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 PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF WISCONSIN

BRIEF *AMICI CURIAE* OF THE CATHOLIC CONFERENCES OF ILLINOIS, IOWA, MICHIGAN, AND MINNESOTA IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*

Amici curiae are the state Catholic conferences representing the Roman Catholic dioceses throughout Illinois, Iowa, Michigan, and Minnesota in matters of public policy. They write to aid the Court in understanding the importance of the issues presented and why this Court should reverse the decision of the Wisconsin Supreme Court and render judgment in favor of Catholic Charities Bureau and its sub-entities ("CCB"). In short, they believe that the state supreme court's ruling distorts the fundamentally religious nature of Catholic charitable work and imperils foundational freedoms from interference with internal organization and from religious discrimination under the First Amendment. [1]

The Catholic Conference of Illinois serves as the public-policy voice of the bishops in Illinois' six Catholic dioceses, consisting of approximately 949 parishes, 18 missions, 46 Catholic hospitals, 21 healthcare centers, 11 colleges and universities, 424 schools, and 527 Catholic cemeteries. It interacts with all elements of government to promote and defend the interests of the Church.

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[1] In accordance with this Court's Rule 37.6, *amici curiae* state that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than *amici curiae* and their counsel made a monetary contribution to the preparation or submission of this brief.

Pursuant to Rule 37.2, counsel for record for all the parties received notice of *amici*'s intention to file a brief at least 10 days prior to the deadline to file this brief.

The Iowa Catholic Conference is the official public-policy voice of the Catholic bishops in Iowa across its four dioceses, including 450 parish-based ministries, 111 schools, 16 hospitals, 12 clinics, 13 social-service centers, and Catholic Charities organizations in each diocese. The Conference advocates the common good and promotes public policies respecting the life and dignity of every human person.

Founded in 1963, the Michigan Catholic Conference serves as the official voice of the Catholic Church in Michigan on matters of public policy. The Conference promotes a social order that respects human life and dignity and serves the common good through public policy advocacy. In addition, MCC offers health, safety, security and protection for those in service to the Catholic Church and in Her ministries throughout the state through the administration of benefit and risk management services.

The Minnesota Catholic Conference is the public-policy voice of the state's Catholic bishops and the six dioceses that the bishops lead. The Conference of bishops and its staff support legislation that serves human dignity and the common good, educates Catholics and the public about the ethical and moral framework to be applied to public-policy choices, and mobilizes the Catholic community in the public arena.

SUMMARY OF ARGUMENT

In Catholic dioceses throughout the country, including those represented by *amici*, Catholic bishops establish a Catholic Charities organization to pursue the Church's charitable works of mercy among the needy. For nearly 2,000 years, the Church has carried out this fundamentally *religious* mission at the command of Jesus himself. For Catholics, these charitable works are never to be used as a means of imposing religious beliefs in exchange for material comforts. As such, the Church's charitable activity is not conditioned on membership or belief. The Church's charitable works, however, cannot be understood as anything but an essential part of her nature and ministry—not simply a welfare activity that could be left to governments and secular organizations. In short, as Catholics, including *amici*, often say: "We do not serve others because they are Catholic, but because we are."

Astonishingly, Wisconsin's state unemployment statute, as interpreted by the Wisconsin Supreme Court in the decision below, would substitute the state's judgment of whether religiously motivated charitable activity, undertaken as part of the local Church's religious mission and under the control of the local Bishop, constitutes "typical" religious activity or instead is "essentially secular." The decision below offers a miserly and false vision of what constitutes religious activity that would dramatically curtail the Church's self-understanding of her religions mission. And by forcing "religious activity" into the

cramped confines of the court's subjective view of religion, the Wisconsin statute discriminates between religions, favoring some and disfavoring others.

The Wisconsin Supreme Court's decision violates the First Amendment's Religion Clauses in two fundamental ways. *First*, as this Court has long taught, questions regarding the centrality of religious beliefs and how the Church chooses to pursue its mission and structure its internal affairs must be left to the Church itself. Conditioning benefits on the answers to these questions risks entangling courts in religious questions and intruding into the religious domain protected by the church autonomy doctrine.

Second, the decision below discriminates in favor of some religions at the expense of others, in violation of both Religion Clauses. Under the Wisconsin Supreme Court's decision, a church-controlled religious organization that conditions its charitable works on church membership or participation in worship services or religious education is eligible for an exemption from the unemployment system. But a similar religious organization that offers identical charitable services to the needy, *without* seeking to proselytize and convert, is denied the same benefit. By conditioning benefits under Wisconsin law on a religious organization's willingness to conform to the state's view of what constitutes "typical" religious activity, the decision below penalizes Catholic Charities for following the Catholic Church's religious teaching regarding charitable work.

