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 ELEVEN MAJOR RELIGIOUS DENOMINATIONS AS *AMICI CURIAE* SUPPORTING PETITIONERS AND REVERSAL

JAMES C. PHILLIPS
SCHAERR | JAFFE LLP
299 South Main Street
Suite 1300
Salt Lake City, UT 84111

R. SHAWN GUNNARSON
KIRTON | MCCONKIE
36 S. State Street
Suite 1900
Salt Lake City, UT 84111

GENE C. SCHAERR
Counsel of Record
ERIK S. JAFFE
H. CHRISTOPHER BARTOLOMUCCI
HANNAH C. SMITH
JOSHUA J. PRINCE
MEGAN SHOELL
MIRANDA CHERKAS SHERRILL
SCHAERR | JAFFE LLP
1717 K Street NW, Suite 900
Washington, DC 20006
(202) 787-1060
gschaerr@schaerr-jaffe.com

Counsel for Amici Curiae

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INTRODUCTION AND INTERESTS OF *AMICI CURIAE*[1]

This Court has long recognized that one "fixed star in our constitutional constellation * * * is that no official, high or petty, can prescribe what shall be orthodox in * * * religion[.]" *West Virginia State Bd. of Educ.* v. *Barnette*, 319 U.S. 624, 642 (1943). Although the church autonomy doctrine may not have been what the Court had in mind when it drafted those words, it is an important corollary of that foundational principle. Accordingly, this Court has formulated that doctrine broadly, explaining that it allows religious organizations "to decide for themselves, free from state interference," not only matters of "faith and doctrine," but also—critically for this case and so many others—"matters of church government." *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952).

The Wisconsin Supreme Court's decision under review here departed from that longstanding guidance, which is dispositive here. That court adopted a constitutionally implausible interpretation of a Wisconsin law that generally exempts from the state unemployment insurance program religious organizations "operated, supervised, controlled, or principally supported by a church or convention or association of churches." Wis. Stat. § 108.02(15)(h)(2). Although any reasonable interpretation of that statute

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[1] This brief was not authored in whole or in part by counsel for any party and no person or entity other than *amici* or their counsel has made a monetary contribution toward the brief's preparation or submission.

would include the Catholic Charities Bureau and its sub-entities, which are subdivisions of and controlled by the Diocese of Superior, the Wisconsin Supreme Court reached the far-fetched (and legally wrong) conclusion that the Bureau is not "operated primarily for religious purposes," but is, instead, engaged in "activities [that] are primarily charitable and secular." Pet.App.30a, Pet.App.32a-33a. But the Wisconsin court could reach that conclusion only by second-guessing the Diocese on an important "matter[] of church government."

For instance, the court conducted a constitutionally offensive examination of the organizational structure of the Catholic Charities Bureau and its sub-entities to determine that their motives and activities are separate from those of the Roman Catholic Church. Pet.App.18a-19a. It then relied on the fact that the Bureau's employment and ministry were "open to all participants regardless of religion" as evidence that the Bureau was not religious. Pet.App.25a-26a, Pet.App.29a-30a. By undertaking this intrusive "process of inquiry" into the Diocese's internal decisions about how best to organize its charitable work, whom to employ, and whom to serve, see generally *NLRB* v. *Catholic Bishop of Chi.*, 440 U.S. 490, 502 (1979), the Wisconsin Supreme Court violated the First Amendment's Religion Clauses and the church autonomy doctrine that those clauses require. See, *e.g.*, *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC*, 565 U.S. 171, 186 (2012).

This stark departure from the First Amendment's church autonomy doctrine is of great concern to

Amici—major religious denominations including the General Conference of Seventh-day Adventists, the United States Conference of Catholic Bishops, The Church of Jesus Christ of Latter-day Saints, The Lutheran Church–Missouri Synod, The Ethics & Religious Liberty Commission of the Southern Baptist Convention, The United Methodist Church, the Church of Christ, Scientist, the Assembly of Canonical Orthodox Bishops of the United States of America, the Union of Orthodox Jewish Congregations of America, Hindu American Foundation, and BAPS Swaminarayan Sanstha. Collectively, these organizations' members comprise some 90 million Americans. And, as is true for Petitioners, *Amici*'s autonomy would be severely undermined if the First Amendment allowed the government to second-guess their decisions on matters of church government such as a religion's organizational structure or employment or service decisions.

Thankfully, the First Amendment—as correctly construed and applied by this Court—forbids governmental second-guessing of religious authorities on such "matters of church government." *Amici* respectfully urge the Court to reverse the Wisconsin court's decision in an opinion explaining that "matters of church government" include large swaths of a religious organization's internal activities, including their decisions about how to best organize and pursue what *they* sincerely view as their religious missions. The Religion Clauses demand as much.

STATEMENT

The Bureau is the social ministry arm of the Roman Catholic Church's Diocese of Superior, Wisconsin. Pet.App.371a. Pursuant to the Diocese's directives, the Bureau includes separately incorporated, non-profit sub-entities that operate programs serving the elderly, the disabled, the poor, and others, regardless of the recipient's religious affiliation or lack thereof. Pet.App.373a, Pet.App.386a-402a, Pet.App.431a. These activities are intended to reflect "the charity of Christ." Pet.App.383a.

The Bureau sought review in state court after it unsuccessfully invoked an exemption, available to religious organizations, that would allow it to operate an independent Church Unemployment Pay Program rather than participating in the state unemployment program. See Pet.App.351a-370a; Wis. Stat. §§ 108.02(15)(h)(2), 108.02(13)(b). The Wisconsin Supreme Court denied the exemption because, in its view, the "nature" of the Bureau's activities was "charitable and secular"—not religious. Pet.App.29a-30a. The court rejected the Bureau's declaration of its religious purpose, Pet.App.5a-6a, focusing instead on the fact that the Bureau offered employment—and offered services to—participants of any religious background. Pet.App.29a-30a. The Court also scrutinized the Bureau's organizational structure, concluding that—because it was a separate entity from the Diocese and the Roman Catholic Church—it could not rely on the Church's religious purposes as evidence of its own. Pet.App.18a.

