

IN THE SUPREME COURT OF THE UNITED STATES

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No. 24-154

CATHOLIC CHARITIES BUREAU, INC., ET AL., PETITIONERS

v.

WISCONSIN LABOR & INDUSTRY REVIEW COMMISSION, ET AL.

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ON WRIT OF CERTIORARI  
TO THE SUPREME COURT OF WISCONSIN

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MOTION OF THE UNITED STATES FOR LEAVE TO  
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE  
AND FOR DIVIDED ARGUMENT

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Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Deputy Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae supporting petitioners and requests that the United States be allowed ten minutes of argument time. Petitioners have agreed to an allocation of ten minutes of argument time to the United States and therefore consent to this motion.

This case involves a state statute that mirrors and implements the Federal Unemployment Tax Act (FUTA), 26 U.S.C. 3301 et seq., which provides an unemployment-tax exemption for certain church-controlled organizations that are "operated primarily for

religious purposes.” 26 U.S.C. 3309(b)(1)(B); Wis. Stat. § 108.02(15)(h)2 (2019-2020). In the proceedings below, the Wisconsin Supreme Court construed that language to require courts to consider not only the motivations that drive the organization to conduct its activities but also whether those activities are inherently religious or secular. Pet. App. 19a-28a. On that understanding, the state supreme court concluded that petitioners -- organizations that serve as the social-ministry arm of a diocese of the Roman Catholic Church -- do not qualify for the religious-employer exemption because, in the court’s view, “their activities are secular in nature.” Id. at 32a; see id. at 28a-33a. The court further concluded that its interpretation does not violate the Free Exercise Clause or Establishment Clause of the First Amendment to the United States Constitution. Id. at 33a-51a. The United States has filed a brief as amicus curiae supporting petitioners, contending that the state supreme court misinterpreted the statutory text, that the court’s misreading conflicts with the First Amendment, and that the judgment should be reversed.

The United States has a substantial interest in the statutory and constitutional principles governing this case. As the state supreme court recognized, it interpreted a state statute that is in relevant respects “verbatim to,” and was intended “to conform” with, the religious-employer exemption in FUTA. Pet. App. 31a. This Court’s decision will thus have repercussions for the appli-

cation of the federal statute. Moreover, the Secretary of Labor administers FUTA by certifying to the Secretary of the Treasury whether each State's law conforms to FUTA's requirements. 26 U.S.C. 3304(c). The decision below also addressed whether Wisconsin's implementation of a FUTA exemption violates the Free Exercise Clause or the Establishment Clause. The United States has substantial interests both in preserving the free exercise of religion and in ensuring that the federal government avoids a prohibited establishment of religion.

The United States has previously presented oral argument in cases involving First Amendment challenges to States' implementation of FUTA. See California v. Grace Brethren Church, 457 U.S. 393 (1982); St. Martin Evangelical Lutheran Church v. South Dakota, 451 U.S. 772 (1981). The United States has also presented oral argument as amicus curiae in other recent cases involving the Religion Clauses of the First Amendment. See, e.g., Carson v. Makin, 596 U.S. 767 (2022); Fulton v. City of Philadelphia, 593 U.S. 522 (2021); Espinoza v. Montana Department of Revenue, 591 U.S. 464 (2020); Our Lady of Guadalupe School v. Morrissey-Berru, 591 U.S. 732 (2020). Participation by the United States could therefore materially assist this Court in its consideration of this case.

Respectfully submitted.

CURTIS E. GANNON  
Deputy Solicitor General  
Counsel of Record\*

MARCH 2025

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\* The Acting Solicitor General is recused in this case.