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 Writ of Certiorari to the Supreme Court of Wisconsin

BRIEF OF *AMICUS CURIAE* WISCONSIN STATE LEGISLATURE IN SUPPORT OF PETITIONERS

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STATEMENT OF INTEREST[1]

The Wisconsin State Legislature is the bicameral legislative branch of the state government of Wisconsin. Wis. Const. art. IV, § 1. Under the state constitution, the Legislature's power "encompasses the ability to determine whether there shall be a law, to what extent the law seeks to accomplish a certain goal, and any limitations on the execution of the law." *Evers v. Marklein*, 2024 WI 31, ¶ 12.

When making Wisconsin law, the Legislature is mindful of the constitutional bounds on its power, including the federal religion clauses, *see* U.S. Const. amend. I, and the parallel state rule that the Legislature may not "interfer[e] with . . . the rights of conscience" or give "preference . . . to any religious establishments or modes of worship," Wis. Const. art. I, § 18.

The Wisconsin Supreme Court, however, did not heed those limitations in the decision below. It instructed state bureaucrats administering Wisconsin's religious-nonprofit unemployment-tax exemption to exclude all but "typical" religious

[1] Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for a party authored this brief in whole or in part, that no counsel for a party or party made a monetary contribution intended to fund the preparation or submission of the brief, and that no entity or person, aside from *amicus curiae*, its members, or its counsel, made a monetary contribution to fund the preparation or submission of this brief.

organizations. That holding empowers state agencies to tax disfavored religious organizations, which flouts both the federal and state constitutions and blatantly misinterprets Wisconsin law. The Legislature enacted the exemption to protect *all* religious exercise—"typical" or not—not to harm religious minorities.

The Legislature has a strong interest in vindicating its law, protecting religious organizations from discriminatory taxation, and holding the court below accountable for its misinterpretation.

INTRODUCTION AND SUMMARY OF ARGUMENT

The federal constitution bans religious establishment because it is dangerous. The decision below crosses the line, licensing state bureaucrats to tax religious groups whose practices do not conform to an arbitrary (if not outright prejudiced) sense of what "religion" looks like. That regressive result is harmful, wrong, and unconstitutional.

I. History shows that government should not meddle with religion. Religious establishments in the American colonies intimidated and persecuted religious minorities. The persecutors should have known better, having been persecuted as minorities in Europe. Thankfully, the country eventually came to its senses and decommissioned religious establishments. Following the First Amendment's lead, Wisconsin, too, rejected establishments from the

start. As a result, the state became a haven for diverse religious communities.

The state still provides broad protections for religious freedom today, including tax exemptions that give faith-based institutions room to breathe. Wisconsin extends to charitable organizations the same exemptions that it grants any other religious organization, and for good reason. Charity is itself a religious practice. In fact, as late as the founding, charity was understood to be an exclusively religious practice.

II. The decision below, however, butchers the religious unemployment-tax exemption. It directs state agencies to tax charitable religious organizations, saying that charity is "secular," so only groups that also engage in "typical" religious practice, like holding worship services and preaching sermons, deserve the exemption. That is wrong. For one, charity is—and has always been—a typical religious practice. But more importantly, the state oversteps when it questions whether a practice is sufficiently religious, or holds that groups such as the Catholic charities here must practice charity in a way that violates their conscience to secure a tax exemption. By distorting the religious exemption, the decision below suppresses religious freedom.

III. The decision below is not only divisive; it is unconstitutional. Just as a state may not openly discriminate against less-favored religious groups, it likewise may not reserve benefits for "typical"

religious groups and deny them to all others. Nor can a state agency (or court) cloak itself with authority to decide what practices are sufficiently religious. The state is not the arbiter of religious truth. And it certainly cannot coerce groups to adopt its views. But that is just what the decision below does. It imposes taxes on some charitable religious groups but not others, declaring that only those groups that approach religious charity in ways it deems "typical" will not be taxed.