SUMMARY OF ARGUMENT

Amici agree with Petitioners that the Wisconsin Supreme Court's decision should be reversed. *Amici* write to highlight three points about the constitutional errors and practical dangers of the decision below, and to urge the Court to resolve this case under the church autonomy doctrine's prohibition on governmental second-guessing of religious groups' decisions on "matters of church government." *Hosanna-Tabor*, 565 U.S at 186 (quoting *Kedroff*, 344 U.S. at 116).

First, in deciding this crucially important case, the Court should bear in mind that religious groups offer humanitarian aid and charitable relief for different reasons and in different ways. And the organizational structures through which religions administer those services are as varied as the acts themselves—and are often driven by theological concerns. The Wisconsin Supreme Court's "one-size-fits-all" view of religion-based services would undermine the very religious pluralism the First Amendment was adopted to secure.

Second, that court's decision also undermines the ability of religious bodies (and their related organizations) to operate autonomously. It thereby prevents them from fulfilling their religious missions in the way best aligned with their beliefs.

Third, the decision violates the First Amendment, not only by improperly second-guessing the views of Petitioners' controlling religious organization on "matters of * * * faith and doctrine"—including especially the "religious" character of its activities (see Pet.Br. 38-41)—but also by second-guessing the

sponsoring Church's views on "matters of church government." *Hosanna-Tabor*, 565 U.S. at 186 (quoting *Kedroff*, 344 U.S. at 116). A religious organization's decisions about how to organize its religiously motivated activities (including its charitable work), as well as whether to hire and serve non-members, are quintessential "matters of church government" that must remain free from governmental second-guessing and control.

ARGUMENT

I. Religious Organizations Structure Themselves and Engage in Charitable Activities for Many Religious Reasons.

Perhaps the most constitutionally offensive of the Wisconsin Supreme Court's errors is that its denial of tax-exempt status rested on the misguided view that Petitioners do not engage in "typical[ly]" religious activities or fit within a prescribed or "typical" structure. As Petitioners have well explained, that evaluation of Petitioners' internal organization and the pursuit of its religious mission is flatly unconstitutional.[2]

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[2] Indeed, decades ago, this Court summarily affirmed a decision enjoining a charitable solicitation regulation requiring the government to decide between what activities are "spiritual" and what are "secular." See *Rusk* v. *Espinosa*, 456 U.S. 951 (1982) (mem.). The Tenth Circuit's affirmed decision explained that one of the regulation's constitutional infirmities was its "broad definition of secular," under which *every* activity that a religious group undertook was considered secular unless it was "purely spiritual or evangelical." *Espinosa* v. *Rusk*, 634 F.2d 477, 481 (10th Cir. 1980). Yet the Wisconsin Supreme Court made a functionally equivalent error when it reached a conclusion as to

The Wisconsin court's analysis, moreover, would be devastating to a wide range of faith groups. Many religions require adherents to engage in certain activities—including attending services, making donations, etc. Often these activities lack secular analogues. Many faiths, for example, hold formal liturgical services or involve ritualistic ceremonies. But religious activities with secular corollaries—such as helping the poor—do not always *appear* religious, at least to an outside observer. To be sure, a given activity is not made religious just because the instructing organization is itself religious. But the existence of a comparable non-religious activity neither precludes nor supersedes a religious organization's sincere determination that its activity (and the motivations for it) is religious.

1. This general principle is no less true for a religious group's charitable activities. Indeed, many religious groups have long considered themselves bound by religious obligations to engage in such efforts.[3] And, while charitable behavior may not seem "typically" religious to those who do not follow a particular faith tradition (or perhaps any other), the

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what it means to be "typical[ly]" religious—or that there even is a "typical" religion—based on its flawed and cramped understanding of "religion"—and the broad understanding of "secular" that logically flows from it.

[3] See, *e.g.*, *Deuteronomy* 10:19 (ESV) ("Love the sojourner, therefore, for you were sojourners in the land of Egypt."); *The Qur'an* 16:90 (Sahih Int'l) ("Allah orders justice and good conduct and giving to relatives and forbids immorality and bad conduct and oppression."); *Mosiah* 2:17, *The Book of Mormon* ("[W]hen ye are in the service of your fellow beings ye are only in the service of your God.").

acts are nevertheless compelled by many faiths' religious tenets.

For example, many faiths, following Jesus' parable of the Good Samaritan, strive to show their love for "the Lord [their] God" by serving those around them. See *Luke* 10:25-37. They believe that, when they serve the hungry, the thirsty, the stranger, the naked, the sick, and the imprisoned, they are really serving Jesus Christ himself. See *Matthew* 25:40-45. But even though these groups point to the Bible as the inspiration for their charitable service, the resulting activities manifest in different ways.

The Seventh-day Adventist Church, for example, seeks to "be a good neighbor to those in need" by providing "human, financial, material[,] and technical resources" to the needy.[4] But the church takes a "long-term view" of relief, seeking to "help[] communities struck by tragedy for the long haul."[5] These services are offered for an expressly religious purpose—"so all may live as God intended."[6] To that end, the church's "global humanitarian arm" delivers "relief and development assistance" to the needy "regardless of their ethnicity, political affiliation, gender, or religious association."[7]

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[4] *Institutions & Organizations*, Gen. Conf. of Seventh-day Adventist Church, https://tinyurl.com/bdhpruhu (last visited Feb. 3, 2025).

[5] *Ibid.*

[6] *Our Story*, Adventist Dev. & Relief Agency (ADRA), https://tinyurl.com/2xwm77bn (last visited Feb. 3, 2025).

