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 THE INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF THE *AMICUS CURIAE*[1]

The International Society for Krishna Consciousness ("ISKCON"), otherwise known as the Hare Krishna movement, is a monotheistic, Gaudiya Vaishnava faith within the broad Hindu tradition. ISKCON has over seven hundred temples and rural communities, one hundred affiliated vegetarian restaurants, and ten million congregational members worldwide. Its affiliated Hare Krishna Food Relief programs distribute more than one million free meals daily across the globe. ISKCON members believe that all living beings have an eternal relationship with God, who in their faith is Lord Krishna, and that the purpose of life is to awaken our dormant love of God. Thus, protecting religious freedom for all people is an essential principle for ISKCON.

ISKCON is concerned that the decision of the Wisconsin Supreme Court impermissibly entangles government entities in religious affairs because it requires government bodies to decide whether religious organizations' activities are, on balance, "primarily religious" or "secular." That assessment necessarily involves a searching inquiry into religious organizations' beliefs, doctrines, and sacred texts—an exercise this Court has recognized impermissibly intrudes into religious affairs and entangles Church and State.

ISKCON believes that courts and other government entities are ill-equipped to conduct this analysis, as exemplified by the exceedingly narrow conception of reli-

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[1] No counsel for any party authored this brief in whole or in part and no entity or person, aside from *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

gious activity endorsed by the Wisconsin Supreme Court here. If courts are to analyze the religious tenets of ISKCON and those of other faiths through this myopic lens, activities central to their religious worship and devotion will likely be deemed secular, rather than religious, in the eyes of the State. That risk of State entanglement is particularly acute for the religion *amicus* represents and other non-Western and minority religions in the United States that are less familiar to courts and other government entities. ISKCON is filing this brief to provide the Court with its unique perspective on this issue.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Wisconsin Supreme Court's decision authorizes a sweeping government intrusion into the religious sphere—empowering government tribunals to scrutinize the religious nature of an institution's activities and disadvantaging minority religions in the process. The lower court's decision thus cannot be reconciled with the First Amendment's fundamental protections against government interference in religious activities and beliefs. To make matters worse, the Wisconsin Supreme Court's decision requires courts to pass judgment on the religious character of an organization's activities even in circumstances where, as here, a court has already determined that the organization has a sincere religious motivation for undertaking those activities. This Court should not tolerate this erosion of fundamental First Amendment protections.

Under the Wisconsin Unemployment Compensation Act, an employer may be exempted from its obligation to pay into the State's unemployment insurance program if, among other things, it is "operated primarily

for religious purposes." Wis. Stat. § 108.02(15)(h). Rather than looking to an entity's uncontested religious *motivation* to assess whether it is "operated primarily for religious purposes," the Wisconsin Supreme Court's decision directs courts and other state tribunals to undertake a searching, case-by-case inquiry into whether the activities of a religious entity—activities undeniably motivated by sincere religious conviction—fit within the lower court's myopic conception of what are truly "religious" activities that warrant an exemption from State regulation. The court then applied that misguided rule to hold that the religious-purposes exemption in the Wisconsin statute does not encompass the Catholic Charities Bureau and its sub-entities (collectively, "CCB"), because it deemed their religiously motivated activities to nonetheless be "primarily charitable and secular." Pet. App. 30a. And it held that this government exclusion of religiously motivated conduct from the State's view of what counts as true religious activity does not offend the First Amendment. Pet. App. 33a-51a.

The lower court's decision is egregiously wrong and will undermine religious autonomy and disproportionately disadvantage minority religions in the process.

