

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 *AMICI CURIAE* THE ECONOMIC
POLICY INSTITUTE, THE CENTURY FOUNDATION,
LEGAL ACTION OF WISCONSIN, THE MAURICE
& JANE SUGAR LAW CENTER FOR ECONOMIC &
SOCIAL JUSTICE, THE NATIONAL EMPLOYMENT
LAW PROJECT, THE WISCONSIN EMPLOYMENT
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TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF CITED AUTHORITIES	iii
INTERESTS OF AMICI CURIAE	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT.....	4
I. The History of Unemployment Insurance Demonstrates the Economic Value and Practical Necessity of Broad Compulsory Employer Participation.....	4
A. Unemployment Insurance: Responding to the Great Depression and Preventing Another One.....	4
B. Historical Failure of Voluntary Unemployment Insurance Programs and Specter of Competitive Disadvantage Illustrate the Need for Broad Compulsory Participation	7
II. A Broad Exemption for Religiously Affiliated Employers Undermines the Unemployment System’s Ability to Support Laid-Off Workers and Counter Economic Downturns	14

Table of Contents

	<i>Page</i>
A. The Number of Employees Who May Lose Benefits Is Potentially Large.....	14
B. The Lost Economic Benefits from Diminished Coverage Will Be Very Large	18
C. Catholic Charities' Voluntary Private Benefits for Its Unemployed Workers Does Not Address the Potentially Catastrophic Harm to Them or to the Economy.....	23
CONCLUSION	26

TABLE OF CITED AUTHORITIES

	<i>Page</i>
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INTERESTS OF AMICI CURIAE¹

The Economic Policy Institute (EPI) is a non-profit organization with nearly 40 years of experience analyzing the effects of economic policy on the lives of working people in the United States. EPI has produced extensive research examining how safety net programs such as unemployment insurance provide a solid floor for the economy and protect the economic conditions of working people.

The Century Foundation (TCF) is an independent progressive think tank that conducts research, develops solutions, and drives policy change to make people's lives better. Since 2016, TCF's unemployment insurance program has researched system administration and solvency.

Legal Action of Wisconsin (LAW) is a nonprofit legal services organization that represents thousands of low-income clients each year, many of whom are unemployed, irregularly employed, or employed in low-wage jobs, and are seeking to meet their basic human needs in times of economic distress. From 2020 through 2024, LAW represented over 3000 unemployment benefits claimants.

The Maurice & Jane Sugar Law Center for Economic & Social Justice (Sugar Law Center) is a national nonprofit law center headquartered in Detroit, Michigan. Dedicated

1. Rule 37.6 Disclosure: No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of the brief.

to providing advocacy and support for poor and working people, Sugar Law Center has assisted over 1,600 individuals with unemployment insurance appeals over the past three years alone.

The National Employment Law Project (NELP) is a non-profit organization with 55 years of experience advocating for the employment and labor rights of low-wage and unemployed workers. NELP is a national expert on unemployment insurance (UI), and advocates for broad access to and coverage of workers under the federal-state UI system.

The Wisconsin Employment Lawyers Association (WELA) is a voluntary association of employee-side employment lawyers. Many WELA members handle Wisconsin unemployment claims and appeals as a regular part of their practice.

New York Legal Assistance Group (NYLAG), founded in 1990, is a civil legal services organization based in Manhattan, New York, representing those who face legal challenges threatening their economic stability and safety. Since 2020, NYLAG has assisted thousands of individual unemployment benefits claimants and worked with unions on unemployment insurance matters.

SUMMARY OF ARGUMENT

The parties and other amici debate whether a state may, without violating the Religion Clauses of the First Amendment, adopt an objective “religious activity” test for exempting religiously affiliated entities from the otherwise generally applicable obligation of employers to participate in the unemployment insurance (UI) system.

Amici in this brief urge the Court to carefully consider the historical and economic evidence, which shows that allowing employers to obtain a religious exemption simply by asserting a subjective religious motive—without also showing that what they *do* is distinctively religious—would undermine the ability of the unemployment insurance system to both protect American families from the worst effects of unemployment and help the economy recover from downturns by ensuring a baseline rate of spending in times of economic crisis.

The state and federal UI statutes embody public policy choices made during the Great Depression, the most devastating economic crisis in United States history. They are designed to ameliorate the misery of job loss and to prevent Depression level economic devastation from occurring again by bolstering consumer demand to counteract recessionary pressures. Achieving these public policy goals requires broad mandatory inclusion of employers in the UI program to distribute the burdens and benefits of the program as widely as possible—just like any other form of insurance.

As described below, Wisconsin’s historical experience, which includes a failed experiment in voluntary employer-based unemployment insurance, demonstrates the importance of broad compulsory participation in the system. Such mandatory participation maximizes economic benefits and avoids unfair competitive advantages arising from exemptions that some employers may exploit while others providing the same services cannot. As further described below, religiously affiliated entities today employ significant numbers of people, particularly in health and social services sectors of the economy. The withdrawal of these religiously affiliated employers from

the unemployment insurance system would substantially weaken the country's defenses against economic downturns.

ARGUMENT

I. The History of Unemployment Insurance Demonstrates the Economic Value and Practical Necessity of Broad Compulsory Employer Participation.