[7] *Ibid.*

For its part, the Roman Catholic Church, often acting through Catholic Charities USA and its local affiliates like the Bureau, aims to "encounter[] those along the margins, regardless of their faith," to "[r]educe [p]overty in America."[8] Through those encounters, the organization aims to "provide comfort, hope and relief to vulnerable people and those living in poverty[.]"[9] Here again, these efforts are inspired by an expressly religious desire to help "those who have been left out to know and experience the tremendous and abundant love of God through Jesus Christ."[10] Service to the poor is not only a matter of Catholic teaching but also an obligation prescribed by the Church's internal law.[11]

The Church of Jesus Christ of Latter-day Saints similarly administers charitable programs to follow "the Savior's two great commandments: to love God

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[8] *Home*, Cath. Charities USA, https://tinyurl.com/4wx3fzkc (last visited Feb. 3, 2025).

[9] *About Us*, Cath. Charities USA, https://tinyurl.com/2s34r2km (last visited Feb. 3, 2025).

[10] *Ibid.*

[11] For example, the Code of Canon Law obliges all Catholics "to promote social justice and, mindful of the precept of the Lord, to assist the poor." Code of Canon Law, c. 222, § 2, https://tinyurl.com/3u46kad3. The Code also assigns a corresponding obligation to diocesan bishops: "He is to insist upon the duty which binds the faithful to exercise the apostolate[.]" *Id.* at c. 394, § 2, https://tinyurl.com/2p4mp3kx. In addition, the Catholic Church's "purposes" are "principally: to order divine worship, to care for the decent support of the clergy and other ministers, and to exercise works of the sacred apostolate and of charity, especially toward the needy." *Id.* at c. 1254, § 2, https://tinyurl.com/2s3mf8na. The defined purposes, therefore, place charitable activity on the same footing as divine worship.

and to love our neighbor."[12] The Church "seeks to extend care to an ever-increasing number of God's children in need * * * in the form of welfare and self-reliance efforts, humanitarian aid, and volunteer service."[13] While some of these activities "primarily benefit Church members," the Church's broader efforts "benefit millions of God's children across the world, without regard to race, nationality, or religious affiliation."[14] For the Church, these efforts, and the volunteer services that often attend them, are "an essential part of helping [Church members] become more like Jesus Christ."[15] Accordingly, the Church considers "the sacred work of caring for those in need" to be "both a duty and a joyful privilege."[16]

And Southern Baptists believe that they "should work to provide for the orphaned, the needy, the abused, the aged, the helpless, and the sick."[17] Each autonomous Baptist congregation determines for itself how to best do that.

Islam likewise instructs its followers to voluntarily extend charity to others, specifically by observing a practice known as *sadaqa* or *sadaqah*,

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[12] The Church of Jesus Christ of Latter-day Saints, *Caring for those in Need: 2023 Summary of The Church of Jesus Christ of Latter-day Saints* 6 (2024), https://tinyurl.com/fphyz948.

[13] *Id.* at 4.

[14] *Ibid.*

[15] *Ibid.*

[16] *Id.* at 3.

[17] S. Baptist Convention, *Baptist Faith & Message 2000, XV: The Christian and the Social Order* 16 (2024), https://tinyurl.com/5b9ckr33.

depending on the translation.[18] *Sadaqah* is charity given for the benefit of society without regard to the beneficiary's religious (or non-religious) affiliation.[19] Many Muslims, moreover, believe that "[t]he righteous are those who * * * give charity out of their cherished wealth to relatives, orphans, the poor, * * * [and] beggars[.]"[20] And, beyond providing temporal benefits for the receiver, observing *sadaqah* offers to the giver an avenue for purity in this life and divine mercy in the next.[21]

Judaism's approach to charity is evident in the "cardinal * * * commandment[]" of *tzedakah*.[22] The Torah teaches practitioners to open their hands to their brothers, their poor, and their needy alike[23] and promises that "Zion shall be redeemed with judgment

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[18] *Sadaqa*, Islamic Relief Worldwide, https://tinyurl.com/4tnh3drs (last visited Feb. 3, 2025).

[19] Marwan Abu-Ghazaleh Mahajneh et al., *Zakat Giving to Non-Muslims: Muftis' Attitudes in Arab and Non-Arab Countries*, 5 J. Muslim Philanthropy & Civ. Soc'y 66, 67, 72, 79 (2021).

[20] *The Qur'an* 2:177, Quran.com, https://quran.com/en/al-baqarah/177.

[21] Islamic Relief Worldwide, *supra* note 18 ("The Prophet (peace be upon him) said 'Sadaqah extinguishes sin as water extinguishes fire' * * * [and that] '[t]he believer's shade on the Day of Resurrection will be their charity.'").

[22] *Charity (Tzedakah): Charity Throughout Jewish History*, Jewish Virtual Libr., https://tinyurl.com/32sfnwrt (last visited Feb. 3, 2025).

[23] *Deuteronomy* 15:11, https://tinyurl.com/39hdjbvv; *accord* George Robinson, *Tzedakah in the Jewish Tradition,* My Jewish Learning, https://tinyurl.com/mu56w32y (last visited Feb. 3, 2025).

and those that return by tzedakah."[24] *Tzedakah*, moreover, encompasses more than just the mandate to make monetary donations: it is a way for the faithful to bring about justice in the world, a sign of the donator's personal righteousness and the Jewish people's shared deservingness of redemption.[25]

Similarly, foundational in the numerous traditions of Hinduism are selfless service (*seva*) and charity (*dana*). Hindu ethical principles demand consideration of the motivation behind charitable giving, prioritizing selfless desire for the wellness of all beings[26] over selfish pursuits such as fame or manipulation. Hindu texts contemplate self-awareness in charitable activities by lauding charity that is given without the hope of personal gain, mindful of the recipient's situation and journey, and provided in a manner that encourages sustainability and independence.[27] In Hinduism, the ultimate goal of charity is that *none may suffer*,[28] meaning that charity in Hinduism cannot end with Hindus alone, but must extend outward to those of other faiths.

