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No. 2020AP002007

# In the Supreme Court of Wisconsin

CATHOLIC CHARITIES BUREAU, INC., BARRON COUNTY  
DEVELOPMENTAL SERVICES, INC., DIVERSIFIED SERVICES, INC.,  
BLACK RIVER INDUSTRIES, INC., AND HEADWATERS, INC.,  
*Petitioners-Respondents-Petitioners,*

v.

STATE OF WISCONSIN LABOR AND INDUSTRY REVIEW COMMISSION,  
*Respondent-Co-Appellant,*

STATE OF WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT,  
*Respondent-Appellant.*

On Remand from the U.S. Supreme Court, Case No. 24-154

## NON-PARTY BRIEF OF WISCONSIN CATHOLIC CONFERENCE IN SUPPORT OF PETITIONERS-RESPONDENTS-PETITIONERS

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### INTEREST OF NON-PARTY *AMICUS CURIAE*

The Bishops of Wisconsin founded the Wisconsin Catholic Conference in 1969 to fulfill the vision of the Second Vatican Council, which called upon the Church to be more involved in the world. See *Catechism of the Catholic Church* ¶¶ 863, 1915 (2d ed. 1992), <https://t.ly/aPH0>.

Led by the Bishops, the Conference—with teachings of the Church at its foundation—serves to promote dignity, preserve justice, and advance the common good by offering a specifically Catholic contribution to public policy debates. The Conference responds to issues facing the Church’s five dioceses, their Catholic Charities organizations, and the more than 1,700 priests and deacons that minister in over 700 parishes, 275 Catholic schools, and 30 hospitals across Wisconsin. Wisconsin Catholic Conference, *The Catholic Presence in Wisconsin*, <https://t.ly/c5jTl>.

The Conference’s significant interest in this case stems from its mission as the Church’s public policy voice in Wisconsin and its role as the “informational clearinghouse” for the Church Unemployment Pay Program (CUPP). CUPP, *CUPP Policy Handbook 2* (Oct. 1, 2022), <https://t.ly/DVPS>.

The Conference submits this brief to explain how the State’s proposed remedy—to eliminate the religious-employer exemption for all organizations that aren’t themselves churches—continues to violate the First Amendment by discriminating against religion and forcing the government to adjudicate matters of church governance.

## INTRODUCTION

The U.S. Supreme Court was clear: denying the Catholic Charities Bureau the religious-employer exemption violates the First Amendment. 605 U.S. 238 (2025). On remand, rather than agreeing to exempt the Bureau, the State urges an alternate path to the same unconstitutional result—this time by eliminating the religious-employer exemption for all organizations that operate as separate corporate entities from the churches they serve.

Far from curing the First Amendment violation, the State’s new approach doubles down on it. Eliminating the religious-employer exemption for religious organizations that are “operated, supervised, controlled, or principally supported” by churches—but leaving it in place for churches themselves, *see* Wis. Stat. § 108.02(15)(h)(1)–(2)—creates the same “denominational preference” that the U.S. Supreme Court held unconstitutional. 605 U.S. at 241.

The State’s proposal also interferes with church autonomy by making the exemption turn on whether a particular ministry is part of the church itself—thereby impermissibly enmeshing regulators and courts in the church’s internal governance. *See* 605 U.S. at 255 (Thomas, J., concurring) (“[C]hurch autonomy gives religious institutions the right to define their internal governance structures without state interference.”).

The State’s proposed “remedy” is no remedy at all. This Court should affirm the Circuit Court judgment and enforce the U.S. Supreme Court’s mandate by holding that the Bureau qualifies for the religious-employer exemption.

## BACKGROUND

### **I. Charity is both fundamental to the Catholic faith and inherently religious.**

As Pope Leo XIV recently explained, “love for the poor . . . is the evangelical hallmark of a Church faithful to the heart of God.” *Apostolic Exhortation Dilexi Te* ¶ 103 (Oct. 4, 2025), <https://t.ly/DPwMV>. The duty to spread Christian love through charity—providing care for the most vulnerable without seeking to impose one’s faith on others—is foundational to Catholicism.

Christ commanded his followers to practice charity: “Just as I have loved you, you also should love one another.” *John* 13:34 (NRSV-CE). He taught His followers that they would be judged by their acts of charity—welcoming the stranger, clothing the naked, feeding the hungry, and visiting the sick and incarcerated. *Matthew* 25:34–46.

Keeping Christ’s command, the Church has always taught that “[r]eligion that is pure and undefiled before God, the Father, is this: to care for orphans and widows in their distress.” *James* 1:27. The Church “cannot neglect the service of charity any more than she can neglect the Sacraments and the Word.” Pope Benedict XVI, *Deus Caritas Est* ¶ 22 (Dec. 25, 2005), <https://t.ly/fGFZY>.

