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.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF WISCONSIN

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING PETITIONERS

CURTIS E. GANNON
Deputy Solicitor General
Counsel of Record
ERIC D. MCARTHUR
Deputy Assistant Attorney General
NICHOLAS S. CROWN
Assistant to the Solicitor General
MICHAEL S. RAAB
LOWELL V. STURGILL JR.
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether a Wisconsin statute that mirrors a provision of the Federal Unemployment Tax Act and exempts services performed in the employ of an organization "operated primarily for religious purposes," 26 U.S.C. 3309(b)(1)(B), can be read to comport with the Free Exercise Clause and the Establishment Clause of the First Amendment to the United States Constitution.

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INTEREST OF THE UNITED STATES

This case involves a state statute that mirrors and implements the Federal Unemployment Tax Act (FUTA), 26 U.S.C. 3301 *et seq.*, which authorizes grants of federal funds to qualifying States for the administration of state unemployment-compensation programs and provides tax credits for covered employers operating within such States. The Secretary of Labor administers FUTA by, among other things, certifying to the Secretary of the Treasury whether each State's law conforms to FUTA's requirements. 26 U.S.C. 3304(c). Moreover, the decision below addressed whether Wisconsin's implementation of a FUTA exemption violates the Free Exercise Clause or Establishment Clause of the First Amendment. The United States therefore has substantial interests in this case.

INTRODUCTION

The statutes at issue provide a tax exemption for certain church-controlled organizations that are "operated primarily for religious purposes." 26 U.S.C. 3309(b)(1)(B); Wis. Stat. § 108.02(15)(h)2 (2019-2020). The Wisconsin Supreme Court construed that language to require courts to consider not only the motivations that drive the organization to conduct its activities but also whether those activities are inherently religious or secular. That was error. The statutory text makes clear that the inquiry focuses on whether the organization *actually* operates primarily for religious reasons, not on the nature of its activities or on whether another organization *could* undertake the same activities for nonreligious reasons. The decision below recognized that the state and federal provisions "contain[] verbatim language" and that "Wisconsin's law was enacted to conform" with the FUTA exemption. Pet. App. 31a. Because a grant of "certiorari to determine whether a statute is constitutional fairly includes the question of what that statute says," *Rumsfeld* v. *Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47, 56 (2006), the state supreme court's misreading of the unambiguous text is sufficient reason to reverse.

The decision below also conflicts with the Free Exercise and Establishment Clauses of the First Amendment. By inviting inquiries into whether an action is intrinsically religious or nonreligious, the state supreme court's reasoning would permit government officials or judges to second-guess the sufficiency of religious values, inspect practitioners' adherence to religious doctrine, and discriminate among various faiths. This Court has recognized that "[t]he 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." *New York* v. *Cathedral Academy*, 434 U.S. 125, 133 (1977). To the extent this Court perceives any statutory ambiguity that might support the judgment below, the Court should still reject the lower court's interpretation to avoid serious constitutional questions.

Under the proper understanding of the religious-employer exemption, petitioners—organizations that serve as the social-ministry arm of a diocese of the Roman Catholic Church—are "operated primarily for religious purposes." And because it is undisputed that petitioners satisfy the remaining statutory prerequisites, they are entitled to the exemption.

STATEMENT

A. Legal Background

Congress enacted FUTA as part of the Social Security Act, ch. 531, 49 Stat. 620. See Tit. IX, 49 Stat. 639; Social Security Act Amendments of 1939, ch. 666, Tit. VI, § 615, 53 Stat. 1396. The Act "envisions a cooperative federal-state program of benefits to unemployed workers." *Wimberly* v. *Labor & Indus. Relations Comm'n*, 479 U.S. 511, 514 (1987). To fund that program, the Act imposes a federal excise tax on wages paid by an "employer" in covered "employment." 26 U.S.C. 3301, 3306(a) and (c).

Employers may receive a credit of up to 90% of their FUTA taxes if they contribute to a fund maintained under a State's federally approved unemployment-compensation program. 26 U.S.C. 3302. To obtain federal approval, a state unemployment-compensation program must meet certain requirements under FUTA. See 26 U.S.C. 3304, 3309. FUTA requires, for example, that a qualifying state program provide unemployment-

insurance benefits to individuals who work for certain employers. *Ibid.* Each year, the Secretary of Labor reviews and certifies whether each State's unemployment-compensation program complies with the Act's prerequisites. 26 U.S.C. 3304(c); see 20 C.F.R. 604.6.

FUTA exempts certain "service[s]" and allows States to do so as well. 26 U.S.C. 3309(b). The religious-employer exemption at issue here was enacted in 1970. See Employment Security Amendments of 1970, Pub. L. No. 91-373, § 104(b)(1), 84 Stat. 698. A State may exempt services performed "in the employ of * * * an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches." 26 U.S.C. 3309(b)(1)(B).

Wisconsin operates an unemployment-compensation program, see Wis. Stat. § 108.01 *et seq.*, which the Secretary of Labor has certified to be compliant with FUTA, 89 Fed. Reg. 90,053, 90,054 (Nov. 14, 2024). Wisconsin's religious-employer exemption mirrors Section 3309(b)(1)(B). Wis. Stat. § 108.02(15)(h)2. Under Wisconsin law, services are exempt from state unemployment taxes if they are provided 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." *Ibid.* As the state supreme court explained in the decision below, when the Wisconsin legislature enacted the current version of its exemption, it sought to "'bring Wisconsin's law in line with'" and "to conform" with the same exemption in FUTA. Pet. App. 31a (citation omitted).

B. The Present Controversy

1. Petitioners—Catholic Charities Bureau, Inc., and four of its sub-entities—are nonprofit organizations that serve as the social-ministry arm of the Diocese of Superior, a diocese of the Roman Catholic Church. Pet. App. 7a-9a. They are covered by an exemption from federal income tax under 26 U.S.C. 501(c)(3) for a group that includes "the educational, charitable, and religious [i]nstitutions operated by the Roman Catholic Church in the United States." Pet. App. 386a; see *id.* at 10a n.6.

Since 1917, Catholic Charities Bureau has provided "services to the poor and disadvantaged as an expression of the social ministry of the Catholic Church in the Diocese of Superior." Pet. App. 7a. Its stated purpose is "'to be an effective sign of the charity of Christ'" by providing services "that are 'significant in quantity and quality' and not duplicative of services provided by other agencies." *Ibid.* It also oversees several separately incorporated sub-entities, including the other petitioners in this case. *Id.* at 7a-8a. The sub-entities provide various services for individuals with developmental and mental-health disabilities, including subsidized housing, job placement and training, in-home support services, and transportation. *Id.* at 8a-9a, 128a-131a. The sub-entities also set their own "organizational goals and make plans to accomplish those goals, employ staff, set program policies, enter into contracts, raise funds, and assure regulatory compliance." *Id.* at 9a-10a.