The Court should grant review to address these critical issues of church autonomy and religious discrimination.

ARGUMENT

I. Care for those in need is a fundamentally religious obligation for Catholic bishops and their dioceses.

For the Catholic Church, the service of charity is as much a part of its religious mission as worship or spreading the faith. Rooted in the words of Jesus himself that "whatever you did for one of these least brothers of mine, you did for me," *see Matthew* 25:40 (New American Bible), and witnessed in the practice and teaching of the earliest Christians, "the exercise of charity" is "one of [the Church's] essential activities, along with the administration of the sacraments and the proclamation of the word." Pope Benedict XVI, *Deus Caritas Est* ¶¶ 22, 23 (Dec. 25, 2005). "[T]he Church has always been present and active among the needy, offering them material assistance in ways that . . . promot[e] their dignity as persons." Pope John Paul II, *Centissimus Annus* ¶ 14 (May 1, 1991). This principle is found in the Church's ancient enumeration of the "corporal works of mercy," which are the ways in which are "found in the teachings of Jesus

and give us a model for how we should treat all others."[2] These works of mercy include such mandates as to "feed the hungry," "shelter the homeless," and "visit the sick." *Id.* Thus, "love for widows and orphans, prisoners, and the sick and needy of every kind, *is as essential to her as the ministry of the sacraments and preaching of the Gospel*," such that "[t]he Church cannot neglect the service of charity any more than she can neglect the sacraments and the Word." *Deus Caritas Est* ¶ 22 (emphasis added). "These duties presuppose each other and are inseparable." *Id.* ¶ 25.

The Catholic Church's charitable service is thus "an indispensable expression of her very being" and an essential part of her nature and ministry, "not a kind of welfare activity which could equally well be left to others." *Id.* Further, the Church never regards itself as "a humanitarian agency" or charitable service one of its "logistical departments." *Address of Pope Francis to Participants in the Meeting Sponsored by Caritas Internationalis* (May 28, 2019).[3] Rather, "charity . . . is the experiential encounter with Christ; it is the wish to live with the heart of God who does not ask us to have generic love, affection, solidarity, etc., toward the poor, but to encounter him in them (cf. Mt 25:31–46), with the manner of poverty." *Id.*

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[2] United States Conference of Catholic Bishops, The Corporal Works of Mercy, https://www.usccb.org/beliefs-and-teachings/how-we-teach/new-evangelization/jubilee-of-mercy/the-corporal-works-of-mercy.

[3] http://bit.ly/3Dcl7IZ.

Moreover, the Church's ministry of charity is neither conditioned on membership in the Catholic Church nor "used as a means of engaging in what is nowadays considered proselytism." *Deus Caritas Est* ¶ 31. "Those who practice charity in the Church's name will never seek to impose the Church's faith upon others." *Id.*

While the Church exhorts all the faithful to charitable works, it specially charges its bishops to carry out the service of charity in each particular diocese. *Deus Caritas Est* ¶ 32. "To facilitate aid for the needy in the most effective manner, the Bishop should promote a diocesan branch of Caritas, Catholic Charities, or other similar organizations which, under his guidance, animate the spirit of fraternal charity throughout the diocese." Congregation for Bishops, *Directory for the Pastoral Ministry of Bishops (Apostolorum Successores)* ¶ 195 (Feb. 22, 2004).[4] Thus, Catholic Charities' purpose is essentially religious: "In every situation, diocesan Caritas or Catholic Charities should participate in all authentically humanitarian initiatives, so as to testify that the Church is close to those in need and in solidarity with them." *Id.* And, "[w]ithout ever misusing works of charity for purposes of proselytism, the Bishop and the diocesan community exercise charity in order to bear witness to the Gospel, to inspire people to listen to the Word of God and to convert hearts." *Id.* ¶ 196.

[4] https://bit.ly/3wtK8eV.

Catholic Charities therefore functions as an integral component of the Church's religious ministry, regardless of its legal structure under state law or, for that matter, its organization under the Church's canon law. Many dioceses organize their Catholic Charities as separately incorporated legal entities under civil law (even while in some cases treating them as part of the diocese under canon law). Other Catholic Charities are housed directly within the diocesan entity, and their employees are direct diocesan employees like other ministers. Such distinctions under state law, however, do not affect the practical reality that Catholic Charities is the principal charitable arm of the diocesan bishop, an integral part of the diocese through which the local Church exercises its fundamentally *religious* ministry of charity, answerable to that bishop.

In sum, the Catholic Church holds that charity is as integral to its nature as liturgical worship and spreading the faith. Moreover, the Church practices charity as a fundamentally religious activity in which it both encounters Christ in those served and bears witness to the Gospel to the world. For these reasons—not simply as a humanitarian act or means to proselytize or impose the faith on others—the Church instructs bishops to perform charitable works through Catholic Charities or similar charitable organizations under their guidance.

