No. 24-154

IN THE

Supreme Court of the United States

CATHOLIC CHARITIES BUREAU, INC., ET AL.,

Petitioners,

v.

WISCONSIN LABOR & INDUSTRY REVIEW COMMISSION, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Wisconsin

BRIEF OF THE JEWISH COALITION FOR RELIGIOUS LIBERTY AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

YAAKOV M. ROTH
Counsel of Record
ETHAN D. BECK
JONES DAY
51 Louisiana Ave., NW
Washington, DC 20001
(202) 879-3939
yroth@jonesday.com

Counsel for Amicus Curiae

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INTEREST OF THE AMICUS CURIAE[1]

The Jewish Coalition for Religious Liberty is a nonprofit organization comprised of lawyers, rabbis, and professionals who practice Judaism and defend religious liberty. Representing members of the legal profession and adherents of a minority religion, the Coalition has an interest in ensuring the flourishing of diverse religious viewpoints and practices. Accordingly, the Coalition advocates for people of faith who practice their faith in religious services, in schools, and in the public square.

INTRODUCTION AND SUMMARY OF ARGUMENT

Under the First Amendment, "no official, high or petty, can prescribe what shall be orthodox in . . . religion." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). Nor can those officials act to "disfavor" some religions, including "because of [their] religious ceremonies." *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993). The Wisconsin Supreme Court's ruling in this case violates these cardinal prohibitions. It effectively installs courts as the final authority over what activities are "objective[ly]" "religious." Pet.App.27a. And, in doing so, the decision disadvantages minority religions such as Judaism that engage in less recognizable or well-known religious activities.

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[1] *Amicus* provided all counsel of record with notice of its intent to file this brief ten days prior to the filing deadline. No party or counsel for a party authored this brief in whole or in part, and no entity, aside from *amicus* and its counsel, made any monetary contribution toward the preparation or submission of this brief.

This extraordinary ruling sprang from ordinary soil. Like many States, Wisconsin generally requires nonprofits to pay unemployment taxes. Wis. Stat. § 108.02(13)(b). And like many States, Wisconsin exempts any nonprofit organization that is "operated . . . by a church" and is "operated primarily for religious purposes." *Id.* § 108.02(15)(h)(2).

On its face, that exemption would cover nonprofits like Petitioners—the Catholic Charities Bureau, Inc. (Catholic Charities) and a set of its affiliates. The Catholic Charities exist under the control of the bishop of the Diocese of Superior and profess to operate for a religious purpose, namely, to serve as the social ministry arm of the Catholic Church. Pet. 8–10; Pet.App.7a–10a, 28a–29a. No one questions the sincerity of their religious motivation. *See* Pet.App.28a–29a.

The Wisconsin Supreme Court, however, refused to rely on the sincerity of the Catholic Charities' religious beliefs to decide whether they qualify for the religious tax exemption. Pet.App.23a–24a. Instead, the court constructed and conducted its own "objective inquiry" into whether the Catholic Charities' activities conformed to the court's conception of typical religious behavior, such as proselytizing, inculcating religious tenets, or holding religious services. Pet.App.26–27a, 29a–30a. Applying that test, the court held that the Catholic Charities do not qualify for the exemption. By the court's lights, the charitable operations of these Church-run ministries "are secular in nature" because they do not "attempt to imbue" others with the Catholic faith or engage in other sufficiently "religious" activity. Pet.App.30a–32a.

Under this novel framework, Wisconsin courts going forward will review the activities of a nonprofit that is controlled by a church and professes a religious purpose to assess, supposedly as an objective matter, whether those activities match the State's criteria for religious behavior. In sum, the State will decide what is "religious" and what is not.

That inquiry plainly violates the U.S. Constitution. The First Amendment bars the sort of government entanglement with religion that follows from having courts decide what conduct is sufficiently "religious." *See Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 761 (2020). And it prevents the sort of discrimination against minority religious groups that follows from courts deciding what is "typical" religious behavior. *See Larson v. Valente*, 456 U.S. 228, 245 (1982) (describing the "constitutional prohibition of denominational preferences").

