. Revs. Michael A. Champlin, O.P., Pres., Email: machamplin@gmail.com; Nicholas W. Punch, O.P., Treas; Sr. Joan Bukrey, O.S.F., Vice Pres.

WINTER. Camp WeHaKee Girls, 8104 N. Barker Lake Rd., Winter, 54896. Tel: 715-268-3269; Tel: 800-682-2287; Fax: 608-787-8207; Email: info@weha-keecampforgirls.com. Web: www.weha-keecampforgirls.com. Rob Braun, Co-Dir; Maggie Braun, Co-Dir.

WOODRUFF, Harvard Young Health Care, Inc., 240 Maple St., P.O. Box 470, Woodruff, 54568. Tel: 715-356-8000. Fax: 715-366-6098; Web: www.ministryhealth.org. Sandra L. Anderson, Pres. Ascension Health Ministries (Ascension Sponsor) Total Staff 14.

* * *

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Office of General Counsel
3211 Fourth Street NE – Washington DC 20017-1194
202-541-3300
Fax 202-541-3337

Date: July 17, 2015

**NOTICE OF ACCEPTANCE OF
GROUP RULING [REDACTED]**

To: Chancellor, (Arch) Diocese of Superior

Fax: _____

Attn: Debra J Lieberg

From: USCCB Office of General Counsel

This letter is to inform you that the following organization was accepted for inclusion in the United States Conference of Catholic Bishops (USCCB) Group Ruling [REDACTED]

Name: Barron County Developmental Services Inc.

EIN: [REDACTED] _____

In order for the organization to be included in the next edition of the Official Catholic Directory, in the section for the (Arch)Diocese listed above, you must submit a copy of this notice to the OCD. You should also send a copy to the organization for its records.

If you have questions, you may contact this office (by mail or FAX):

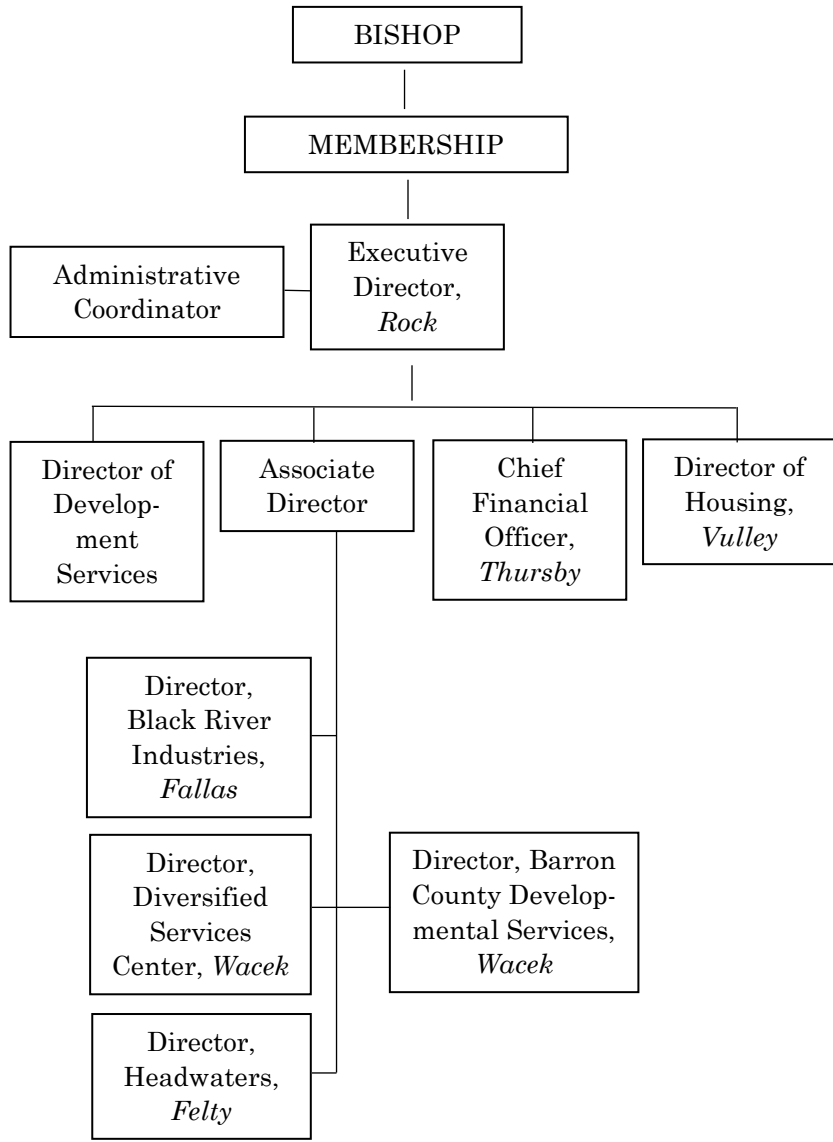
Office of General Counsel
United States Conference of Catholic Bishops
3211 4th Street NE
Washington, DC 20017
202-541-3337 (FAX)

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Note to (Arch)Diocese and/or organization
(if applicable):

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**CATHOLIC CHARITIES BUREAU, INC.
INTERNAL CHART OF ORGANIZATION**



**ROLE OF THE CATHOLIC CHARITIES
BUREAU MEMBERSHIP**

The governance of Catholic Charities Bureau, Inc. originates with the Membership of the corporation.

The Bishop of the Diocese of Superior appoints the Membership. The Membership and its officers are:

- The Bishop of the Diocese of Superior is the President
- The Vicar General/Judicial Vicar of the Diocese of Superior is the Vice President
- The Executive Director of Catholic Charities Bureau is the Secretary/Treasurer

The Bishop convenes the Membership at the Annual Meeting of Catholic Charities Bureau at a date set in the corporation Bylaws. At the Annual meeting, the Membership deliberates and formally approves the appointment or reappointment of the nominees to the Board of Directors. The Membership also reviews and approves the Annual Report of Catholic Charities Bureau at the Annual Meeting.

The Membership meets at the discretion of the Bishop of the Diocese of Superior. Traditionally, regularly scheduled meetings are conducted throughout the year with the Executive Director of Catholic Charities Bureau. At these meetings the Membership receives information regarding the operations of Catholic Charities. The Membership also reviews initiatives to extend and expand the social ministry of the Diocese of Superior.

Formally, the Membership assumes these responsibilities:

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1. To consult with the Bishop on the development or revision of the Catholic Charities Bureau Mission Statement, Philosophy of Service, and Code of Ethics.
2. To consult with the Bishop in the selection and appointment of members of the Board of Directors of Catholic Charities Bureau.
3. To delegate the on-going governance of the combined Catholic Charities Bureau organization to the Board of Directors.
4. To sanction the disposition of real property of the corporation.
5. To consult with the Bishop in the selection and appointment of the Executive Director of Catholic Charities Bureau.

Catholic Charities Bureau serves as an arm of the Church=s social ministry in the Diocese of Superior. The Membership provides essential oversight to insure the fulfillment of the mission of Catholic Charities Bureau in compliance with the Principles of Catholic Social Teaching.

**CATHOLIC CHARITIES BUREAU
PROGRAMS AND SERVICES**



Catholic Charities Bureau Membership

From Left to Right: Fr. James Tobolski, Vice President; Bishop James Powers, President; and Alan Rock, Secretary/Treasurer.



Catholic Charities Bureau 2017 Board of Directors

Left to Right: Sherry Mattson, Superior; Larry Wojchik, Chair, Clear Lake; Blurette Puchner, Webster; Terry Jacobson, Vice-Chair, Superior; John Huebscher, Madison; Barbara Wessberg, Superior; Renee Wachter, Superior; Dawn Staples, Superior; Jeff Cummings, Rhinelander; and Kyle Torvinen, Lake Nebagamon

**PROCESS TO NOMINATE CANDIDATES
TO THE BOARD OF CATHOLIC CHARITIES
BUREAU FOR THE APPROVAL OF
THE BISHOP**

The following statements delineate the process for nominating candidates for the Catholic Charities Bureau Board of Directors;

1. Each year the Chairperson will notify each Catholic Charities Bureau Board Agency Director of those directors whose terms of office are expiring, including those directors who will be completing their first term. Those completing their first term are eligible for re-nomination and re-appointment by the Bishop.
2. The Chairperson receives names of qualified candidates from Catholic Charities Bureau Board directors to recommend for consideration to the Catholic Charities Bureau Nominating Committee.
3. The Chairperson will ask each Board director to submit to the Catholic Charities Bureau Nominating Committee a brief biography of each candidate they recommend for consideration.
4. The Nominating Committee will review the qualifications of each candidate in reference to the current board directorship criteria and the present composition of the Board.
5. After careful review, the Nominating Committee will submit the names of the recommended candidates to the Bishop.

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6. The Bishop may also choose to accept nominations from the Membership of Catholic Charities Bureau.
7. The Membership elects new directors and re-elects directors nominated for a second term to the Board of Directors, as approved by the Bishop.
8. The Bishop, as President of Catholic Charities Bureau, will announce the newly appointed and/or re-appointed directors at the Annual Meeting in January of each year.

After the Nominating Committee has finalized its recommendations, the Board Chairperson or the Executive Director will contact finalist candidates regarding their availability and willingness to serve on the Board. When this process is completed, our final recommendations will be sent to the Bishop as President of the Membership. The Bishop will announce his selected appointments at the Annual Meeting.

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**ROLE OF
CATHOLIC CHARITIES BUREAU
EXECUTIVE DIRECTOR**

The Executive Director of Catholic Charities Bureau is appointed by the Bishop of the Diocese of Superior to assume the executive responsibilities of administering the agency operations in collaboration with the Catholic Charities Bureau Board of Directors. These responsibilities are determined by the Bishop of the Diocese of Superior and are more specifically delineated in the position description of the Executive Director.

**GUIDING PRINCIPLES OF
CORPORATE AFFILIATION
CATHOLIC CHARITIES BUREAU, INC.**

A clear understanding of the corporate relationship between Catholic Charities Bureau, Inc. and XXX Affiliate Agency XXX is necessary to effectively encourage teamwork and to mutually implement our shared mission. To encourage collaboration and coordination between Catholic Charities Bureau, Inc. and XXX Affiliate Agency XXX requires that we provide a clear delineation of the duties and responsibilities of the Board of Directors of each corporation. The following principles will provide the required structure to support the work of XXX Affiliate Agency XXX and for sustaining its operations.

