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 SERVICE EMPLOYEES INTERNATIONAL UNION AND AMERICAN FEDERATION OF STATE COUNTY AND MUNICIPAL EMPLOYEES AS AMICI CURIAE SUPPORTING RESPONDENTS

SCOTT A. KRONLAND
Counsel of Record
EMANUEL A. WADDELL
ALTSHULER BERZON LLP
177 Post Street, #300
San Francisco, CA 94108
(415) 421-7151
skronland@altber.com

Mosaic - (301) 927-3800 - Cheverly, MD

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INTEREST OF AMICI CURIAE

The Service Employees International Union ("SEIU") is a labor organization with about 2 million members who work in healthcare, property services, and public service employment across the United States, Canada, and Puerto Rico. The American Federation of State County and Municipal Employees ("AFSCME") is a labor organization with about 1.4 million members in public and private employment in 46 states, the District of Columbia, and Puerto Rico.[1]

The amici represent workers employed by religiously affiliated nonprofit corporations across the country, including employees of affiliates of Catholic Charities agencies. The employment protections at issue in this case directly affect these workers' economic security. Amici have a substantial interest in ensuring that all workers receive basic employment protections, including unemployment insurance coverage, regardless of whether they work for organizations affiliated with religious or non-religious parent organizations.

SUMMARY OF ARGUMENT

Workers employed by religiously affiliated nonprofits have the same fundamental need for basic employment protections, including for unemployment insurance, as other workers. When janitors, home health aides, security officers, and other service

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[1] No party or counsel for a party authored this brief in whole or in part, and no person or entity, other than the amici curiae and their counsel, made a monetary contribution to the preparation or submission of this brief.

workers lose their jobs, the devastation is immediate and profound in the absence of unemployment benefits: rent payments missed, utility bills unpaid, healthcare deferred, children's needs unmet. These consequences do not change based on whether their employer happens to be affiliated with a religious organization.

Petitioners promise to voluntarily provide their own unemployment benefits for workers if they prevail here, but their argument is not limited to religiously affiliated nonprofits that provide voluntary and equivalent unemployment insurance benefits to former workers. More than a million workers are employed by religiously affiliated organizations in the United States. If the Court adopts Petitioners' approach, the economic security of large swaths of workers, including healthcare providers engaged in purely secular activities, could be put at risk.

Petitioners do not contend that Wisconsin's requirement that they participate in the State's unemployment insurance system impermissibly burdens the free exercise of religion. Nor would such an argument be plausible. Petitioners participated in the State's unemployment system for decades, and the employees performing work for Petitioners' affiliated nonprofits are performing work that is indistinguishable from the work performed by employees of secular nonprofits. The Free Exercise Clause may require exemptions from some employee-protective laws for ministers, but the employees here do not even arguably fall within that category.

Petitioners' argument is that, having granted an exemption to religiously affiliated nonprofits that goes

beyond what the Constitution requires, the State cannot place a reasonable limitation on that exemption. But the States must have leeway to draw lines or they will not grant such exemptions in the first place. There is no good policy reason for a broad religious exemption that harms workers yet is not necessary for the free exercise of religion. Moreover, if the States cut back religious exemptions to the minimum the Free Exercise Clause requires, the courts would have to engage in exactly the sort of multi-factor line drawing that Petitioners claim is impermissible.

ARGUMENT

I. Workers employed by religiously affiliated nonprofits have the same need for basic employment protections as other workers.

1. This Court has long recognized that exempting religiously affiliated organizations from ordinary employment laws that provide a safety net would impose burdens on workers and the public. In *United States v. Lee*, 455 U.S. 252 (1982), this Court rejected an Amish employer's religious objection to social security and unemployment taxes. The Court explained that the social security system "serves the public interest by providing a comprehensive insurance system" that "requires support by mandatory contributions from covered employers and employees" to maintain its fiscal vitality. *Id.* at 258. The Court further explained that "the broad public interest in maintaining a sound tax system is of such a high order" that "religious belief in conflict with the payment of taxes affords no basis for resisting the tax." *Id.* at 260. And the Court warned that allowing employers to impose "the limits

they accept on their own conduct as a matter of conscience and faith" onto universal statutory schemes via religious exemptions would effectively "impose the employer's religious faith on the employees." *Id.* at 261.

Likewise, in *Tony & Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290 (1985), this Court held that the Fair Labor Standards Act's minimum wage and overtime protections applied to workers at a religious nonprofit foundation, explaining that such protections help prevent "substandard wages" and mitigate the risk of employers using their "superior bargaining power to coerce employees" to act in ways detrimental to their interests. *Id.* at 302. Exceptions to the coverage of worker protections must therefore be drawn narrowly, because the broader the exception, the more it "would be likely to exert a general downward pressure on wages" and working conditions. *Id.; see also Prince v. Massachusetts*, 321 U.S. 158 (1944) (rejecting a religious objection to child labor laws).