The Coalition is particularly concerned by this approach, because the State's "true religiosity" test systematically harms minority religions like Judaism. By limiting eligibility for the tax exemption based on the perceived religiosity of an organization's activities, the State's approach will require courts to use their own judgment about what activities quality. In practice, such an approach will favor more popular religions with better-known religious activities, such as protestant Christian-style services, over minority religions that engage in practices that judges may not immediately recognize as religious.

Indeed, the Wisconsin Supreme Court has already traveled far down this road by identifying a list of typical religious activities that reflects a narrow view

of what religious practices look like—a list that is obviously drawn from protestant Christianity and cannot readily be applied to Judaism and other minority faiths. The claim that this represents an "objective" test of religiosity is an ominous sign for members of minority faiths. Pet.App.27a.

It could hardly be otherwise. Any list of *typical* or *normal* religious activities will tend to exclude the practices of minorities. Judges lack the competence to construct comprehensive lists of religious activities, particularly for minority groups with practices that are less well known and may not appear "religious" at first glance. In Judaism, for example, many acts that may appear secular to a non-adherent carry religious significance. Judaism contains a system of commandments called "*mitzvot*" that govern even mundane aspects of life. The Wisconsin Supreme Court's notion that acts such as teaching the faith or leading prayers are more religious than giving charity or ministering to the sick is alien to Judaism. The State's religious litmus test would likely lead courts to deem important Jewish observances irreligious.

The State's religious litmus test will thus harm Jews and other religious minorities, both by violating their constitutional rights and by gerrymandering religious minorities outside the scope of its tax exemption for typical religious activities. This Court should accept certiorari and reverse.

ARGUMENT

I. THE STATE'S RELIGIOUS LITMUS TEST VIOLATES THE FIRST AMENDMENT.

The First Amendment protects religion from government control, interference, and discriminatory preferences. Pet. 23–31. Of particular relevance, the First Amendment bars government entanglement with religion and prevents States from treating some religions more favorably than others. *See, e.g.*, *Carson v. Makin*, 596 U.S. 767, 787 (2022) (explaining that "scrutinizing whether and how a religious [entity] pursues its [particular] mission would raise serious concerns about state entanglement with religion and denominational favoritism").

The Wisconsin Supreme Court's decision defining the tax exemption's scope violates these principles. By requiring courts to decide what conduct is sufficiently "religious," the State entangles itself in core questions of religious doctrine. *See New York v. Cathedral Acad.*, 434 U.S. 125, 133 (1977) (describing question of "what does or does not have religious meaning" as "the very core of the constitutional guarantee against religious establishment"). And by deeming certain practices "secular" and others "religious," the State disfavors religions with practices it deems *atypical*. *See Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 216–217 (1963) (explaining that Establishment Clause bars "governmental preference of one religion over another"). Such judicial attempts to define "what is or is not a 'religious activity'" present "obvious" constitutional errors. *Kendall v. Dir. of Div. of Emp. Sec.*, 473 N.E.2d 196, 199 (Mass. 1985).

For the reasons further explained by Petitioners—with which the Coalition fully agrees—the Wisconsin Supreme Court decision offends the First Amendment and warrants this Court's intervention.

II. THE STATE'S RELIGIOUS LITMUS TEST HARMS RELIGIOUS MINORITIES.

The Coalition submits this brief principally to expand on how the Wisconsin Supreme Court's test threatens religious minorities. The decision gives courts the final say on whether an activity is "religious in nature" or "secular in nature." *See* Pet.App.29a, 32a. But courts are ill-suited to apply a religious-secular distinction, particularly in light of the diversity of religious views in America.

A. Courts Cannot Objectively Distinguish Religious and Secular Acts, Especially for Minority Faiths Like Judaism.

The Wisconsin Supreme Court asserted that courts can objectively determine whether activities are truly religious. Pet.App.32a. As that court saw it, the inquiry is simple: Courts "need only" decide what the "activities of the organization are" and whether they are "secular in nature." Pet.App.32a, 40a.