No group should have to satisfy a panel of government employees, whether they be regulators or judges, that it is "religious enough" for a tax exemption. This Court should reverse.

ARGUMENT

I. LIKE OTHER STATES, WISCONSIN EXEMPTS RELIGIOUS ORGANIZATIONS FROM TAXES, INCLUDING THOSE THAT PRACTICE CHARITY, A LONG-RECOGNIZED RELIGIOUS EXERCISE.

The court below took a sledgehammer to Wisconsin's religious unemployment-tax exemption. It instructs state bureaucrats to tax religious charities that do not perform "typical" religious activities, such as "worship services," because, in its view, charity is "secular." App.26a, 29a, 32a–33a.

That holding is divisive and wrong. Wisconsin has long been a haven for diverse religious exercise. And the Wisconsin Legislature enacted the tax exemption

to encourage religious freedom, not to stir up conflict by taxing traditions that practice charity for its own sake.

A. By the time Wisconsin became a state in 1848, the country had already suffered severe interdenominational and interreligious conflict and learned the hard lesson that state religious establishments do more harm than good. In Virginia, for example, the established Anglican church aggressively persecuted Baptists: in one infamous incident an Anglican parson and the local sheriff interrupted a Baptist service, dragged the preacher off the stage, and horsewhipped him. Andy G. Olree, *"Pride Ignorance and Knavery": James Madison's Formative Experiences with Religious Establishments*, 36 Harv. J.L. & Pub. Pol'y 211, 227–28 (2013). Quakers faced similarly harsh treatment in Massachusetts; some were killed because the Puritans perceived them as a threat to their Congregationalist churches and pursuit of religious uniformity. Timothy L. Hall, *Roger Williams and the Foundations of Religious Liberty*, 71 B.U. L. Rev. 455, 464 (1991).

In response, states began rejecting establishments in favor of protections for religious freedom. By 1791, at least six of the thirteen state constitutions "prohibit[ed] governmental preference among religions or among Christian sects." Arlin M. Adams & Charles J. Emmerich, *A Heritage of Religious Liberty*, 137 U. Pa. L. Rev. 1559, 1637 (1989). And by the 1860s, 27 of 37 state constitutions prohibited

religious establishment. Steven G. Calabresi & Sarah E. Agudo, *Individual Rights Under State Constitutions When the Fourteenth Amendment Was Ratified in 1868: What Rights Are Deeply Rooted in American History and Tradition?*, 87 Tex. L. Rev. 7, 31–32 (2008). Not only did those protections benefit religious dissenters, but they also fostered the development of diverse, competing "religious factions," which served "as a source of peace and stability" by "frustrat[ing] attempts to monopolize or oppress" religious practice. Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1515–16 (1990).

Rather than repeat other states' errors, Wisconsin enacted broad protections for religious freedom from inception—and reaped the benefits. The Wisconsin constitution secured "the rights of conscience," guaranteed the freedom to worship, and banned government discrimination between religious groups: "nor shall . . . any preference be given by law to any religious establishments or modes of worship." Wis. Const. art. I, § 18 (1848). And the state quickly became a religious haven for immigrants from every corner of Europe—from the Protestant Welsh to the Jewish Germans.[2]

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[2] *Ethnic Groups in Wisconsin: Historical Background*, Max Kade Inst. for German-Am. Studies, Univ. Wisconsin-Madison, https://perma.cc/NXU6-5LMP (last visited Jan. 29, 2025).

Adding to constitutional protections, Wisconsin also provided tax exemptions to encourage its citizens to develop religious institutions. That practice too traces back to "pre-Revolutionary colonial times." *Walz v. Tax Comm'n of City of New York*, 397 U.S. 664, 676–77 (1970). In fact, "[f]ew concepts are more deeply embedded in the fabric of our national life . . . than for the government to exercise . . . benevolent neutrality toward churches and religious exercise generally" by granting tax exemptions. *Id.* This "lengthy tradition" still flourishes today: "more than 2,600 federal and state tax laws provide religious exemptions." *Gaylor v. Mnuchin*, 919 F.3d 420, 436 (7th Cir. 2019). Tax exemptions have long been recognized to promote both healthy religious institutions and a healthy barrier against government intrusion into those institutions. *Walz*, 397 U.S. at 676–77.