1. Catholic Charities Bureau, Inc. will retain the following responsibilities:
 1. Appoint the Board of Directors of XXX Affiliate Agency XXX
 2. Remove Directors for cause
 3. Provide management services and consultation as deemed necessary by Catholic Charities Bureau, Inc.
 4. Approve amendments of Articles and Bylaws in writing as identified in the XXX Affiliate Agency XXX Bylaws.
 5. Establish and coordinate the mission of XXX Affiliate Agency XXX
 6. Approve all capital expenditures and sale of real property in excess of \$100,000 by XXX Affiliate Agency XXX
 7. Approve of the investment policy of XXX Affiliate Agency XXX

8. Assigned Administrator of XXX Affiliate Agency XXX as an employee of Catholic Charities Bureau, Inc.
 9. Establish the compensation plan for the assigned Administrator of XXX Affiliate Agency XXX
2. XXX Affiliate Agency XXX will retain the following responsibilities:
1. Set organizational goals and the plans to accomplish these goals.
 2. Assure program excellence.
 3. Accept the annual budget and audit.
 4. Establish the amount of discretionary signature authority for the assigned Administrator.
 5. Employ staff, and set policies affecting their employment.
 6. Set policies guiding program, personnel and board activities.
 7. Enter into contracts.
 8. Carry out fund raising activities.
 9. Pursue public relations initiatives which benefit the organization.
 10. Assure regulatory compliance.
 11. Secure/maintain buildings, vehicles and equipment.
 12. Work in close collaboration with the Administrator assigned by Catholic Charities Bureau.
3. The Executive Director of Catholic Charities Bureau, Inc. or his delegate will assume responsibility for the following:
1. Final determination in consultation with the XXX Affiliate Agency XXX Board of Directors for the recruitment, appointment and/or de-selection of the Administrator.

2. Serve as non-voting ex officio member of the XXX Affiliate Agency XXX Board of Directors.
 3. Provide the position description for the assigned Administrator.
 4. Provide ongoing supervision of die assigned Administrator.
 5. Complete performance evaluation of the assigned Administrator as needed.
 6. Facilitate the professional development of the assigned Administrator.
4. Remuneration of assigned administrator will be facilitated as follows:
 1. Salary, fringe benefits, and other compensation will be included in the budget of XXX Affiliate Agency XXX
 2. Salary will be included in the payroll of XXX Affiliate Agency XXX
 3. Fringe benefits will be provided according to the Catholic Charities Bureau, Inc. employee handbook.
 5. The Articles of Incorporation and Bylaws of XXX Affiliate Agency XXX are to be consistent with the provisions that exist in Catholic Charities Bureau, Inc. Articles and Bylaws. Therefore where possible, the same wording will be used to assure continuity in the content of the Articles/Bylaws of XXX Affiliate Agency XXX

All Board of Directors of the Catholic Charities Bureau, Inc. organization share in the ministry to those in need by providing service to all persons regardless of race, sex, economic status, or religion. Catholic Charities Bureau, Inc. and its various programs administer to the disadvantaged, children with special needs, people with disabilities, the elderly and to those

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least able to help themselves. This confirms the importance of the role Catholic Charities Bureau, Inc. and XXX Affiliate Agency XXX have in fulfilling the social ministry of the Diocese of Superior. XXX Affiliate Agency XXX will not engage in activities that violate Catholic Social Teachings.

Approved By:

The Most Reverend Peter F. Christensen Bishop

Diocese of Superior

President: Catholic Charities Bureau, Inc.

President: XXX Affiliate Agency XXX.

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CATHOLIC CHARITIES BUREAU, INC.

Phone (715) 394-6617

Fax (715) 394-3951

1416 Cumming Avenue

Superior, Wisconsin 54880

Diocese of Superior

Date

Name

Add

City, State, Zip

Dear :

I would like to take this opportunity to welcome you to our organization as a new employee of Catholic Charities Bureau. We are pleased you have decided to become associated with our agency, and we look forward to sharing a mutually beneficial relationship with you for many years to come.

With this letter, I am enclosing a copy of our Annual Report, our Mission Statement, our Statement of Philosophy, and our agency's Code of Ethics. While the goals and accomplishments of our organization change from year to year, the one thing that remains constant is we continue to strive to improve the quality of life for the people we serve, whether they are elderly, disabled, children with special needs, or families in poverty.

Catholic Charities has a tradition, going back to 1917, of reaching out to those in need with compassion and concern. We are quite proud of this tradition, and we believe it has played a major role in our growth and expansion over the years. In an effort to maintain this

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tradition, we adopted the enclosed Code of Ethics with the hope and expectation that you will utilize these standards in your professional endeavors. Your employment is an extension of Catholic Social Teachings and the Catechism of the Church.

We believe the enclosed materials are important in orienting you as a new employee to Catholic Charities Bureau. With these, you will be introduced to people whose quality of life is being dramatically improved because of the efforts of dedicated professionals like yourself. We hope you will enjoy this packet and I encourage you to share it with your friends and family.

It is my sincere pleasure to welcome you to Catholic Charities Bureau, and I trust that you will find your new association with our organization satisfactory in every way.

Sincerely,
Alan Rock
Executive Director

MISSION STATEMENT
CATHOLIC CHARITIES BUREAU, INC.
DIOCESE OF SUPERIOR

Under the pastoral leadership of our Diocesan Bishop, to carry on the redeeming work of our Lord by reflecting gospel values and the moral teaching of the Church.

To meet the critical needs and issues of our society through the use of our gifts and resources by mobilizing the Christian community in partnership with private and public enterprise.

To collaborate with all people of goodwill to alleviate human suffering by sponsoring direct service programs for the poor, the disadvantages, the disabled, the elderly and children with special needs.

To create an environment of human dignity based on justice, mutual respect, understanding and trust. We profess the dignity of each person as a creation of God. This truth becomes the foundation of our great respect and love of each individual.

To translate our mission and vision into goals, commitments and action.

*Adopted by Catholic Charities Bureau Membership
January 18, 1989*

CODE OF ETHICS
CATHOLIC CHARITIES BUREAU, INC.
DIOCESE OF SUPERIOR

Preamble:

The purpose of the Code of Ethics is to set forth expectations for Catholic Charities Bureau board members, volunteers, administrators and staff members regarding how we are to conduct our transactions with one another and the people we serve. Catholic Charities will in its activities and actions reflect gospel values and will be consistent with its mission and the mission of the Diocese of Superior.

Code I:

We will support the sanctity and dignity of human life and recognize the central role of the family in our society. We will respect and protect the dignity of the individual.

Code II:

We will give first consideration in the provision of our service to assist those members of community who are most vulnerable and least able to help themselves.

Code III:

We will practice the virtues of charity and justice in our relationships with one another and with the people we serve as well as in our dealings with the community at large.

Code IV:

We will utilize our personal talents, training and experience for the benefit of enriching the lives of the people we serve.

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Code V:

We will respect and conform to civil law and its governance. We will also seek to peacefully change those civil practices that adversely affect the well-being of the people we serve.

Code VI:

We will as faithful stewards assure organizational integrity by exercising prudent judgment in the utilization of the resources that are entrusted to us.

Code VII:

We will engage in activities that promote the well-being of the organization and avoid participation in actions that are intended to serve personal or private interests.

Code VIII:

We will guarantee confidentiality as a living principle within the organization and establish policies and procedures to protect the interests of the people we serve, our governing boards and our personnel.

Code IX:

We will expect all persons affiliated with Catholic Charities to conduct themselves in a professional manner that brings credibility to the organization.

Code X:

We will collaborate with individuals, groups and other people of good will to achieve the fullest measure of charity and justice and strive to meet the highest standards of program excellence.

*Adopted January 16, 1991
Catholic Charities Bureau Membership*

**CATHOLIC CHARITIES BUREAU
STATEMENT OF PHILOSOPHY**

Catholic Charities has since 1917 been providing services to the poor and disadvantaged as an expression of the social ministry of the Catholic Church in the Diocese of Superior.

Accordingly, the purpose of the Catholic Charities Bureau is to be an effective sign of the charity of Christ. To this end, Catholic Charities:

- Provides services that are significant in quantity and quality.
- Assures an Ecumenical orientation exists in that no distinctions are made by race, sex, or religion in reference to clients served, staff employed and board members appointed.
- Avoids unnecessary duplication of services already adequately provided by governmental or public organizations and other private agencies. Our programs are intended to complement the efforts of others.

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*Church Unemployment Pay Program (CUPP) –
12/1/08 Wisconsin Catholic Conference*

Filed 01-30-2020
Clerk of Court
Douglas County, WI
2019CV000324

Church Unemployment Pay Program (CUPP)

The Church Unemployment Pay Program (CUPP) was developed to assist Wisconsin parishes, schools, and other church employers meet their social justice responsibilities by providing church funded unemployment coverage for lay employees in the Archdiocese of Milwaukee and the Dioceses of La Crosse, Madison, and Superior. ** CUPP is governed by an Interdiocesan board through the Wisconsin Catholic Conference.

For more information, read the CUPP brochure, or contact the program coordinator, **UC Management Services:**

Church Unemployment Pay Program

Program Administrator
UC Management Services
P.O. Box 44635
Madison, WI 53744-4635
608-273-8300
1-800-728-4635
ucms@att.net

Download Benefit Claim Form

**The Diocese of Green Bay administers its own unemployment program.

* * *

**CHURCH UNEMPLOYMENT PAY PROGRAM
WISCONSIN CATHOLIC CONFERENCE**

* * *

INTRODUCTION

Pope John Paul II affirmed the need for justice in instances of unavoidable unemployment when he wrote:

“The obligation to provide unemployment benefits, that is to say, the duty to make the suitable grants indispensable for the subsistence of unemployed workers and their families, is a duty springing from the fundamental principle of the moral order in this sphere, namely the principle of the common use of goods, or, to put it another and still simpler way, the right to life and subsistence.”