A. Unemployment Insurance: Responding to the Great Depression and Preventing Another One.

In response to the economic free-fall and human deprivation of the Great Depression, Wisconsin became the first state to enact unemployment insurance legislation.² Wisconsin's Unemployment Compensation Act was signed into law on January 28, 1932.³ A few years later, guided by the experience of pioneers from Wisconsin, Congress adopted the 1935 Social Security Act, which included provisions supporting the creation of the federal-state unemployment insurance programs that now cover workers in every state. 42 U.S.C. §§ 1321-1324.⁴

2. Daniel Price, *Unemployment Insurance, Then and Now, 1935-85*, Social Security Bulletin, October 1985, Vol. 48, No. 10. <https://www.ssa.gov/policy/docs/ssb/v48n10/v48n10p22.pdf> (last visited Feb. 20, 2025); W.H. Burhop, *Wisconsin Unemployment Compensation Act*, 19 *Casualty Actuarial Society Proceedings* 13, 15-16 (Nov. 18, 1932).

3. DWD History Timeline, <https://dwd.wisconsin.gov/dwd/history/> (last visited Feb. 20, 2025).

4. Edwin E. Witte, *Development of Unemployment Compensation*, 55 *Yale L.J.* 21, 30 (1945).

The centrality of economic stimulus as a rationale for unemployment insurance is emphasized in the public policy declaration of Wisconsin's unemployment statute:

Unemployment in Wisconsin is recognized as an urgent public problem, gravely affecting the health, morals and welfare of the people of this state. The burdens resulting from irregular employment and reduced annual earnings fall directly on the unemployed worker and his or her family. *The decreased and irregular purchasing power of wage earners in turn vitally affects the livelihood of farmers, merchants and manufacturers, results in a decreased demand for their products, and thus tends partially to paralyze the economic life of the entire state.* In good times and in bad times unemployment is a heavy social cost, directly affecting many thousands of wage earners. . . .

Wis. Stat. § 108.01(1) (emphasis added).

The macroeconomic value of the unemployment system was broadly acknowledged by 1945, when Professor Eveline Burns wrote:

Economists, social scientists, business and labor groups, and many politicians appear today to agree that unemployment insurance should be viewed as an obviously convenient instrument for grappling with a substantial part of the problem of loss of income due to unemployment, and one which, by maintaining a minimum of purchasing power, might act

as a national safeguard against a downward economic spiral.⁵

In the decades since, recognition of the macroeconomic value of unemployment insurance has only grown. In 1955, the U.S. Department of Labor observed that unemployment insurance “helps to maintain purchasing power and to stabilize the economy.”⁶ Commentators have noted that “increased benefits are dispensed at just the right time, in just the right place, and among those who tend to need them most.”⁷ When amending unemployment laws, Congress has recognized both the individual benefit and the broad economic stabilization roles served by unemployment insurance: “Over the years, the Unemployment Compensation Program has provided a continuing income to millions of men and women in periods of unemployment. The program has also added a stability to the national economy that has moderated, and on occasion perhaps even averted, economic recession.” Senate Rep’t 91-752, 1970 U.S.C.C.A.N. 3606, 3606 (Mar. 26, 1970). More recent research demonstrates that “where unemployment benefits are more generous, the local economy tends to react significantly less sharply to negative shocks.”⁸ During the COVID-19 crisis, one

5. Eveline M. Burns, *Unemployment Compensation and Socio-Economic Objectives*, 55 Yale L. J. 1, 12 (1945).

6. Saul Bernstein, *Unemployment Insurance in the United States* 47 (W.E. Upjohn Institute 1993).

7. *Id.* at 59.

8. Nick Gwyn, *Historic Unemployment Programs Provided Vital Support to Workers and the Economy During Pandemic, Offer Roadmap for Future Reform*, Center on Budget and Policy Priorities (March 24, 2022) <https://www.cbpp.org/research/economy/historic-unemployment-programs-provided-vital->

bank described unemployment benefits as “a lifeline to an economy in freefall as the pandemic struck” and another emphasized that UI “helped to stabilize aggregate demand.”⁹

B. Historical Failure of Voluntary Unemployment Insurance Programs and Specter of Competitive Disadvantage Illustrate the Need for Broad Compulsory Participation.

Broad compulsory employer participation in UI was essential to the viability and macroeconomic impact of the system. The contemporary scholarship described below shows that, during the early years of the Depression, fears of competitive disadvantage thwarted progress toward adoption of unemployment insurance in most states and delayed its implementation in Wisconsin. Similarly, Wisconsin employers who considered creating their own unemployment insurance plans feared that competitors within their states would not. These competitive concerns contributed to adoption of a presumption in favor of coverage and a correspondingly narrow construction of exemptions.

Wisconsin’s initial unemployment insurance statute attempted to induce employers to voluntarily provide unemployment benefits to their laid off workers. The

support-to-workers-and-the-economy (last visited Feb. 24, 2025) citing Marco Di Maggio and Amir Kermani, *The Importance of Unemployment Insurance as an Automatic Stabilizer*, Harvard Business School Working Paper 17-009 (March 2016).

9. *Id.*, citing Federal Reserve Bank of Dallas and JP Morgan Chase.