Although the sub-entity petitioners do not receive funding from the Diocese of Superior, Pet. App. 8a-9a, each petitioner is subject to the diocesan bishop's "control," *id.* at 7a. The bishop serves as the president of Catholic Charities Bureau and "appoints its membership," which in turn "'provide[s] essential oversight to

ensure the fulfillment of the mission of Catholic Charities Bureau in compliance with the Principles of Catholic social teaching.'" *Id.* at 7a-8a. Petitioners and their employees are subject to policies and a code of ethics forbidding "activities that violate Catholic social teachings." *Id.* at 131a; see *id.* at 371a-385a.

2. In 2016, petitioners sought a determination from the Wisconsin Department of Workforce Development that they qualify for the religious-employer exemption codified in Wisconsin's version of Section 3309(b)(1)(B). Pet. App. 10a-11a; see Wis. Stat. § 108.02(15)(h)2.

The Department denied petitioners' requests. Pet. App. 351a-370a. It was undisputed that petitioners are "operated, supervised, controlled, or principally supported by a church," Wis. Stat. § 108.02(15)(h)2, but the Department concluded that petitioners are not "operated primarily for religious purposes" within the meaning of the exemption. Pet. App. 352a, 356a, 360a, 364a, 368a. Following a hearing, an administrative law judge sitting as an appeal tribunal reversed, concluding that petitioners are entitled to the exemption. *Id.* at 291a-350a.

On further administrative appeal, however, the State's Labor and Industry Review Commission reinstated the denials of petitioners' exemption requests. Pet. App. 212a-290a. The Commission reasoned that an entity's "activities, not the religious motivation behind them or the organization's founding principles, determine whether an exemption" applies. *Id.* at 227a, 242a-243a, 258a, 273a-274a, 290a. It concluded that petitioners do not qualify for an exemption under that test because "[p]roviding services to those in need is not intrinsically, necessarily, or uniquely religious in nature." *Id.* at 224a, 240a, 255a, 271a, 287a-288a.

3. Petitioners sought judicial review in state court.

a. In a bench ruling, the trial court concluded that petitioners are entitled to the religious-employer exemption. Pet. App. 189a-211a. The court reasoned that "the test is really why the organizations are operating, not what they are operating," and found that petitioners qualify for the exemption because they are motivated by "Catholic tenets" and the "religious motive of the Catholic Church of being good stewards, of serving the underserved." *Id.* at 209a.

b. The state court of appeals reversed. Pet. App. 125a-168a. The court "acknowledge[d] that the professed reason that [petitioners] administer [their] social service programs is for a religious purpose: to fulfill the Catechism of the Catholic Church." *Id.* at 163a-164a. But the court took the view that the exemption requires consideration of "both the *activities* of the organization as well as the organization's professed *motive* or purpose." *Id.* at 146a. It held that petitioners do not qualify for the exemption because they provide "charitable social services that are neither inherently or primarily religious activities." *Id.* at 165a.

c. The state supreme court affirmed in a 4-3 decision. Pet. App. 1a-122a. The majority reasoned that "both activities and motivations must be considered in a determination of whether an organization is 'operated primarily for religious purposes.'" *Id.* at 21a-22a. According to the court, "[c]onsidering purposes, i.e., motivations, alone would give short shrift to the word 'operated'" and "essentially render an organization's mere assertion of a religious motive dispositive." *Id.* at 21a, 23a. The court thus concluded that analyzing the statutory exemption requires an "objective examination of

[petitioners'] actual activities" to determine whether those activities are "secular in nature." *Id.* at 32a.

The state supreme court explained that its interpretation is consistent with the identical exemption in FUTA. Pet. App. 31a-32a. It emphasized that Wisconsin's exemption "contains verbatim language to" Section 3309(b)(1) and that the Wisconsin legislature had adopted FUTA's language "to conform" state law with the federal statute. *Id.* at 31a. Because the Wisconsin legislature intended for the state exemption to be "in line with" FUTA's parallel text, the court reasoned that FUTA's legislative history informs the meaning of Wisconsin's parallel provision. *Ibid.* (citation omitted). The court also invoked the analysis that federal courts undertake when evaluating tax-exemption requests under Section 501(c)(3), *id.* at 26a-27a, and when applying the "ministerial exception" under the First Amendment, *id.* at 27a-28a.

Under its interpretation of the phrase "operated primarily for religious purposes," the state supreme court held that petitioners do not qualify for the religious-employer exemption. Pet. App. 28a-33a. Although the court "accept[ed]" at "face value" petitioners' "assertions of religious motivation" for their operations, *id.* at 29a, it concluded that petitioners "are not operated primarily for religious purposes" because their activities "are secular in nature," *id.* at 31a-32a. The court understood petitioners' activities to be "primarily charitable and secular" because their "services can be provided by organizations of either religious or secular motivations, and the services provided would not differ in any sense." *Id.* at 30a; see *id.* at 32a. The court emphasized that one of the sub-entity petitioners "had no affiliation with any religious organization" until 2014, and that "the services

provided before and after [its] partnership with [Catholic Charities Bureau] commenced were exactly the same." *Id.* at 30a.

The state supreme court further held that its interpretation does not violate the Free Exercise and Establishment Clauses. Pet. App. at 33a-51a. The court concluded that its "neutral and secular inquiry" into petitioners' "actual activities," *id.* at 40a-41a, does not "cross into an evaluation of religious dogma," *id.* at 38a. The court added that its interpretation does not violate principles of church autonomy because it "neither regulates internal church governance nor mandates any activity." *Id.* at 45a-46a. Finally, the court found that its statutory construction does not violate petitioners' free-exercise rights because imposing a generally applicable tax is not a constitutionally significant burden. *Id.* at 48a-50a.

Justice Bradley dissented, joined almost entirely by Chief Justice Ziegler. Pet. App. 51a-121a. According to the dissent, the majority erred in "ask[ing] whether" petitioners' activities are "religious in nature" because "no activities are inherently religious." *Id.* at 79a. What makes "an activity religious," the dissent noted, is "religious motivation." *Ibid.* The dissent would have applied the "common-sense understanding" of the term "purposes" and concluded that petitioners qualify for the exemption because it is "uncontested" that petitioners' "raison d'être is religious." *Id.* at 65a, 67a. The dissent also warned that the majority's interpretation "triggers constitutional quandaries" by "engag[ing] in religious discrimination and entangl[ing] the state with religion in violation of the First Amendment." *Id.* at 90a; see *id.* at 90a-121a.