(Laborem Exercens)

The Church Unemployment Pay Program (Program) was developed in 1986 at the direction of the bishops of Wisconsin to assist parishes, schools, and other church employers in meeting their social justice responsibilities by providing church funded unemployment coverage for lay employees in the Archdiocese of Milwaukee and the Diocese of LaCrosse, Madison and Superior.*

The Program provides employees with a temporary pay continuation plan during the period they seek new employment, if their job is terminated for certain unavoidable reasons. The benefit payments are drawn from a savings pool made up of contributions from the employers, and are later reimbursed by the employers

involved in specific claims. The Program includes policies covering employment termination situations and is governed by an Interdiocesan Board through the Wisconsin Catholic Conference (WCC).

*Assistance of the Diocese of Green Bay in development of this Program is gratefully acknowledged.

PROGRAM ADMINISTRATION

- Responsibility for the Program rests with a Policy Board (Board) consisting of one person from each participating diocese (appointed by the Bishop) and the WCC Executive Director.
- The Board determines general policies and criteria for the Program, and serves as the final-level appeal body for the benefit claims process.
- The Program Administrator (Administrator), contracted by WCC with the approval of the Board, is responsible for the day-to-day operation of all aspects of the Program and reports to the Board via the WCC Executive Director.
- UC Management Services serves as the Administrator. Brochures claim forms and appeal forms are available from:

UC MANAGEMENT SERVICES
P.O. Box 44635 • Madison, WI 53744-4635
(608) 273-8300 • (800) 728-4335
Fax (606) 273-8301

Questions regarding the Program should be directed to the Administrator.

ELIGIBLE EMPLOYERS

- Eligible employers are church/diocesan entities not under mandatory state Unemployment Insurance coverage, including parishes, schools, and diocesan offices/agencies.

COVERED EMPLOYEES

- All employees of participating employers (except priests, members of religious communities, and seasonal workers) are covered if, when they file a claim, they have had at least 20 weeks of work with the employer during the prior 52 weeks, averaging at least 20 hours of work per week.
- Each employer must inform all covered employees of their coverage under the Program via distribution of this designated Program brochure. In addition, the brochure should be posted on employee bulletin boards or other appropriate display areas.

BENEFIT ELIBILITY FACTORS

- Qualifying change in employment status:
 - Termination due to position elimination or employer closing or consolidation.
 - Termination or resignation requested by employer for inability to meet employer's performance standards.
 - Contract non-renewal by employer for reasons(s) other than misconduct or violation of terms of contract or conditions of hire.

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- Voluntary quit/resignation due to 15% or more reduction in gross wages.
- Termination or resignation from claimant's next job within the first 13 weeks of that job, if otherwise deemed eligible for benefits from original job.
- Weekly gross earnings less than weekly program benefit rate will not reduce the benefit rate if otherwise eligible.
- Available for and actively seeking work with at least a comparable number of hours.
- Physically able to work in qualified employment.
- Valid claim filed with the Administrator. Program benefits may be reduced or eliminated if the filing of the claim form with the Administrator is delayed through the employee's own fault.

DISQUALIFICATIONS

- Any week covered by the claimant's receipt of, or eligibility for, any type of offsetting payments such as:
 - Wages.
 - Terminal pay:
 - Vacation
 - Sick
 - Severance
 - Back pay.
- Disability pay.
- Workers Compensation.

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- Diocesan Pension/Retirement pay (Program weekly benefit rate reduced by 100% of employer contributions).
- State Unemployment Insurance (Program benefits reduced by 100% of State Unemployment Insurance benefits paid).
- Vacation periods.
- Between school terms for continuing employees.
- Voluntary or medical leave of absence.
- Negative or untimely response to contract renewal offer.
- Voluntary quit/resignation.
- Suspension for good cause – week of suspension plus 3 following weeks.
- Termination for misconduct or violation of terms of contract or conditions of hire.
- Refusal of valid job offer or job interview.
- Position is valid if it offers gross wages and hours at least equal to 85% of the previous gross wages. Employee benefits will not be considered in determining whether or not a position is valid.
- Receipt of a verbal or written offer of comparable school year employment for the following school year by a non-renewed school year employee.
- Acceptance of permanent employment with weekly gross wages greater than the claimant's Program weekly benefit rate.
- Program benefits will be suspended for any week in which gross wages from recognized temporary or part-time employment exceed the Program weekly

benefit rate. The suspended benefit may be possibly drawn later in the benefit year.

BENEFIT DETERMINATIONS

Benefit Amount

- Program weekly benefit rate: 50% of the employee's average weekly gross wages from the employer during the 52 weeks prior to filing claim.
- Program maximum weekly benefit rate: same as the Wisconsin Unemployment insurance maximum weekly benefit amount.
- Partial benefits are not payable under Program, except when diocesan pension retirement pay or state UI benefit offset amount is less than Program weekly benefit amount.

Benefit Duration

- Number of weeks of Program benefit 8075 of the weeks worked for the employer during the 52 weeks prior to filing claim.
- Maximum number of weeks of Program benefits: 26. No extended benefit weeks are available.
- Benefit year: the 52 week period after a valid Program claim is established. Any potential Program benefits must be drawn during the benefit year.
- Program benefit eligibility begins the calendar week during which a valid claim is received by the Administrator or the calendar week covering the last day covered by employer payments (except school year payouts), whichever is later.

- If an ex-employee is otherwise eligible for Program benefits, eligibility will begin the week following the last day covered by employer payments (except school year payouts) if employer had previously failed to provide employees the Program brochure.

CLAIMS PROCESS

- Claim forms and appeal forms may be available from the employer and any available from the Administrator.
- Claimant must submit a completed Benefit Claim Form to the Administrator within one year of the last week covered by appropriate employer payments unless claimant has not been informed of Program existence.
- Salary payments made to school year employees during the summer months beyond the normal school year term are considered to be payments due the employees for work performed during the school year. Potential Program benefit eligibility would, therefore, begin the week after the end of the normal school year. Program claims by non-renewed employees may be filed during or before that week, rather than when the salary payout period ends.
- Prior to drawing any Program benefits, claimant must apply for any other types of payments (such as disability, workers compensation, state unemployment insurance, etc.) for which the claimant may have potential eligibility. If claimant has

worked in employment covered by any state unemployment insurance law in the eighteen months prior to filing a Program claim, the claimant must file for such benefits. Copies of written determinations as to eligibility for any other payments per above may be required by the Administrator.

- Employer provides complete payroll and employment status information to the Administrator in a timely fashion via the toll-free telephone number when contacted upon the Administrator's receipt of claimant's claim form.
- Administrator makes a written initial determination of claimant eligibility and potential Program weekly benefit rate and duration.
- Determinations are based upon Program specifications and information obtained by the Administrator from both parties. For income tax purposes, Program benefits are treated as other income, NOT as state unemployment insurance benefits. Income taxes are not withheld.
- Determinations are mailed to both parties, the involved diocese and the WCC.
- Bi-weekly Program benefit payments begin one week after all appropriate payments from the employer are exhausted.
- When Program benefit checks are issued, a copy of each check is sent to the employer involved for audit purposes.

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- Unless one of the circumstances below apply, it is unnecessary for claimant to contact administrator each week.
- Claimant must provide immediate notice to the Administrator of any of the following:
 - All job interviews refused.
 - All job offers refused.
 - All verbal or written school year job offers received by school year employees, at the time the offer is extended to the employee.
 - All job offers accepted (full-time, part-time, permanent, or temporary).
 - All part-time or temporary weekly gross wages in excess of the claimant's Program weekly benefit rate.
 - Any unavailability for potential work due to illness, vacation, school classes, personal reasons, etc.
- Failure to provide the above notifications may result in suspension or termination of Program benefits and possible overpayments subject to immediate repayment to the Program. Legal actions will be instituted to recover any unpaid overpayments and associated fees.

APPEALS PROCESS

Appeal Committee Review

- Initial determination of the Administrator may be appealed by either party to a Program Board Appeal Committee Review. The appeal must be in

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writing on the appropriate Appeal Form submitted to the Administrator, specifying the reason for the appeal. The appeal must be received by the Administrator within 30 days of the issuance of the initial determination.

- A three-person Appeal Committee (Committee) of the Board will review the information utilized in arriving at the initial determination and will issue a written Determination within 30 days to both parties.
- The Committee may contact various involved parties in reaching its determination, depending upon the circumstances. Both the claimant and the employer may be requested to acknowledge documentation supplied to the Administrator during the initial investigation of the claim.
- The Committee consists of three members of the Board. It will normally include the WCC Executive Director, the Board member representing the diocese from which the claim is filed, and another Board member.

PROGRAM BOARD HEARING

- Either party may appeal the Appeal Committee Determination to the Board by submitting a written appeal on the appropriate Appeal Form to the Administrator specifying the reasons for the appeal. The appeal must be received by the Administrator within 30 days of the issuance of the Appeal Committee Determination.

- The Board has authority to determine whether there are sufficient grounds for any appeal. If an appeal is ruled valid, a hearing before the Board will be scheduled at an appropriate location or it may be scheduled via telephone.
- A simple majority of the board must be present to conduct a hearing. The Board member representing the diocese of the claimant's employer may be present at the hearing but will not be a voting participant in the hearing process. Should the Board Decision result in a tie vote, the previous Appeal Committee Decision will be upheld.
- Both parties are expected to testify under oath at the hearing and supply appropriate witnesses and documentation to provide a sufficient factual basis for a decision by the Board. Affidavits are not permitted. Witness(es) may be sequestered.
- Either party may be represented by counsel and may cross-examine witnesses. Any counsel fees or other expenses are the responsibility of the individual parties and are not reimbursable.
- The Administrator normally serves as the non-voting chairperson at the hearing.
- The goal of the chairperson is to provide an informal forum in which both parties will have the opportunity to present the facts of their case and receive a fair and equitable decision from the Board.
- In order to expeditiously and fairly obtain necessary information, the chairperson has the authority to determine hearing procedures, including the

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limitation of issues to be reviewed; the order of testimony and rebuttal; the relevance of any specific witness, testimony, or documentation; possible sequestering of witnesses; and time limitations that may be applied to case presentation.

- Hearings may be recorded only for the exclusive use of the Board in reaching its decision. The hearings are closed to the media and public.
- The written Board Decision will be issued within 30 days of the hearing and is final.