This command to care for the most vulnerable is at the core of Catholic doctrine.

### **II. The structure of the Catholic Church promotes unity and effective service.**

There’s only one Catholic Church. *E.g.*, *Catechism* ¶¶ 865–66; *Codex Iuris Canonici* (Code of Canon Law), 1983 CIC c.368, <https://t.ly/abL3>.

The Church is led by the Pope, who is the direct successor of Peter, and is divided into dioceses. 1983 CIC cc.330–35, 368–70. A diocese “is a portion of the people of God” that is “defined territorially” and “constitutes a particular church in which the one, holy, catholic, and apostolic Church of Christ is truly present and operative.” *Id.* c.369–70. Each diocese is “entrusted to a bishop for him to shepherd.” *Id.* c.369. Bishops, who are successors to the Apostles, are appointed by the Pope to be “teachers of doctrine, priests of sacred worship, and ministers of governance.” *Id.* c.375 § 1, c.377. A bishop derives from the Pope the “legislative, executive, and judicial power” over his diocese and represents the diocese “in all its juridic affairs.” *Id.* c.391 § 1, c.393.

Through this apostolic structure, the Church’s spiritual mission takes concrete form in charity. In response to the Church’s high calling to practice charity, the early Church recognized that it “need[ed] to be organized if it [was] to be an ordered service to the community.” *Deus Caritas Est* ¶ 20. The Apostles “put[] this fundamental ecclesial principle into practice” by establishing “*diaconia*”: the “ministry of charity exercised in a communitarian, orderly way.” *Id.* ¶ 21. Over five centuries, the *diaconia* “evolved into a corporation” that effectuated the Church’s duty to spread love through charity. *Id.* ¶ 23. Indeed, “the social service which they were meant to provide was absolutely concrete, yet at the same time it was also a spiritual service.” *Id.* ¶ 21.

That same divinely ordered integration of charity endures in the Church today. The Pope appoints each bishop to serve as a successor to the Apostles as a “president of the assembly and



minister of charity in the Church.” Congregation for Bishops, *Directory for the Pastoral Ministry of Bishops* ¶ 194 (2004), <https://t.ly/YQon>; see 1983 CIC cc.331, 368–73; *Catechism* ¶¶ 880–81. The bishop then oversees the Church’s local charitable organizations—including, in Wisconsin, the Bureau, and its subunits. These entities, which are part of the Church, answer to the bishop, and then ultimately to the Pope.

This structure embodies the Catholic doctrine of subsidiarity by promoting participation at local and diocesan levels and ensuring that every citizen “contributes to the cultural, economic, political and social life of the civil community to which he belongs.” Pontifical Council for Justice & Peace, *Compendium of the Social Doctrine of the Church* ¶ 189 (Apr. 2005), <https://t.ly/wRiyI>. Indeed, the Church has long taught that it’s “a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do.” Pope Pius XI, *Quadragesimo Anno* ¶ 79 (May 15, 1931), [https://t.ly/LPFk\\_](https://t.ly/LPFk_).

So the “true subject of the various Catholic organizations that carry out a ministry of charity,” like the Conference, the Bureau, and other Catholic charities, “is the Church herself—at all levels, from the parishes, through the particular Churches, to the universal Church.” *Deus Caritas Est* ¶ 32. That’s because the “exercise of charity is an action of the Church as such” and is “an essential part of her mission.” *Id.*

### **III. The Conference, the Church Unemployment Pay Program, and the Bureau all further the Church's charitable work.**

Continuing in the tradition of the *diaconia* and consistent with the theological doctrine of subsidiarity, the Bishops of Wisconsin, through the Conference, founded CUPP for lay employees in the Archdiocese of Milwaukee and the Dioceses of La Crosse, Madison, and Superior. CUPP's creation is the result of the Church's effort to meet its "social justice responsibilities." *CUPP Policy Handbook* at 2; see Pope John Paul II, *Laborem Exercens* 26 (Sept. 14, 1981), <https://t.ly/IcH95> ("The obligation to provide unemployment benefits . . . is a duty springing from the fundamental principle of the moral order in this sphere, namely . . . the right to life and subsistence.").

CUPP is "housed under the umbrella" of the Conference, which serves as CUPP's "informational clearinghouse." *CUPP Policy Handbook* at 2. And its board of directors is chaired by the Conference's executive director, with the remaining members consisting of an appointee from each participating diocese, appointed by the bishop of that diocese. *Id.* The board "determines general policies and criteria for the Program and serves as the final-level appeal body for the benefit claims process." *Id.*

Importantly, the Bishops of Wisconsin maintain ultimate juridical power and direct the Conference in administering CUPP and sharing the Church's principles of Catholic social teaching. This allows the members of the Catholic Church within Wisconsin to more faithfully answer the Lord's call "to be good and faithful servants who serve the hungry and the thirsty, welcome the

stranger, clothe the naked, and visit the ill and the incarcerated.” Archbishop of Milwaukee Jerome E. ListECKi et al., *A Letter to Wisconsin Catholics on Faithful Citizenship* 2 (Aug. 2022), <https://t.ly/FEpN>.