Justice Hagedorn also dissented. Pet. App. 121a-122a. He agreed with the primary dissent's "construction of the statute," but "would not [have] reach[ed] the constitutional questions" implicated in this case. *Ibid.*

SUMMARY OF ARGUMENT

The religious-employer exemption from the federal-state unemployment-tax framework applies to certain church-controlled organizations that are "operated primarily for religious purposes." 26 U.S.C. 3309(b)(1)(B); Wis. Stat. § 108.02(15)(h)2 (2019-2020). The Wisconsin Supreme Court erred in construing that language to require courts to ask not just whether the organization has sincere religious motivations but whether its activities are inherently religious or secular. The statutory text makes clear that the relevant inquiry is whether the organization *actually* operates primarily for religious reasons, not whether another organization *could* undertake the same activities for nonreligious reasons. This Court should reverse.

A. The judgment below rests on a misunderstanding of federal law. Although this Court typically accepts the interpretation of state law as announced by that State's highest court, that principle is inapplicable here because the decision below relied on federal case law and analyzed a state-law exemption that is the same as, and intended to conform with, the parallel exemption in FUTA. This Court should correct the state court's misconstruction, just as it did the last time it construed FUTA's religious-employer exemption and its implementation by a parallel state statute. See *St. Martin Evangelical Lutheran Church* v. *South Dakota*, 451 U.S. 772, 780 n.9 (1981).

The religious-employer exemption applies to organizations that conduct their affairs primarily for sincere

religious motivations. That focus on the subjective intent motivating an organization's operations tracks the ordinary meaning of the statutory terms "operated," "primarily," and "purposes." That interpretation also finds support in the broader tax context, including the exemption in Section 501(c)(3) of the Internal Revenue Code. At the same time, the religious-employer exemption allows courts to assess the sincerity and predominance of an organization's asserted purposes.

The state supreme court's contrary reasoning lacks merit. Rather than adhere to the statutory focus on actual intent, the court analyzed whether certain activities are inherently religious. But that interpretation effectively excises the terms "purposes" and "primarily."

B. Even if this Court concludes that there is statutory ambiguity, it should still reject the state supreme court's view. That court's construction, as applied to petitioners, would conflict with the First Amendment in at least two respects.

First, by asking whether an activity is inherently religious or nonreligious, the decision below invites courts to second-guess whether a sincerely held belief or expression of faith is truly religious. This Court has made clear that the First Amendment guards against that type of intrusive inquiry.

Second, the state supreme court's reasoning creates a constitutionally impermissible risk that certain religions would be treated unequally in the granting and denying of tax exemptions. The court listed certain acts —such as worship services and ceremony, religious outreach, and religious education—that it viewed as enjoying "strong indications that the activities are primarily religious in nature." Pet. App. 29a. But that approach privileges the activities of certain religions over others,

especially minority faiths, thereby discriminating in the allocation of benefits or administration of government programs.

The decision also raises additional constitutional concerns that courts will be entangled in religious issues. Accordingly, this Court should adopt an interpretation of the religious-employer exemption that avoids those constitutional infirmities and doubts. *St. Martin*, 451 U.S. at 780.

C. Under a proper understanding of the religious-employer exemption, petitioners—organizations that serve as the social-ministry arm of a diocese of the Roman Catholic Church—qualify as organizations "operated primarily for religious purposes." And because it is undisputed that petitioners satisfy the remaining prerequisites, petitioners are entitled to the exemption.

ARGUMENT

A. The Wisconsin Supreme Court Erred In Construing FUTA And Its Identical State-law Analogue

The decision below rests on a fundamental misunderstanding of federal law. The state supreme court misinterpreted language in a state-law tax provision that is materially identical to, and intended to conform with, 26 U.S.C. 3309(b)(1)(B), and that court relied on federal precedent for its erroneous conclusion. This Court should reverse.

1. This Court should correct the state supreme court's misunderstanding of federal law

Although petitioners do not directly question the state supreme court's construction of the relevant statutes, "there can be little doubt that granting certiorari to determine whether a statute is constitutional fairly includes the question of what that statute says." *Rums-*

feld v. *Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47, 56 (2006) (*FAIR*). This Court ordinarily accepts the interpretation of state law as announced by that State's highest court. See, *e.g.*, *O'Brien* v. *Skinner*, 414 U.S. 524, 531 (1974). But when a "state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion," the Court presumes "that the state court decided the case the way it did because it believed that federal law required it to do so." *Michigan* v. *Long*, 463 U.S. 1032, 1040-1041 (1983). In those circumstances, this Court may correct the state court's misunderstanding of federal law. See *ibid.*

This Court has already done that in the context of FUTA's exemptions for religious employers. In *St. Martin Evangelical Lutheran Church* v. *South Dakota*, 451 U.S. 772 (1981), the Court reviewed the South Dakota Supreme Court's decision about a state statute that shared identical text with FUTA. *Id.* at 774 nn.1, 2 (quoting 26 U.S.C. 3309(b) (1976) and the parallel state statute). Although the state-court decision technically "concern[ed] the construction of a state statute," this Court reviewed the state court's judgment and determined "the proper * * * interpretation of the intertwined federal law." *Id.* at 780 n.9.

The Court should follow the same course here because this case involves the proper interpretation of FUTA. Like the state-court judgment under review in *St. Martin*, the decision below turned on a state-law exemption that is "intertwined" with its parallel exemption in FUTA. 451 U.S. at 780 n.9. The relevant text in both statutes is identical. Compare 26 U.S.C.

3309(b)(1)(B) ("operated primarily for religious purposes"), with Wis. Stat. § 108.02(15)(h)2 (2019-2020) (same). The state supreme court recognized that the Wisconsin legislature enacted "verbatim language to a provision of federal law" to "'bring Wisconsin's law in line with'" and "to conform" state law with FUTA. Pet. App. 31a (citation omitted). In analyzing the state statute, the state court relied on FUTA's legislative history, *id.* at 27a n.15, 31a-32a, and on federal case law interpreting the similarly worded Section 501(c)(3) of the Internal Revenue Code, *id.* at 23a, 26a-29a, 40a. And the Wisconsin Attorney General has supported an "analytical approach * * * consistent with the congressional history of FUTA" and treated decisions from various state courts as presenting "similar interpretation questions" precisely because the States have "copied the language of [FUTA]." Br. in Opp. 8, 14.