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[24] Scott Bolton, *Living Generously–Tzedakah in the Sources: Introduction*, Sefaria (Sept. 20, 2016), https://tinyurl.com/mu8u33d7 (citing *Isaiah* 1:27).

[25] *Charity Throughout Jewish History*, *supra* note 22.

[26] *Bhagavad Gita* 5.25.

[27] See *Bhagavad Gita* 17.20; *Atharva Veda* 3.24.5; *Shiva Purana* 2.5.5 (asking Hindus to identify and assist the needy or suffering by providing protection to the fearful, necessities to the impoverished, medicine to the sick, and knowledge to students).

[28] *Garuda Purana* 2.35.51.

In short, while the call to service may look different across religions, for many religious groups, profoundly and sincerely held religious beliefs direct their charitable activities.

2. Like a religious organization's foundational doctrines, its forms of internal organization are also often dictated by religious belief.

Many religious groups, such as Baptists, employ a congregational structure "compris[ing] autonomous local bodies." *Chavis* v. *Rowe*, 459 A.2d 674, 676 (N.J. 1983) (citation omitted). Such a church, "by the nature of its organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority." *Watson* v. *Jones*, 80 U.S. 679, 722 (1871).

Many others (such as the Roman Catholic Church and The Church of Jesus Christ of Latter-day Saints) follow a hierarchical structure. This means that the overall denomination is "organized as a body with other churches having similar faith and doctrine with a common ruling convocation or ecclesiastical head." *Kedroff*, 344 U.S. at 110.

Under the Catholic Church's canon law, bishops have various structures available to them for conducting works of charity.[29] Canon law directs

[29] For example, the canonical structure of an "association of the Christian faithful" is one choice, see Code of Canon Law, cc. 298, § 1; 301, § 2, https://tinyurl.com/ycb4ehx3; the establishment of a "[j]uridic person"—the canon law equivalent of a corporation—would be another, see *id.* at c. 114, § 2. The cited canons

bishops "to foster various forms of the apostolate in the diocese and * * * to take care that * * * all the works of the apostolate are coordinated under his direction[.]"[30] The 1967 Synod of Bishops, weighing revisions to canon law, urged Bishops to give "[c]areful attention * * * to the greater application of the so-called principle of subsidiarity within the Church. * * * In virtue of this principle one may defend the appropriateness and even the necessity of * * * the recognition of a healthy autonomy for particular executive power while" observing legislative unity and universal and general law.[31]

While traditional organizational guidelines may exist in other regions with historical Hindu presence, in the United States, Hindu religious groups rely on varied organizational forms. Examples of Hindu organizations in America include national organizations with local outposts (e.g. BAPS North America[32]), regional Hindu temples (*mandir*) or community centers, or other Hindu faith-based organizations (e.g. SEWA International[33]). The structure within these organizations also vary—some may utilize traditional organizational charts and

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describing those two structures expressly reference works of the apostolate and of charity.

[30] *Id.* at c. 394, § 1.

[31] Cath. Church, *Code of Canon Law: Latin-English Edition, New English Translation*, at xli (Canon Law Soc'y of Am., 4th prtg. 2017); see also Pet.Br. 7-8, 29, 47.

[32] See *Our Activities*, BAPS North America, https://tinyurl.com/3ustdswm (last visited Feb. 3, 2025).

[33] See *About Us*, SEWA USA, https://tinyurl.com/yc58wynd (last visited Feb. 3, 2025).

defined positions, while others allocate personnel and resources on an ad hoc basis.

Of course, as Michael McConnell and Luke Goodrich have explained, many religious organizations "are neither 'congregational' nor 'hierarchical,' and it is no easy task * * * to determine where along the spectrum a given church lies."[34] Still others' polities "change over time."[35] And, even when a religious organization may nominally have a defined structure, it may be "hortatory but widely ignored," "purely aspirational," or subject to opposition from some members of the faith.[36]

3. Many of these varied religious organizations rely on one or more sub-entities to carry out their religious missions. See *Reed* v. *Columbia St. Mary's Hosp.*, 915 F.3d 473, 483 (7th Cir. 2019) ("Many religious organizations in the United States use * * * corporate mechanisms to operate * * * an array of social services."). And unsurprisingly, as established in detail below, a religion's method for administering charitable work often mirrors the organization's overall structure. Some congregational religions, for example, engage in service activities in a comparatively decentralized way. And hierarchical religions may choose a correspondingly more centralized model to administer their charitable works. But this is no inexorable rule. As one might expect, America's diverse religious organizations act

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[34] Michael W. McConnell & Luke W. Goodrich, *On Resolving Church Property Disputes*, 58 Ariz. L. Rev. 307, 327-328 (2016).

[35] *Id.* at 328.

[36] *Id.* at 330.

in various ways and may not fit neatly into a particular category.

American Muslim congregations, for example, often both collect and distribute donations at the local level.[37] Charity within Judaism is also commonly decentralized, with congregants often performing acts of service or doing charitable giving within their communities.[38] Likewise, Buddhists often do charitable work individually or together with local temples.[39]

Consistent with Hindu teachings that encourage charitable giving to be both context-specific and selfless, some Hindu religious organizations set up sub-entities to focus on charitable goals (such as BAPS Charities[40] and ISKCON's Food for Life[41]) while others partner with experienced secular organizations that provide such charity (such as the Médecins Sans Frontières USA).

Still other religions are semi-centralized. The American Presbyterian Church, for example, maintains separately incorporated charitable arms with close ties to the central churches. The

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[37] The Pluralism Proj., Harvard Univ., *Islam: The Five Pillars* 2 (2020), https://tinyurl.com/3vtbzeb4.