That approach is flawed from the outset. As this Court has explained, applying a "religious-secular distinction" is taxing and prone to error because "the character of an activity is not self-evident." *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 343 (1987) (Brennan, J., concurring in the judgment); *see id.* at 336 (majority op.) (agreeing "[t]he line is hardly a bright one"). Recognizing that courts cannot evaluate

what constitutes religious activity as an objective matter, federal courts instead ask only whether the activity stems from a sincere religious belief. *E.g.*, *United States v. Seeger*, 380 U.S. 163, 185 (1965) (limiting inquiry to whether person's beliefs "are sincerely held and whether they are, in his own scheme of things, religious"). The Wisconsin Supreme Court, by contrast, eschews "reliance on self-professed motivation" in favor of judicial adjudication of what is religious and what is secular. Pet.App.23a.

That approach "understandably" provokes "concern[s]" that a "secular court" will "not understand [the] religious tenets" of a religious organization and wrongly conclude that important religious acts are secular. *Amos*, 483 U.S. at 336. The potential for such misunderstandings abounds. To borrow one of the court's examples, consider baptism. Pet.App.27a. How can a court distinguish between *spiritual* washing (baptism) and *physical* washing without evaluating the religious doctrine of the participants? In Christianity, perhaps the presence of a pastor or priest provides a clue, but Judaism provides more challenging examples. Married Jewish women are required to immerse in a pool of water known as a *mikvah* every month as part of divinely ordained purity ordinances. Rivkah Slonim, *The Mikvah*, Chabad.org, https://tinyurl.com/3c8a49rt. Though this exercise has nothing to do with physical hygiene or recreation, a *mikvah* often resembles a bathhouse or "a miniature swimming pool," leading to "popular misconception[s]" on the purpose of these immersions. *Id.* Similarly, Judaism requires the immersion of certain cooking utensils before use. *See* Parshat Matot, *Immersion of Vessels (Tevilat Keilim)*,

Chabad.org, https://tinyurl.com/44ytd959. If an individual buys a measuring cup and washes it before use, was that a secular activity (removing potential germs) or a religious activity (obeying the divine obligation to purify vessels used for food)? The answer depends on the individual's religious doctrine and beliefs, because the same outward act—washing a person or a utensil—can be religious *or* secular.

The court's supposedly *objective* approach also fails to recognize that a division between activities that are "religious in nature" and those that are "secular in nature" is largely alien to many faiths, including Judaism. Applying it would cause courts to arbitrarily distinguish between different, but equally authentic, Jewish religious organizations.

In Judaism, all religious requirements flow from the commandments that appear in the Torah, known as 613 *mitzvot*. *See* Mendy Hecht, *The 613 Commandments (Mitzvot)*, Chabad.org, https://tinyurl.com/y7he88c4. Each commandment is a divinely given religious obligation, and no act to fulfill one commandment is more or less religious than an act to fulfill any other commandment.

The Torah contains a religious obligation to give charity, for example. This obligation can sometimes be linked to an observable religious ritual that would presumably meet the State's test, like donating to charitable funds that ensure the poor have provisions for the Passover Seder. *See Ma'ot Chitim – "Wheat Money,"* Chabad.org, https://tinyurl.com/5n6sw3zs. However, Judaism does not view that type of charity as any more religious than other forms of charity, like donating to food banks. Menachem Posner, *What is*

Tzedakah?, Chabad.org, https://tinyurl.com/y4cdu79c. The Wisconsin Supreme Court would arbitrarily disqualify this latter form of divinely ordained charity because it does not involve proselytizing or providing "religious materials." Pet.App.29a.

To provide another example, Judaism contains a commandment to comfort the sick, known as *bikur cholim*. *See* Eliezer Wenger, *Bikur Cholim*, Chabad.org, https://tinyurl.com/4r2cc86b. Visiting a sick person to lead him in prayers is no more religious than simply visiting to provide him solace. While both fulfill the commandment of *bikur cholim*, the State's approach would have courts distinguish between the two on the ground that solace "can be provided by organizations of either religious or secular motivations." Pet.App.30a.

The decision below contains yet another example. The Wisconsin Supreme Court declared that training for individuals with developmental disabilities is "a wholly secular endeavor." Pet.App.30a. That would surprise Jewish organizations like Yachad, which provides vocational training for individuals with developmental disabilities. *See Clinical Services*, Yachad, https://tinyurl.com/y8utf9j7. Yachad engages in these activities because it is "guided by Torah values" and recognizes "that every person is made B'Tzelem Elokim—in G-d's Image." *About Yachad*, Yachad, https://tinyurl.com/yvcuzdbf; *see* Genesis 1:26. When Yachad offers services like these, it engages in religious activity. Aside from its *ipse dixit* and conception of what is *typical*, the court offered no reason to conclude that such charitable work is any less religious than teaching religious doctrine.