Wisconsin Unemployment Compensation Act of 1932 delayed compulsory participation for more than a year to give employers time to create their own benefits systems sufficient to provide coverage for 175,000 workers in the state.¹⁰ If employers voluntarily provided coverage to that many workers, the compulsory features of the Act would not have gone into effect.¹¹ After employers failed to reach this target, in 1933 the legislature lowered the coverage threshold to 139,000 workers and extended the deadline another year.¹² Even with extensions of time, Wisconsin employers ultimately never reached the lowered targets for voluntary coverage, but compulsory participation was nonetheless delayed until 1936.¹³

Other states acted more slowly than Wisconsin, expressing reluctance to pass similar legislation out of fear that requiring unemployment insurance “handicapped its employers in interstate markets by burdening them with costs their competitors in other states were not required to meet.”¹⁴

Similar concerns about intrastate unfairness contributed to the failure of Wisconsin’s experiment with

10. Burhop, *supra*, at 15-16.

11. *Id.*

12. Paul A. Raushenbush, *Present Status of Wisconsin’s Unemployment Compensation Act*, 9 Wis. L. Rev. 141, 141, 145 (1933-1934); Witte, *supra*, at 27 (citing 1933 Wis. Laws ch. 186).

13. Witte, *supra*, at 28-32; Elizabeth Brandeis, *Unemployment Compensation in Action: A Progress Report from Wisconsin*, 27 Am. Lab. Legis. Rev. 61 (1937).

14. Witte, *supra*, at 28.

voluntary coverage. Employers inclined to provide their own coverage ultimately “prefer[red] not to act” out of concern that “laggards” would freeload and “escape all responsibility” for helping meet the voluntary coverage thresholds.¹⁵

Objections related to competitive unfairness were ultimately overcome in Wisconsin and around the country when the Social Security Act incentivized adoption of mandatory unemployment insurance programs in all states. In Wisconsin, the legislature included reassurances that all covered employers would pay their share:

Each employing unit in Wisconsin should pay at least a part of this social cost, connected with its own irregular operations, by financing benefits for its own unemployed workers. Each employer’s contribution rate should vary in accordance with its own unemployment costs, as shown by experience under this chapter. Whether or not a given employing unit can provide steadier work and wages for its own employees, it can reasonably be required to build up a limited reserve for unemployment, out of which benefits shall be paid to its eligible unemployed workers. . . .

Wis. Stat. § 108.01(1) (emphasis added).

Beyond addressing concerns over competitive disadvantage, the requirement that “each employing unit” must participate in the program reflects the need

15. Raushenbush, *supra*, at 144-45.

for a large base of employers to spread the costs and benefits of the system. “At a macro level, ‘[t]he system generally provides for collecting limited funds from a large number of employers, particularly during periods of stable employment, then paying out benefits during periods of high unemployment from the funds that have been accumulated.’” *Cath. Charities Bureau, Inc. v. Lab. & Indus. Rev. Comm’n*, 2024 WI 13, ¶ 28, 411 Wis. 2d 1, 20–21, 3 N.W.3d 666, 675 (quoting Maynard Sautter, *Employment in Wisconsin* § 12-1 (Matthew Bender 2023)).

The participation requirement helps explain the common presumption of unemployment insurance coverage that most courts apply. In Wisconsin, the unemployment statutes are “liberally construed to effect unemployment compensation coverage for workers who are economically dependent upon others in respect to their wage-earning status.” *Operton v. LIRC*, 2017 WI 46, ¶31-32, 375 Wis. 2d 1, 894 N.W.2d 426 (quoting *Princess House, Inc. v. DILHR*, 111 Wis.2d 46, 62, 330 N.W.2d 169 (S.Ct. 1983)). Other state courts have similarly adopted construction rules favoring the provision of benefits to terminated workers. *See, e.g., Tomei v. General Motors Corp.*, 194 Mich. App. 180, 184, 486 N.W.2d 100, 102-103 (1992) (“the provisions of the act are liberally construed; disqualification provisions, however, are to be narrowly construed”) (citing *Schultz v. Oakland Co.*, 187 Mich App. 96, 102; 466 N.W.2d 374 (1991)).

As numerous state courts have held, this liberal construction in favor of coverage entails as a corollary a narrow construction of exemptions, including religious exemptions. *See, e.g., Campus Crusade for Christ v.*

Unemployment Appeals Comm’n, 702 So. 2d 572, 575 (Fla. Dist. Ct. App. 1997) (finding employer did not qualify for church exemption and noting, “We also recognize that the exclusion of employment by a church found in [the unemployment statutes] is to be narrowly construed, consistent with the beneficial purposes behind unemployment compensation.”); *Irvine v. St. John’s Lutheran Church of Mound*, 779 N.W.2d 101, 103 (Minn. Ct. App. 2010) (noting that “unemployment-benefits statute is remedial in nature and will be construed liberally in favor of awarding benefits to those unemployed through no fault of their own, while ineligibility standards will be interpreted narrowly,” but finding employment by a church was not employment covered by the act such that the payment of benefits would be allowed); *By The Hand Club for Kids, NFP, Inc. v. Dep’t of Emp. Sec.*, 2020 IL App (1st) 181768, ¶ 18, 188 N.E.3d 1196, 1202 (affirming religious purpose exemption, while noting “exemption language is to be strictly construed and all debatable questions must be resolved against exemption.”) (citing *Scripture Press Foundation v. Annunzio*, 414 Ill. 339, 347-48, 111 N.E.2d 519, 524 (1953)); see also *Mid Vermont Christian Sch. v. Dep’t of Empl. & Training*, 178 Vt. 448, 453, 885 A.2d 1210 (2005) (no exemption for religious school where state did not adopt optional federal exemption for such schools); *Matter of Faith Bible Church*, 179 A.D.2d 308, 312, 582 N.Y.S.2d 841, 843 (1992) (noting purpose to “extend unemployment insurance coverage to previously exempt employees of nonprofit organizations,” while retaining exemption under limited circumstances and concluding church secretaries were not employees performing “religious functions” or “duties of a religious nature” who would be exempt from coverage); see generally *Lorain Cty. Aud. v. Ohio Unemp. Comp. Rev. Comm.*, 113