II. Wisconsin's statute impermissibly entangles the courts in the *religious* question of what constitutes "inherently religious" activity and infringes the Church's autonomy to decide its internal organization.

Allowing Wisconsin state agencies and courts to decide when charitable activities are and are not "primarily religious activity," and thus whether a church-controlled charitable organization is operated for a "religious purpose," would entangle the courts in religious questions in violation of the First Amendment's Religion Clauses. *See Carson v. Makin*, 596 U.S. 767, 787 (2022) (citations omitted) ("[S]crutinizing whether and how a religious school pursues its mission would also raise serious concerns about state entanglement with religion and denominational favoritism."). As this Court has repeatedly observed, "[i]t is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds." *Emp. Div., Dep't of Hum. Res. of Oregon v. Smith*, 494 U.S. 872, 887 (1990) (quoting *Hernandez v. Comm'r*, 490 U.S. 680, 699 (1989)). Thus, whether a ministry is part of the Church is a question for the Church, not for the Wisconsin Labor & Industry Review Commission, Wisconsin Department of Workforce Development, or the Wisconsin courts. As explained above, the Church itself considers the charitable ministries of Catholic Charities and other corporal works of mercy as an essential part of the nature and mission of the Church and the Christian identity of her members.

By requiring Wisconsin agencies and courts to evaluate what constitutes "primary religious purpose" under Wisc. Stat. § 108.02(15)(h)(2), the decision below mandates the very entanglement that this Court's precedents forbid. Though the decision below characterizes this test as a "neutral and secular inquiry based on objective criteria," *Catholic Charities Bureau, Inc. v. Lab. & Indus. Rev. Comm'n*, 3 N.W.3d 666, 687 (Wis. 2024), in practice, the Wisconsin statute would entangle the courts in an evaluation of religious doctrine and the detailed context in which unquestionably religiously motivated charitable activities take place to determine the religious meaning of those activities. Moreover, this so-called "objective" inquiry effectively requires a court to invent its own conception of which activities are "essentially secular" or "inherently religious," and then use that criteria to decide the question of whether an organization is operated "primarily for religious purposes" under the statute. *Id.* at 690. Far from "objective," this test simply substitutes the courts' subjective view of what constitutes "religious activity" for a church's self-definition of its own religious mission. The decision below blithely asserts that its new test "does not lead us into a First Amendment quagmire." *Id.* at 682. However, it does exactly that, granting to Wisconsin courts and agencies the power to decide for themselves which actions meet the standard for "essentially religious" and which do not.

Moreover, how a diocese structures its operations to engage in this ministry—perhaps to reflect other

fundamental principles such as subsidiarity and participation[5]—is a question of the Church's internal organization and itself a form of protected religious exercise. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 710 (2014) (holding that "[b]usiness practices that are compelled or limited by the tenets of a religious doctrine fall comfortably within" the definition of "religious exercise"). The decision below unconstitutionally permits—indeed, requires—courts to interfere with the internal structure and governance of churches and subsidiary entities, contrary to longstanding First Amendment doctrine prohibiting such intrusion on church autonomy. *See, e.g.*, *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020). It does this by providing a benefit to churches that engage in both "typical" (according to the court) religious activities (such as worship, religious instruction, and evangelization) *and* charitable activities through a single unified entity but denying that same benefit to churches that choose to separately organize and incorporate various aspects of ministries. But "the freedom of a religious organization to select its ministers," must also include the freedom of the Church to choose whether to pursue its ministries through subsidiary organizations or through its own employees. *See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 188 (2012); *see also Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713 (1976) ("[C]ivil

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[5] *See* COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH, ¶¶ 185–91 (2004), at https://bit.ly/476wik7 (describing the Catholic social principles of subsidiarity and participation).

courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, *internal organization*, or ecclesiastical rule, custom, or law." (emphasis added)). By favoring certain internal structures over others, Wisconsin impermissibly constrains the Church's freedom to organize its religious polity as befits its religious mission.

III. Wisconsin's statute violates the Religion Clauses by preferring some types of religious expression and conditioning benefits on conformity to the state's conception of what is "typical" religious activity.