In Judaism, God's commandments—not outward appearances—determine what actions hold religious value. Allowing courts to gauge religious acts by their own lights will arbitrarily exclude Jewish organizations that act to fulfill *mitzvot* apart from typical or judicially recognized religious rituals.

B. Allowing Courts to Decide What Constitutes Religious Acts Will Harm Adherents of Judaism.

Courts are neither empowered nor qualified to decide religious questions. *E.g.*, *Watson v. Jones*, 80 U.S. 679, 733 (1871) (recognizing that courts have "no jurisdiction" over theological issues). They regularly err while engaging in these inquiries. And such errors often redound to the detriment of religious minorities such as Jews; the Wisconsin Supreme Court's misadventure will prove no different.

1. There is no shortage of cases to illustrate the point that courts misunderstand and misapply even basic practices of Judaism.

In one case concerning the reach of the Religious Freedom Restoration Act, a judge gave the example of a law requiring someone to "turn on a light switch every day" as a statute that would not impose a substantial burden on religion. Oral Argument at 1:00:40–50, *E. Tex. Baptist Univ. v. Burwell*, 793 F.3d 449 (5th Cir. 2015) (No. 14-20112), *vacated and remanded*, 578 U.S. 403 (2016). However, he was mistaken. That requirement would substantially burden Orthodox Jewish religious practices. On the Sabbath, Jews are forbidden from kindling flames, and Orthodox rabbis agree that this prohibition extends to turning on a light switch. *See Exodus* 35:3;

see also Aryeh Citron, *Electricity on Shabbat*, Chabad.org, https://tinyurl.com/mrx4ynkk. The judge certainly did not intend to demean Judaism or suggest that Jewish practices should not qualify for protection. He was simply unaware of a practice that is central to the life of Orthodox Jews.

In another cautionary tale, the Fourth Circuit effectively created a brand-new Jewish law requiring a quorum of men to study the bible. *See Ben-Levi v. Brown*, No. 5:12-CT-3193-F, 2014 WL 7239858 (E.D. N.C. Dec. 18, 2014), *aff'd*, No. 14-7908, 2015 WL 1951350 (4th Cir. May 1, 2015). The North Carolina Department of Public Safety had implemented a policy requiring the presence of a rabbi or a quorum of ten men before Jewish inmates were allowed to study the bible together. *See id.* at *4. Such a requirement is unheard-of and likely the result of miscommunication. While some prayers and communal readings require 10 men, *see* Aryeh Citron, *Minyan: The Prayer Quorum*, Chabad.org, https://tinyurl.com/58xx8fwk, Judaism's corpus of religious law and tradition expressly contemplates Torah study in groups of two and permits study by individuals as well. *See How to Properly Study the Torah*, Jewish Virtual Library, https://tinyurl.com/2fa8ndey; *see also* Ilene Rosenblum, C*havruta: Learning Torah in Pairs*, Chabad.org, https://tinyurl.com/ypkan7nj.

In another case, a court determined that a prison did not burden a Jewish prisoner's religious rights because it allowed him "thirty seconds of prayer" and twenty minutes to eat a communal meal, which the court found sufficient "to observe the Shavuot holiday." *See Kravitz v. Purcell*, 87 F.4th 111, 117, 125

(2d Cir. 2023). But Shavuot is traditionally a two-day festival "celebrated through desisting from work … and staying up all night to study Torah"—not something one can do in twenty minutes, let alone thirty seconds. *See What is Shavuot?*, Chabad.org, https://tinyurl.com/592kkzu3. Indeed, even rote recitation of the most essential prayers would require far longer than 30 seconds. *E.g.*, Zalman Goldstein, *Yizkor – The Memorial Prayer*, Chabad.org, https://tinyurl.com/4vf6nnw5 (providing text of one prayer recited on second day of Shavuot). During oral argument on appeal, the attorney for the prison could not answer even basic details about the festival of Shavuot or how it should be celebrated. Oral Argument at 1:20–2:00, *Kravitz v. Purcell*, 87 F.4th 111 (2d Cir. 2023) (No. 22-764). Reversing, the Second Circuit faulted the district court for "rel[ying] on its own authority to determine what the observance of Shavuot requires." *Kravitz*, 87 F.4th at 125.