CUPP helps “parishes, schools, and other church employers in meeting their social justice responsibilities by providing church funded unemployment coverage for lay employees” in an effective and efficient manner. *CUPP Policy Handbook* at 2. In addition to funding the program, the diocesan-affiliated employers are also required to actively cooperate with claims adjudicators to ensure that claims are assessed and benefits are distributed in a timely manner. *Id.* at 4.

Individuals seeking unemployment benefits are entitled to appeal their initial eligibility determination to an appeal committee, which must issue its decision within 30 days of its review. *Id.* at 10. The appeal committee’s decision can then be appealed to CUPP’s board of directors, which—if there are sufficient grounds for an appeal—will conduct a hearing to “expeditiously and fairly obtain necessary information” and render a decision within 30 days of the hearing. *Id.* at 11. These ensure that CUPP delivers benefits to those in need quickly and efficiently—on average within two to four weeks of submitting their claims.

The need for the Church to efficiently serve its unemployed community is particularly acute in Wisconsin, where the unemployment system has been historically plagued with delays and backlogs. One 2021 report, for example, noted that “nearly

30% of [Wisconsin’s] first unemployment payments were delayed more than 70 days, the 8th highest rate among states.” Noah Williams, *The (Poor) Performance of the Unemployment Insurance System During COVID-19 in the United States and (Especially) Wisconsin* 1 (May 10, 2021), <https://t.ly/zYAPB>. The delays in the State’s program only underscore the Conference’s need to provide a streamlined benefits program and fulfill its religious mission to care for the Church’s unemployed.

The Church’s decision to provide unemployment benefits through CUPP reflects the Church’s commitment to providing these services as part of its religious mission. The bishops maintain ultimate juridical power over the Catholic Charities in their dioceses, with the Bureau, for example, under the pastoral leadership of the Bishop of the Diocese of Superior. 605 U.S. at 243.

The Bureau serves as an arm of the Church’s social ministry. It operates “in compliance with the Principles of Catholic social teaching.” 605 U.S. at 243; *accord* App.204. Indeed, when a charity is made part of the Bureau, it confirms its import role “in fulfilling the social ministry of the Diocese of Superior” and affirms that it “will not engage in activities that violate Catholic Social Teachings.” App.204. And the Bureau further maintains this unique *Catholic* charitable ministry by:

- explaining to each charity that a “clear understanding of the corporate relationship between Catholic Charities Bureau, Inc. and [the charity] is necessary to effectively encourage teamwork and to *mutually implement our shared mission*”;
- retaining the ability to hire and fire directors;

- providing management services; and
- “[e]stablish[ing] and coordinat[ing]” the charity’s mission.

App.203 (emphasis added).

In short, each of the Bureau’s charities—including those at issue in this case—act under, at the direction of, and to further the charitable ministry of the Catholic Church. *See* 605 U.S. at 243.

#### **IV. The U.S. Supreme Court recognized the unity of the Bureau’s charitable and religious activities.**

Wisconsin law accommodates this intertwinement between charity and faith by exempting certain religious employers from paying into the State’s unemployment system for services performed. *See* Wis. Stat. § 108.02(15)(h).

That exemption covers any “church or convention or association of churches,” and services performed “[b]y a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order.” *Id.* §§ 108.02(15)(h)(1), (3). It also covers nonprofit organizations “operated, supervised, controlled, or principally supported by a church or convention or association of churches,” if they are “operated primarily for religious purposes.” *Id.* § 108.02(15)(h)(2).

This Court previously held that the Bureau didn’t qualify for the exemption. *See* 3 N.W.3d 666, 692 (Wis. 2024). Although there was no question that the Bureau was supervised and controlled by the Catholic Church, the Court held that the Bureau wasn’t “operated primarily for religious purposes” as it neither engaged in proselytization nor served only Catholics. *Id.*

The U.S. Supreme Court reversed, holding that this Court’s interpretation of section 108.02(h)(15)(2) as applied to the Bureau violated the First Amendment because the Bureau’s “charitable works are religiously motivated.” 605 U.S. at 249. Requiring the Bureau “to proselytize or serve only co-religionists” to qualify for the exemption, the U.S. Supreme Court explained, imposed a denominational preference that failed to “satisfy the highest level of judicial scrutiny.” 605 U.S. at 250, 254.

