

No. 24-319

IN THE
Supreme Court of the United States

ROMAN CATHOLIC DIOCESE OF ALBANY, et al.,
Petitioners,

v.

ADRIENNE A. HARRIS, Superintendent,
New York Department of Financial Services, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE NEW YORK STATE COURT OF APPEALS

SUPPLEMENTAL BRIEF IN OPPOSITION

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INTRODUCTION

Respondents submit this supplemental brief in response to petitioners' request for summary reversal in light of the Court's recent opinion in *Catholic Charities Bureau v. Wisconsin Labor & Industry Review Commission*, No. 24-154, 2025 U.S. LEXIS 2196 (June 5, 2025) (referred to hereafter as *Catholic Charities* and cited to the slip opinion). This Court's frequent practice upon issuing an opinion that is relevant to a pending petition for certiorari is to grant the petition, vacate the judgment, and remand the case to the state court for reconsideration in light of that opinion. *See* Stephen M. Shapiro et al., *Supreme Court Practice* 5-38 (11th ed. 2019). The Court should follow that practice here to allow the state courts to address the *Catholic Charities* opinion in the first instance.

REASONS TO GRANT, VACATE, AND REMAND

In *Catholic Charities*, the Court reviewed Wisconsin's exemption for certain nonprofit religious organizations "operated primarily for religious purposes" from the obligation to pay into the State's unemployment compensation system. The Court held that this exemption, as applied to the petitioners by the Wisconsin Supreme Court, violates the First Amendment. *See* Slip op. at 1-2. In light of the developed record before it, the Court reasoned that the Wisconsin Supreme Court's interpretation of the exemption imposed a denominational preference by differentiating on the basis of theological practices, and held that the exemption was for this reason subject to strict scrutiny, which it did not survive. *Id.* at 1-2, 10-11, 13.

The Court’s opinion in *Catholic Charities* is relevant to the petition for writ of certiorari pending in this case; the petition here concerns a facial challenge, on First Amendment grounds, to a state health insurance provision that accommodates “religious employers,” as defined by criteria similar to those that the Wisconsin Supreme Court read into the exemption at issue in *Catholic Charities*. See Respondents’ Brief in Opposition 4-5, 8-9. Indeed, we agree that, in light of the *Catholic Charities* opinion, some of the subject accommodation’s criteria are likely unconstitutional as applied to at least some of the petitioners in this case. Resolving that issue, however, would not resolve the underlying litigation. To the contrary, a question of the proper remedy would remain. It is possible, for example, that the First Amendment challenge here could be resolved by extending the accommodation at issue to petitioners, or perhaps by simply severing objectionable aspects of the criteria. That determination should be made in the first instance by the state courts, because it requires assessing what the state legislature would have done if it had foreseen the decision in *Catholic Charities*.

Vacatur and remand to the New York Court of Appeals is especially appropriate here because, unlike this case, *Catholic Charities* was decided with the benefit of a developed record that included specific evidence of the petitioners’ theological practices. See Slip op. at 10-11 (analyzing specific facts). While petitioners here may well adhere to the same practices—some of the petitioners almost certainly do—the Court should afford the state courts the respect they are due by giving them the opportunity to consider any such practices in the first instance in light of this Court’s opinion.

CONCLUSION

The Court should grant the petition, vacate the judgment below, and remand the case to the state court for reconsideration in light of *Catholic Charities*.

Respectfully submitted,

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