[38] *Charity Throughout Jewish History*, *supra* note 22.

[39] See, *e.g.*, *Sacred Service Opportunities*, Temple Buddhist Ctr., https://tinyurl.com/2zdz8ufk (last visited Feb. 3, 2025).

[40] *Home*, BAPS Charities, https://tinyurl.com/mvzh2eff (last visited Feb. 3, 2025).

[41] *Food Relief Program*, ISKCON, https://tinyurl.com/y3y4s8tp (last visited Feb. 3, 2025).

Presbyterian Foundation has clergy members on its board of trustees.[42]

The Presbyterian Foundation, moreover, operates under express authorization from the Presbyterian Church's General Assembly.[43] That authorization makes the Foundation—though nominally separate—responsible for supporting "the mission and ministry of the entire denomination[.]"[44] The Foundation also works to both encourage generosity within local congregations and to facilitate the charitable work of individual Presbyterians in their communities.[45]

Other faiths follow a similar model. Among these are the Orthodox Church in America (which coordinates its humanitarian relief with other churches through the broader International Orthodox Christian Charities[46]) and the United Pentecostal Foundation (which is maintained as a subsidiary of the United Pentecostal Church International[47]). The Episcopal Church similarly channels its efforts through Episcopal Relief & Development, an organization which, like Catholic Charities and the

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[42] *Board of Trustees*, Presbyterian Found., https://tinyurl.com/4sheptf3 (last visited Feb. 3, 2025).

[43] *Our Story*, Presbyterian Found., https://tinyurl.com/3kxsrn5s (last visited Feb. 3, 2025).

[44] *About, FAQs*, Presbyterian Found., https://tinyurl.com/4xs8cffr (last visited Feb. 3, 2025).

[45] *Ibid.*

[46] *About IOCC*, Int'l Orthodox Christian Charities ("IOCC"), https://tinyurl.com/4jtp77a2 (last visited Feb. 3, 2025).

[47] *Our Story*, United Pentecostal Found., https://tinyurl.com/3jerb3ku (last visited Feb. 3, 2025).

Presbyterian Foundation, is a separately incorporated organization[48] with clergy members on its Board of Directors to help maintain close administrative ties to the Episcopal Church.[49] The United Methodist Committee on Relief, a separately organized nonprofit organization, likewise carries out The United Methodist Church's religious mission by administering disaster relief, teaching self-sufficiency, providing vital resources, and "supporting programs in the areas of migration, health, food security and environmental sustainability."[50]

At the most hierarchical end of the church government spectrum, some religious organizations house the administration of their charitable work within the main religious organization. For example, The Church of Jesus Christ of Latter-day Saints administers much of its charitable work directly.[51] It maintains within the Church organization a "Philanthropies" department responsible for carrying out a variety of charitable work including providing

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[48] *Frequently Asked Questions*, Episcopal Relief & Dev., https://tinyurl.com/mr2eva2e (last visited Feb. 3, 2025).

[49] *Board of Directors*, Episcopal Relief & Dev., https://tinyurl.com/3jbcnr8j (last visited Feb. 3, 2025).

[50] *UMCOR Overview: Global Ministries*, United Methodist Comm. on Relief ("UMCOR"), https://tinyurl.com/mr32y6b7 (last visited Feb. 3, 2025).

[51] *Who is Philanthropies?*, The Church of Jesus Christ of Latter-day Saints, https://tinyurl.com/yc5tpkkz (last visited Feb. 3, 2025).

emergency response, clean water, food, wheelchairs, immunizations, vision care, and medical treatment.[52]

4. Virtually none of these religious organizations fits neatly in just one of the described categories. And even when their charitable efforts can be collectively categorized, nearly all these organizations (like their adherents) perform charitable work in a variety of ways.

Many religious organizations also operate in partnership both with one another and with secular organizations. Some non-denominational Christian churches, for example, have partnered with World Vision, a charity that helps local churches collaborate in providing charitable service.[53] And the Philanthropies department of The Church of Jesus Christ of Latter-day Saints and various Catholic philanthropic organizations (including Catholic Charities) have worked together on many humanitarian projects over the past four decades.[54] The religious motivations behind such activities remain the same even when these organizations act with other groups, whether those organizations are affiliated with other religious groups or are secular.

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[52] *Philanthropies: Humanitarian Services*, The Church of Jesus Christ of Latter-day Saints, https://tinyurl.com/27f9mevj (last visited Feb. 3, 2025).

[53] *Christian Faith*, World Vision, https://tinyurl.com/mr3574sr (last visited Feb. 3, 2025).

[54] The Church of Jesus Christ of Latter-day Saints, *Catholic and Latter-day Saint Humanitarian Partnerships* (2021), https://tinyurl.com/mr48cbx5.

These examples show that any attempt to capture a "typical" religious structure or practice is a fruitless task. There is no such "typical" organization—at least not as far as the Constitution is concerned. As discussed below, all that matters is that, however a group decides to further its religiously motivated charitable activities, its organizational structure is protected. The First Amendment is "flexible enough to accommodate all forms of religious organization and polity." *Jones* v. *Wolf*, 443 U.S. 595, 603 (1979).

By contrast, the Wisconsin Supreme Court's inflexible understanding of what it means to be religious would allow it to deny many of these religious groups access to an important benefit if they lack the hallmarks of whatever prototypical example of a religious organization a majority of the Wisconsin Supreme Court (or any other court employing its myopic view) can conjure. That understanding should be rejected.

II. The Decision Below Undermines Religious Organizations' Ability to Fulfill Their Religious Missions as Their Faiths Require.

The Wisconsin Supreme Court's approach not only naively assumes a non-existent homogeneity among religious service providers, it also affirmatively undermines religious organizations' ability to fulfill their self-determined religious missions as their faiths require.