2. The religious-employer exemption covers organizations that conduct their affairs sincerely and principally for religious reasons

Statutory interpretation "begins with the statutory text." *National Ass'n of Mfrs.* v. *Department of Defense*, 583 U.S. 109, 127 (2018) (citation omitted). If "the plain language" is "'unambiguous,'" the inquiry "'ends there as well.'" *Ibid.* (citation omitted). The statutory text at issue here means that the exemption applies to organizations that conduct their affairs sincerely and fundamentally with religious motivations.

a. The religious-employer exemption added to FUTA in 1970 and its state-law analogue apply to services performed in the employ of "an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches."

26 U.S.C. 3309(b)(1)(B); see Wis. Stat. § 108.02(15)(h)2. Because the parties agree that petitioners are "operated, supervised, controlled, or principally supported by a church," Pet. App. 5a n.3, 218a-219a, only the first clause of the provisions is at issue.

The relevant statutory terms here are "operated," "primarily," and "purposes." The term "operated" is the past-participle form of the transitive verb "operate," which means, as pertinent here, "to manage and put or keep in operation." *Webster's Third New International Dictionary* 1581 (1971) (*Webster's*) (giving the example "*operated* a grocery store"); see 10 *The Oxford English Dictionary* 848 (2d ed. 1989) (*OED*) ("To direct the working of; to manage, conduct, work (a railway, business, etc.); to carry out or through, direct to an end (a principle, an undertaking, etc.)."). The ordinary meaning of "primarily" is "fundamentally, principally," or "first of all." *Webster's* 1800 (capitalization omitted); see 12 *OED* 472 ("In the first place; first of all, preeminently, chiefly, principally; essentially."). And a "purpose" is "an end or aim to be kept in view in any plan, measure, exertion, or operation." *Webster's* 1847; see 12 *OED* 878 ("the object which one has in view"; "[t]he object for which anything is done or made, or for which it exists; * * * end, aim.").

Read naturally, those terms mean that the relevant inquiry—determining whether an organization "is operated primarily for religious purposes"—is whether the principal objects or aims for the organization's activities are religious. That inquiry turns on the organization's own objects or aims—not on whether that organization (or another one) *could have* engaged in the same kinds of activities in the service of nonreligious aims. The tax exemption at issue here is based on an organization's

fundamental motivation for its affairs, not on the nature of the activities through which it pursues its purposes.[1]

b. That interpretation of FUTA's exemption finds support in the broader tax context. For instance, this Court employed a similar approach in *Better Business Bureau of Washington, D.C., Inc.* v. *United States*, 326 U.S. 279 (1945), when it construed a tax exemption in the Social Security Act, 42 U.S.C. 301 *et seq.*, that had been incorporated into the Internal Revenue Code. 326 U.S. at 280 n.1. Much as FUTA and Wisconsin's parallel provision tether the applicability of a tax exemption to an organization's principal purpose, the Social Security Act provided an exemption for "[s]ervice performed in the employ of a corporation * * * organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes." 26 U.S.C. 1426(b)(8) (1940). This Court recognized that the exemption focused on the corporation's purposes animating its activities, not the nature of its actions. See *Better Business Bureau*, 326 U.S. at 283-284. The Court concluded that the exemption did not apply to the Better Business Bureau because, even though it sought to educate businesses and the public about honest business practices, its corporate charter and title reflected that its "activities we[re] largely animated by" the non-exempt "com-

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[1] The decision below suggested that a court must look at the motivation of the organization seeking the exemption, and not the motivation of a church that controls the organization. Pet. App. 16a-17a. That observation is immaterial because all agreed that petitioners have sincerely held religious motivations. *Id.* at 29a. It is also incorrect because the exemption contemplates that an organization "operated primarily for religious purposes" is in some cases "operated * * * by a church." 26 U.S.C. 3309(b)(1)(B); Wis. Stat. § 108.02(15)(h)2. In those circumstances, the church's own purposes are at issue.

mercial purpose" of promoting practices that would help merchants "profitably conduct their business." *Id.* at 284. The Court concluded that the organization's efforts were "directed fundamentally to ends other than that of education," *ibid.*, without determining whether its activities were innately educational or pedagogical.

Courts have similarly construed the longstanding and widely used exemption in Section 501(c)(3) of the Internal Revenue Code by focusing on an organization's purposes. Section 501(c)(3) provides that an organization is exempt from federal income tax if it is "organized and operated exclusively" for, among other things, "religious" purposes. 26 U.S.C. 501(c)(3).[2] To determine whether an organization is exempt, courts and the Internal Revenue Service have focused on "the purposes toward which an organization's activities are directed, and not the nature of the activities." *Living Faith, Inc.* v. *Commissioner*, 950 F.2d 365, 370 (7th Cir. 1991) (citation omitted); see, *e.g.*, *Presbyterian & Reformed Publ'g Co.* v. *Commissioner*, 743 F.2d 148, 156 (3d Cir. 1984) ("[T]he inquiry must remain that of determining the purpose to which the increased business activity is directed."); *Dumaine Farms* v. *Commissioner,* 73 T.C. 650, 663-668 (1980) (similar); *Golden Rule Church Ass'n* v. *Commissioner*, 41 T.C. 719, 728 (1964) (similar); IRS, *Publication 5859: Exempt Organizations Technical Guide* 19-20 (Feb. 1, 2024), https://www.irs.gov/pub/irs-pdf/p5859.pdf.

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[2] The phrase "organized and operated exclusively" under Section 501(c)(3) has long been understood to include organizations "engage[d] *primarily* in activities which accomplish one or more of such exempt purposes." 26 C.F.R. 1.501(c)(3)-1(c)(1) (emphasis added); see, *e.g.*, *Mayo Clinic* v. *United States*, 997 F.3d 789, 800 (8th Cir. 2021).

The decisions in *Living Faith*, *Dumaine Farms*, and *Golden Rule Church* are instructive. In each instance, the organizations seeking Section 501(c)(3) exemptions engaged in activity that could be thought commercial in nature (and thus non-exempt). *Living Faith*, 950 F.2d at 367 (restaurants and stores); *Dumaine Farms*, 73 T.C. at 651 (farming); *Golden Rule Church*, 41 T.C. at 723-724 (laundry, livestock, lodging, and lumber operations). But the nature of the activities was not dispositive: Instead, the inquiry focused on the *purpose* for which seemingly commercial activities were performed. In *Living Faith*, the court held that the organization did not qualify for the exemption because it operated not only for a religious purpose but for a "substantial commercial purpose as well," such that the religious purpose did not predominate. 950 F.2d at 376. By contrast, the organizations in *Dumaine Farms* and *Golden Rule Church* qualified for Section 501(c)(3) status because they engaged in ostensibly commercial activities for tax-exempt reasons. *Dumaine Farms*, 73 T.C. at 663-668 (scientific and educational purposes); *Golden Rule Church*, 41 T.C. at 729-732 (religious purposes). Secular, for-profit organizations also engage in farming, laundry, and other activities that might typically be viewed as commercial—but that did not foreclose the conclusion that the organizations in *Dumaine Farms* and *Golden Rule Church* engaged in those activities primarily for exempt purposes.