Wisconsin Catholic Conference

131 W. Wilson St., #1105 • Madison, WI 53703

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PLEASE PRINT OR TYPE
CHURCH UNEMPLOYMENT PAY PROGRAM

Social Security No. _____

Suffix _____

Name _____
first initial last

Address _____

Phone () _____

Employer _____

Contact _____

Street _____

City/Zip _____

Phone _____

Position Held _____

Program Brochure Received from The Employee?

No _____ Yes _____ Approx. Date _____

Number of regular scheduled hours worked weekly during the previous 52 weeks: _____

In how many different calendar weeks during the previous 52 weeks did you actually perform wage earning services for the employer? _____

What were the combined gross wages earned by you during the weeks reported above? Do NOT report any payments, such as vacation pay. \$ _____

What was the last day that you actually performed wage-earning services for the employer? _____

If you received any payments such as vacation, severance, sick, or holiday pay after your last day of work,

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please check here ____ and please provide details on the reverse side.

If you are currently eligible for or drawing disability pay, worker's compensation, state unemployment insurance, pension, retirement, social security, or any wages, give details:

Type: _____ Amount \$ _____ (weekly) Duration _____

In the past 18 months, if you have worked for any employer other than that listed above, please check here _____ and indicate the name and address of the employer(s) and your dates of employment on the reverse side.

If you have refused any job offers, please provide dates and details: _____

Change in employment status:

_____ Quit ___ Non-renewed _____ Terminated

_____ Laid off _____ Others

Reason _____

Did you receive a reduction in pay? ___ Yes ___ No

Reason _____

Previous pay \$ _____ New pay \$ _____

Additional information or details may be included below and on the reverse side. Check here: _____

In filing for unemployment pay benefits, I hereby certify that I am available and seeking work, with at least a comparable number of hours, that I am physically able to work in qualified employment, and that the

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above information is true and correct to the best of my
knowledge.

Signature _____ Date _____

Forward completed form to:

UC Management Services

Program Administrator

PO Box 44635

Madison, WI 5477-4635

Telephone Numbers:

(608) 273-8300

(800) 728-4635

Fax: (608) 273-8301

Email: ucms@att.net

CHURCH UNEMPLOYMENT PAY PROGRAM
 UC MANAGEMENT SERVICES
 Program Administrators
 PO Box 44635
 Madison, WI 53744

EMPLOYER PARTICIPANT POLICIES

Funding Level	\$320 per covered tax employee averaging at least 20 hours per week for 20 weeks \$2,000 minimum funding level (covers 6 or fewer covered employees)
Administration Fee	\$12 per covered employee per year
Minimum Fee Billing	\$400 or less total annual fiscal billing for funding and fee purposes to be billed once in third quarter
Covered Employee Report	Updated annually each December – listing by name only
Reimbursements for Benefits Paid	Payment will be billed and due by the end of the quarter after the quarter benefits paid
Benefits	Weekly benefit rate of non-school year employees calculated at 50% of

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	<p>average weekly gross pay during prior year</p> <p>Teacher benefit calculation – annual contract amount divided by 40 times 50%</p> <p>\$363 maximum rate; 26 weeks maximum</p> <p>Non-renewed school year employees eligible week after school ends even if salary payout is 10 or 12 months</p>
<p>Brochures</p>	<p>Program brochures must be distributed to all covered employees and all covered new hires</p> <p>Employees must be informed of the Program prior to any termination or non-renewal</p>

* * *

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December 5, 2003

Mr. Mike Mathis
Division of Unemployment Services
P.O. Box 8942
Madison, WI 53708
RE: UI ACCOUNT [REDACTED]

Dear Mr. Mathis:

We hereby request to withdraw from the Wisconsin Unemployment Insurance Program as of January 1, 2004. It is our intent to join the Church Unemployment Pay Program administered by U.C. Management Services.

Catholic Charities Bureau is a church-related entity and in our opinion meets the requirement under 108.02(15)(h)2 of the Wisconsin Statistics thereby making us eligible to withdraw from the State U.C. system.

Enclosed is a copy of our most recent group ruling issued by the IRS which exempts us from federal income tax and a copy of the page from the official Catholic Directory listing Catholic Charities as a covered entity in this ruling.

If you need further information or have questions, please contact me.

Sincerely,
/s/ William Anderson
William Anderson
Chief Executive Officer

* * *

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Department of Workforce Development
Unemployment Insurance
Bureau of Tax and Accounting
P.O. Box 7942
Madison, WI 63707-7942
Fax: (608) 267-1400
e-mail: dwdtaxnet@dwd.state.wi.us

* * *

CATHOLIC CHARITIES BUREAU INC.
1416 CUMMING AVE
SUPERIOR WI 54880-1720
UI Account #: XXXXXXXXXX

Initial Determination

It is determined that the services of the employees of Catholic Charities Bureau, Inc. are not excludable pursuant to sec. 108.02 1., 2., or 3., Wis. Stats., and that therefore Catholic Charities Bureau, Inc. continues to be an employer subject to Ch.108, Wis. Stats as of January 1, 2004.

As a non-profit employer, you may elect reimbursement financing instead of your current tax financing. Enclosed are forms regarding this. Although the filing deadline was 12-31-03 for election for 2004, we would be willing to accept your election for 2004 if you do so by February 20,2004. •

This finding constitutes an Initial Determination under Section 108.10 of the Wisconsin Unemployment Compensation Law. This determination will become final unless you file a written request for hearing with the undersigned deputy. Your written request must be received by the department or postmarked not later

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than 21 days after the date of this determination. If a request for hearing is filed, it should specify why you object to this determination.

Mailing Date: 01/30/04

Appeal Period Ends: 02/20/04

Rick holzbauer, Deputy

608/267-9441

FAX 608/267-1400

* * *

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MAKI, DURST, LEDIN & BICK, S.C.

Attorneys At Law
1109 Tower Avenue
Superior, Wisconsin 54880
Telephone (715) 394-4471
Fax (715) 394-3889

Forrest O. Maki
Steven J. Ledin
Stephen R. Bick*
Stephen J. Olson*
Karry A. Aspinwall
*Also admitted in Minnesota
IN MEMORIAM:
Michael F. Durst (1949-2003)

February 9, 2004

Mr. Rick Holzbauer, Deputy
State of Wisconsin
Department of Workforce Development
Unemployment Insurance
Bureau of Tax and Accounting
P.O. Box 7942
Madison, WI 53707-7942

RE: Catholic Charities Bureau, Inc.
UI Account No: [REDACTED]
Our File No. 2371a

REQUEST FOR HEARING
(SECTION 108.10, WIS. STATS.)

Dear Deputy Holzbauer:

Our office represents Catholic Charities Bureau, Inc. of Superior. On behalf of Catholic Charities Bureau, Inc., and pursuant to Section 108.10, Wis. Stats., we

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hereby request a hearing with respect to, the Initial Determination with mailing date of January 30, 2004.

We object to the Initial Determination, in that Catholic Charities Bureau, Inc. is excludable as an employer under Section 108.02(15)(h), Wis. Stats.

I would request that the notice of hearing be sent to both Mr. Anderson, CFO of Catholic Charities at his address below, as well as the undersigned.

Once the notice of hearing is received, we will be forwarding additional submissions for the hearing examiner. Thank you for your attention to this.

Yours truly,

/s/ Forrest O. Maki

Forrest O. Maki

FOM/bjs

fmaki@makidurst.com

* * *

cc: Mr. William P. Anderson
Chief Financial Officer
Catholic Charities Bureau, Inc.
1416 Cumming Avenue
Superior, WI 54880

* * *

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APPEAL TRIBUNAL DECISION

State of Wisconsin
Department of Workforce Development
Unemployment Insurance

Madison Hearing Office
1801 Aberg Avenue, Suite A
Madison, WI 53707-7975

* * *

Hearing No. S0400040EC

****FILE COPY****

In the matter of:

Employer 1: THE CATHOLIC CHARITIES
BUREAU
APPELLANT

* * *

Mailed to: ENFORCEMENT – ATTORNEY

APPEAL RIGHTS

THIS DECISION WILL BECOME FINAL UNLESS A WRITTEN APPEAL IS RECEIVED OR POSTMARKED WITHIN 21 DAYS FROM THE DATE OF THIS DECISION (SEE DATE BELOW). THE APPEAL MAY BE FILED AT A UI HEARING OFFICE, THE BUREAU OF LEGAL AFFAIRS IN THE CENTRAL ADMINISTRATIVE OFFICE, OR THE LABOR AND INDUSTRY REVIEW COMMISSION OFFICE. THE COMMISSION WILL REVIEW THE EVIDENCE ALREADY PRESENTED

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AT THE HEARING TO MAKE A DECISION. NO FURTHER HEARING WILL BE HELD UNLESS THE COMMISSION SO ORDERS.

DECISION: SEE ATTACHED DECISION WHICH AFFIRMS THE INITIAL DETERMINATION.

Appearances

Employer 1: Forrest Maki, Attorney

Employer 2:

Department: Michael J. Mathis, Attorney

Administrative Law Judge Leann R. Prock
Dated and Mailed February 18, 2005
Petition Must Be Received or Postmarked By March 11, 2005

* * *

Decision mailed to:

THE CATHOLIC CHARITIES BUREAU INC, 1416 CUMMING AVE, SUPERIOR, WI 54880-1720
MAKI, DURST, LEDIN & BICK, S.C., FORREST O MAKI, 1109 TOWER AVE, SUPERIOR
DEPT. ATTORNEY: MICHAEL J. MATHIS, PO BOX 8942, MADISON, WI 53708

* * *

THE DEPARTMENT'S DETERMINATION, dated and mailed on January 30, 2004, held that the services of the employees of Catholic Charities Bureau Inc. were not excludable under the provisions of the

Wisconsin Unemployment Insurance law. As a result, Catholic Charities Inc. continued to be an employer subject to the provisions of the Wisconsin Unemployment Insurance Law as of January 1, 2004. Catholic Charities Bureau Inc, filed a timely appeal.