1. This case's facts illustrate the point. It was to carry out its religious mission of caring for the less fortunate of any faith (or none at all), that the Diocese created the Bureau. As explained below, it is of no

constitutional moment that the Diocese created a separate arm to assist in fulfilling a specific religious mission. No one would seriously suggest that the Department of Justice—an executive agency—exercises something other than the President's executive power just because it is a sub-entity of the Executive Branch. The same is true here: Whether the Diocese undertakes its religiously motivated charitable activities itself or creates and supervises another entity to do so does not change the religious nature and purpose of the underlying activity.

But, according to the Wisconsin Supreme Court, when a religious polity allows for the delegation of its religious functions—such as charitable activities—to a sub-entity, it forfeits the religious nature of those functions and the constitutional protections that attend them.

The logical consequences of such a rule are alarming. If the Diocese itself were to give a meal to a homeless person, that act—assuming it was prompted by the Diocese's sincere beliefs—would (rightly) be considered religious. Yet according to the Wisconsin Supreme Court (Pet.App.18a) all bets are off when the *Catholic* Charities Bureau performs the same act (and for the same reasons), even if it acts with the Diocese's imprimatur. Likewise, if a Catholic organization serves Catholics, that service is considered religious under the Wisconsin court's analysis. But if that same organization serves non-Catholics, the service suddenly loses its religious character.

Were that not confusing enough, the Wisconsin court suggested that, if the Bureau were to have

simultaneously performed *two* religious activities—such as by serving the poor not of their faith *and* trying to convert them—the court would likely have considered those actions, taken in tandem, to be religious. See Pet.App.25a-26a; Pet.App.29a-30a; Pet.App.48a n.21. The court thereby implicitly required religious activities to be religious twice-over before it would credit them as such.

But such logic games are foreign to the First Amendment, and the incoherent distinctions they make reflect a cramped notion of religion that serves no one—not the faithful whose religion requires that they serve based on need rather than creed, and not the needy who are looking for help. All that matters is whether, "in [the religious organization's] own scheme of things," its activities are "religious." *United States* v. *Seeger*, 380 U.S. 163, 185 (1965). The Wisconsin Supreme Court's view thus strips religious organizations in the state of the right to consider themselves religious—as existential a harm as there can be. See Carl H. Esbeck, *An Extended Essay on Church Autonomy*, 22 Fed. Soc'y Rev. 244, 254 (2021) ("Church autonomy doctrine has long entailed the rule that the judiciary must avoid issues that cause it to probe into the religious meaning of religious words, practices, or events[.]").

2. Such a subjective, narrow approach to religiosity would be devastating for religious groups: If the Wisconsin Supreme Court's decision were affirmed, religious organizations would either have to eschew creating, delegating to, and supervising subject-specific entities to carry out their religious

missions, or potentially lose significant public benefits, like the tax exemption at issue here.

Instead, only by following the government-prescribed organizational structure or engaging in religiously mandated activities in the government-prescribed way would religious organizations be able to avoid being stripped of government benefits available to other religious groups that check the right boxes. Religious groups would be harmed not only by the discrimination inherent in such a decision, but also from the "indirect coercion" that flows from it. See *Carson* v. *Makin*, 596 U.S. 767, 778-779 (2022).

A rule imposing such constant worry on religious organizations would, in turn, undermine their ability to fulfill all the mandates of their faiths to the best of their ability, forcing them to adopt what they see as second- or third-best organizational structures—all to avoid losing a benefit or suffering a penalty. But this Court has long recognized that putting a religious organization to the choice between its beliefs and a government benefit is itself a First Amendment harm. *E.g., Fulton* v. *City of Philadelphia*, 593 U.S. 522, 532 (2021) ("[I]t is *plain* that the City's actions have burdened CSS's religious exercise by putting it to the choice of curtailing its mission or approving relationships inconsistent with its beliefs." (emphasis added)); see also *Thomas* v. *Review Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 716 (1981) ("[A] person may not be compelled to choose between the exercise of a First Amendment right and participation in an otherwise available public program."). These decisions stand for the unremarkable proposition that the First Amendment allows no religious organization to be put

to a coercive choice between its religion on one hand and a benefit or a penalty on the other. See *Sherbert* v. *Verner*, 374 U.S. 398, 404 (1963).

3. Such protections reflect the existential threat posed by government intrusion into religious questions. As the Seventh Circuit recognized in its recent ministerial exception case, the possibility that a government entity will misunderstand a religious doctrine or practice alone "threatens to fundamentally alter" the way a religious organization operates. See *Demkovich* v. *St. Andrew the Apostle Par.*, 3 F.4th 968, 980 (7th Cir. 2021) (en banc). That court, together with Justice Brennan, rightly understood that the very "prospect of government intrusion raises concern that a religious organization may be chilled in its free exercise activity." *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints* v. *Amos*, 483 U.S. 327, 343 (1987) (Brennan, J., concurring in judgment). Accordingly, the First Amendment, properly understood, ensures that the only thing that will influence a religious organization's activities or organizational structure are its beliefs—not the "prospect of future investigations and litigation." *EEOC* v. *Catholic Univ. of Am.*, 83 F.3d 455, 467 (D.C. Cir. 1996).

Here, the Wisconsin Supreme Court flouted these foundational principles in a way that risks harming all religious organizations. The solution is for this Court to squarely hold that the matters that seemed to make that court reluctant to grant the tax exemption at issue here are quintessential "matters of church government" that the First Amendment places outside the judicial ken.

III. The Wisconsin Court Should Be Reversed Because It Improperly Second-Guessed a Religious Body On "Matters of Church Government."