Ohio St. 3d 124, 2007-Ohio-1247, 863 N.E.2d 133 (2007) (denying exception to the bar on employee waiver of UI coverage, such as for union-contract and educational-institution employees, and stating, “The protections of an employee under [the unemployment statute] are to be liberally construed. Thus, the exceptions to [the statute] should be narrowly construed.”); *Perez v. New Mexico Dep’t of Workforce Sols.*, 2015-NMSC-008, ¶ 12, 345 P.3d 330, 334 (denying exemption for “major nontenured [government] policy-making or advisory positions”, and noting “this Court narrowly construes exemptions under the Unemployment Compensation Law.”); *Bellinger v. Thompson*, 373 Ga. App. 383, 386, 908 S.E.2d 395, 398 (2024) (interpreting appeal deadline in favor of claimant, and noting that “courts are statutorily directed to *broadly* ‘construe the provisions of the unemployment statutes in favor of the employee, and statutory exceptions and exemptions that are contrary to the expressed intention of the [codified] law should be narrowly construed.’”) (quoting *Hudson v. Butler*, 337 Ga. App. 207, 209, 786 S.E.2d 879 (2016)); *Law Off. of Anne Brady, PLLC v. Dep’t of Econ. Sec., ESA Tax Unit*, 255 Ariz. 302, 305, 530 P.3d 1192, 1195 (Ct. App. 2023) (employer seeking “exemption from payment of unemployment contributions” bears burden of proving that exemption applies) (citing *First Nat’l Benefit Soc’y v. Sisk*, 65 Ariz. 1, 6–7, 173 P.2d 101 (1946)); *Virginia Emp. Comm’n v. A.I.M. Corp.*, 225 Va. 338, 345, 302 S.E.2d 534, 539 (Va. 1983) (“Exemptions in the Act should be strictly construed against the alleged employer, the rule requiring liberal construction in favor of the taxpayer not being applicable.”); *Western Ports Transp., Inc. v. Employment Sec. Dept. of State of Wash.*, 110 Wash. App. 440, 41 P.3d 510 (Div. 1 2002) (“The purpose of unemployment compensation is to reduce involuntary unemployment and ease the suffering caused thereby. To

this end, the Employment Security Act must be liberally construed in favor of the unemployed worker. Liberal construction of a statute implies that any exceptions to the statute be narrowly confined.”) (internal citations omitted).

In 1970, Congress amended federal statutes to require elimination of what had been a broad exemption from compulsory participation in UI for virtually all non-profit employers and state hospitals. *See* Pub.L. 86–778, § 533, 74 Stat. 984 (1960) (pre-1970 exemption of “service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) which is exempt from income tax under section 501(a)” from definition of employment for UI purposes); Employment Security Amendments of 1970, Pub. L. No. 91-373, § 104(b)(1), 84 Stat. 698 (now codified at 26 U.S.C. § 3309(b)(1)(B)). The same Act permitted (but did not require) states to exempt certain religiously affiliated entities from participation in unemployment insurance. 26 U.S.C. § 3309(b)(1)(B).

The 1970 amendments came at a time when the number of nonprofit entities had grown rapidly. “Nonprofit service organizations grew especially in and after the 1960s as government contracted with nonprofits to deliver services rather than providing services directly itself through government agencies.”¹⁶ Congress expected the

16. Alan J. Abramson, *History of the Nonprofit Sector: Part 2*, Independent Sector, at 2 (March 2019), <https://independentsector.org/wp-content/uploads/2019/04/IS-class-summary-part2-final.pdf> (last visited Feb. 22, 2025); David Hammack, *Introduction: Growth, Transformation & Quiet Revolution in the Nonprofit Sector Over Two Centuries*, 30:2 Nonprofit & Vol. Sector Q. 157, 165 (2001).

inclusion of nonprofit entities to cover an additional 3.2 million workers. Sen. Rep't 91-752, 1970 U.S.C.C.A.N. at 3609 (estimating 3.2 million additional jobs covered by expansion to nonprofits and state hospitals).

In 1971, Wisconsin responded to the federal changes by extending coverage to nonprofit employers generally and adopting a religious exemption that corresponded to the federal exemption. 1971 Wis. Act 53, § 6 (creating what is now Wis. Stat. § 108.02(15)(h)2). The Wisconsin Supreme Court's objective "activity" test for employer eligibility for the religious exemption, by limiting the scope of the exemption more than would Catholic Charities' purely subjective test, better reflects the historical experience showing the need for broad employer participation to prevent unfair competition and spread the benefits of unemployment insurance widely, while still giving breathing room to churches and closely related entities performing distinctively religious functions.