Wisconsin provides several broad religious tax exemptions. Churches and religious associations are exempt from paying property tax, including on property housing pastors or other members of religious orders. Wis. Stat. § 70.11(4); *see Missionaries of Our Lady of La Salette v. Michalski*, 15 Wis. 2d 593, 597 (1962). Religious schools and religious nonprofit camps receive generous property tax exemptions. Wis. Stat. § 70.11(4), (11); *see Wis. Evangelical Lutheran Synod v. City of Prairie du Chien*, 125 Wis. 2d 541, 551 (Ct. App. 1985). And religious organizations are exempt from paying sales tax, Wis. Stat. § 77.54(9a)(f), or corporate income tax, *Id.* § 71.26(1)(a).

When state courts have misconstrued the exemptions to exclude less typical religious uses, the Legislature has expanded them. For example, a state court interpreted the language in the property tax exemption "used exclusively by . . . churches or religious . . . associations" to exclude parsonages, so the Legislature responded by adding the word "parsonages." *Michalski*, 15 Wis. 2d at 597. Then a state court decided that a house for members of a religious order was nonexempt, which forced the Legislature to add an express clause for housing for "members of religious orders." *Id.* at 598. These decisions hammer home the Legislature's plain intent that the religious exemptions are broad exemptions.

Churches and religious organizations are also exempt from paying unemployment tax. Wis. Stat. § 108.02(15)(h). The exemption is broad. It extends to all religious nonprofit organizations that are a "church or convention or association of churches" or an "organization operated primarily for religious purposes and operated, supervised, controlled, or principally supported by a church or convention or association of churches." *Id.* § 108.02(15)(h)(1)–(2).

The exemption's plain language exempts religious organizations regardless of whether their beliefs or activities reflect (to some) a traditional or more marginal religious practice. And that is necessary because a narrower, exclusive exemption would undermine the exemption's whole purpose. For one, when the government exempts some religious groups but not others, it effectively "allie[s] itself with one

particular form of religion" and thus "inevitabl[y] . . . "incur[s] the hatred, disrespect and even contempt of those who h[o]ld contrary beliefs." *Engel v. Vitale*, 370 U.S. 421, 431 (1962). For another, an exclusive exemption would catalyze interdenominational conflict. "[A]nguish, hardship and bitter strife . . . come when zealous religious groups struggle[] with one another to obtain the Government's stamp of approval." *Id.* at 429. On top of that, exempting only some religious groups would cause the state to unlawfully burden other religious groups with taxes because of their religious practices, violating their First Amendment right to free exercise. *See Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021) (holding that schemes riddled with "individualized exemptions" unconstitutionally burden religious exercise).

B. Charitable religious organizations fall in the heartland of Wisconsin's religious tax exemptions. As this Court has explained, it is "unnecessary to justify the tax exemption on the social welfare services or 'good works' that some churches perform for parishioners and others—family counselling, aid to the elderly and the infirm, and to children." *Walz*, 397 U.S. at 674. Put another way, some emphasize the work of charitable religious organizations to justify religious tax exemptions, but in fact the exemptions span far broader, capturing all forms of religious organizations. Doing good works neither qualify nor disqualify religious organizations from these exemptions.

The reason charity is a common focal point is that it is central to many religious practices. In fact, some believe that it is as important (if not more important) than studying religious texts or attending religious services. *See, e.g.*, *James* 1:27 (English Standard) ("Religion that is pure and undefiled before God the Father is this: to visit orphans and widows in their affliction, and to keep oneself unstained from the world."). In fact, many well-respected charitable organizations, some of which have been operating in the United States for nearly *two centuries*, sprang to existence at moments when those with passionate religious conviction confronted the horrible realities of the human suffering around them.