Thus, the decision below erred in suggesting that Section 501(c)(3) supports an inquiry into whether an activity is inherently "religious in nature." Pet. App. 29a; see *id.* at 26a-30a. The state supreme court's principal citation, *United States* v. *Dykema*, 666 F.2d 1096 (7th Cir. 1981), cert. denied, 456 U.S. 983 (1982), does

not support that proposition. Although *Dykema* follows a long line of cases correctly recognizing that courts may assess whether a religious belief is sincerely held or actually motivating a claimant (see pp. 19-21, *infra*), that decision did not suggest that courts may deem certain actions inherently nonreligious, and it avoided "entering into any subjective inquiry with respect to religious truth." 666 F.2d at 1100.

There is no sound reason to conclude that Congress intended to require a different approach for FUTA's religious-employer exemption, or that the Wisconsin Legislature intended to prescribe a different mode of analysis when it amended state law "to conform" with FUTA. Pet. App. 31a.

c. Although FUTA and Wisconsin's parallel statute focus on an organization's subjective motivations, courts have an important role to play in assessing whether the exemption applies. Specifically, courts may assess the sincerity and predominance of an organization's asserted purposes.

First, courts may assess an organization's *sincerity*. This Court has repeatedly explained that a religious motivation is to be credited when it is sincerely held and authentic. See, *e.g.*, *Hernandez* v. *Commissioner*, 490 U.S. 680, 693 (1989) (First Amendment); *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U.S. 682, 723-726 (2014) (Religious Freedom Restoration Act of 1993, 42 U.S.C. 2000bb *et seq.*); *Cutter* v. *Wilkinson*, 544 U.S. 709, 725 n.13 (2005) (Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. 2000cc *et seq.*).

Second, courts may consider whether an organization was *actually* and *principally* motivated by its asserted purpose. That too is a familiar concept in the law.

In the First Amendment context, this Court has recognized that an actor's choices may be "philosophical and personal rather than religious," and thus "not rise to the demands of the Religion Clauses." *Wisconsin* v. *Yoder*, 406 U.S. 205, 216 (1972). Similarly, in *Ramirez* v. *Collier*, 595 U.S. 411 (2022)—involving a death-row inmate's right under RLUIPA to pray with his pastor in the execution chamber—this Court considered whether the plaintiff's conduct and his prior statements suggested a motivation other than "sincere religious exercise." *Id.* at 426. And in *Better Business Bureau*, this Court affirmed the denial of a social-security-tax exemption for an entity that claimed to have predominantly "scientific or educational purposes." 326 U.S. at 280. Rather than take the organization's assertions at face value, the Court concluded that the entity was not truly "animated" by its professed motivation, and that its actual aims were instead "directed fundamentally" to a nonexempt "commercial purpose." *Id.* at 284.

In analyzing the sincerity and primacy of an organization's stated purposes, "a variety of factors may be important." *Our Lady of Guadalupe Sch.* v. *Morrissey-Berru*, 591 U.S. 732, 751 (2020) (addressing the applicability of the "ministerial exception" to employment-discrimination claims) (citation omitted). An organization's founding documents, bylaws, and public statements may be relevant to assessing its true motivations. See *Better Business Bureau*, 326 U.S. at 283-284 (examining "corporate title" and "charter provisions"); *Hobby Lobby*, 573 U.S. at 702-703 (examining other corporate statements). An organization's prior assertions may also be relevant. See *Ramirez*, 595 U.S. at 426. Likewise, a court could consider whether the organization "holds itself out to the public as a religious institu-

tion." *Duquesne Univ. of the Holy Spirit* v. *NLRB*, 947 F.3d 824, 832 (D.C. Cir. 2020) (applying inferred religious exemption from the National Labor Relations Act, 29 U.S.C. 151 *et seq.*). And in some circumstances, the "particular manner in which an organization's activities are conducted, the commercial hue of those activities, competition with commercial firms, and the existence and amount of annual or accumulated profits" could be "relevant evidence." *Living Faith*, 950 F.2d at 372 (addressing Section 501(c)(3)). Nevertheless, "[i]n considering the circumstances of any given case, courts must take care to avoid 'resolving underlying controversies over religious doctrine.'" *Our Lady*, 591 U.S. at 751 n.10 (citation omitted).

3. The Wisconsin Supreme Court's contrary reasoning lacks merit

The state supreme court disregarded the exemption's focus on subjective intent and instead analyzed whether certain actions are, in its view, inherently religious or secular in nature. That interpretation has scant basis in the statutory text.

a. The Wisconsin Supreme Court acknowledged that a "'purpose'" is ordinarily "'the reason for which something exists or is done,'" and it "implies 'motivation.'" Pet. App. 21a (citations omitted). Yet the court asserted that "[c]onsidering purposes, i.e., motivations, alone would give short shrift to the word 'operated'" in the statute and would "essentially render an organization's mere assertion of a religious motive dispositive." *Id.* at 21a, 23a. The court therefore took the view that Wisconsin and federal law require assessing the nature of an organization's activities to determine whether they are intrinsically religious or secular. *Id.* at 30a-

33a. Those conclusions disregard the statutory text in two respects.

First, the decision below effectively excised the term "purposes" from the statutory exemption. Courts should "give effect to every clause and word of a statute." *Polselli* v. *IRS*, 598 U.S. 432, 441 (2023) (brackets and citation omitted). Here, however, the state supreme court focused on whether petitioners' operations "would be the same *regardless of* the motivation" behind them. Pet. App. 31a (emphasis added). For example, the court found that petitioners' conduct is inherently nonreligious because one of the sub-entity petitioners provided "exactly the same" services before and after it came under the "umbrella" of Catholic Charities Bureau and the bishop of the Diocese of Superior. *Id.* at 30a. That blinkered approach ignores the statutory focus on the organization's aims in operating its affairs.