II. A Broad Exemption for Religiously Affiliated Employers Undermines the Unemployment System's Ability to Support Laid-Off Workers and Counter Economic Downturns.

A. The Number of Employees Who May Lose Benefits Is Potentially Large.

A broad religious exemption will affect significant numbers of workers in multiple industries and sectors. The immediate effect is likely to be greatest in sectors that currently have a greater concentration of religiously affiliated employers, some of which are quite large. For example, employers in the "health care and social

assistance” sector (employers classified NAICS 62 by the Bureau of Labor Statistics) employ approximately 23 million people.¹⁷

Charities that provide health care and social assistance are particularly likely to be religiously affiliated. Analysis of data from the National Center for Charitable Statistics, using a conservative methodology to identify religiously affiliated employers, indicates that at least 1.2 million workers are employed across at least 140,000 religiously affiliated employers nationwide.¹⁸ In Wisconsin alone,

17. U.S. Bureau of Labor Statistics, *Industries at a Glance: Health Care & Social Assistance: NAICS 62*, <https://www.bls.gov/iag/tgs/iag62.htm> (last visited Feb. 19, 2025).

18. Economic Policy Institute analysis of 2021 nonprofit 990 and 990-N data from the National Center for Charitable Statistics contained in the Nonprofit Sector In Brief Dashboard, Urban Institute (November 21, 2024) (<https://nccs-urban.shinyapps.io/sector-in-brief/>) and Lecy, JD, NCCS Form 990-N(e-Postcard) Filers Database (2023), <https://urbaninstitute.github.io/nccs/datasets/postcard/> (last visited Feb. 25, 2025). The methodology used was conservative. It involved analyzing 990 and 990-N filings (the forms nonprofit organizations file with the Internal Revenue Service) for 501(c)(3) organizations coded by the IRS as religious (for example, those with an NTEE code of “X”), known religiously affiliated hospitals, and organizations with names containing keywords closely associated with religious groups (*e.g.*, “Catholic,” “Lutheran,” “Hebrew,” “Methodist,” “Missionary,” “Synod,” “Holy,” etc.), and calculating the number of employees reported by those employers on the form 990. The estimate of 1.2 million workers at religiously affiliated nonprofits likely represents a substantial undercount, both because it is likely to miss religiously affiliated nonprofits with names that are not overtly religious and because small nonprofits—those with annual revenues under \$50,000—who file the 990-N are not required to report employment numbers. Small employers who do not report the number of employees they have

9% of all employment covered by the UI system in 2020 was by nonprofit “reimbursable” employers like Catholic Charities.¹⁹ These reimbursable employers pay only for the benefits their employees receive, as opposed to paying the actuarial, experienced-based unemployment insurance tax rate paid by for-profit employers.²⁰ At least 0.6% of the state’s workforce (around 16,800 workers) worked for explicitly religiously affiliated nonprofit organizations that could seek an exemption if Catholic Charities’ legal argument were adopted.²¹

Nationally the health care sector has many religiously affiliated employers. A recent study identified fifty-five hospital chains in the United States that accepted

outnumber larger employers reporting employees on their 990s. Of the 140,000 religiously affiliated nonprofits analyzed, only 8% report employment figures.

19. Century Foundation calculations from U.S. Dep’t of Labor, *ETA Handbook 394* data, <https://oui.doleta.gov/unemploy/hb394.asp> (last visited Feb. 20, 2025).

20. For an overview of how funding of unemployment benefits from reimbursable employer functions, see U.S. Dep’t of Labor, *Comparison of State Unemployment Laws 2023* (July 2024), Ch.2 Financing, at 34-38 (reimbursement financing of unemployment benefits for state and local governments, non-profit organizations, and certain Indian tribes), <https://oui.doleta.gov/unemploy/pdf/uilawcompar/2023/financing.pdf> (last visited Feb. 27, 2025).

21. Century Foundation analysis of religiously affiliated nonprofit employment figures from the National Center for Charitable Statistics, *Nonprofit Sector in Brief Dashboard 2021* data, and state employment statistics from the Current Population Survey, Basic 2021 microdata, <https://www.census.gov/programs-surveys/cps/data/datasets.html> (last visited Feb. 20, 2025). See n. 18, *supra*, for summary of methodology. As noted, this is likely a significant undercount of employees of religiously affiliated entities.

Medicare and had at least ten hospitals in the chain.²² Based on a review of these chains' websites by Sugar Law Center staff, at least fifteen of the chains, representing 310 hospitals, identified as religiously affiliated, and several others were historically religiously affiliated. Most of these chains were affiliated with the Roman Catholic faith, but there were chains with Methodist, Presbyterian, Baptist, and non-denominational Christian affiliations as well.