Consider the Salvation Army. Today the name evokes images of cheerful bell-ringers with red kettles raising funds to serve those in need, in continued pursuit of the organization's original purpose. The Salvation Army began in the 1850s in England after minister William Booth left his pastoral role in the Methodist church to serve the poor struggling to survive in industrial London. Booth felt called to evangelize the public broadly rather than preach Sunday services in established churches, so he decided to step down and move to the East End of London. 1 Robert Sandall, *The History of the Salvation Army* 7, 17 (1947). The East End was a living nightmare—infamous for streets covered with sewage and animal carcasses; decrepit, cramped housing; malnourished children working long hours in dangerous conditions; and "thieves' dens . . ., gin-spinning dog-holes, [and] low brothels." *Id.* at 28, 30.

Amidst the darkness and despair, Booth founded the Salvation Army, emboldened by his belief "that in every person there is always that divine spark that may be kindled into a glowing flame." *Id.* at 36. Operating under the principle that "the salvation of the soul is the key to the salvation of the body," Booth both fervently preached the gospel and sought "to provide employment[,] housing, [and] feeding . . . to bring about the betterment of the poor and the redemption of those outcast." *Id.* The work sent shockwaves through the city. "Thieves, prostitutes, gamblers, and drunkards were among their first converts to Christianity. And soon, those converts were also preaching and singing in the streets as living testimonies to the power of God."[3] That faith-driven charity continues in earnest today, and now the Salvation Army serves in 134 countries and has assisted over 27 million people in the United States alone.[4]

Other organizations likewise began out of deep religious conviction, but chose to practice charity for its own sake, as a way to "show how they lived out their faith by their actions," rather than mixing charity with evangelism.[5] The Society of St. Vincent

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[3] *What Do We Do?*, Salvation Army, https://perma.cc/8FGR-738J (last visited Jan. 29, 2025).

[4] *Id.*

[5] Ralph Middlecamp, *History of the Society of St Vincent de Paul*, Int'l Confederation of the Soc'y of St. Vincent de Paul, at 4 (Nov. 15, 2017), https://perma.cc/2XW9-YFL5.

de Paul, for example, is an organization of lay Catholics "who seek personal and spiritual growth through service to those most in need."[6] The group began in 1833 when Catholic students studying at the Sorbonne in Paris were challenged by a fellow student's accusation that "while the Catholic Church had done much good work in the past, he could not see what good the Church was doing currently" to alleviate the vast suffering in France.[7] The students sprang into action and organized a new charitable society.[8] They took the name the Society of St. Vincent de Paul, and by 1846 it had grown rapidly and expanded from France to Rome, England, Turkey, and the United States.[9]

From the Society's inception, it has always prioritized "person-to-person contact."[10] The members visit the homes of those they serve to talk with them, discern their needs, and then assist them with everything from utilities and rent payments to food and clothing.[11] To some on the outside, the Society's

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[6] *About Us*, Int'l Confederation of the Soc'y of St. Vincent de Paul, https://perma.cc/W74D-SSTH (last visited Jan. 29, 2025).

[7] *History*, Nat'l Council of the U.S., Soc'y of St. Vincent de Paul, https://perma.cc/TMX5-ADZL (last visited Jan. 29, 2025).

[8] Middlecamp, *supra*, at 7, 9.

[9] *Id.* at 38.

[10] *Rule of the Society of St. Vincent De Paul* § 1.2 (2003) https://perma.cc/2C8D-YGFH.