In yet another case, a Pennsylvania trial court set a five-day trial to begin on Yom Kippur, the holiest day in the Jewish calendar. Br. of Appellants at 1, *DiMeo v. Gross*, 280 EDA 2024 (Sup. Ct. Penn. Apr. 24, 2024), https://tinyurl.com/4et5c3hk. When the defendant asked to delay the trial by one day so he could observe the holy day, the court refused, showing no familiarity with Yom Kippur or its significance. *Id.* at 7–13. The court required the defendant to choose between foregoing his right to religious observance on the holiest day of the year (a day on which Jewish people believe God determines whether they live or die in the next year), or his right to a jury trial (a day on which a group of his peers would determine his fate before secular authorities). *Id.* at 10–13.

2. The Wisconsin Supreme Court's decision in this case further highlights the inevitability of such errors. The court purported to establish "a neutral and secular inquiry based on objective criteria." Pet.App.40a. In doing so, the court relied on a list of "[t]ypical activities of an organization operated for religious purposes," *United States v. Dykema*, 666 F.2d 1096, 1100 (7th Cir. 1981):

> (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.

Pet.App.26a–27a (quoting *Dykema*, 666 F.2d at 1100).

Far from serving as a "neutral and secular" guide, Pet.App.40a, the court's list of "[t]ypical" religious activities serves as "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." Pet.App.53a (Grassl Bradley, J., dissenting).

Although presumably not intentional, the court's list reveals that it used Christianity as the benchmark for a "typical" religion. Indeed, the words "baptism," "evangelical," "pastor" and "clergy," and "missionary" either originate with Christianity or carry distinctly Christian cadence. A list with such Christian-centric phrasing will measure the religiosity of non-Christian religions by how much they sound like Christianity.

The Christian-centric phrasing maps onto practices that are no less distinctly Christian. Indeed, the court's supposedly "objective" list of religious behaviors would bewilder observant Jewish readers and could not be applied to Jewish practices. For example, "Judaism is not a proselytizing religion," *Beyond The Jewish Community*, Chabad.org, https://tinyurl.com/t8b2uj4a, yet proselytizing is a listed activity. Meanwhile, Judaism commands giving charity, which is not listed. Worse, because Jewish charities will never "attempt to imbue [others] with [their] faith," they will always lack the State's "strong indicator[] that [their] activities are primarily religious in nature." Pet.App.29a. It would be both tragic and unconstitutional if a court were to tell a synagogue that its charity could qualify as religious only if it only acted more like a Christian group and proselytized. Similarly, Judaism does not involve "baptism" (a listed activity), but it does involve private gatherings such as Passover (which is not listed). *What is a Seder (Passover Meal)?*, Chabad.org, https://tinyurl.com/mw4f9yvf. Once again, the court's examples implicitly betray a religious bias.

The prominence of clergy on the court's list of examples is also distinctly Christian and cannot "objective[ly]" apply to Jewish practices, which (contrary to some conventional misunderstandings) generally do not require the participation of rabbis. Under an analysis guided by these examples, a rabbi officiating at a funeral would be considered religious, whereas a *chevra kadisha*—a Jewish burial society comprised of lay volunteers that prepares a body for burial according to the strictures of Jewish law—would not. *See* Menachem Posner, *The Chevra Kadisha*, Chabad.org, https://tinyurl.com/599t9m6n. A rabbi officiating a wedding ceremony would be regarded as religious (even though clergy are not even required for a Jewish wedding), but a *gmach*, or free loan society that often helps defray the costs of weddings, would not. *See Interest-Free Loans*, Chabad.org, https://tinyurl.com/3yr2pmbn.