Catholic affiliated hospital systems especially are large and growing. In 2024, the Catholic Health Association identified 674 Catholic affiliated hospitals, employing nearly 500,000 full-time workers and over 200,000 part-time workers.²³ Four of the ten largest hospital chains in the country, ranked by number of beds in acute-care hospitals, are Catholic affiliated.²⁴

22. W. Pete Welch, et al., *Ownership of Hospitals: An Analysis of Newly Released Federal Data & a Method for Assessing Common Owners*, U.S. Dep't of Health & Human Servs., Office of Health Policy, Data Point HP-2023-14 at 6-7 (Aug. 2023), <https://aspe.hhs.gov/sites/default/files/documents/582de65f285646af741e14f82b6df1f6/hospital-ownership-data-brief.pdf> (last visited Feb. 26, 2025).

23. Catholic Health Ass'n, *U.S. Catholic Health Care: The Nation's Largest Group of Not-for-Profit Health Care Providers* (2024), https://www.chausa.org/docs/default-source/about/catholic-health-care-in-the-united-states---2024.pdf?sfvrsn=a745daf2_3 (last visited March 2, 2025).

24. Tess Solomon et al., *Bigger & Bigger: The Growth of Catholic Health Systems*, Community Catalyst at 1, 3-4, 7 (2020) (identifying 544 Catholic hospitals and 33 Catholic-affiliated hospital; "four of the 10 largest health systems in the country are Catholic"), <https://www.communitycatalyst.org/wp-content/>

The number of communities reliant solely on Catholic affiliated hospitals for acute care beds has increased.²⁵

B. The Lost Economic Benefits from Diminished Coverage Will Be Very Large.

The Federal Reserve Board of D.C. has found that unemployment benefits provide the biggest dollar-for-dollar economic stimulus of any social insurance program.²⁶ The impact is so large because relief is targeted to those suffering a decline in purchasing power who spend (rather than save) money in their local communities on basic goods like food, rent, medicine, transportation, and education. Indeed, economic studies have concluded that UI benefits have a ripple effect of at least an additional \$1.60 in economic activity for every \$1 of benefits paid.²⁷

uploads/2022/11/2020-Cath-Hosp-Report-2020-31.pdf (last visited Feb. 26, 2025).

25. Solomon, *supra*, at 4.

26. Christopher Carroll, *et al.*, *Welfare & Spending Effects of Consumption Stimulus Policies*, Finance and Economics Discussion Series (Federal Reserve Board of Washington DC, 2023), www.federalreserve.gov/econres/feds/files/2023002pap.pdf (last visited Feb. 20, 2025).

27. Mark Zandi, *U.S. Macro Outlook: Compromise Boosts Economic Stimulus*, Moody's Analytics (December 8, 2010), <https://www.economy.com/economicview/analysis/195470>; Chad Stone & Hannah Shaw, *Zandi Analyses Show 'Democratic' Measures in Tax Cut-UI Deal Boost Economy, 'Republican' Measures Add to Deficit Risk*, Center on Budget & Pol'y Priorities at 3 (Dec. 22, 2010), <https://www.cbpp.org/sites/default/files/atoms/files/12-22-10tax1.pdf>. Other estimates find an even larger \$1.92 multiplier effect for each dollar of unemployment insurance benefits. Klaus-Peter Hellwig, *Supply & Demand Effects of Unemployment Insurance Benefit Extensions: Evidence from*

Withdrawal of religiously affiliated employers from the UI system would deprive their employees not only of state benefits, but also of access to the supplemental federal benefits that are built upon the state system. In Wisconsin, for example, the Department of Workforce Development pays a benefit up to a maximum of \$370 per week for 26 weeks,²⁸ for a total of \$9,620.²⁹ Generally, receipt of state unemployment benefits is a condition of receiving federal extended and additional benefits during economic recessions, when a large share of unemployed workers exhaust state benefits without finding a job (rising to 40% in 2009 and 2020, from typical rates in non-recessions of 15-20%).³⁰

Supplemental federal benefits are especially critical to workers and the economy during prolonged or deep recessions. These benefits include both the permanent Federal-State Extended Benefits (EB) program and temporary expansions passed by Congress in response to specific economic or other crises.³¹

U.S. Counties, IMF Working Paper WP/21/70 (March 2021), <https://www.elibrary.imf.org/view/journals/001/2021/070/article-A001-en.xml>. (All last visited Feb. 26, 2025.)

28. Weekly benefit amounts in Wisconsin are calculated as 4.0% of total earnings in a single quarter. Wis. Stat. § 108.05.

29. U.S. Department of Labor, *Significant Provisions of State Unemployment Insurance Laws* (July 2024), <https://oui.doleta.gov/unemploy/content/sigpros/2020-2029/July2024.pdf> (last visited Feb. 19, 2025).

30. U.S. Department of Labor, *UI Quarterly Data Summary* (3rd Quarter 2024), https://oui.doleta.gov/unemploy/data_summary/DataSum.asp (last visited Feb. 20, 2025).

31. Other federal benefit programs tied to the unemployment benefits states make available to their residents include FEMA-

During the Great Recession of 2008-2009, Wisconsin workers could qualify for up to 73 weeks³² of extended benefits through the standard EB program and the Emergency Unemployment Compensation Program of 2008, through the American Recovery and Reinvestment Act, at the state maximum then of \$363 per week, plus \$25 per week from February 2009 to December 2010.³³ A Wisconsin worker who remained unemployed for the full 73 weeks could expect to receive \$28,749 in benefits. During that crisis, UI benefits were estimated to have prevented 1.3 million foreclosures.³⁴

funded Disaster Unemployment Assistance (“DUA”), Trade Readjustment Assistance (“TRA”), and Short-Time Compensation (“STC,” also known as work share benefits). For more information on these and other federal supports, see U.S. Dep’t of Labor, *Unemployment Compensation, Federal-State Partnership* (May 2024), <https://oui.doleta.gov/unemploy/pdf/partnership.pdf> (last visited Feb. 27, 2025).