[11] *History*, Nat'l Council of the U.S., Soc'y of St. Vincent de Paul, https://perma.cc/TMX5-ADZL (last visited Jan. 29, 2025).

charitable work may not seem religious, but it is deeply so. The group admonishes its members "to follow Christ through service to those in need and so bear witness to His compassionate and liberating love."[12] They are called to "serve the poor cheerfully, listening to them and respecting their wishes [and] helping them to feel and recover their own dignity, for we are all created in God's image."[13] Today the Society is made up of over 1.5 million volunteers that serve their communities in 155 countries around the world.[14]

The list goes on and on. Some organizations began in the United States. The Five Points Mission in New York City, "one of the oldest missions in New York City," was established in 1848 by the Ladies of the Home Missionary Society of the Methodist Episcopal Church to assist immigrants and the poor, including by establishing a camp to provide respite from the oppressive, unhealthy living conditions in the city.[15] Before that, the Hebrew Orphan Society was established in Charleston, South Carolina on July 15, 1801, "for the purpose of relieving widows" and

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[12] *Rule of the Society of St. Vincent De Paul*, *supra*, § 1.2.

[13] *Id.* § 1.8.

[14] *Where are we?*, Int'l Confederation of the Soc'y of St. Vincent de Paul, https://perma.cc/PZK8-6RY9 (last visited Jan. 29, 2025).

[15] *History of Five Points Mission*, Olmsted Center, https://perma.cc/MMB9-WQDQ (last visited Jan. 29, 2025).

"educating, clothing and maintaining orphans and children of indigent parents."[16]

Other charitable organizations formed in the United States but then expanded worldwide. The Mennonite Central Committee, for example, was formed in Elkhart, Indiana in 1920 to provide food for families suffering from famine and disease in southern Russia, focusing at first on the needs of fellow Mennonites. *Feeding the Hungry* 49–54 (P. C. Hiebert ed., 1929); *A Table of Sharing* 66 (Alain Epp Weaver ed., 2011). From there the organization rapidly grew and now "respond[s] to basic human needs and work[s] for peace and justice" for everyone in 45 countries around the world.[17] Likewise, Catholic Relief Services was formed by the Catholic Bishops of the United States "to serve World War II survivors in Europe," then expanded globally.[18]

In sum, many longstanding charitable organizations have deeply religious origins, and many continue to practice religious charity today. To say that charitable work is secular work, as the court did below, ignores reality. People may provide the hungry with food for many reasons. The owner of a restaurant

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[16] *Hebrew Orphan Society*, Jewish Hist. Soc'y S.C., https://perma.cc/WD8S-TBRR (last visited Jan. 29, 2025).

[17] *Annual Report 2024*, Mennonite Cent. Comm., https://perma.cc/7UTC-MJPB (last visited Jan. 29, 2025).

[18] *About Catholic Relief Services*, Catholic Relief Servs., https://perma.cc/3LC2-RPQ9 (last visited Jan. 29, 2025).

provides food to make money. A company might do so to promote its products. A political organization might do so to try to encourage people to vote. What differentiates one from the other is the motivation. And when someone provides the hungry with food "to follow Christ through service to those in need and so bear witness to His compassionate and liberating love," that charitable act can be classified as nothing but religious.[19]

And that remains true regardless of whether those practicing religious charity engage in other, more overt religious expression or not. Some, such as the Salvation Army, may intertwine a religious message with their charitable work. Others may let their actions speak for themselves. It is not religious speech that makes the organization's work religious.

II. THE DECISION BELOW, THAT CHARITY ITSELF IS NEVER RELIGIOUS, IS WRONG.

The Wisconsin Supreme Court, however, has effectively rewritten the statute, and, clashing with the First Amendment, its revisions threaten to stir up conflict. The decision below turned on the meaning of the phrase "organization operated primarily for religious purposes," and the court held that an organization does not operate primarily for religious purposes unless it "participate[s] in worship services, religious outreach, ceremony, or religious education." App.29a. In its view, those organizations are the

[19] *Rule of the Society of St. Vincent De Paul*, *supra*, § 1.2.

"typical" organizations that deserve the exemption. App.26a (alteration adopted).

Applying that rule to Catholic Charities, the court held that they do not qualify because they only provide charity to the needy. App.30a. Put plainly, the court held that charity is not religious because it does not *sound like* church (proselytizing) or *look like* church (worship services). App.26a. That is wrong for several reasons. To start, a church could run a charity with none of these trappings, and so long as the charity was not a legally separate nonprofit entity, it would be exempt. Wis. Stat. § 108.02(15)(h)(1). The decision below thus replaces substance with a senseless distinction.