The primary example provided in the decision below underscores the errors in its analysis. According to the state supreme court, "[t]he services provided by a religiously run orphanage and a secular one do not differ in any meaningful sense." Pet. App. 32a. But they differ in a sense made meaningful by the statute. While it may be true that certain *activities* associated with running an orphanage could be the same notwithstanding a particular actor's motives, that provides no basis to ignore the statute's focus on purposes (*i.e.*, what would, in the instance of an individual, be the mental state that accompanied the activities). Whether an action has religious meaning depends on the circumstances, especially the actor's intent. Some might grow their beards for secular reasons, while others may do so "in accordance with [their] religious beliefs." *Holt* v. *Hobbs*, 574 U.S. 352, 355-356 (2015). Drinking tea may have no religious

significance for some, but be "a sincere exercise of religion" for others. *Gonzales* v. *O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 423 (2006). And some may abstain from certain foods for reasons of health or taste, while others do so on religious grounds. The statutory reference to "religious purposes" captures an analogous—and meaningful—difference. The decision below, by contrast, would treat certain conduct as categorically secular and foreclose an organization from claiming a religious basis for its activities, no matter how sincere or profoundly religious its reasons may be.

Second, the Wisconsin Supreme Court failed to give adequate effect to the term "primarily." 26 U.S.C. 3309(b)(1)(B); Wis. Stat. § 108.02(15)(h)2. The court did not separately analyze that term at all: In its view, the "key words" were "'operated' and 'purposes,'" Pet. App. 20a, and on that understanding the court endeavored to avoid "render[ing] an organization's mere assertion of religious motive dispositive," *id.* at 23a. But the statutory text makes clear that an asserted religious motive must be the principal or fundamental purpose behind an organization's affairs. See pp. 14-16, *supra*.

Hewing to the plain meaning of "primarily" would minimize the state supreme court's concern that "any religiously affiliated organization would always be exempt" based on the theory that "[a] church's purpose is religious by nature." Pet. App. 18a; see *id.* at 21a-23a. Assessing the motivations for an organization's affairs helps to ensure that the religious-employer exemption does not extend to entities that are not actually operated primarily for religious purposes.

b. The Wisconsin Supreme Court advanced three additional rationales for its unpersuasive interpretation of the statutory text. None has merit.

First, the state supreme court reasoned that narrowly construing a tax exemption would serve the goal of compensating the unemployed. Pet. App. 14a, 21a-24a, 31a-32a. But "'[n]o legislation pursues its purposes at all costs,' and 'every statute purposes, not only to achieve certain ends, but also to achieve them by particular means.'" *Freeman* v. *Quicken Loans, Inc.*, 566 U.S. 624, 637 (2012) (brackets and citations omitted). Although FUTA and related state laws seek to foster "a cooperative federal-state program of benefits to unemployed workers," *Wimberly* v. *Labor & Indus. Relations Comm'n*, 479 U.S. 511, 514 (1987), the decision below gave short shrift to the specific statutory goal of *exempting* certain organizations, including entities that are "operated primarily for religious purposes and which [are] operated, supervised, controlled, or principally supported by a church or convention or association of churches." 26 U.S.C. 3309(b)(1)(B); see Pet. App. 31a (observing Wisconsin legislature's intent to "bring Wisconsin's law in line with" federal exemption) (citation omitted); see also *BP p.l.c.* v. *Mayor & City Council of Baltimore*, 593 U.S. 230, 239 (2021) ("Exceptions and exemptions are no less part of Congress's work than its rules and standards[.]"). In any event, "[v]ague notions of statutory purpose provide no warrant" to ignore the "unambiguous[]" statutory text. *Freeman*, 566 U.S. at 637; see *St. Martin*, 451 U.S. at 786 n.19 ("[G]eneral statements of overall purpose * * * cannot defeat the specific and clear wording of a statute.").

Second, the decision below relied on a committee report in FUTA's legislative history for the proposition that certain church-related "charitable organization[s] (such as an orphanage or a home for the aged) would not be considered * * * to be operated primarily for reli-

gious purposes." Pet. App. 32a (emphasis omitted) (quoting H.R. Rep. No. 612, 91st Cong., 1st Sess. 44 (1969)). In finding that petitioners did not qualify for an exemption, the state supreme court compared their activities—*e.g.*, providing "developmental services"—to the "secular" examples in the committee report. *Ibid.*

That reasoning was flawed because, among other things, "Congress's 'authoritative statement is the statutory text, not the legislative history.'" *Chamber of Commerce* v. *Whiting*, 563 U.S. 582, 599 (2011) (citation omitted). And even "[t]hose [Members of this Court] who make use of legislative history" do so when "clear evidence of congressional intent may illuminate ambiguous text." *Delaware* v. *Pennsylvania*, 598 U.S. 115, 138-139 (2023) (citation omitted). Here, the committee report does not constitute clear evidence, and the enacted text is not ambiguous, see pp. 14-19, *supra*. The report's drafters did not explain why the plain text would not reach the parenthetical examples. Nor did they have the benefit of the intervening half-century of this Court's jurisprudence concerning the Religion Clauses.[3]

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[3] In a 1987 advisory letter, the Department of Labor took the view that the religious-employer exemption would not cover "entities with a religious orientation but which are not affiliated with a particular church, or convention or association of churches"—such as "nondenominational college[s]"—because such "entities are not operated, supervised, controlled, or principally supported by a church or convention or association of churches." 52 Fed. Reg. 27,072 (July 17, 1987). That letter is inapplicable because it did not address the relevant phrase ("operated primarily for religious purposes") and it is common ground that petitioners are "operated, supervised, controlled, or principally supported by a church," Pet. App. 5a n.3, 218a-219a.

Finally, the Wisconsin Supreme Court erred in invoking cases applying the "'ministerial exception'" to support its view that it is appropriate to analyze the inherent nature of a religious organization's "actions" to determine whether its "activities are primarily charitable and secular." Pet. App. 24a-25a & n.14, 30a (citation omitted). The ministerial exception "foreclose[s] certain employment discrimination claims brought against religious organizations" based on the constitutionally protected "principle of church autonomy * * * in matters of faith and doctrine and in closely linked matters of internal government." *Our Lady*, 591 U.S. at 747. While this Court has taken care to explain that "a variety of factors may be important" in "determining whether a particular position falls within the * * * exception," *id.* at 751, the Court has likewise emphasized that "[i]n a country with the religious diversity of the United States, judges cannot be expected to have a complete understanding and appreciation of the role played by every person who performs a particular role in every religious tradition," *id.* at 757; see *id.* at 771-772 (Sotomayor, J., dissenting) (noting that the "inquiry is holistic" and examines whether an organization acted "for nonreligious *reasons*") (emphasis added). In short, the "ministerial exception" does not suggest that courts may subordinate an organization's sincerely held beliefs and actual motivations to the conclusion that certain activities are categorically nonreligious.