### **ARGUMENT**

The U.S. Supreme Court held that section 108.02(15)(h)(2) “as applied” to the Bureau violated the First Amendment. 605 U.S. at 250. So the only thing left for this Court to do on remand is recognize that the Bureau qualifies for the religious-employer exemption. But the State asks this Court to double down on its prior error by eliminating subsection (h)(2)’s religious-employer exemption altogether. State Suppl. Br. 36.

This Court should decline the State’s invitation to circumvent the U.S. Supreme Court’s mandate. The State’s proposal creates the same “denominational preference” that the U.S. Supreme Court held unconstitutional—it discriminates against the Bureau based on its corporate structure. 605 U.S. at 249.

Excluding the Bureau from the religious-employer exemption simply because it’s incorporated separately from the Diocese itself would violate the church-autonomy doctrine by treating the Catholic Church “as nothing more than the corporate entities” through which it carries out its religious mission and ministry. 605 U.S. at 259 (Thomas, J., concurring).

1. The First Amendment is “flexible enough to accommodate all forms of religious organization and polity.” *Jones v. Wolf*, 443 U.S. 595, 603 (1979). The Catholic Church’s structure—from the Pope to the bishops to diocesan ministries like the Bureau—is a fundamental attribute of the Catholic faith and embodies the doctrine of subsidiarity. *See* Background Part II.

Although they’re separate legal entities, “Catholic Charities and related organizations exist essentially to spread Christian love” and are thus unified in Christ and His Church. Pope John Paul II, *Address to the Members of Catholic Charities USA* ¶ 8 (Sept. 13, 1987), <https://t.ly/3etcX>; *accord* 605 U.S. at 255 (Thomas, J., concurring) (“although Catholic Charities and its subentities are separately incorporated from the Diocese of Superior, they are, as a matter of church law, simply an arm of the Diocese”).

Were another denomination to “provide charitable services in a similar manner,” but provide those services from within the church’s corporate structure, it would qualify for the religious-employer exemption under subsection (h)(1). 605 U.S. at 253 (majority) (citing Wis. Stat. §§ 108.02(15)(h)(1), (3)).

It’s only because the Catholic Church houses its charitable services in separate “nonprofit organization[s] controlled by the church” that it wouldn’t qualify for the exemption under subsection (h)(1) if this Court accepted the State’s invitation to judicially excise subsection (h)(2). *Id.* That is “textbook denominational discrimination.” 605 U.S. at 248.

2. The State’s proposal would further violate the “First Amendment’s guarantee” that “religious institutions” may “define

their internal governance structures without state interference.” 605 U.S. at 255 (Thomas, J., concurring).

Together with subsection (h)(1), subsection (h)(2) respects religious institutions’ “right to define their internal governance structures,” *id.*, by making eligibility for the religious-employer exemption agnostic to corporate structure. Taken together, the parts of subsection (h) apply to all religious entities that provide charitable services—regardless of whether “the work is done directly by the church itself or its ministers” or “by a separate nonprofit organization controlled by the church.” 605 U.S. at 253 (majority).

Judicially excising subsection (h)(2) would thus interfere with religious institutions’ “right to define their internal governance structures” and require regulators and the courts to intrude upon religious teaching as to which church-affiliated ministries are part of the church itself, and which are not. 605 U.S. at 255, 263 (Thomas, J., concurring) (“[T]he government may not use [corporate] entities as a means of regulating the internal governance of religious institutions.”).

The First Amendment guards against such “indirect coercion” of “the internal governance of religious institutions,” 605 U.S. at 263, 269, and forbids such forays into “matters of church government.” *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709 (1976); accord *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 747 (2020).

The Court should reject the State’s invitation to rewrite the statute by excising subsection (h)(2), which would only serve to



defy the First Amendment’s command that religious institutions “define their internal structure for themselves.” 605 U.S. at 268 (citing *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952)).

\* \* \*

There’s only one Catholic Church, and a diocesan charity is part of it—regardless of whether its lay employees serve in ministry or its precise corporate structure. Questioning that unity cannot be squared with the First Amendment, let alone the Supreme Court’s mandate to afford the Bureau the religious-employer exemption.

### CONCLUSION

The Conference respectfully asks the Court to affirm the Circuit Court judgment and enforce the U.S. Supreme Court’s mandate by holding that the Bureau qualifies for the religious-employer exemption.

Dated: November 3, 2025

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## CERTIFICATES

**A. Certification as to Form and Length.** I certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief, not including the caption, tables of contents and authorities, signature blocks, and certification, is 2,995 words. It is produced with a minimum printing resolution of 200 dots per inch, 13-point body text, 11-point for quotes and footnotes, and a maximum of 60 characters per line of body text.

**B. Certificate of Service.** I certify that this brief (and this Certification) has been served on all opposing parties through the Court's electronic filing system pursuant to the Clerk's designation of this case as part of the Supreme Court's e-Filing Pilot Program.

Dated: November 3, 2025

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