But, worse still, the court wrongly held that charity is not religious. The court below concluded that the charities engage in a "wholly secular endeavor," that they "offer services that would be the same regardless of the motivation of the provider." App.30a–31a. That is wrong several times over. To start, that perspective ignores hundreds—if not thousands—of years of history. The early Christian church invented the practice of charity: there "were no pre-Christian institutions in the ancient world that [offered] charitable aid . . . to those in need." Gary B. Ferngren, *Medicine and Health Care in Early Christianity* 124 (2009). Even as late as the time of the Founding "charity [was] almost exclusively regarded as within the purview of religion." Michael W. McConnell, *Religion and Its Relation to Limited Government*, 33 Harv. J.L. & Pub. Pol'y 943, 949

(2010). So while the court below seemingly believes that "charitable" activities are "a wholly secular endeavor," App.30a, that is incorrect. Even the word "charity" is pregnant with religious meaning; in Old English, it meant "Christian love of one's fellows." *Charity*, *Oxford English Dictionary* 293 (3d ed. 2010). And the inexorable link between charity and religion remains today, as seen in the work of organizations like the Salvation Army and the Society of St. Vincent de Paul.

The court below was simply wrong to hold that the motivation behind charitable work does not make it religious. App.23a–24a. Motivation and intent, the purpose of the act, is what separates the butcher from the priest or the vacationer from the pilgrim. It's what makes burning incense or lighting candles a significant religious act rather than a decorative flourish. And that is no less true here. The act of a nameless bureaucrat sending a $100 social security check to a person struggling to make ends meet is *not* commensurate with a devout Catholic neighbor giving a $100 check to the same person out of compassion.[20]

Focusing on outward appearance in determining whether the "purpose" of an act is religious is especially problematic because many religions command humility in good works. For "when you give

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[20] *See* Michael D. Tanner, *Less Welfare, More Charity*, CATO Institute (Aug. 20, 2014), https://perma.cc/QNE4-ECVW (explaining how private charity "address[es] the real underlying problems that leave people in poverty" better than welfare).

to the needy, sound no trumpet before you, as the hypocrites do in the synagogues and in the streets, that they may be praised by others." *Matthew* 6:2 (English Standard); *see also Qur'an* 2:271 ("To give charity publicly is good, but to give to the poor privately is better."). Thus the court's decision below inappropriately stirs up division by penalizing religious entities that emphasize unspoken, underlying motivations over religious pomp.

Worse still, the state court declared that the reason it disqualified Catholic Charities from the tax exemption is that they perform charity consistent with Catholic teaching. Catholics believe that practicing Christian faith involves unconditional charity to those in need. *See* Pet.10–11. But the state court held that charity is not truly religious unless it comes with strings attached, such as requiring attendance at a worship service or Bible reading. App.29a. The decision below thus denied Catholic Charities the tax exemption because it was *complying* with the religious tenets of its faith rather than practicing charity in the way that the court below arbitrarily considers more religious.

The state agency, in a last-ditch attempt to justify its misinterpretation of the statute, has suggested that the key is to import the legislative history of the federal Unemployment Tax Act, which in its view requires it to exclude charitable organizations such as "orphanage[s] or home[s] for the aged" that lack religious trappings. Opp.14. That too is wrong. The Wisconsin Legislature does not import federal

legislative history into its statutes. Sometimes when a legislature enacts a statute using language similar to existing laws, it intends for the language to carry the same meaning. *See State v. Rector*, 2023 WI 41, ¶ 40 (describing the prior construction canon). But that "presumption" does not extend to legislative history. *See id.* Besides, even if federal courts had interpreted the federal statute to exclude charitable organizations, it would be inappropriate to import that interpretation because it conflicts with the "common, ordinary, and accepted meaning" of purpose, which centers on intent or motivation. *See, e.g.*, *Purpose*, *Oxford English Dictionary* 1443 (3d ed. 2010) ("the reason for which something is done or created or for which something exists"). And even if purpose were focused on the act itself rather than the underlying motivation, charity is a quintessential religious act. Given all that, importing the legislative history of a federal statute would do nothing but "sow confusion," *Rector*, 2023 WI 41, ¶ 40, so it should be rejected.