B. The Decision Below Conflicts With The Free Exercise And Establishment Clauses

Even if this Court concludes that there is statutory ambiguity, it should still reverse the judgment of the state supreme court, which construes the text in ways that, as applied to petitioners, violate the First Amend-

ment. That court's approach wrongly invites government officials to question whether a particular expression of faith is sufficiently "religious" and to discriminate among certain faiths. And it may require government officials to second-guess an entity's religious mission or to analyze an organization's adherence to religious tenets. Of course, this Court normally "will not decide a constitutional question if there is some other ground upon which to dispose of the case." *Bond* v. *United States*, 572 U.S. 844, 855 (2014) (citation omitted). Accordingly, the Court should adopt an interpretation that "avoid[s] serious constitutional doubts," *Iancu* v. *Brunetti*, 588 U.S. 388, 397 (2019) (citation omitted)—just as it did the last time it construed FUTA's religious-employer exemption and its implementation by a parallel state statute. *St. Martin*, 451 U.S. at 780.

1. The First Amendment, which applies to the States under the Fourteenth Amendment, provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Those clauses guarantee to religious organizations the right to "decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff* v. *Saint Nicholas Cathedral of the Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952); see *Serbian E. Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696, 724-725 (1976); see also *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC*, 565 U.S. 171, 186-187 (2012). They also guard against religious discrimination in the allocation of benefits or administration of government programs. *Carson* v. *Makin*, 596 U.S. 767, 778 (2022) (Free Exercise Clause); *Larson* v. *Valente*, 456 U.S. 228, 246 (1982) (Establishment Clause).

a. The state supreme court's decision flouts those fundamental First Amendment principles in at least two respects. First, the court's reasoning invites judges to inquire whether a sincerely held belief or expression of faith is truly religious. The court reasoned that some services are "secular by nature" because they "would not differ in any sense," whether they were "provided by organizations of either religious or secular motivations." Pet. App. 30a. But this Court has admonished that "[i]t 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*, 490 U.S. at 699 (citation omitted); see *New York* v. *Cathedral Academy*, 434 U.S. 125, 133 (1977). That is, courts should not decide "what is a 'religious' belief or practice" based on "a judicial perception of the particular belief or practice in question." *Thomas* v. *Review Bd. of the Ind. Emp't Sec. Div.*, 450 U.S. 707, 714 (1981). Rather, "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Fulton* v. *City of Philadelphia*, 593 U.S. 522, 532 (2021) (quoting *Thomas*, 450 U.S. at 714). Indeed, "[r]eligion may have as much to do with *why* one takes an action as it does with *what* action one takes." *University of Great Falls* v. *NLRB*, 278 F.3d 1335, 1346 (D.C. Cir. 2002) (emphases added); see *ibid.* ("That 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.").

By treating certain actions as inherently secular, the decision below also conflicts with this Court's reasoning in *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints* v. *Amos*, 483 U.S. 327

(1987). *Amos* held that Title VII's exemption for certain religious entities, 42 U.S.C. 2000e-1(a), comports with the Establishment Clause because that exemption "alleviate[s] significant governmental interference with the ability of religious organizations to define and carry out their religious missions." 483 U.S. at 335. The Court emphasized that the broad exemption "*avoids* the kind of intrusive inquiry into religious belief" that the First Amendment forbids. *Id.* at 339 (emphasis added). The Court further observed that it would be "a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities a secular court will consider religious," particularly because a court might "not understand its religious tenets and sense of mission." *Id.* at 336. Justices Brennan and Marshall concurred because, in their view, it would have been "inappropriate" under the First Amendment to conduct a "case-by-case determination whether [a nonprofit corporation's] nature is religious or secular" when applying Title VII's religious-corporation exception. *Id.* at 340 (Brennan, J., concurring in the judgment). The decision below, however, would require courts to engage in the same analysis that *Amos* considered to be constitutionally infirm.

The decision below is likewise incompatible with *Hernandez* v. *Commissioner*, *supra*, which construed 26 U.S.C. 170(c)(2)(B), a provision allowing deductions for a "contribution or gift" for use by an organization "organized and operated exclusively for religious * * * purposes." This Court rejected a taxpayer's argument that *quid pro quo* transactions could qualify for the exemption if the payer received "benefits of a religious nature" in exchange, *Hernandez*, 490 U.S. at 694, because "under the First Amendment, the IRS can reject other-

wise valid claims of religious benefit only on the ground that a taxpayers' alleged beliefs are not sincerely held, but not on the ground that such beliefs are inherently irreligious," *id.* at 693 (citing *United States* v. *Ballard*, 322 U.S. 78 (1944)). The Court made clear that such an inquiry "might raise problems of entanglement between church and state," and that "'pervasive monitoring' for 'the subtle or overt presence of religious matter' is a central danger against which we have held the Establishment Clause guards." *Id.* at 694 (citation omitted). Yet, the decision below would force officials and courts into that constitutional thicket by requiring them to decide whether an activity is inherently "religious" or "secular" in "nature." Pet. App. 29a, 32a.

Second, the Wisconsin Supreme Court's construction of Section 3309(b)(1)(B) and the parallel state statute presents an impermissible danger that certain religions —including minority faiths—would be treated unequally in the granting and denying of tax exemptions. This Court has made clear that the First Amendment forbids governments to condition benefits on the degree of an organization's perceived religiosity. For example, in *Carson* v. *Makin*, *supra*, the Court held that the Free Exercise Clause precludes a State from excluding a school from a tuition-assistance program on the ground that the school "promotes a particular faith and presents academic material through the lens of that faith." 596 U.S. at 787 (citation omitted). That distinction, the Court observed, would "raise serious concerns about state entanglement with religion and denominational favoritism" because such a test might favor religious schools that do not evangelize or inject religious views into secular instruction. *Ibid.*; see also *Larson*, 456 U.S. at 245 ("This constitutional prohibition of denomina-

tional preferences is inextricably connected with the continuing vitality of the Free Exercise Clause."). The Court has further explained that "[r]equiring" different faiths to share certain characteristics—such as "use of [a] title"—"would constitute impermissible discrimination" and "risk privileging religious traditions with" certain tenets over others. *Our Lady*, 591 U.S. at 752-753; see *Yoder*, 406 U.S. at 216-217.