Based on the applicable records and evidence in this case, the appeal tribunal makes the following

**FINDINGS OF FACT and CONCLUSIONS
OF LAW**

Catholic Charities Bureau Inc., hereinafter referred to as the appellant, is a non-profit business that operates and supervises charitable programs. In 2003, the appellant requested that its employees be excluded from coverage of the Wisconsin Unemployment Insurance Law. That request was denied when the above determination was issued. .

The issue to be decided is whether the employees of the appellant may be excluded from coverage of the Wisconsin Unemployment Insurance Law.

Section 108,02(15)(8) of the Wisconsin statutes provides that: “employment” as applied to a non-profit organization does not include service:

(1.) in the employ of a church or convention or association of churches;

(2.) in the employ of an organization operated primarily for religious purposes and operated, supervised, controlled, or principally supported by a church, convention-or association of churches; or

(3.) by a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order.

The appellant is located in the Roman Catholic Diocese of Superior. The Roman Catholic Church oversees the operation of the appellant. The department and the appellant agree that the appellant has been operated, supervised, controlled, or principally supported by a church or convention or association of churches. The department contended that the appellant was not an organization operated primarily for religious purposes.

The 2003 Annual Report of the appellant refers to providing a “helping hand to those individuals facing the challenges of aging, the distress of a disability, the concerns of children with special needs, -and the stresses of families living in poverty.” The appellant’s articles of incorporation state that the corporation’s business was to operate exclusively for charitable, scientific, literary or educational purposes. The mission statement of the appellant describes its mission to “collaborate with all people of good will to alleviate human suffering by sponsoring direct services programs for the poor, the disadvantaged, the disabled, the elderly and children with special needs.”

In 2003, the appellant oversaw 47 programs that provided home health care, senior housing, senior programs, family housing programs, daycare and after school care, and services to people with disabilities. Some of the programs managed by the appellant provide credit counseling, mitigation of landlord/tenant disputes, fair housing violation counseling, and home ownership education. The participants in the appellant’s programs are not required, to be of the Roman Catholic faith nor are they required to believe in any Christian doctrine. The participants are not required to attend religious training or orientation as a

condition of receiving services from the appellant's programs.

While there are no Wisconsin court cases that have interpreted the phrase "operated primarily for religious purposes", the Labor and Industry Commission addressed the question of whether a high school was liable for unemployment compensation contributions under the religious exemption statute in MHS Inc. Hearing No, 8852S (LIRC July 12, 1991). The Commission noted that the high school's mission was to provide education in the Catholic tradition, that its educational purpose was to provide a Catholic religious influence on high school education. The emphasis on "Catholic tradition" differentiated the high school from other public and many private schools. The high school conducted regular religious services and required the students to attend religious training. The Commission concluded that the high school was operated primarily for religious purposes.

The appellant in this matter does not require that the participants in its programs attend religious services, training or orientation. The programs are similar to other human service programs that are not associated with any religion. While the charitable purpose of the appellant may fulfill a basic teaching of the Roman Catholic religion, the purpose of the appellant is to provide charity to disadvantaged individuals rather than to have individuals participate in any religious activity. Under the circumstances, the appeal tribunal is unable to conclude that the appellant is operated primarily for religious purposes.

The appeal tribunal therefore finds that the appellant was a non-profit organization operated, supervised, controlled or principally supported by a church

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or convention or association of churches but not for primarily religious purposes, within the meaning of section 108.02(15)(8)(2) of the Wisconsin statutes.

DECISION

The department's determination is affirmed. Accordingly, the appellant is subject to the requirements of the Wisconsin Unemployment Insurance Law as of January 1, 2004.

APPEAL TRIBUNAL

By: /s/ LeAnn R. Prock

LeAnn R. Prock

Administrative Law Judge

LRP;jkk

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STATE OF WISCONSIN
LABOR AND INDUSTRY REVIEW COMMISSION
P.O. BOX 8126, MADISON, WI 53708-8126
(608/266-9850)

THE CATHOLIC CHARITIES BUREAU, Appellant
1416 CUMMING AVE
SUPERIOR WI 54880-1720

UNEMPLOYMENT INSURANCE
CONTRIBUTION LIABILITY
DECISION

Account No. [REDACTED]

Hearing No. S0400040EC

**SEE ENCLOSURE AS TO
TIME LIMIT AND PROCEDURES
ON FURTHER APPEAL**

FILE

An administrative law judge for the Division of Unemployment Insurance of the Department of Workforce Development issued a decision in this matter. A timely petition for review was filed.

The commission has considered the petition and the positions of the parties, and it has reviewed the evidence submitted to the administrative law judge. Based on its review, the commission agrees with the decision of the administrative law judge, and it adopts the findings and conclusion in that decision as its own, except that it makes the following modifications:

1. In the third paragraph on the first page of the appeal tribunal's FINDINGS OF FACT and CONCLUSIONS OF LAW, the statutory

reference “108.02(15)(8)(2.)” is deleted, and the statutory reference “108.02(15)(h)2.” is substituted therefor.

2. In the fifth paragraph on the second page of the appeal tribunal’s FINDINGS OF FACT and CONCLUSIONS OF LAW, the statutory reference “108.02(15)(8)(2)” is deleted, and the statutory reference “108.02(15)(h)2.” is substituted therefor.
3. In the last sentence of the first paragraph on the second page of the appeal tribunal’s FINDINGS OF FACT and CONCLUSIONS OF LAW the term “good well” is deleted and the word “good-will” is substituted therefor.

DECISION

The decision of the administrative law judge, as modified, is affirmed. Accordingly, the appellant is subject to the requirements of the Wisconsin Unemployment Insurance Law as of January 1, 2004.

Dated and mailed

APR 28 2005

/s/ James T. Flynn
James T. Flynn, Chairman

/s/ David B. Falstad
David B. Falstad, Commissioner

/s/ Robert Glaser
Robert Glaser, Commissioner

MEMORANDUM OPINION

The appellant’s petition for commission review contains no argument and the commission has no specific

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indication as to why the appellant believes it should prevail based upon this record. Notwithstanding this, the commission has reviewed the hearing record in order to determine whether the appeal tribunal's findings of fact and conclusions of law are supported. Based upon its independent review of the record, the commission agrees with the factual findings made by the appeal tribunal and with its legal conclusion that the services of the appellant's employees are not excluded from coverage under Wis. Stat. [weird symbol] 108.02(15)(h)2. The appellant is not operated primarily for religious purposes. Accordingly, the appeal tribunal decision is affirmed.

cc: Attorney Michael J. Mathis

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Dear Fellow Employee of Headwaters,

On behalf of everyone at Headwaters, Inc. I would like to welcome you to our organization. We are very pleased that you have decided to accept the position and we look forward to establishing a mutually beneficial relationship.

Attached is your copy of Headwaters, Inc. Employee Handbook that will serve as a guide to your employment with this agency. You will note in the handbook that references are made to Supervisors, Administrative Assistant, and Director as resources in obtaining additional information regarding the policies of Headwaters. This handbook is not a contract and the policies are subject to change by the Board of Directors. When you have a question regarding the proper course or action as outlined in this guide, please feel free to check with your supervisor, the Administrative Assistant, or me to determine the appropriate action.

Catholic Charities Bureau (CCB) is the parent company of Headwaters, Inc. CCB was established in 1917 and has a long tradition of serving the people in northern Wisconsin with compassion and competence. Our mission includes the challenge to collaborate with all people of goodwill to alleviate human suffering by sponsoring direct service programs for families in poverty, the disabled, the elderly, and children with special needs. We are very pleased that you have dedicated your talent and energies to assist us in creating an environment of human dignity based on mutual respect, understanding, and trust.

Please feel free to call upon me or other members of the staff to discuss the mission and policies of

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Headwaters, Inc. I trust you will enjoy your involvement with our agency and we look forward to our future association with you.

Sincerely,

Jennifer Felty
Director

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BARRON COUNTY DEVELOPMENTAL
SERVICES, INC.

EMPLOYEE HANDBOOK

*Barron County Developmental Services, Inc. is an Af-
filiate of Catholic Charities Bureau*

Updated 2016

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Introduction

1.01 Letter of Welcome

Dear Employee of Barron County Developmental Services, Inc.

I would like to take this opportunity to share with you a copy of our employee handbook.

The Employee Handbook is designed to provide guidance to you during the course of your employment with Barron County Developmental Services, Inc. You'll note that, in the Handbook, references are made to supervisors and the Catholic Charities Bureau Executive Director as resources in obtaining additional information regarding the expectations and policies of Barron County Developmental Services, Inc. and the Catholic Charities Bureau. While the handbook is not a contract, it does serve as a document that outlines our policies that affect your employment with the agency. These policies are subject to change by the Board of Directors. If you have questions regarding the handbook, please feel free to contact your supervisor and/or myself to receive clarifications about any questions that you might have.

Catholic Charities Bureau has a long tradition of serving people in northern Wisconsin in a manner that expresses both compassion and competence in addressing their needs. We trace our origin back to 1917 with the founding of St. Joseph's Orphanage Home and have been providing services through a myriad of programs throughout the Diocese for nearly 100 years. The mission of Catholic Charities expresses our

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interest in collaborating with all people of good will to alleviate human suffering, by sponsoring direct service programs for families in poverty, the disabled, the elderly, and children with special needs. We are especially pleased that you have dedicated your talents and energies to assist us in creating an environment of human dignity based on mutual respect, understanding, and trust.

You'll note the enclosed Handbook identifies the Mission of Barron County Developmental Services, Inc. and the Mission and Philosophy of Catholic Charities Bureau and the Catholic Charities Bureau Code of Ethics. The Missions essentially identify the reason we exist and the Philosophy and Code of Ethics suggest guidelines for our interactions with one another in carrying out our Mission.

I trust you will enjoy and be challenged by your involvement with our organization and we look forward to a long and satisfying association with you.

Sincerely,

/s/ Alan Rock

Alan Rock

Executive Director

Catholic Charities Bureau, Inc.

/s/ Joe Wacek

Joe Wacek

Director

Barron County Developmental Services, Inc.

1.02 Mission Statement – CATHOLIC CHARITIES BUREAU

Under the pastoral leadership of our Diocesan Bishop, to carry on the redeeming work of our Lord by reflecting gospel values and the moral teachings of the Church.

To meet the critical needs and issues of our society through the use of our gifts and resources, by mobilizing the Christian community in partnership with private and public enterprise.