In sum, nothing in the text of the statute even remotely suggests that Catholics (or any religious group) must violate their beliefs about charity to qualify for the tax exemption. The whole point of the statute is to protect nonprofits engaging in charitable work for religious purposes. The theory below—that charity is never religious because it is sometimes secular—is nonsense.

III. IT IS UNCONSTITUTIONAL TO DENY RELIGIOUS CHARITABLE ORGANIZATIONS A RELIGIOUS TAX EXEMPTION.

In denying Catholic Charities the religious tax exemption, the Wisconsin Supreme Court imposed a regime that violates the constitution, twice over. *First*, it directs the state to deny the religious exemption to any religious groups that don't fit the "typical" Western, Protestant mold. That not only harms Catholics, Jews, Hindus, and other religious groups, but also pits the court's preferred, "typical" religious groups against the others. *Second*, in questioning whether the work of Catholic charities (and others) is sufficiently religious, the decision improperly second-guesses their decision to follow the tenets of their faith—and burdens them with taxes for it. That coercive scheme violates the First Amendment.

To remedy this abuse and prevent future harm, this Court should hold that when granting religious tax exemptions the government may not exclude organizations that emphasize internal religious motivation over overt religious expression. And although some acts may show that an organization's religious motivation is insincere, that is never true of charity.

A. The state court replaced the statute's broad religious protection with a discriminatory framework that creates friction between religious groups. Under the new rule, a religious nonprofit is not exempt

unless its activities either look or sound like traditional religious activities—"worship services, religious outreach, ceremony, or religious education." App.29a. Put plainly, that means a nonprofit is not religious without pulpits and choirs or hymns and Bible studies.

That discriminatory treatment is unconstitutional. The government may not turn its "power, prestige and financial support" towards or against "a particular religious belief." *Engel*, 370 U.S. at 431. And that, among other things, means it "must be neutral when it comes to competition between sects" and cannot show "partiality to any one group" over the others. *Zorach v. Clauson*, 343 U.S. 306, 313–14 (1952). The state cannot "prefer one religion over another" based on the court's own little list of must-have features. *Larson v. Valente*, 456 U.S. 228, 246 (1982).

But reserving tax exemptions for "typical" religious groups does just that. The court below adopted a philistine conception of religion that ignores the diversity and complexity of American religious practice. It denigrates both Jews and Catholics, who "consider charity a central religious practice," and, "according to the Catholic faith, charity is a religious duty they must fulfill in an impartial manner, without proselytizing." App.81a–83a (Bradley, J., dissenting). And it spurns other minority religious practices too. Many may see yoga as exercise, but Hare Krishnas and Hindus consider

it a deeply religious practice.[21] Imposing geographic formations like Devils Tower National Monument in Wyoming are simply vacation destinations to many, but to some Native Americans such places carry deep religious significance.[22] Under the state court's narrowminded conception of religious practice, nonprofits promoting these minority religious practices cannot qualify for the exemption. They are not "typical" enough to make the cut.

And by asserting the authority to decide what counts as sufficiently religious, the court below also improperly questions the validity of Catholic Charities' religious practice. The First Amendment requires states to apply religious exemptions and protections at arm's length—"[c]ourts are not arbiters of scriptural interpretation." *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 715–16 (1981). "It is not within the judicial ken to question the centrality of particular beliefs *or practices* to a faith, or the validity of particular litigants' interpretations of those creeds." *Hernandez v. Comm'r*, 490 U.S. 680, 699 (1989) (emphasis added).