32. U.S. Department of Labor, *Unemployment Insurance Program Letter 11-09* (February 23, 2009), <https://www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2009/UIPL11-09.pdf> (last visited Feb. 20, 2025). Unemployment Insurance Program Letters (UIPLs) are issued by the Department of Labor (DOL) to clarify the application of that federal law to the facts of a particular claim and provide “indicia of legislative intent.” *Pickering v. Lab. & Indus. Rev. Comm’n*, 156 Wis. 2d 361, 369, 456 N.W.2d 874 (Ct. App. 1990).

33. U.S. Department of Labor, *Unemployment Insurance Program Letter 04-10*, July 23, 2010, https://www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2010/UIPL04-10_Ch3.pdf (last visited Feb. 20, 2025).

34. Joanne W. Hsu, David A. Matza, and Brian T. Melzer, *Unemployment Insurance as a Housing Market Stabilizer*, 2018:108(1) *American Economic Review* 49, 74-75 (Jan. 2018), <https://pubs.aeaweb.org/doi/pdfplus/10.1257/aer.20140989> (last visited Feb. 26, 2025).

During the COVID pandemic, the existing UI system once again demonstrated its efficiency at delivering federal relief and economic stabilization.³⁵ In 2020 and 2021, EB and the CARES Act, as amended, provided an additional fifty-three weeks of extended unemployment benefits to workers,³⁶ and a top up of \$300-\$600 per week.³⁷ For Wisconsin workers, this could have amounted to an additional \$42,110 of federal dollars in a year (\$370 per week in federal extensions of state benefits, 41 weeks of \$300 in additional benefits and 17 weeks of \$600 per week in additional benefits).³⁸ In Wisconsin, the UI system

35. Josh Bivens & Asha Banerjee, *How to Boost Unemployment Insurance as a Macroeconomic Stabilizer*, Economic Policy Institute (Oct. 12, 2021) (“[P]olicymakers have never used UI as effectively for macroeconomic stabilization as they did for the 2020 COVID-19 crisis.”), <https://www.epi.org/publication/how-to-boost-unemployment-insurance-as-a-macroeconomic-stabilizer-lessons-from-the-2020-pandemic-programs/> (last visited 2/17/2025).

36. U.S. Department of Labor, *Unemployment Insurance Program Letter, 17-20* (March 26, 2021), https://www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2021/UIPL_17-20_Change_3.pdf (last visited Feb. 20, 2025).

37. US Department of Labor, *Unemployment Insurance Program Letter 15-20* (April 4, 2020) https://www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2020/UIPL_15-20.pdf (last visited Feb. 20, 2025).

38. Pandemic Emergency Unemployment Compensation (PEUC) benefits are federally funded extensions of regular unemployment benefits. Pub. L. 116-136 § 2107, 134 Stat. 281, 323-8, Pub. L. 116-260 § 206, 134 Stat. 1182, 1954-6; Pub. L. 117-2 § 9013, 135 Stat. 4, 119; partially codified at 15 U.S.C. § 9025. Supplemental PUC, or Pandemic Unemployment Compensation, benefits were federally funded supplemental payments added to any unemployment benefits—regular, PUA, PEUC, or EB—the claimant received in a specific week. Pub. L. 116-136 § 2104, 134

delivered \$4.4 billion in federal benefits to Wisconsin families who had exhausted state benefits, at no expense to Wisconsin employers.³⁹ As noted by the Department of Labor, “The PUA program alone was a central part of the U.S. safety net during the COVID-19 pandemic. Along with the traditional unemployment insurance (UI) program, it helped reduce family economic hardship, prevent poverty, and stabilize the economy after one of the sharpest declines in employment in U.S. history.”⁴⁰ Nationwide, pandemic unemployment benefits kept 5.5 million people from falling into poverty, including 1.4 million children.⁴¹

If all the employees of Wisconsin nonprofits that were expressly identified as religiously affiliated by their

Stat. 281, 318-21; Pub. L. 116-260 § 203, 134 Stat. 1182, 1953; Pub. L. 117-2 § 9016, 135 Stat. 4, 119-10; see also 15 U.S.C. § 9023. In 2020 weeks where PUC supplemental payments were available (first paid for the week ending 4/4/2020 and last paid for the week ending 7/25/2020), the weekly amount was \$600. For weeks ending 1/2/2021 thru 9/4/2021, the PUC supplemental payment was \$300 per week.

39. Century Foundation calculations of ETA 2112 and ETA 5159, available from the US Department of Labor, *UI Data Downloads*, <https://oui.doleta.gov/unemploy/DataDownloads.asp> (last visited Feb. 20, 2025).

40. Employment & Training Administration, *Opportunities for Improving Benefits Processing and Reducing Fraud in Future Emergencies*, U.S. Department of Labor (undated webpage) <https://www.dol.gov/agencies/eta/ui-modernization/customer-experience/income-verification> (last visited 2/18/2025).