First, the Wisconsin Supreme Court improperly authorized government tribunals to perform an intrusive inquiry into the nature of religious organizations' activities to determine whether they are "primarily religious" in nature—rather than measuring the religious character of a religious adherent's actions by the person's or entity's *motive*. In so doing, the lower court improperly authorized the entanglement of the State in religious affairs. Although the Wisconsin Supreme Court postulated that it could avoid such entanglement

by undertaking what it characterized as a "neutral and secular inquiry based on objective criteria," Pet. App. 40a, no such "neutral" or "objective" criteria exist. Instead, deciding which of a religious institution's activities are "primarily religious" requires government officials to engage in careful scrutiny of a religion's sacred doctrines and rituals in an effort to discern what practices and beliefs are central to that religion. The Wisconsin Supreme Court's decision below did precisely that—it denied the religious significance of CCB's activities, performed in compliance with "the Principles of Catholic social teaching," Pet. App. 8a, based on the court's view of what acts are stereotypically religious. This type of inquiry necessarily entangles Church and State, and makes government officials—rather than religious organizations—the arbiters of religious doctrine.

Second, the Wisconsin Supreme Court erred by imposing a restrictive view of what activities are "religious"—one that excludes a broad swath of religiously motivated practices from the public sphere and threatens to favor Western religions and religious practices to the exclusion of religious practices of non-Western, minority religions, including those of the Hare Krishnas, that may not resemble the religious practices of Western religions. The Wisconsin Supreme Court held that the charitable activities of CCB—for example, providing care to those with developmental and mental-health disabilities—are not "primarily religious" because a secular entity could provide similar services and CCB does not engage in stereotypical religious practices—such as conducting "worship services, religious outreach, [or] ceremony," or proselytizing those it serves. Pet. App. 29a. By that logic, the core religious practices of the Hare Krishnas—such as dancing and

the sharing of sanctified food (prasada)—risk being stripped of their religious character and branded secular in the eyes of the State. The lower court's decision illustrates perfectly the danger to religious groups that is posed by a judicial rule that requires government officials to decide what *activities* are "primarily religious." These dangers are only amplified for religious adherents whose non-Western and minority religious beliefs and practices likely are foreign to courts and other tribunals within the United States.

The Wisconsin Supreme Court's decision is a dramatic departure from fundamental and longstanding principles governing the relationship between Church and State. The Court should not allow the tenets of religious freedom guaranteed to adherents of all religions to be whittled away.

ARGUMENT

I. The Wisconsin Supreme Court's decision impermissibly entangles Church and State.

This Court has historically gone "to great lengths to avoid government 'entanglement' with religion." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 764 (2020) (Thomas, J., concurring). For good reason: By barring the government from intruding into the affairs of religious organizations and religious doctrine, the Constitution stands in the way of government control of religion or religious doctrine, thus "protect[ing] a religious group's right to shape its own faith and mission." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 188 (2012); *see also Lynch v. Donnelly*, 465 U.S. 668, 687-688 (1984) (O'Connor, J., concurring) (noting that "excessive en-

tanglement with religious institutions … may interfere with the independence of the institutions").

The Wisconsin Supreme Court's decision threatens to erode that important safeguard. That court held that to determine whether a religious entity is "operated primarily for religious purposes," Wis. Stat. § 108.02(15)(h), a court or other reviewing body may not credit the religious *motives* underlying that conduct, but must instead undertake a searching inquiry into the nature of the religious entity's *activities* to determine whether they satisfy the State's conception of what conduct is "religious." Pet. App. 19a-28a. The Wisconsin Supreme Court dismissed any concern that this inquiry breeds impermissible entanglement on the theory that courts are equipped to assess the religious nature of the CCB's activities through a "neutral" inquiry using "objective criteria." Pet. App. 40a. But invoking those buzzwords does not alter the true nature of the inquiry the Wisconsin Supreme Court adopted, as the decision itself illustrates.

The religious character of an "activity is not self-evident." *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 343-344 (1987) (Brennan, J., concurring in the judgment). As Justice Bradley noted in her dissent below, "no activities are inherently religious"; rather, "religious motivation *makes* an activity religious." Pet. App. 79a (emphasis added). Fully understanding which practices and activities are dictated by a particular religion—and are therefore the product of sincere religious motivations—requires parsing sacred texts and understanding the history, tradition, and evolution of the religious faith. It follows that "determining whether an activity is religious or secular requires a searching

case-by-case analysis[,]" which necessarily produces "considerable ongoing government entanglement in religious affairs." *Amos*, 483 U.S. at 343-344 (Brennan, J., concurring in the judgment).