The unemployment insurance system provides a necessary safety net for workers and relieves burdens on other public social insurance programs. The "basic purpose" of unemployment insurance is to "provid[e] a 'substitute' for wages" when workers lose employment through no fault of their own. *Cal. Dept. of Human Res. Dev. v. Java*, 402 U.S. 121, 134 (1971). Job loss is a disruptive life event with potentially devastating consequences for workers. Unemployment takes a toll on not only the unemployed worker, but also their dependents, *Charles C. Steward Mach. Co. v. Davis*, 301 U.S. 548, 586 (1937), and unemployment has been linked to a range of ills including declines in

psychological and physical well-being; loss of psychosocial assets; social withdrawal; family disruption; and harm to children's educational attainment and well-being. The unemployment system partially ameliorates those harms by providing "prompt … replacement of wages to the unemployed, to enable workers 'to tide themselves over, until they get back to their old work or find other employment, without having to resort to relief.'" *Java*, 402 U.S. at 131.

The secular objectives of the unemployment system apply with equal force to employees of religious and non-religious organizations alike. Job loss imposes identical hardships on workers at Catholic Charities nonprofits as it does on workers at secular nonprofits providing the same services.

2. Petitioners promise that, if they prevail here, they will voluntarily fill the social need currently met by the State's unemployment insurance system through their own program. Pet. Br. 11. As is often the case when this Court speaks on matters that affect workers, however, the ruling that Petitioners seek could "affect many more people than those workers directly at issue in this case." *Tony & Susan Alamo Found.*, 471 U.S. at 302. Nothing in Petitioners' argument requires that religiously affiliated organizations offer substitute unemployment benefits or that such benefits must be equivalent to government benefits.

In this regard, it bears emphasis that about 1.6 million people in the United States work for religiously affiliated organizations. Valarie K. Blake & Elizabeth Y. McCuskey, *Employer-Sponsored Reproduction*, 124 Colum. L. Rev. 273, 289–290 (2024). Nonprofit Catholic healthcare systems, for example,

employ tens of thousands of workers at hospitals and clinics around the country. These organizations include three of the five largest healthcare systems in the country—Commonspirit Health, Ascension, and Trinity Health. *Id.* at 290 n.98 (citation omitted).

Thousands of amici's members work at religiously affiliated nonprofit healthcare systems across the country. Amici represent workers at Catholic hospital systems, including Ascension, Trinity Health, and Dignity Health. Amici also represent workers at Lutheran and Episcopalian hospital systems such as Legacy Health System, Columbia Memorial Medical, and Samaritan Health in Oregon. Amici's members are also employed at Seventh-day Adventist hospitals such as Adventist Health in California, and many other religiously affiliated hospitals from California to New York.

Amici's members are likewise employed by many other religiously affiliated nonprofit employers. Jewish Community Centers employ amici's members in California, New York, New Jersey, and Pennsylvania. Amici also represent workers at numerous Catholic Charities affiliates around the country, including Catholic Charities Neighborhood Services in Brooklyn, Catholic Charities of St. Paul, Minneapolis' St. Joseph Home for Children, and Maryville Academy in Illinois.

The jobs that amici's members perform for these organizations are indistinguishable from the jobs of amici's members at institutions with secular parent companies. The workers are employed as janitors, cooks, dining assistants, housekeepers, van drivers, technicians, maintenance workers, secretaries, x-ray

technologists, groundskeepers, receptionists, orderlies, nurses, anesthesia aides, sonographers, medical aides, occupational therapy assistants, security officers, activity assistants, job coaches, cashiers, and in myriad other occupations. Many of them do not share the religious beliefs of their employers' parent organizations.

Many of amici's members live paycheck to paycheck and sometimes find themselves forced to change jobs through no fault of their own.[2] Neither they nor their families can afford to rely exclusively on the mercy of their former employers in the event that an economic downturn or downsizing causes them to suddenly become unemployed.

It is useful to consider the example of SEIU-represented security officers employed by a contractor for a religiously affiliated hospital. The hospital also directly employs its own security officers. Under Petitioners' approach, contracted security officers, but not directly employed security officers, would be eligible for unemployment benefits, even though the employees work side-by-side and are engaged in functionally equivalent secular activities at the same facilities. The distinction would make no sense as a matter of policy.