The First Amendment's church autonomy doctrine prohibits state resolution, not just of theological questions, but also matters of church organization and mission. As the Court has long held, the First Amendment protects the right of religious institutions "to decide for themselves, free from state interference, *matters of church government* as well as those of faith and doctrine." *Hosanna-Tabor* , 565 U.S. at 186 (emphasis added) (quoting *Kedroff*, 344 U.S. at 116). And the Court has properly recognized that an organization's choice of its "religious mission" is itself a constitutionally protected "matter[] of church government." See *Our Lady of Guadalupe Sch.* v. *Morrissey-Berru*, 591 U.S. 732, 746, 762 (2020).

Petitioners have persuasively detailed how the Wisconsin Supreme Court violated the aspect of the *Kedroff/Hosanna-Tabor* rule protecting against government intrusions into matters of "faith and doctrine." As Petitioners explain, by holding that Petitioners' activities were insufficiently "religious" to merit the tax exemption at issue here, the Wisconsin court impermissibly intruded upon the ability of Petitioners' governing body—the Diocese of Superior—to decide for itself the (necessarily religious) line between the secular and the religious, while also violating the Establishment Clause's prohibition on entangling courts in what amount to religious inquiries. See Pet.Br. 33-42. That fundamental error warrants reversal.

Amici, however, also urge the Court to decide this case based on the "matters of church government" prong of the *Kedroff/Hosanna Tabor* formulation. Specifically, the Court should hold that the Wisconsin Supreme Court violated the church autonomy doctrine by (a) second-guessing the Diocese's (and the entire Catholic Church's) view of how best to organize its charitable work, and (b) second-guessing the Diocese's decisions about whom the organization should employ and serve. Because these are all "matters of church government" under a proper interpretation of that phrase, each of the Wisconsin Supreme Court's intrusions into those matters violated the First Amendment.

A. A religion's organization of its charitable work is a "matter of church government" constitutionally protected from government second-guessing.

The Wisconsin Supreme Court first interfered with "matters of church government" by allowing a religious benefit to turn on the organizational structure that a religious organization decides to adopt. See Pet.Br. 29-30.

1. This Court has long recognized that issues of church organization are "matter[s] of internal church government, an issue at the core of ecclesiastical affairs." *Serbian E. Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696, 721 (1976). In *Milivojevich*, for example, the Court explained that "the First and Fourteenth Amendments forbid" a court's "substitut[ing] its interpretation of" a religious organization's "constitutions for that of the highest ecclesiastical

tribunals[.]" *Ibid.* The Court thus refused to scrutinize the "reorganization of the Diocese" at issue there, deferring instead on any "such questions of church polity" to the hierarchical church. *Ibid.* (citation omitted). And the Court held that the First Amendment not only "permit[s] * * * religious organizations to establish their own rules and regulations" with respect to organizational structure, it also "requires that civil courts accept their decisions as binding upon them." *Id.* at 724-725. *Milivojevich* thus recognized that a religious organization's legal structure is a question of church governance, which the First Amendment places beyond the judicial power.

2. This Court's later decisions likewise recognized the risk of allowing government interference in or second-guessing of a religious organization's decision on how best to organize. One striking example is *Larson* v. *Valente*, 456 U.S. 228, 244 (1982), which famously held that "[t]he clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." But by clear implication, the decision also protects a religious organization's choice of its legal structure.

In *Larson*, the Court reviewed a statute that required religious organizations to register and report charitable donations only when they solicited more than half their funds from nonmembers. *Id*. at 230. The Court rightly found that such a distinction "discriminates against such organizations" in violation of the First Amendment's Religion Clauses. *Id*. at 230, 255. And the Court's reason for so concluding was

clear: the "*selective* legislative imposition of burdens and advantages upon particular denominations" was a decision "fraught with the sort of entanglement that the Constitution forbids" and "pregnant with dangers of excessive government direction * * * of churches." *Id.* at 254-255 (citation omitted from second and third quotations). The Court further explained that avoiding those dangers was necessary for the "continuing vitality of the Free Exercise Clause," a provision that "assumed that every denomination would be equally at liberty to exercise * * * its beliefs." *Id.* at 245. Naturally, such freedom would be lacking "in an atmosphere of official denominational preference." *Ibid.*

But that is exactly what would happen if the government were free to second-guess churches on matters as fundamental to church government as the choice of a legal structure they believe will best empower them to fulfill their religious missions. The *Larson* court explicitly recognized that placing conditions on some religious organizations, but not on others, based on how they organized their work could lead to the government's coercing religious organizations to conform to the government's preferred structure, thus interfering with what the Court had recognized was "a matter of internal church government." *Milivojevich*, 426 U.S. at 721.

3. The Court should take the opportunity presented here to reiterate, as it did in *Milivojevich* and *Larson*, that a religious organization's decision on how to organize the pursuit of its mission is a matter of church government that must be left to the religious organization alone. Here, in departing from those

principles, the Wisconsin Supreme Court "impermissibly substitu[ted] its own inquiry into" the proper "structure and administration" of the Diocese's charitable work. *Milivojevich*, 426 U.S. at 708-709. That error allowed the Wisconsin court to reach its own conclusion about how a religion *should* organize an important aspect of its work—one that is directly contrary to that of the Diocese itself—and, in so doing, to deny the Diocese's Bureau a benefit for which it was otherwise qualified.

The First Amendment forbids such judicial second-guessing of a religious organization's internal decisions on how to structure itself and its work. Indeed, under the church autonomy doctrine, "religious organizations are immune" from any inquiry into their "determination of [their own] polity."[55] And, as this Court's decisions recognize, it makes no constitutional difference that the intrusion comes in the form of withholding an otherwise available benefit, such as the exemption at issue here, or direct coercion. See *Espinoza* v. *Montana Dep't of Revenue*, 591 U.S. 464, 475-476 (2020). The Religion Clauses forbid both forms of encroachment into matters of church government. *Hosanna-Tabor*, 565 U.S. at 187-189.