That is true for Western religions, such as the Catholic Church, but it is all the more true when a court commences the untoward task of scrutinizing the religious activities of a Hare Krishna or a member of any other non-Western, minority religion practiced in the United States. In the case of the Hare Krishnas, this exercise would, at a minimum, require study of Hindu religious texts, including the Bhagavad-Gita, the Srimad-Bhagavatam, and the Caitanya Caritamrita. Absent an understanding of how these sacred texts have been interpreted by religious adherents and leaders over time, and within the current cultural context, judicial scrutiny of the Hare Krishna faith's religious tenets will inevitably yield an incomplete and misleading picture of what that faith requires. That is why asking courts "to make distinctions as to that which is religious and that which is secular … is necessarily a suspect effort." *Espinosa v. Rusk*, 634 F.2d 477, 481 (10th Cir. 1980), *aff'd*, 456 U.S. 951 (1982).

Ultimately, the only way for a reviewing body to decide whether a particular act or practice is a "primary" component of a faith is to parse religious doctrines and tenets—embroiling "civil courts" in the "forbidden" practice of "interpreting and weighing church doctrine." *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 451 (1969). The Court has strictly prohibited this hallmark of government entanglement with religion. *See id.* at 449 (holding that courts may not "resolv[e] … controversies over religious doctrine" or "ecclesiastical

questions"); *Serbian E. Orthodox Diocese for U.S. and Can. v. Milivojevich*, 426 U.S. 696, 709-710 (1976) (holding that "First Amendment values are plainly jeopardized" when "civil courts" become embroiled in "controversies over religious doctrine and practice") (citation omitted); *accord Lee v. Weisman*, 505 U.S. 577, 599 (1992) (Blackmun, J., concurring) ("Nearly half a century of review and refinement of Establishment Clause jurisprudence has distilled one clear understanding" that Government may not "obtrude itself in the internal affairs of any religious institution."). At a bare minimum, the Wisconsin Supreme Court's decision "involves [government] officials in the definition of what is religious"—the essence of entanglement. *See Rusk*, 634 F.2d at 481; *see also Agudath Isr. of Am. v. Cuomo*, 983 F.3d 620, 633-634 (2d Cir. 2020) ("The government must normally refrain from making assumptions about what religious worship requires.").

The entangling effect of the lower court's decision is further illustrated by the incentives it creates for religious organizations to alter their practices to avoid being deemed "secular" by a government body. For example, the Wisconsin Supreme Court reasoned that CCB was not operated primarily for religious purposes because, among other factors, "[b]oth employment with [CCB] and services offered by [CCB] are open to all participants regardless of religion." Pet. App. 30a. Thus, a religious organization, such as CCB, may feel compelled to alter its religiously motivated practices to conform to those activities the State deems "religious"—providing charitable services only to those willing to be proselytized or only hiring those of the same faith. The entanglement doctrine exists to address this very concern: the risk that religious organizations, "wary of [] judicial review of their decisions, might

make them with an eye to" the government response they will engender, "rather than upon the basis of their own personal and doctrinal assessments." *Rayburn v. Gen. Conf. of Seventh-Day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985).

The Court should reject the impermissible entanglement between Church and State dictated by the lower court's decision.

II. The Wisconsin Supreme Court adopted an exceedingly narrow view of what activities are "primarily religious," which excludes core religious practices from the public sphere and disfavors minority religions.

The Wisconsin Supreme Court's misguided decision requiring government tribunals to scrutinize whether institutions' activities are sufficiently "religious" led to a predictable result: a conception of religious activity that effectively confines religious practice only to those activities that in no way resemble activities that could be performed by a secular organization for non-religious reasons. That exceedingly restrictive view of religious conduct sets a dangerous precedent under which vast swaths of religiously motivated practices will now be deemed secular—particularly the practices of non-Western, minority religious faiths—and stripped of their religious character in the eyes of the State. This Court should emphatically reject the Wisconsin Supreme Court's misguided and narrow-minded conception of religious activity.