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[2] For example, Ascension Health laid off thousands of workers across the country to cut labor costs. Rebecca Robbins, Katis Thomas, and Jessica Silver-Greenberg, *How a Sprawling Hospital Chain Ignited Its Own Staffing Crisis*, N.Y. Times (Dec. 15, 2022), https://www.nytimes.com/2022/12/15/business/hospital-staffing-ascension.html.

II. Wisconsin's requirement that Petitioners continue to participate in the State's unemployment system does not burden the free exercise of religion.

Three foundational principles guide the analysis of whether a generally applicable law impermissibly burdens religious exercise. First, "it is virtually self-evident that the Free Exercise Clause does not require an exemption from a governmental program unless, at a minimum, inclusion in the program actually burdens the claimant's freedom to exercise religious rights." *Tony & Susan Alamo Found.*, 471 U.S. at 303. Second, the mere imposition of a general tax or fee does not constitute a substantial burden on religion, even when applied to religious organizations. *Jimmy Swaggart Ministries v. Bd. of Equalization*, 493 U.S. 378, 391 (1990). Third, where a law is neutral and generally applicable, religious organizations must demonstrate more than mere economic impact to establish a constitutional violation. *Braunfeld v. Brown*, 366 U.S. 599, 605–06 (1961).

In light of these general principles, Petitioners do not even claim that the Free Exercise Clause requires Wisconsin to provide all religiously affiliated nonprofits with an exemption from the State's unemployment system. Nor would such a claim be plausible, except perhaps for employees who are ministers.

Wisconsin's unemployment system does not regulate Catholic Charities' internal governance. *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94 (1952) (invalidating state law that interfered with church's authority to select its leadership). Nor has Wisconsin prevented Catholic

Charities from performing its nonprofit activities according to its own interpretation of Catholic doctrine. *Fulton v. City of Philadelphia*, 593 U.S. 522, 540 (2021) (finding burden where city's requirements contradicted Catholic agency's religious beliefs about marriage). Nor does Wisconsin's requirement that Petitioners guarantee unemployment protections to employees with secular job duties implicate the organization's ability to determine who among its staff works in a religiously significant, ministerial capacity. *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746–47 (2020).

Petitioners' own conduct confirms the absence of any genuine religious burden. Catholic Charities participated in Wisconsin's unemployment insurance system for more than fifty years without claiming any conflict with its religious mission or practices. Pet. App. 490a–91a. Three of the four Catholic Charities sub-entities seeking an exemption participated for at least forty years, and the fourth for at least a decade. *Catholic Charities Bureau, Inc. v. Lab. and Indus. Rev. Comm'n*, 411 Wis. 2d 1, 14–16 (2024). This extended period of uncontested compliance belies any claim that Petitioners' desire to avoid participating in the State's unemployment system has anything to do with the free exercise of religion. *See Tony & Susan Alamo Found.*, 471 U.S. at 303–04 & n.29 (where a religious organization has long operated under generally applicable employment laws without protest, claims of religious burden warrant particular skepticism).

Indeed, Petitioner Catholic Charities recently acquired a subsidiary (Barron County Developmental Services) that was previously a secular nonprofit

subject to unemployment insurance requirements. *Catholic Charities Bureau, Inc.*, 411 Wis. 2d at 36–37. The subsidiary continues to function exactly as it did before Catholic Charities' acquisition. *Id.* This seamless integration demonstrates that unemployment insurance compliance is fully compatible with Catholic Charities' religious mission and practices.

III. States must have leeway to draw lines when granting exemptions for religiously affiliated nonprofits or they will not grant such exemptions.

Petitioners contend that, even though Wisconsin was not constitutionally required to grant religiously affiliated nonprofits any exemption from the unemployment system in the first place (except perhaps for ministers), the State violated the Constitution by imposing limits on the reach of that exemption. But States must have discretion to draw reasonable lines, or there will be pressure for States to cut back any exemptions to the minimum the Constitution requires. In the absence of such statutory exemptions, the courts would likely have to undertake the same type of multi-factor inquiry that Petitioners claim is unconstitutional.

1. This Court recognized in *Our Lady of Guadalupe School* that "a variety of factors may be important" in determining whether a given employee of a religious organization falls within the scope of the ministerial exception to employment protections. 591 U.S. at 751–52. Likewise, in *Hosanna-Tabor Evangelical Lutheran Church and Sch. v. EEOC*, 565 U.S. 171 (2012), the Court declined to "adopt a rigid formula for deciding when an employee qualifies as a minister," instead

considering "all the circumstances" of the particular case. *Id.* at 190.