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[55] Carl H. Esbeck, *Church Autonomy, Textualism, and Originalism: SCOTUS's Use of History to Give Definition to Church Autonomy Doctrine*, 108 Marquette L. Rev. (forthcoming 2025) (Rsch. Paper No. 2025-02, at 5-6 & n.18) (collecting cases), https://tinyurl.com/4967htz4.

B. A religious body's decisions about whether to employ or serve non-members are "matters of church government" constitutionally protected from government second-guessing.

The Wisconsin Supreme Court's analysis also interfered with "matters of church government" by conditioning the exemption on the faith status of a religious organization's employees and beneficiaries. In adopting that approach, the court imposed a cramped notion of religious work, forcing religious organizations to minister only through and to those who shared (or might embrace) their faith. But the First Amendment forbids the government from making a religious entity's access to benefits contingent on either basis, just as it forbids the government from requiring a religious organization to adopt a particular corporate structure or belief system.

1. As discussed, it is beyond question that religious organizations have the "right to organize * * * to assist in the expression and dissemination of any religious doctrine." *Kedroff*, 344 U.S. at 114. *Kedroff* shows that questions about what a religious organization's doctrine is, and who and how best to effectuate its directives, fall squarely within the organization's own purview—free from state influence. *Id*. at 114-115. *Accord Hosanna-Tabor*, 565 U.S. at 194-195. This Court's decisions on this point could not be clearer: "[T]he authority to select and control" a religious entity's representatives "is the church's alone." See *ibid*. (citing *Kedroff*, 344 U.S. at 119). As *Kedroff* explained, "[a]ll who unite themselves to" a religious body, regardless of whether they

practice the faith, commit themselves to carrying out the organization's mission. *Kedroff*, 344 U.S. at 114. That alone renders unconstitutional a law that hinges on whether a religious entity's employees or beneficiaries (or some percentage in either category) share a particular faith.

In a closely related context, this Court has already rejected a co-religionist requirement for a religious schoolteacher to fall within the First Amendment's ministerial exception—which is simply one branch of the church autonomy doctrine. The Court in that case explained that "insisting on [a shared religion] as a necessary condition [for the ministerial exception] would create a host of problems." *Our Lady of Guadalupe*, 591 U.S. at 761. Indeed, "determining whether a person is a 'co-religionist' will not always be easy," and "[d]eciding such questions would risk judicial entanglement in religious issues." *Ibid*.

Foremost among those forbidden "religious issues" are the threats to a religious organization's internal governance whenever the government seeks to scrutinize its choices about who will carry out its religious missions. Here again, this Court's ministerial-exception decisions are instructive. There the Court has recognized that a religious organization's decisions about whom to employ is left to the religious organization alone. As the Court declared, the "First Amendment has struck the balance," and "the interest of religious groups in choosing who will * * * carry out their mission" means that the religious organization "must be free to choose those who will guide it on its way." *Hosanna-Tabor*, 565 U.S. at 196.

That general principle applies with equal force to a religious organization's charitable activities. If a religious organization engages in such activities, the First Amendment forbids the government from interfering with or second-guessing the organization's choice of whom to serve or the choice of whom to accept as a volunteer. Both questions implicate not only a religious organization's beliefs and related missions, but also its internal decisions about *how* best to carry out those missions—quintessential "matters of church government." The only way for courts and the government to avoid interfering with such decisions is for those institutions to stay out of them.

2. Applying those principles here, the government was not free to decide that the Bureau's mission and work was less religious because, unlike some other hypothetical religious organizations, the beneficiaries of the Bureau's humanitarian efforts are not all practicing Catholics. Nor was the government free to decide that the Bureau's work was less religious because its *employees* or *volunteers* did not need to be practicing Catholics, or because those charitable activities are performed without requiring the recipient to join the Catholic faith.

In short, to deny the Bureau access to a public benefit because it conducts its internal affairs differently than the Wisconsin courts prefer is no less "pregnant with [the] dangers of excessive government direction * * * of churches" than the statute at issue in *Larson*. See 456 U.S. at 255 (alteration in original) (citation omitted). Just as in *Larson*, the Wisconsin Supreme Court's interpretation of the exemption here would require the Bureau to modify either its

interpretation of religious doctrine related to charity or its approach to evangelization. The former is obviously a matter of "church doctrine and practice," while the latter is a quintessential "matter of church government." Either way, governmental inquiries into such questions, or actions that second-guess the Diocese's decisions about them, are prohibited by the First Amendment.

CONCLUSION

The Wisconsin Supreme Court's decision interferes with the First Amendment-based freedom of religious organizations to make their own decisions on "matters of church government" free from governmental second-guessing and interference. And that court's decision improperly resulted in "the exclusion of [the Bureau] from a public benefit for which it is otherwise qualified, solely because" of its organizational structure and modes of employment and service. *Trinity Lutheran Church of Columbia, Inc.* v. *Comer*, 582 U.S. 449, 467 (2017). That outcome, and the reasoning that led to it, are "odious to our Constitution * * * and cannot stand." *Ibid.*

Respectfully submitted,

GENE C. SCHAERR
Counsel of Record
ERIK S. JAFFE
H. CHRISTOPHER BARTOLOMUCCI
HANNAH C. SMITH
JAMES C. PHILLIPS
JOSHUA J. PRINCE
MEGAN SHOELL
MIRANDA CHERKAS SHERRILL
SCHAERR | JAFFE LLP
1717 K Street NW, Suite 900
Washington, DC 20006
(202) 787-1060
gschaerr@schaerr-jaffe.com

JAMES C. PHILLIPS
SCHAERR | JAFFE LLP
299 South Main Street
Suite 1300
Salt Lake City, UT 84111

R. SHAWN GUNNARSON
KIRTON | MCCONKIE
36 S. State Street
Suite 1900
Salt Lake City, UT 84111

Counsel for Amici Curiae

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