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[21] *Bhakti Yoga*, Int'l Soc'y for Krishna Consciousness, https://perma.cc/58JE-E3BS (last visited Jan. 29, 2025); *The Hindu Roots of Yoga and the Take Back Yoga Campaign*, Hindu Am. Found., https://perma.cc/RH74-Q3QD (last visited Jan. 29, 2025).

[22] *A Place of Reverence for Native Americans*, Nat'l Park Serv., https://perma.cc/99ET-WJ33 (last visited Jan. 29, 2025).

And because denying a tax exemption is indistinguishable from imposing a tax, the court below thus effectively transformed a religious tax exemption into a tax on the religious charitable organizations that emphasize internal religious discipline and practice charity for its own sake. That coercive tax is unconstitutional. *See Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 537 (2022); *Fulton*, 593 U.S. at 533.

Another danger posed by the decision below is that its reasoning applies equally to regulations. The decision below would permit a state to, for example, prohibit charitable work outside of the context of "worship services, religious outreach, ceremony, or religious education." App.29a. That ban would flout the First Amendment, because it would prohibit organizations like Catholic Charities from following their religious obligations to care for the poor, while allowing other religious groups to practice charity unhindered. *See Fulton*, 593 U.S. at 533. That this case involves a tax exemption, rather than a regulation, does not cure the First Amendment problems.

Finally, by reserving benefits for the "typical" religious nonprofit, the decision below by definition harms minority religious groups, the very ones the First Amendment was designed to protect. *See Kennedy*, 597 U.S. at 524. The court's stereotypes of religious activity—"worship services, religious outreach, ceremony, or religious education"—unabashedly reflects "a 'Western' understanding of

religion." App.106a (Bradley, J., dissenting). The decision below cannot stand.

B. This Court should hold that the state court's "typical"-religion test is unconstitutional, and that sincere religious motivation alone renders actions protected under the First Amendment. Religious groups must not be excluded from a religious tax exemption on the grounds that their "activities," apart from their "motivations," do not appear objectively religious. App.21a–22a.

That approach is necessary because it is indisputable that "the same outward act . . . can be religious or secular" depending on the internal motivations—the *purpose*—behind it. *See, e.g.*, Jewish Coalition Cert. Br. at 8 (describing Jewish washing rituals). Given that, courts and government agencies should be prohibited from imposing a supposedly "objective" test of whether outward acts are sufficiently religious. If an act is motivated by sincere religious belief, then it should be treated as religious. *See United States v. Seeger*, 380 U.S. 163, 185 (1965).

To be sure, that rule does not prevent courts from considering an organization's activities in determining whether it is religious, because at times those activities may be so incompatible with religious motivation that they prove that the claimed motivation is merely pretense. But those restrictions apply only on the margins. The whole point of our nation's tradition of religious tax exemptions is "to

help guarantee the free exercise of all forms of religious belief." *Walz*, 397 U.S. at 678. Protecting "all forms," not just the "typical" forms of religious belief, requires giving religious organizations the benefit of the doubt.

At bare minimum, the fact that an organization practices charity should never disqualify it from a religious tax exemption. If anything, charity is a typical religious act.

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The decision below empowered state agencies to deny religious tax exemptions to religious organizations. Perhaps, to the court below, that is a feature of its decision, not a bug. After all, in its words, charitable "services can be provided by organizations of either religious or secular motivations, and the services provided would not differ in any sense." App.30a. Some may think that religious charities don't deserve a tax exemption that is not extended to similar secular organizations. But that is not the court's place to decide. The Legislature granted a religious exemption, and the court may not rewrite it—especially not in a way that violates religious organizations' First Amendment rights.

This Court should reverse the decision below and hold that the First Amendment prohibits the state agency from denying Catholic Charities the religious tax exemption. Acts driven by internal religious

motivation—especially acts of charity—are not less religious because they come without strings attached.

CONCLUSION

The state court's decision denying Catholic Charities the religious tax exemption should be reversed.

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