This Court has "[r]epeatedly and in many different contexts" recognized the dangers inherent in courts scrutinizing the nature, validity, or centrality of particular religious practices or beliefs. *Emp. Div., Dep't*

of Hum. Res. of Or. v. Smith, 494 U.S. 872, 887 (1990). For that reason, courts have consistently declined to question whether a particular belief or practice is central to a particular religion—"[i]t is not," the Court has emphasized, "within the judicial ken to question the centrality of particular … practices to a faith." *Hernandez v. Comm'r of Internal Revenue*, 490 U.S. 680, 699 (1989); *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 714 (1981) (concluding that "what is a 'religious' belief or practice" does "not … turn upon a judicial perception of the particular belief or practice in question"); *Smith*, 494 U.S. at 887 ("Judging the centrality of different religious practices is akin to the unacceptable 'business of evaluating the relative merits of differing religious claims.'") (citation omitted); *Kravitz v. Purcell*, 87 F.4th 111, 124, 129 (2d Cir. 2023) (stating that declining to evaluate the centrality or importance of religious beliefs is a "consistent and resounding theme echoed throughout many Supreme Court opinions" and that "what the observance of" a religious practice "entails is beyond the competence of a federal court") (citation omitted).

Following this principle, courts have adopted a broad view of religious activity—one that turns largely on the motives and beliefs underlying the relevant conduct, not on some generally applicable or so-called "objective" criteria. For example, in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), the Court held that the Old Order Amish's practice of withdrawing their children from traditional school after eighth grade was religious activity protected by the Free Exercise Clause. The Court recognized that the practice would not have been protected by the First Amendment had it been "based on purely secular considerations," but held that the Free Exercise Clause applied because the practice

sprung from a "deep religious conviction." *Id.* at 215-216.

Similarly, in *Espinosa v. Rusk*, *supra*, the Tenth Circuit invalidated an ordinance requiring charitable organizations, including churches, to obtain a license before engaging in solicitation. 634 F.2d at 479. The ordinance exempted "religious" activities from the license requirement, but deemed "secular" numerous activities performed by the church—including "the feeding of the hungry or the offer of clothing and shelter to the poor." *Id.* at 481. The court rejected the city's narrow view that to be "religious" the activity must "be purely spiritual or evangelical[,]" and, in turn, criticized the city's "broad definition of secular" that subjected the church's charitable acts to regulation. *Id.* This Court thought the Tenth Circuit's decision to be so clearly correct that it affirmed the court of appeals' judgment in a summary order without oral argument. *See Rusk v. Espinosa*, 456 U.S. 951 (1982).

The principle underlying these and other cases is clear—the scope of religious activity extends beyond judicial conceptions of the "purely spiritual," *Rusk*, 634 F.2d at 481, and government officials may not declare activity "secular" that is motivated by sincerely held religious beliefs.

The Wisconsin Supreme Court, however, did precisely that in holding that CCB's charitable activities—activities that it conceded were motivated by sincerely held religious beliefs, Pet. App. 29a—were "wholly secular" rather than primarily religious, Pet. App. 30a. The court acknowledged that the CCB engages in a range of charitable services, including assisting those "facing the challenges of aging, the distress of a disability, the concerns of children with special needs, the

stresses of families living in poverty and those in need of disaster relief." Pet. App. 8a. The lower court also recognized that CCB engages in those activities because of a sincere religious motivation to "provid[e] services to the poor and disadvantaged as an expression of the social ministry of the Catholic Church," and "to be an effective sign of the charity of Christ." Pet. App. 7a. Nonetheless, the Wisconsin Supreme Court held that CCB's activities are not primarily religious because CCB does not "attempt to imbue program participants with the Catholic faith," "supply any religious materials to program participants or employees," and offers employment and services to "all … regardless of religion." Pet. App. 29a, 30a. Absent such proselytizing or religion-based favoritism, the Wisconsin Supreme Court concluded, CCB's efforts to serve the aging, disabled, and poor in compliance with Catholic doctrine "*do not differ in any meaningful sense*" from actions performed by a secular organization for secular purposes. Pet. App. 32a (emphasis added).[2] It made no difference to the lower court's conception of religious activity that CCB offers its charitable services "to be an effective sign of the charity of Christ," Pet. App. 383a, and in furtherance of Catholic teaching that charity "cannot be used as a means of engaging in … proselytism" and must be exercised "in an impartial manner" regardless of religious affiliation, Pet. 11. In the eyes of Wisconsin, CCB's activities are "a wholly secular endeavor." Pet. App. 30a.