Similarly, when determining whether a given entity is a "religious corporation" exempt from Title VII's prohibition on religious discrimination, courts apply a multi-factor test to guide their analysis. *See EEOC v. Townley Eng'g & Mfg. Co.*, 859 F.2d 610, 618 n.14 (9th Cir. 1988); *EEOC v. Kamehameha Sch./Bishop Est.*, 990 F.2d 458, 463 (9th Cir. 1993); *LeBoon v. Lancaster Jewish Cmty. Ctr. Ass'n*, 503 F.3d 217, 226 (3d Cir. 2007). The same is true when determining whether a religiously affiliated organization qualifies for a "religious purposes" tax exemption under federal law. *See U.S. v. Dykema*, 666 F.2d 1096, 1100 (7th Cir. 1981).

The Wisconsin Supreme Court's approach to the State's unemployment exemption does not impermissibly entangle government with religion; rather, it reflects the type of objective, secular inquiry into the actual operations of an organization that this Court has repeatedly approved. *Cf. New York v. Cathedral Acad.*, 434 U.S. 125, 132–33 (1977) (explaining that the First Amendment is offended by detailed inquiries into religious meaning). The Wisconsin Supreme Court did not second-guess Catholic doctrine or practices—it merely applied neutral criteria to determine whether separately incorporated affiliates of Catholic Charities qualified for a statutory exemption based on their actual operations, which were indistinguishable from the operations of a secular nonprofit.

By contrast, Petitioners' position offers the States no logical stopping point. In Petitioners' view, the State cannot consider that Catholic Charities affiliates are separately incorporated entities because the

religious principle of "subsidiarity" dictates that structure. Pet. Br. 29, 47. In Petitioners' view, the State also cannot consider whether a separately incorporated affiliate's operation is indistinguishable from the operation of a secular nonprofit because Petitioners' religious principles dictate that services must be provided without regard to religious status and without proselytizing. Pet. Br. 10, 46. Petitioners thus would leave the States with an all-or-nothing choice.

2. If the States cannot limit the reach of discretionary religious exemptions from employment laws (*i.e.,* exemptions that go beyond what is required by the Constitution), then there will be public pressure to protect workers by eliminating the discretionary exemptions entirely. The expansion of the ERISA "church plan" exemption provides a cautionary tale for how overbroad exemptions can hurt workers.

The original ERISA exemption applied only to plans established by a church. *Advoc. Health Care Network v. Stapleton*, 581 U.S. 468, 472 (2017). In 1980, however, Congress expanded the church plan exemption to cover church-affiliated organizations, such as church-affiliated hospitals. *Id.* Hundreds of employers subsequently sought, and obtained, exemptions from ERISA's worker-focused protections. The employees of those organizations have paid the price. Hundreds of thousands of workers are now covered by pension plans with little to no oversight, leading to fraud, mismanagement, and, ultimately, thousands of workers who are retiring without the pensions they

were promised.[3] As just one example, 1,100 former employees of St. Clare's Hospital in New York lost some or all of their promised pensions, despite decades of service, after the hospital obtained church plan status.[4]

From amici's perspective, there is no good policy reason for an overbroad religious exemption that harms workers and, by extension, their communities, and is unnecessary to protect the free exercise of religion. The general public is likely to share that view. *See Lee*, 455 U.S. at 258, 260 (noting that "mandatory participation" in universal benefits programs like Social Security and unemployment insurance "is indispensable to the[ir] fiscal vitality"); *Hernandez v. Comm'r*, 490 U.S. 680, 699–700 (explaining that the tax system cannot function if religious exemptions become overly expansive).

And, ironically, if legislatures choose to narrow religious exemptions to the minimum required by the Free Exercise Clause, the result would likely be a coverage test for a ministerial exemption that depends on just the type of multi-factor inquiry that Petitioners contend that courts should not undertake. Wisconsin's approach here strikes the appropriate balance between protecting workers and preserving the free exercise of religion.

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[3] Theo Francis, *Church Retirement Plans Sidestep Federal Oversight—and Employees Pay the Price*, Wall St. J. (Feb. 24, 2025), https://www.wsj.com/us-news/church-retirement-pensions-hospitals-89070d8c.

[4] *Id.*

CONCLUSION

The Wisconsin Supreme Court's judgment should be affirmed.

Respectfully submitted,

Scott A. Kronland
Counsel of Record
Emanuel A. Waddell
Altshuler Berzon LLP
177 Post Street, #300
San Francisco, CA 94108
(415) 421-7151
skronland@altber.com

Counsel for Amici Curiae Service Employees International Union and American Federation of State County and Municipal Employees

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