Wisconsin's "religious activities" test also violates the Religion Clauses by implicitly favoring certain churches and religious organizations over others. Time and again, this Court has re-emphasized the foundational principle that the First Amendment prohibits discrimination based on faith or denomination. Many of the Court's cases involve discrimination between religious and nonreligious organizations. *See Carson*, 596 U.S. at 781, 786. But the principle is equally powerful regarding discrimination *between* religious entities. *See Everson v. Bd. of Educ.*, 330 U.S. 1, 15 (1947) (no government can pass laws which "prefer one religion over another"); *Sch. Dist. of Abington v. Schempp*, 374 U.S. 203, 305 (1963) (Goldberg, J., concurring) ("The fullest realization of true religious liberty requires that government . . . effect no favoritism among sects."); *Larson v. Valente*, 456 U.S. 228, 243 (1982) (discussing how "denominational

preferences" are "consistently [and] firmly deprecated in our precedents").

Wisconsin's law violates the Establishment Clause by engaging in "precisely the sort of official denominational preference that the Framers of the First Amendment forbade." *Id.* at 255. The decision below acknowledges that the First Amendment prohibits the government from enacting laws that "'prefer one religion over another." *Catholic Charities*, 3 N.W.3d at 684. Yet this is precisely what the statute does by exempting some but not all religious organizations from the State's unemployment system.

The Wisconsin Supreme Court acknowledges that the Catholic Charities Bureau is operated by "a church" (the Roman Catholic Diocese of Superior) to serve a religious mission and provides the services it provides for religious reasons. *See id* at 12 n.3, 34. However, the court concludes that, despite the Catholic Church's undisputed religious motivations, its sub-entities' activities are not religious *enough* because they "neither attempt to imbue program participants with the Catholic faith nor supply any religious materials to program participants or employees." *Id.* at 34. In so doing, the decision below excludes *some* religious organizations, such as the Catholic Church, that refuse *for religious reasons* to limit their charitable activities from an exemption specifically extended to *other* religious organizations, i.e., charitable religious organizations that limit their charitable works to co-religionists or treat charitable service "primarily" as a means of engaging in proselytism. In *Larson*

v. Valente, this Court invalidated a state law excluding certain religious organizations from an exemption granted to religious organizations that received a set proportion of their funding from affiliated parties. 456 U.S. at 253–54. That was an illicit denominational preference, and so is Wisconsin's law excluding certain religious organizations from an exemption granted to religious organizations that direct their charity to co-religionists or to purposes of proselytism.

Wisconsin's rule also violates the Free Exercise Clause. By giving preferential treatment to certain types of "typical" religious activities, Wisconsin discriminates in favor of religious traditions that engage in charitable activity as an explicit means of proselytization and against those that, like the Catholic Church (and many others) adamantly believe that charity may not be so limited. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993) ("At a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs . . . ."). Put differently, Wisconsin's law presents religious organizations with an unconstitutional choice: if charitable religious organizations want to be eligible for exclusion from the unemployment system, they must limit their charity to adherents of their own faith or explicitly incorporate religious worship or proselytization into their charitable activities. "By conditioning the availability of benefits' in that manner," Wisconsin's unemployment statute "effectively penalizes the free exercise of religion." *Carson*, 596 U.S. at 780; *see also Sherbert v. Verner*, 374 U.S. 398, 404 (1963) ("It

is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege.").

The decision below seeks to side-step the Free Exercise Clause under neutral-tax-burden cases such as *Hernandez v. Commissioner* and *Jimmy Swaggart Ministries v. Bd. of Equalization of Cal.*, 493 U.S. 278, 391 (1990), but that will not work. Those cases simply held that "to the extent that imposition of a generally applicable tax merely decreases the amount of money appellant has to spend on its religious activities, any such burden is not constitutionally significant." *Swaggart*, 493 U.S. at 391 (citing *Hernandez*, 490 U.S. at 699). Thus, there was no Free Exercise Clause issue with denying a charitable tax deduction to a taxpayer who transferred funds to a church in exchange for services, *Hernandez*, 490 U.S. at 685–86, nor with imposing a sales and use tax on a religious organization's sale tangible materials with religious content, *Swaggart*, 493 U.S. at 391–92. The tax laws in *Hernandez* and *Swaggart* did not distinguish between religious organizations as such and thus the issue of *discrimination* against some or all religious beliefs was not an issue in either case.

By contrast, the statutory provision here applies specifically to religious organizations that are operated by a church for religious reasons—and it gives preference to some such organizations if they devote their religious ministry "primarily" to certain activi-

ties. Thus, unlike the taxes in *Hernandez* and *Swaggart*, the statute here explicitly regulates, and discriminates between, religious organizations.

CONCLUSION

The Wisconsin Supreme Court's decision distorts the fundamentally religious nature of Catholic charitable work, trespasses on the Church's constitutionally guaranteed autonomy to organize its ministries in the manner it chooses and discriminates against the Church by treating charitable religious activity less favorably than other religious activities that conform to Wisconsin's own notions of the proper domain of religion. For these reasons, the Catholic Conferences respectfully urge the Court to grant the petition for certiorari.

Respectfully submitted,

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