In short, far from being objective, the distinctions cited by the Wisconsin Supreme Court reflect a particular subjective religious tradition and cannot be evenhandedly applied to other faiths, such as Judaism. *See* Pet.App.105a (Grassl Bradley, J., dissenting) ("The [Court's] primarily-religious-in-nature-activities test poses a particular danger for minority faiths."). Such a benchmark disfavors minority religions with unique practices, violating the First Amendment. *E.g.*, *Larson*, 456 U.S. at 244 ("The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another."). And the State demeans minority religions by judging the legitimacy of their sincere religious practices by comparison to other faiths with practices the State deems more "typical."

3. Trying to resist this conclusion, the Wisconsin Supreme Court acknowledged "the listed activities may be different for different faiths." Pet.App.27a. Fair enough. But who will undertake the herculean task of creating a list of typical religious activities for each religion? Harder still, what of denominations within a religion? And how should a court evaluate intra-faith disagreements? Is premarital counseling for interfaith couples a "religious" activity in Judaism? Some rabbis engage in the practice, while others refuse citing commands from Torah. *See* Nissan Dovid Dubov, *What Is Wrong with Intermarriage?*, Chabad.org, https://tinyurl.com/4r9spf5x. If a rabbi holds a lunch event to commemorate Yom Kippur, has he sponsored a "religious" activity or violated the commands of Judaism to fast that day? *Why Gather DC Hosted A Space to Eat on Yom Kippur*, GatherDC (Oct. 14, 2022), https://tinyurl.com/mr437hcy. No "objective" inquiry can answer such questions for one religion, let alone every religion or every adherent within a religion. *See Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 715–16 (1981) (recognizing that intra-faith disagreements "are not uncommon," and that courts are "singularly ill equipped to resolve" them).

Besides, even if such lists could be created (and maintained despite doctrinal shifts), courts would stumble into the very entanglement with religious doctrine that the court below purported to avoid and that the U.S. Constitution forbids. *See Czigler v. Administrator*, 501 N.E.2d 56, 57–58 (Ohio Ct. App. 1985) (refusing to enter the constitutional "quagmire" of deciding what proportion of an entity's activities were "religious").

In search of some criteria other than its flawed list, the court suggested that an organization's history may provide a clue as to whether its activities are sufficiently religious. Pet.App.30a. It posited that, if an organization engaged in the same activity both before and after it became part of a religious group, then the activity must be secular.

That claim is clearly false. If an individual engaged in intermittent fasting to lose weight before converting to Judaism, that does not mean that his subsequent religiously motivated fasting on Yom Kippur is a secular activity. And this hypothetical is actually too generous to the State because it assumes that the initial fasting was non-religious. Return to the measuring cup example. An individual buys a measuring cup and washes it before use. Later, the individual begins attending his local synagogue. He purchases a second measuring cup and again washes it before use. How can a court tell whether washing the first measuring cup was a secular activity (to clean it) or a religious activity (to purify vessels)? Again, the answer depends not on formal association with a religion, but on the individual's subjective belief.

In the same way, a nonprofit's activities are not secular simply because it is not yet formally associated with a religious group. If anything, a subsequent affiliation with such a group suggests that the nonprofit's activities were religious all along. The only way to know for sure is to ask: Were the activities undertaken pursuant to sincere religious beliefs? The Wisconsin Supreme Court instead disregards sincere professions of religious motivation in favor of its own purportedly objective assessment of what is religious and what is secular. Pet.App.23a.

All told, the Wisconsin Supreme Court's decision provides no effective guidance on how to "objective[ly]" distinguish activities that are "secular in nature" from those that are "religious." Pet.App.32a–33a, 40a. Instead, courts must second-guess sincere religious beliefs and "make determinations of religiosity on an ad hoc basis." Pet.App.79a (Grassl Bradley, J., dissenting). As a result, what qualifies as a religious activity "will simply reflect what an individual judge subjectively regards as religious enough." *Id.* That is not consistent with First Amendment values and, as explained, will disparately harm religious faiths.

CONCLUSION

The Court should grant the petition for certiorari.

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Respectfully submitted,

YAAKOV M. ROTH
Counsel of Record
ETHAN D. BECK
JONES DAY
51 Louisiana Ave., NW
Washington, DC 20001
(202) 879-3939
yroth@jonesday.com

Counsel for Amicus Curiae