To collaborate with all people of goodwill to alleviate human suffering, by sponsoring direct service programs for the poor, the disadvantaged, the disabled, the elderly, and children with special needs.

To create an environment of human dignity based on mutual respect, understanding, and trust. We profess the dignity of each person as a creation of God. This truth becomes the foundation of our great respect and love for each individual.

To translate our mission and vision into goals, commitments, and action.

1.03 Mission Statement – Barron County Developmental Services, Inc.

The mission of BARRON COUNTY DEVELOPMENTAL SERVICES, INC. is to provide person-centered services to adults based on the needs of each individual so that they are able to live their lives to the fullest.

1.04 **Philosophy of Service**

Catholic Charities Bureau, Inc. (CCB) has since 1917 been providing services to the poor and disadvantaged as an expression of the social ministry of the Catholic Church in the Diocese of Superior, Wisconsin.

The purpose of CCB is to be an effective sign of the charity of Christ. To this end CCB:

1. Provides services that are significant in quantity and quality.
2. Assures an Ecumenical orientation exists in that no distinction is made by race, sex, or religion in reference to clients served, staff employed, volunteers assigned, and the appointment of board members.
3. Avoids unnecessary duplication of services already adequately provided by governmental or public organizations and other private social service agencies.

1.05 **Professional Code of Ethics**

Catholic Charities Bureau – Diocese of Superior

Preamble

The purpose of the Code of Ethics is to set forth expectations for CCB board members, volunteers, administrators and staff members regarding how we are to conduct our transactions with one another and the people we serve. CCB will in its activities and actions reflect gospel values and will be consistent with its mission and the mission of the Diocese of Superior.

Code I:

We will support the sanctity and dignity of human life and recognize the central role of the family in our society. We will respect and protect the dignity of the individual.

Code II:

We will give first consideration in the provision of our service to assist those members of our community who are most vulnerable and least able to help themselves.

Code III:

We will practice the virtues of charity and justice in our relationships with one another and with the people we serve as well as in our dealings with the community at large.

Code IV:

We will utilize our personal talents, training and experience for the benefit of enriching the lives of the people we serve.

Code V:

We will respect and conform to civil law and its governance. We will also seek to peacefully change those civil practices that adversely affect the well-being of the people we serve.

Code VI:

We will as faithful stewards assure organizational integrity by exercising prudent judgment in the utilization of the resources that are entrusted to us.

Code VII:

We will engage in activities that promote the well-being of the organization and avoid participation in actions that are intended to serve personal or private interests.

Code VIII:

We will guarantee confidentiality as a living principle within the organization and establish policies and procedures to protect the interests of the people we serve, our governing boards and our personnel.

Code IX:

We will expect all persons affiliated with CCB to conduct themselves in a professional manner that brings credibility to the organization.

Code X:

We will collaborate with individuals, groups and other people of good will to achieve the fullest measure of charity and justice and strive to meet the highest standards of program excellence.

1.06 Organization History

The history of the Catholic Charities Bureau organization is located in the appendix of the Employee Handbook

1.07 General purpose of this Employee Handbook

- To describe clearly the specific conditions of employment which are understood by both employer and employee.

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- To ensure consistent personnel practices designed to utilize most effectively the human resources of Barron County Developmental Services, Inc. in the achievement of its goals and mission.

This handbook is not intended to be a contract. Barron County Developmental Services, Inc. may amend, modify, add to, eliminate, or otherwise change this handbook. This handbook is not intended to be all-inclusive. Unanticipated situations may arise that require actions not stated in the handbook.

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**TORVINEN, JONES, ROUTH,
TORVINEN & SAUNDERS, S.C.**
A Limited Liability Service Corporation
ATTORNEYS

Kyle H. Torvinen*
Parrish J. Jones*
Mitchell A. Routh*
Shelley I. Torvinen*
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Facsimile: 715-395-0923
E-Mail: reception@superiorlawoffices.com
Website: www.superiorlawoffices.com

October 21, 2016

DWD
Unemployment Insurance Division
201 E. Washington Avenue
P.O. Box 7946
Madison, WI 53707-7946

Re: Withdrawal from Wisconsin State Unemploy-
ment System

Dear Sirs/Madams:

I represent the Roman Catholic Diocese of Superior
(WI) (the "Diocese") and the Catholic Charities

Bureau, Inc. (“CCB”). I also represent the enclosed, listed entities. Each listed entity is a non-profit 501(c)3 organization that is a subdivision of Catholic Charities Bureau, Inc., which in turn is the non-profit social service branch for the Roman Catholic Church in the Diocese of Superior, Wisconsin. The Diocese’s social service ministry occurs through CCB.

The Diocese, CCB, and each of the other entities have long been considered by the IRS to be operated by the Roman Catholic Church. Roman Catholic entities are identified in the Official Catholic Directory, sometimes referred to as the “Kennedy Manual.” The Diocese of Superior, CCB, and the sub-entities are part of that manual pursuant to a Group Ruling in favor of the United States Conference of Catholic Bishops. To be included in the Manual, an entity must be operated by the Roman Catholic Church in the United States. Thus, CCB and the enclosed sub-entities are exempt from Federal income tax under 501(c)3, because they are “operated, supervised, or controlled by” the Roman Catholic Church.

Throughout the course of late 2014, through late 2015, and over the course of that chronological year, the Challenge Center, Inc., an almost identically situated sub-entity of CCB, battled the State of Wisconsin Labor and Industry Review Commission (along with two individuals who had joined cases) and the State of Wisconsin Department of Workforce Development, on the issue of whether an identically situated plaintiff (Challenge Center) was covered under the Unemployment Insurance Act.

Specifically, the plaintiff Challenge Center in that case, within the meanings of Wis. Stat. §108.02(15)(h)(2), sought exemption on the basis that it was an “organization operated primarily for religious purposes.” In Douglas County Circuit Court, Case Number 14-CV-384, Judge George L. Glonek issued a decision which made clear that “...the Court finds that Plaintiff...has established that it is an organization operated primarily for religious purposes,” within the meaning of Wis. Stat. §108.02(15)(h)(2), thereby establishing that Challenge Center was exempt. I enclose a copy of that decision. The decision was not appealed, and thus serves as claim preclusion to the State further contesting that issue in relation to these entities.

In light of that decision, I, as counsel for CCB, contacted the unemployment system requesting that other similarly situated (if even more religiously purposed) sub-entities of CCB, be dismissed or allowed to withdraw (by whatever terminology) from the Wisconsin Unemployment Insurance system.

As the record in that case established, Catholic entities gave their own unemployment insurance system in place which offers benefits which are generous, but at substantially reduced cost. I was advised that the appropriate route was to send a letter directly to the division of Unemployment Insurance making this request. This is that letter/petition.

I would appreciate it if the Department would, in light of the prevailing precedent, and the amount of time and money which has already been spent trying to

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establish such precedent, issue whatever papers the division deems necessary to accomplish this purpose. If you desire or require anything additional in order to apply this precedent as “the law of the case/issue,” please advise. Your response confirming receipt of this correspondence and your attention to these items in a timely, and cost-effective fashion will be greatly appreciated. Thank you.

Very truly yours,
Torvinen, Jones, Routh, Torvinen & Saunders, S.C.
/s/ Kyle H. Torvinen
Kyle H. Torvinen

KHT; jlk
Enclosure(s)

CC: Mr. Alan Rock, Executive Director
Catholic Charities Bureau, Inc.

[ENCLOSURE FROM LETTER ABOVE]

The Department of Workforce Development lists all of our entries under Account no [REDACTED] and then identifies different operating entities using an additional "Suffix Account" of [REDACTED] where the xx is a two letter identifier of our programs. Given we have reimbursable accounts I do not have the xs variable for all the programs.

Corp name

Catholic Charities Bureau Inc.
Barron County Developmental Services Inc.
Black River Industries Inc.
Catholic Community Services Inc.
Challenge Center Inc.
Diversified Services Center Inc.
Dove Agency
Headwaters Inc.
United Day Care Inc. DBA Hudson Community Day Care Center

Single purpose entities and programs corporations

Foster Grandparent Program
RSVP Superior
RSVP Rhinelander
Challenge Center A Inc.
Challenge Center Foundation Inc
Headwaters Foundation Inc
Blue Valley, Inc
Phoenix Villa of Rhinelander Inc
Phoenix Villa of Superior Inc
Phoenix Villa of Hayward Inc

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Phoenix Villa Inc
Maywood Apartments
Elmwood Apartments
Phoenix Villa of Iron River Inc
Phoenix Villa North Inc
Apple River Inc
Westbay Inc
Sumac Trail Apartments Inc
Acorn Apartments Inc
Northfield Apartments of Duluth Inc
Evergreen Apartments
Eastwood Apartments Inc
Winterhaven Apartments Inc
Lilac Grove Apartments Inc

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State of Wisconsin/Department of Industry,
Labor and Human Relations
JOB SERVICE DIVISION

Unemployment Compensation
201 E. Washington Avenue
P.O. Box 7905
Madison, Wisconsin 53707
UC # [REDACTED]

February 10, 1983

Black River Industries, Inc.
1209 Hughitt Ave.
Superior, WI 54880

INITIAL DETERMINATION

Our records indicate that persons performing services for your organization were reported as employees of Catholic Charities Bureau, Inc., account number [REDACTED] for services performed prior to January 1, 1983. Employees performing services for your corporation prior to January 1, 1983, remain covered under the Catholic Charity Bureau's account. Taxes paid for services performed prior to January 1, 1983, by the Catholic Charities Bureau remain paid. All benefits charged based on credit weeks earned prior to January 1, 1983, remain charged.

It has been established that you are a "nonprofit organization" within the meaning of section 108.02 (26) of the Wisconsin Unemployment Compensation Law. A nonprofit organization incurs liability under coverage provisions of the Wisconsin Unemployment Compensation Law if it employs at least four individuals in employment for some portion of a day on at least 20

days, with each day being in a different calendar week in the current or preceding calendar year.

Based on the reports now on file it is determined that Black River Industries, Inc., became subject under the above conditions with an effective tax liability dating retroactive to January 1, 1983.

The account number you have been assigned in the Wisconsin Unemployment Reserve Fund appears in the upper right hand corner. Please use this number in any correspondence with this office.