The decision below privileges "only a small, and ill-defined, subset of religious activities," Pet. App. 104a (Bradley, J., dissenting), as qualifying for the exemption under FUTA and Wisconsin law. The state supreme court listed certain activities—*e.g.*, "worship services, religious outreach, ceremony, or religious education"—that it viewed as enjoying "strong indications that the activities are primarily religious in nature." *Id.* at 29a. But that approach exalts "largely Protestant[] religious activities" and diminishes other actions that may have profound importance in other faiths, such as "Catholicism, Judaism, Islam, Sikhism, Hinduism, Buddhism, Hare Krishna, and the Church of Latter Day Saints, among others." *Id.* at 53a, 106a (Bradley, J., dissenting).

b. Even apart from those violations of First Amendment principles, the decision below raises additional constitutional concerns. For example, the state supreme court reasoned that petitioners are not "operated primarily for religious purposes," 26 U.S.C. 3309(b)(1)(B); Wis. Stat. § 108.02(15)(h)2, on the theory that they offer "employment" and "services" to individuals "regardless of religion," Pet. App. 30a. But limiting the tax exemption to organizations that hire or serve only those who share their faith—or to organizations that directly expose employees or program participants to religious

doctrine, materials, or ceremony, *id.* at 29a—presents a significant risk that courts would second-guess the content of an entity's religious mission in violation of the First Amendment.

Similarly, this Court has cautioned that determining who is a "member" of "the religion with which the employer is associated" may be a question that "would risk judicial entanglement in religious issues." *Our Lady*, 591 U.S. at 761. Indeed, when a religious group attests to its "religious creeds," a court's "inquiry into the good faith of the position asserted by the clergy-administrators and its relationship to the [group's] religious mission" may itself "impinge on rights guaranteed by the Religion Clauses." *NLRB* v. *Catholic Bishop*, 440 U.S. 490, 502 (1979).

2. This Court, however, should "prudent[ly] exercise" its jurisdiction by avoiding the need to resolve the weighty constitutional questions arising from the decision below. *Bond*, 572 U.S. at 855 (citation omitted). Because the decision below misconstrued the plain language of FUTA and the conforming Wisconsin statute, and because the statute's meaning is "fairly include[d]" in the question presented, *FAIR*, 547 U.S. at 56, the judgment can and should be reversed on that straightforward ground.

Even if there were ambiguity in the text, the constitutional infirmities and concerns described above and in petitioners' brief (at 24-50) would provide powerful reasons to adopt our statutory interpretation as a matter of constitutional avoidance. When faced with ambiguous language, this Court may "choose between competing plausible interpretations of a statutory text," *Jennings* v. *Rodriguez*, 583 U.S. 281, 298 (2018) (brackets, citation, and emphasis omitted), based "on the reasona-

ble presumption that Congress did not intend the alternative which raises serious constitutional doubts," *Clark* v. *Martinez*, 543 U.S. 371, 381 (2005). Our reading "is at least 'fairly possible,'" such that "the canon of constitutional avoidance would still counsel [the Court] to adopt it." *United States* v. *Hansen*, 599 U.S. 762, 781 (2023) (citation omitted).

This Court has previously explained that FUTA's exemption should be construed to "avoid raising doubts of its constitutionality." *St. Martin*, 451 U.S. at 780. In *St. Martin*, two church-run schools sought tax exemptions "on both statutory and First Amendment grounds." *Id.* at 774. The schools argued that they were exempt because their employees performed services "in the employ of * * * a church or convention or association of churches," 26 U.S.C. 3309(b)(1)(A), and that "holding them subject to [unemployment] taxes would violate both the Free Exercise Clause and the Establishment Clause." *St. Martin*, 451 U.S. at 775-776. The Court found it "unnecessary" to "consider the First Amendment issues," *id.* at 788, because the statutory text could be interpreted "to apply to schools, like petitioners', that have no separate legal existence from a church [or] * * * a 'convention or association of churches,'" *id.* at 784 (quoting 26 U.S.C. 3309(b)(1)(A)).

A parallel course is warranted here. Our interpretation is not only the best construction of the statute, but it also avoids the need to decide whether the statute would be constitutional as interpreted and applied by the state supreme court.

C. Petitioners Qualify For The Exemption They Seek

Properly understood, FUTA and Wisconsin's statute make clear that petitioners are organizations "operated

primarily for religious purposes" and thus entitled to the exemption.

First, it is undisputed that petitioners have sincerely held "religious purposes," 26 U.S.C. 3309(b)(1)(B); Wis. Stat. § 108.02(15)(h)2, and that their assertions of "religiosity" are "authentic," *Cutter*, 544 U.S. at 725 n.13. The decision below "accept[ed]" that petitioners have a "religious motivation" and emphasized that respondents "do[] not argue that [petitioners'] assertions of religious motivation are insincere, fraudulent, or otherwise not credible." Pet. App. 29a.

Second, petitioners' religious motivations predominate in their operations. See Pet. Br. 6-11. Petitioner Catholic Charities Bureau, for example, holds itself and its activities out as religiously motivated. Its president is the diocesan bishop, who appoints the "membership" that "'provide[s] essential oversight to ensure the fulfillment of the mission of Catholic Charities Bureau in compliance with the Principles of Catholic social teaching.'" Pet. App. 7a-8a. Its statement of philosophy "indicates" that "its 'purpose . . . is to be an effective sign of the charity of Christ'" by, among other things, "'providing services to the poor and disadvantaged'" that are "not duplicative of services provided by other agencies." *Id.* at 7a; see *Duquesne Univ.*, 947 F.3d at 832 (considering whether an organization "holds itself out to the public as a religious institution"). The entity's code of ethics 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.'" Pet. App. 8a. And there is no dispute that petitioners and their employees are instructed to follow Catholic social teaching in providing services. *Ibid.*; see *id.* at 7a, 371a-385a, 469a-

475a. Nor is there any suggestion that petitioners' "charter provisions," bylaws, statements, or conduct betray a non-exempt motivation such as a "commercial purpose." *Better Business Bureau*, 326 U.S. at 283-284; see, *e.g.*, *Living Faith*, 950 F.2d at 372. In short, the only barrier to petitioners' entitlement to the exemption they seek is the state court's erroneous statutory interpretation.

CONCLUSION

For the foregoing reasons, the judgment of the Wisconsin Supreme Court should be reversed.

Respectfully submitted.

CURTIS E. GANNON
*Deputy Solicitor General**
ERIC D. MCARTHUR
Deputy Assistant Attorney General
NICHOLAS S. CROWN
Assistant to the Solicitor General
MICHAEL S. RAAB
LOWELL V. STURGILL JR.
Attorneys

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* The Acting Solicitor General is recused in this case.