41. Liana E. Fox and Kalee Burns, *The Supplemental Poverty Measure: 2020, Current Population Reports*, Census Bureau (September 2021), www.census.gov/content/dam/Census/library/publications/2021/demo/p60-275.pdf (last visited Feb. 20, 2025).

IRS form 990s had opted out of the system, the state's economy would have lost at least \$26.4 million in federal benefits during the pandemic.⁴² The loss of such benefits would have further strained the families of employees who dedicated their lives to the service of others. The cost of offsetting the loss of those federal benefits would have fallen on locally supported food pantries, shelters, and other charities.

C. Catholic Charities' Voluntary Private Benefits for Its Unemployed Workers Does Not Address the Potentially Catastrophic Harm to Them or to the Economy.

Catholic Charities does not assert a religious objection to provision of insurance for workers it lays off. It does not claim that its Catholic faith in any way prohibits or is inconsistent with continuing its long-standing participation in the public unemployment insurance system. Indeed, it asserts that it is committed, by its religious principles, to providing such benefits to its own employees through the Church Unemployment Pay Program (CUPP). *See* Pet. Br. at 11 ("For the Catholic Church, '[t]he obligation to provide unemployment benefits * * * spring[s] from the fundamental principle of the moral order in this sphere.' Pet.App.433a (quoting Pope Saint John Paul II, *Laborem Exercens* (1981)). Prompted by and in accordance with this teaching, the Wisconsin bishops created the Church Unemployment Pay Program (CUPP) 'to assist parishes, schools, and other church employers in meeting their

42. Century Foundation calculation, multiplying the 0.6% of the State's workforce in expressly religiously affiliated organizations (*see supra* at 9-10 & n.19) by the \$4.4 billion in pandemic UI benefits flowing to the state.

social justice responsibilities by providing church funded unemployment coverage.’ Pet.App.433a.”)

Catholic Charities touts its commitment to voluntary participation in CUPP as evidence that the broad constitutionally based exemption it demands would not have detrimental effects on its employees or the economy. However, CUPP is not equivalent to a system backed by the state and federal government. The current federal-state UI system ensures that employees of nonprofit health and social service providers can count on UI benefits, even if their nonprofit employer goes out of business and is unable to reimburse the state for the cost of its former employees’ benefits. Wis. Stat. § 108.151. This would not necessarily be true of any voluntary scheme a religiously affiliated nonprofit organization might offer. Indeed, the Handbook for the CUPP program explicitly renounces such an obligation: “[t]he Program will not disburse benefits to an eligible claimant whose employer participant does not have sufficient funds in their Program reserve balance to cover the disbursement of benefits.”⁴³

Moreover, the withdrawal of Catholic Charities from the federal-state UI program in favor of its own program would mean there would be no system in place for its employees to receive the sort of supplemental federal unemployment benefits employees of nonprofits received through regular unemployment during the pandemic.⁴⁴

43. CUPP Policy Handbook at 4, <https://www.cuppwi.org/#:~:text=The%20Church%20Unemployment%20Pay%20Program,Dioceses%20of%20La%20Crosse%2C%20Madison%2C> (last visited Feb. 26, 2025).

44. Religiously affiliated nonprofits who opt out could also lose out on additional support that governments have directed to such entities during economic crises. Employees of reimbursable

Setting aside whether the bishops' alternative program provides the same level of security for its employees or benefits for the state economy, nothing about the legal position Petitioners advance would require a religiously affiliated employer to demonstrate that it would provide unemployment benefits as a condition of obtaining an exemption. And there is no evidence other religiously affiliated entities have similar unemployment benefits programs. None of the religiously affiliated amici supporting Catholic Charities before this Court claims to have its own UI system.

The early history of unemployment insurance in Wisconsin, when employers failed to provide coverage for their employees voluntarily, even with the threat of compulsory contributions looming, suggests that making provision of unemployment benefits voluntary for religiously affiliated employers would result in little or no coverage for their employees.

employers, such as Catholic Charities, benefited directly from CARES Act funding. Pub. L. 116-136 § 2103, 134 Stat. 281, 317-18, codified at 15 U.S.C. 9022, and U.S. Department of Labor, *Unemployment Insurance Program Letter, 18-20* (April 27, 2020), https://www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2020/UIPL_18-20.pdf (last visited Feb. 20, 2025). Fifty percent of the benefits paid out to claimants of reimbursable employers, even *before* any federal extensions, were funded with federal dollars. The Wisconsin legislature itself funded the remaining 50% of benefits being charged to reimbursable employers during the Covid-19 pandemic. *See* 2019 Wis. Act 185, §§ 38-40 and 49-50. Had Catholic Charities not been part of the public UI system, CUPP would have had to carry the entire cost of unemployment benefits for its workers, without the government support participating nonprofits received.

CONCLUSION

Historical experience and economic evidence compel the conclusion that unemployment insurance works best—for workers and their families *and* for the economy as a whole—when all employers must pay their fair share, with carefully tailored exemptions kept to a minimum. For these reasons, Amici respectfully request that this Court affirm the judgment of the Wisconsin Supreme Court and hold that its objective religious-activity test comports with the United States Constitution.

Respectfully submitted,

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