As a nonprofit organization, you have options open to you when financing possible benefit costs.

Under your current account designation, you will be required to file quarterly payroll reports with a tax payment at the end of each calendar quarter. You will have a fixed annual cost for unemployment compensation under the contributory tax method. The second option opened to you is individual reimbursement financing. With this method, you would reimburse the state at the end of each month for any benefits paid from your account during the past month.

If you wish to elect individual reimbursement financing, you must file a completed copy of the enclosed election form (UC-683) with this department within 30 days of the date of this letter. An assurance of reimbursement will also be required for the election of reimbursement financing to be approved.

The amount of the assurance of reimbursement must be equal to four percent of your defined payroll of the calendar year immediately preceding the effective

date of the election or your anticipated payroll for the current year, whichever is greater. The assurance may be in a greater amount if you choose. Acceptable types of assurance include a surety bond, a letter of credit, a swings certificate, a certificate of deposit or any other nonnegotiable instrument of fixed value approved by the Treasurer of the Unemployment Reserve Fund.

A third option open to you is to form a group reimbursement account. With this method of financing, all members of the group account are jointly and severally liable for any required reimbursement together with any interest thereon and any tardy filing fees. If you wish to elect group reimbursement, you must file any tardy filing fees. If you wish to elect group reimbursement, you must file a completed copy of the enclosed election of group reimbursement with this department within 30 days of the date of this letter. An assurance of reimbursement will also be required of the group account for the election of group reimbursement to be approved.

In a later mail you will receive other materials relating to an employer's compliance with the provisions of this statute. Toward the close of each subsequent calendar quarter you will receive our Employer's Contribution Report form. The report, with your tax payment, is due at the close of the month following the end of the calendar quarter if it is to be accepted without the assessment of a late filing fee or interest charge.

This finding constitutes an Initial Determination under Section 108.10 of the Wisconsin Unemployment Compensation law. This determination will become final unless you file a written request for hearing with

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the undersigned deputy. Said written request must be received by the department not later than 21 days after the date of this determination. If a request for hearing is filed, it should specify why you object to this determination.

Sincerely,

Robert A. Flemal, Deputy
Unemployment Compensation
608-266-7800

RAF:WE0201

Enc.

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State of Wisconsin/Department of Industry,
Labor and Human Relations
JOB SERVICE DIVISION

Unemployment Compensation
201 E. Washington Avenue
P.O. Box 7905
Madison, Wisconsin 53707
UC # [REDACTED]

February 10, 1983

Headwaters Regional Achievement Center, Inc.
1209 Hughitt Ave.
Superior, WI 54880

INITIAL DETERMINATION

Our records indicate that persons performing services for your organization were reported as employees of Catholic Charities Bureau, Inc., account number [REDACTED] for services performed prior to January 1, 1983. Employees performing services for your corporation prior to January 1, 1983, remain covered under the Catholic Charity Bureau's account. Taxes paid for services performed prior to January 1, 1983, by the Catholic Charities Bureau remain paid. All benefits charged based on credit weeks earned prior to January 1, 1983, remain charged.

It has been established that you are a "nonprofit organization" within the meaning of section 108.02 (26) of the Wisconsin Unemployment Compensation Law. A nonprofit organization incurs liability under coverage provisions of the Wisconsin Unemployment Compensation Law if it employs at least four individuals in employment for some portion of a day on at least 20

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days, with each day being in a different calendar week in the current or preceding calendar year.

Based on the reports now on file it is determined that Headwaters Regional Achievement Center, Inc., became subject under the above conditions with an effective tax liability dating retroactive to January 1, 1983.

The account number you have been assigned in the Wisconsin Unemployment Reserve Fund appears in the upper right hand corner. Please use this number in any correspondence with this office.

As a nonprofit organization, you have options open to you when financing possible benefit costs.

Under your current account designation, you will be required to file quarterly payroll reports with a tax payment at the end of each calendar quarter. You will have a fixed annual cost for unemployment compensation under the contributory tax method. The second option opened to you is individual reimbursement financing. With this method, you would reimburse the state at the end of each month for any benefits paid from your account during the past month.

If you wish to elect individual reimbursement financing, you must file a completed copy of the enclosed election form (UC-683) with this department within 30 days of the date of this letter. An assurance of reimbursement will also be required for the election of reimbursement financing to be approved.

The amount of the assurance of reimbursement must be equal to four percent of your defined payroll of the calendar year immediately preceding the effective

date of the election or your anticipated payroll for the current year, whichever is greater. The assurance may be in a greater amount if you choose. Acceptable types of assurance include a surety bond, a letter of credit, a swings certificate, a certificate of deposit or any other nonnegotiable instrument of fixed value approved by the Treasurer of the Unemployment Reserve Fund.

A third option open to you is to form a group reimbursement account. With this method of financing, all members of the group account are jointly and severally liable for any required reimbursement together with any interest thereon and any tardy filing fees. If you wish to elect group reimbursement, you must file any tardy filing fees. If you wish to elect group reimbursement, you must file a completed copy of the enclosed election of group reimbursement with this department within 30 days of the date of this letter. An assurance of reimbursement will also be required of the group account for the election of group reimbursement to be approved.

In a later mail you will receive other materials relating to an employer's compliance with the provisions of this statute. Toward the close of each subsequent calendar quarter you will receive our Employer's Contribution Report form. The report, with your tax payment, is due at the close of the month following the end of the calendar quarter if it is to be accepted without the assessment of a late filing fee or interest charge.

This finding constitutes an Initial Determination under Section 108.10 of the Wisconsin Unemployment Compensation law. This determination will become final unless you file a written request for hearing with

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the undersigned deputy. Said written request must be received by the department not later than 21 days after the date of this determination. If a request for hearing is filed, it should specify why you object to this determination.

Sincerely,

Robert A. Flemal, Deputy
Unemployment Compensation
608-266-7800

RAF:WE0201

Enc.

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State of Wisconsin/Department of Industry,
Labor and Human Relations
Unemployment Compensation Division
4802 Sheboygan Avenue
P.O. Box 644
Madison, Wisconsin 53701

“EMPLOYER’S REPORT”

REGISTRATION OF NONPROFIT ORGANIZA-
TIONS UNDER THE WISCONSIN UNEMPLOY-
MENT COMPENSATION LAW

Catholic Charities Bureau
1209 Hughitt Avenue
Superior, Wisconsin 54880
11/18/71

1. Is your organization a “nonprofit organization” de-
scribed in sec. 501(c)(3) of the Internal Revenue
Code which is exempt from federal income tax un-
der sec. 501(a) of said code?

Check Yes or No

If “yes”, submit a copy of your determination letter
from the Internal Revenue Service establishing
your “nonprofit” status. (Failure to submit a copy
will mean your organization cannot be treated as a
“nonprofit organization”.)

If “no”, return this report – without completing any
of the following questions.

2. In 1971, has your organization employed as many
as 4 individuals in employment for some portion of
a day (whether or not at the same moment of time)
on at least 20 days, each day being in a different

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calendar week (whether or not such weeks were consecutive)?

Check Yes or No

If "yes" is checked, do not complete item 5. If "no" is checked, complete item 5 (over.)

3. Type of organization (check)
- corporation;
 - community chest;
 - fund;
 - foundation;
 - other (specify) _____
4. Nature of operations (check)
- religious;
 - charitable;
 - scientific;
 - testing for public safety;
 - literary
 - educational;
 - Prevention of cruelty to children or animals
 - other (specify) REHABILITATIVE
5. If you answered item 2 "no", complete all columns in the table below through the most recent week of 1971 employment.

Directions (Read before completing)

1. The employee count in Column 1 should include every individual who performed some services for pay in the week, including part-time employees and paid officers. Include all employees (in Wisconsin) regardless of location.

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2. The count in Column 2 should include employees whose only work in that week was in excluded employment. The following are types of exclusions permitted, see enclosed letter. Check (x) type(s) claimed.
 - (a) Agricultural labor.
 - (b) Employee of church or organization operated primarily for religious purposes.
 - (c) Minister or member of a religious order exercising required religious duties.
 - (d) Employee of school not an institution of higher education.
 - (e) Impaired individual receiving rehabilitation or remunerative work.
 - (f) Individual receiving government financed work relief or work training.
 - (g) Beneficiary under federal Economic Opportunity Act.
 - (h) Patient employed by hospital.
 - (i) Student nurse or intern employed by hospital or nurses' training school.
 - (j) Student or student's spouse employed by the school, college, or university.
3. Subtract Column 2 from Column 1 and show result in Column 3.
4. Using Column 3 figure, check (x) in Column 4 each week where four individuals were employed for any part of one day in that week. Write "none" in Column 4 if there have been no weeks in which you had a day of four employees.

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		1	2	3	4
Week No.	1971 week ending	Total No. of employees in each week	Permitted exclusions	Net No.	Check (x) each week in which you had a day or 4 or more employees
1	Jan. 2				
2	9				
3	16				
4	23				
5	30				
6	Feb. 6				
7	13				
8	20				
9	27				
* * *					
[table continues until the end of the year]					

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This report is true and complete, to the best of my knowledge and belief.

Organization: *The Catholic Charities Bureau, Inc.*

Date: *19 Nov 71*

Signed by: */s/ [signature name not legible]*

Position: *Acting Director*

The information provided will be used to determine if your compliance is required. If you have any questions, do not hesitate to contact this office.

* * *

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State of Wisconsin/Department of Industry,
Labor and Human Relations

Unemployment Compensation Division
4802 Sheboygan Avenue
P.O. Box 644
Madison, Wisconsin 53701
Your U.C. Account # is [REDACTED]

The Catholic Charities Bureau, Inc.
1209 Hughitt Avenue
Superior, Wisconsin 54880

INITIAL DETERMINATION

Based on your recently submitted "Employer's Report" the Deputy finds:

1. That you are a nonprofit employer within the meaning of section 108.02(26) of the Wisconsin statutes; and
2. That you employed as many as 4 individuals in employment for some portion of a day on at least 20 days, each day being in a different calendar week in 1971.

Accordingly, pursuant to section 108.02(4)(b), the Deputy hereby determines that you are an "employer" subject to Wisconsin's unemployment compensation law, ch. 108 of the statutes, as of the beginning of 1972.