The Wisconsin Supreme Court's severely cabined

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[2] Although the Wisconsin Supreme Court stated that such characteristics are "not required" for an activity to be "primarily religious," it identified no other basis for deeming CCB's activities "secular." Pet. App. 29a-30a.

conception of religious activity—one that confines religion to proselytizing or rituals performed in a Church, Temple, Synagogue, or other place of worship on a holy day—disregards other *equally* fundamental aspects of religious faith and practice, such as feeding the poor or caring for the sick and elderly. The Wisconsin Supreme Court fundamentally erred in stripping these practices of their religious character and, in so doing, deeming broad swaths of religiously motivated conduct to be "wholly secular endeavor[s]." Pet. App. 30a.

The lower court's "broad definition of secular," *Rusk*, 634 F.2d at 481, sets a dangerous precedent generally, but the perils of allowing government to define what activities are "inherently" religious or "primarily" religious are particularly acute for minority and non-Western religions, whose varied beliefs and practices are likely to be unfamiliar to government officials in the United States. As federal courts have candidly acknowledged, "lay courts familiar with Western religious traditions"—"characterized by sacramental rituals and structured theologies"—"are ill-equipped to evaluate the relative significance of particular rites of an alien faith." *Int'l Soc'y for Krishna Consciousness, Inc. v. Barber*, 650 F.2d 430, 441 (2d Cir. 1981). As a result, minority religions are at risk of having practices central to their faiths being deemed "secular" by a government actor applying the Wisconsin Supreme Court's so-called "objective criteria." Pet. App. 40a.

The Hare Krishnas, for example, engage in many practices that are central to their faith that broadly resemble actions engaged in by non-adherents for non-religious purposes. For example, the requirements of practicing Bhakti-yoga include mandates against intoxication, following a vegetarian diet, and practicing

cleanliness of the mind and body, as central tenets of the Hare Krishna religion. These physical requirements are "one step on [the] path of God realization" and help followers "connect to the Supreme by means of loving devotional service."[3] Under the lower court's theory, however, Bhakti-yoga would be considered primarily *secular* because it may not always involve proselytizing or religious instruction and—like feeding the poor or caring for the disabled—it involves an activity that may be performed by non-adherents.

The same is true of Prasadam—the Hare Krishna "practice of preparing food, offering it to the Deity, and distributing it to the general population."[4] This practice involves the widespread distribution of vegetarian food to millions worldwide, regardless of faith, and is distributed without proselytizing or direct religious instruction.[5] Yet, a court applying the standard adopted by the Wisconsin Supreme Court would deem this activity to be no more religious than food stamps or a foodbank—"a wholly secular endeavor." Pet. App. 30a.

The lower court's decision thus threatens to drain fundamental practices of minority faiths of their religious character—despite the clear religious dictates, motivations, and beliefs driving those practices. Further still, it invites courts to engage in the type of line-

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[3] *Bhakti Yoga*, ISKCON, https://www.iskcon.org/beliefs/bhakti-yoga.php (accessed Aug. 16, 2024).

[4] *Wonderful Prasadam*, Krishna.com, https://food.krishna.com/article/wonderful-prasadam (accessed Aug. 16, 2024).

[5] *Food Relief Program*, ISKCON, https://www.iskcon.org/activities/food-relief-program.php (accessed Aug. 16, 2024).

drawing that necessarily favors some religions over others, "send[ing] a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community." *Lynch*, 465 U.S. at 688 (O'Connor, J., concurring).

The Wisconsin Supreme Court's decision sets a dangerous precedent, has no place in the law of any State, and is contrary to the principles of religious liberty embodied in the First Amendment.

CONCLUSION

The Court should reverse the judgement of the Wisconsin Supreme Court.

Respectfully submitted.

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