DEPARTMENT OF INDUSTRY,
LABOR AND HUMAN RELATIONS
/s/ Milton G. Pfothauer
Milton G. Pfothauer, Deputy
Unemployment Compensation Division

Dated and mailed:
December 29, 1971

APPEAL PROCEDURE. If you believe this determination is incorrect you may request a public hearing before an appeal tribunal. Such request, if any, must:

- (a) Be in writing; and
- (b) Be filed (i.e. received) within 20 days after the above mailing date with the state administrative office of the U.C. Division, 4802 Sheboygan Avenue, P.O. Box 644, Madison, Wisconsin 53701; and
- (c) Specify on what grounds you believe the determination to be in error.

You have been assigned the account number shown above. It will appear on all future U.C. reports. Please refer to this number in writing us about your account.

The Text of Wisconsin's U.C. law together with other relevant items will be mailed to you soon. In addition, we will supply you with information concerning your option to elect "reimbursement financing" under section 108.151.

* * *

Filed Nov. 18, 2015
Michele Wick
Clerk of Circuit Court

**STATE OF WISCONSIN
IN CIRCUIT COURT DOUGLAS COUNTY**

CHALLENGE CENTER, INC.

Plaintiff,

vs.

STATE OF WISCONSIN
LABOR AND INDUSTRY
REVIEW COMMISSION
and STACY C. ABBOTT,

Defendants.

CHALLENGE CENTER, INC.

Plaintiff,

vs.

STATE OF WISCONSIN
LABOR AND INDUSTRY
REVIEW COMMISSION
and MARIA A. GRENIER,

Defendants.

CHALLENGE CENTER, INC.

Plaintiff,

vs.

STATE OF WISCONSIN
LABOR AND INDUSTRY
REVIEW COMMISSION and
STATE OF WISCONSIN DEPT
OF WORKFORCE DEVELOP-
MENT

Defendants.

HEARING
MEMORANDUM

Case No.
14 CV 384

This case involves three separate lawsuits which were consolidated for purposes of judicial review. More specifically, Plaintiff Challenge Center, Inc. (“Plaintiff”) seeks review of a decision of the Labor and Industry Review Commission (“LIRC”) as to Plaintiff’s coverage under the Unemployment Insurance Act. Although all the actions involve different parties and arose in different contexts, the parties agree that the sole issue in each case is whether Plaintiff is an “organization operated primarily for religious purposes” within the meaning of Wis. Stats. §108.02(15)(h)2.

Plaintiff had earlier been issued a Determination by the Department of Workforce Development (“DWD”) on March 5, 2001 acknowledging that “... you are a church-related entity and meet the requirement under section 108.02(15)(h)2 of the Wisconsin Statutes, to consider your employment as excluded...” Plaintiff then paid into a separate program for unemployment run by the Catholic Church in Wisconsin.

However, in 2013, the Department apparently changed its earlier determination and concluded the Plaintiff was not operated for a religious purpose. This change in its position by DWD occurred without any change in the law or without any change in the way Plaintiff conducted its business. On November 21, 2014, LIRC upheld DWD’s subsequent determination,

On June 27, 2014, ALJ Darren Magree (who presided over the Grenier case) found and concluded that Plaintiff was not “operated primarily for religious purposes.” On November 21, 2014, LIRC issued its Decision in which it agreed with and adopted the decision of ALJ Magee.

On August 14, 2014, ALJ Leann Prock (who presided over the Abbott case) found and concluded that Plaintiff was not “operated primarily for religious purposes.” On November 24, 2014, LIRC issued its Decision in which it agreed with and adopted the decision of ALJ Prock.

Plaintiff has commenced these actions for judicial review of the LIRC decisions. In proceedings for judicial review of an administrative decision, a determination of what standard of review the Court is to apply is a significant one. LIRC contends that this Court should accord its interpretation of Wis. Stats. §108.02(15)(h)2 great weight deference. This Court is not convinced.

A Court is not bound by a Commission’s determination of law. However, the Commission’s determination may be entitled to great or due weight deference (as opposed to no deference) if certain conditions are present. However, this Court agrees with the conclusion of Circuit Court Judge Michael Rosborough that the reviewing Court owes no deference to LIRC’s decision in dealing with Wis. Stats. §108.02(15)(h). “Five decisions over 39 years is a paltry number considering the likely volume of decisions issued by the commission over that span of time,” concluded Judge Rosborough. *See Cornerstone Christian Academy of Vernon County, Inc.* (Vernon Co. Cir. Ct. Case No. 14CV44, December 17, 2014).

In *Cornerstone*, the issue before the Court was whether the plaintiff was “operated, supervised, controlled or principally supported by a church or convention or association of churches.” In that case, LIRC upheld DWD’s determination that plaintiff was subject to the unemployment insurance law. However, Judge

Rosborough actually reversed LIRC's decision and found that plaintiff was entitled to the benefit of a statutory exclusion.

Moreover, of the 5 cases referenced by Judge Roseborough in his decision, only three dealt with the "religious purpose test." However, the facts in those cases do not resemble the facts in the case at bar and the results in those cases have been inconsistent. Overall, this Court is not convinced that LIRC has sufficiently demonstrated any specialized knowledge or expertise relevant to the "religious purpose" question such that this Court should accord its decisions great or due weight deference. This Court concludes that de novo review is appropriate.

Plaintiff is a 501(c)(3) organization which provides services to individuals with a wide range of developmental disabilities. It operates a workshop where such individuals can learn trades and be paid a wage for work performed. It also operates programs for seniors with developmental disabilities and operates group homes and supervised apartments for such individuals.

Plaintiff is a subdivision of Catholic Charities Bureau (CCB) which is the non-profit social service branch of the Catholic Church which supervises charitable programs. Neither Plaintiff nor CCB is autonomous from the Bishop. CCB does not duplicate services that are provided by secular or other groups, but has a mission to provide services to those in need where the services do not otherwise exist. CCB and Plaintiff are exempt from federal income tax under 501(c)(3) because they are "operated, supervised, or controlled by" the Roman Catholic Church.

The Bishop appoints the membership committee and approves the board of directors of the CCB, including the Executive Director. These individuals report directly to the Bishop. Meetings are opened with a prayer, and include discussions of social ministries and how it applies to Plaintiff's mission. Every worker employed by the CCB must abide by the mission statement and code of ethics of the Diocese of Superior.

All of Plaintiff's services are provided at the direction and oversight of the Bishop of the Diocese of Superior, pursuant to the Ten Principles of Catholic Social Teaching. These Ten Principles spring directly out of the Catechism of the Catholic Church and the Compendium of the Social Doctrine of the Church, which are genuine and deeply held tenets of the Catholic faith. The Bishop maintains full and exclusive control, subject only to his own discretion, to ensure Plaintiff is operated in keeping with these Principles of Catholic Social Teaching.

Plaintiff is subject to the oversight and discretion of the Bishop. The Bishop makes such decisions at his own discretion subject only to the advice and consultation of "the membership" wider Canon Law. The membership (with the exception of the Catholic Charities Executive Director) are religious ordained Catholic priests. Plaintiff's mission statement (which is nearly identical to the mission statement of the CCB) is to "collaborate with all people of goodwill to alleviate human suffering by sponsoring service programs for the poor, the disadvantaged, the disabled, the elderly and children with special needs."

When hired, Plaintiff's employees are sent a letter that includes CCB's mission statement and code of ethics. These are also prominently displayed at the

workplace. Catholics are not preferentially treated. The workers and clients are not required to be Catholic, as that would contradict the Catholic social teaching. For these same reasons, they are not required to go to mass, pray or engage in any other overtly religious activities, but they are offered the opportunity to do so.

As stated, the issue before the Court is whether Plaintiff is an organization operated “primarily for religious purposes.” Hence, the proper test requires the Court to consider why the organization is operating (by using the words “for” and “purposes”), and whether it operates primarily for that purpose. The use of the word “primarily” acknowledges that an organization can have more than one purpose.

Plaintiff’s primary goal or purpose is to hire exclusively developmentally disabled people and to provide them with employment skills and with work (without a profit motive). Rather than for profit, this is primarily done to establish dignity for these people as demanded by the Catechism and Social Doctrine. Hence, Plaintiff is organized by the Bishop for a traditional Catholic purpose. Given the great emphasis on providing services to the disadvantaged that exists in Catholic social teaching and the mission of Plaintiff and CCB, this Court is convinced that Plaintiff is operated primarily for religious purposes.

LIRC maintains that Plaintiff is ecumenical with regard to its employees and to the services it provides. This is based on the fact that Plaintiff provides services to everyone, regardless of their religious affiliation. and that no religious doctrine is presented. as part of its programming. Moreover, LIRC relies on the

fact that Plaintiff hires employees without regard to religious orientation.

This Court is not convinced by LIRC's arguments. The test is not focused on the activities performed, but the purpose for which Plaintiff is primarily operated. Despite any arguable secular and commercial aspects of Plaintiff's activities, they seemingly coexist with Plaintiff's primary religious purpose. This, of course, is coupled with the fact that Plaintiff operates its activities without a profit motive. Rather, the mission of CCB is to provide services to the disadvantaged and those in need, where the services do not otherwise exist.

Moreover, mandating all employees and clients to be Catholic in order to receive employment or services from Plaintiff would itself contradict Catholic social teachings. The Catechism and the Social Doctrine require preferential treatment to the "poor and vulnerable," not to Catholics. The programs and services are administered without such discrimination.

However, all employees are provided Plaintiff's mission statement and code of ethics (which spring from the Catholic Social Doctrine and the Catechism), and they are expected to respect these tenets in order to be and remain employed. Likewise, Plaintiff's clients are provided the opportunity (but not the mandate) to attend Catholic Church.

For the foregoing reasons and based upon the totality of the circumstances as discussed in this Hearing Memorandum, this Court finds that Plaintiff Challenge Center, Inc. has established that it is an "organization operated primarily for religious purposes,"

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within the meaning of Wis. Stats. §108.02(15)(h)2. Accordingly, the LIRC Decision is hereby reversed.

Dated this 18 day of November, 2016.

BY THE COURT:
/s/ George L. Glonek
George L. Glonek
Circuit Court Judge