

FILED**06-17-2021****CLERK OF WISCONSIN****COURT OF APPEALS**

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

Case No. 2020AP2007
Circuit Court Case No. 2019CV324
Case Classification Code No. 30607

Catholic Charities Bureau, Inc., Barron County
Developmental Services, Inc., Diversified Services, Inc.,
Black River Industries, Inc., and Headwaters, Inc.,
Petitioners-Respondents,

v.

State of Wisconsin Labor and Industry Review Commission,
Respondent-Co-Appellant,
State of Wisconsin Department of Workforce Development,
Respondent-Appellant.

APPEAL FROM AN ORDER OF THE
CIRCUIT COURT FOR DOUGLAS COUNTY,
HONORABLE KELLY J. THIMM

**REPLY BRIEF OF RESPONDENT-APPELLANT
STATE OF WISCONSIN
DEPARTMENT OF WORKFORCE DEVELOPMENT**

Christine L. Galinat
Attorney for Respondent-Appellant
State of Wisconsin Department of
Workforce Development
State Bar No. 1000693

201 E. Washington Ave.
PO Box 8942
Madison, WI 53708-8942
(608) 266-3171 | christine.galinat@dwd.wi.gov

TABLE OF CONTENTS

	Page
ARGUMENT	1
I. The differing interpretations of the religious purposes exemption reached by other jurisdictions establish the exemption’s ambiguity.....	1
II. The employers have the burden to establish entitlement to the tax exemption.	3
III. Private unemployment benefits do not negate the public policy goals of Wisconsin unemployment insurance law.....	5
IV. The department’s interpretation gives meaning to each part of the statute and the employers’ interpretation does not.....	6
V. The employers’ discussion of <i>Coulee Catholic Schools</i> ignores the first step of the Wisconsin Supreme Court’s analysis.....	7
VI. Wisconsin’s unemployment insurance law does not burden the employers’ free exercise of religion.....	9
VII. The religious purposes exemption is a facially neutral law that does not demonstrate a preference for any religion.	13
VIII. The state and the courts should not interpret church doctrine.....	14
IX. The IRS has not determined that the employers are operated exclusively for religious purposes.....	15
CONCLUSION	17
CERTIFICATIONS REQUIRED BY RULES OF APPELLATE PROCEDURE Wis. Stat. §§ 809.19(8)(d) and 809.19(12)	18

CERTIFICATION REQUIRED BY INTERIM RULE FOR WISCONSIN'S APPELLATE ELECTRONIC FILING PROJECT ORDER No. 19-02	19
CERTIFICATION OF MAILING	20

TABLE OF AUTHORITIES

Court Decisions	Page
<i>Coulee Catholic Schools v. LIRC</i> , 2009 WI 88, 320 Wis. 2d 275, 768 N.W.2d 868 <i>passim</i>	
<i>Dominican Nuns v. City of La Crosse</i> , 142 Wis. 2d 577, 419 N.W.2d 270 (Wis. App. 1987)	4
<i>Fifth Avenue Presbyterian Church v. City of New York</i> , 293 F.3d 570 (2d Cir. 2002)	10
<i>Larson v. Valente</i> , 456 U.S. 228, 102 S. Ct. 1673, 72 L. Ed. 2d 33 (1982).....	13, 14
<i>Leissring v. DILHR</i> , 115 Wis. 2d 475, 340 N.W.2d 533 (1983).....	2
<i>Lemon v. Kurtzman</i> , 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971)...	14
<i>Presbyterian Church v. Hull Church</i> , 393 U.S. 440, 89 S. Ct. 601, 21 L. Ed. 2d 658 (1969).....	15
<i>Princess House, Inc. v. DILHR</i> , 111 Wis. 2d 46, 330 N.W.2d 169 (1983).....	8
<i>Pritzlaff v. Archdiocese of Milwaukee</i> , 194 Wis. 2d 302, 533 N.W.2d 780 (1995).....	12, 15
<i>St. Augustine’s Center for American Indians, Inc. v.</i> <i>Dept. of Labor</i> , 114 Ill. App. 3d 621, 70 Ill. Dec. 372, 449 N.E.2d 246 (1983)	6
<i>St. Martin Evangelical Lutheran Church v. South Dakota</i> , 451 U.S. 772, 101 S. Ct. 2142, 68 L. Ed. 2d 612 (1981).....	2

<i>State ex rel. Kalal v. Circuit Court for Dane Cty.</i> , 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110.....	1, 3
<i>Tony and Susan Alamo Found. v. Sec’y Labor</i> , 471 U.S. 290, 105 S. Ct. 1953, 85 L. Ed. 2d 278 (1985).....	10
<i>United States v. Dykema</i> , 666 F.2d 1096 (7th Cir. 1981), <i>cert. denied</i> , 456 U.S. 983, 102 S. Ct. 2257, 72 L. Ed. 2d 861 (1982).....	13
<i>Wauwatosa Ave. United Methodist Church v.</i> <i>City of Wauwatosa</i> , 2009 WI App 171, 321 Wis. 2d 796, 776 N.W.2d 280	4
<i>Westmas v. Creekside Tree Serv., Inc.</i> , 2018 WI 12, 379 Wis. 2d 471, 907 N.W.2d 68	2
<i>Wis. Evangelical Lutheran Synod v. City of Prairie du Chien</i> , 125 Wis. 2d 541, 373 N.W.2d 78 (Ct. App. 1985).....	13

Statutes

26 U.S.C. § 501(c)(3)	7
Wis. Stat. § 108.01(1).....	6, 8
Wis. Stat. § 108.02(15)(h)1.....	3
Wis. Stat. § 108.02(15)(h)3.....	3
Wis. Stat. § 108.02(19).....	7

Decisions of the Labor and Industry Review Commission

<i>MHS, Inc.</i> , UI Dec. Hearing No. 8852 S (LIRC July 12, 1991).....	14
---	----

Other Authorities

Coronavirus Aid, Relief, and Economic Security Act of 2020.....	5
Federal Unemployment Tax Act	2
First Amendment of the U.S. Constitution.....	<i>passim</i>
H.R. Rep. No. 91-612 (1969)	2

ARGUMENT

The employers' interpretation of the "operated for religious purposes" clause is not reasonable because their interpretation does not give meaning to every part of the statute, is contrary to the legislative history and is inconsistent with the Wisconsin Supreme Court's decision in *Coulee Catholic Schools v. LIRC*.¹ The First Amendment of the U.S. Constitution does not prevent general laws, like the unemployment insurance law, from being applied to employers affiliated with religious entities.² Accordingly, this Court should reverse the circuit court and confirm the commission's decisions.

I. The differing interpretations of the religious purposes exemption reached by other jurisdictions establish the exemption's ambiguity.

The employers err by failing to acknowledge the clause's ambiguity. "[A] statute is ambiguous if it is capable of being understood by reasonably well-informed persons in two or more senses."³ Both parties cite cases from other jurisdictions interpreting the religious purposes exemption and reaching different conclusions. These differing

¹ 2009 WI 88, 320 Wis. 2d 275, 768 N.W.2d 868.

² See *Coulee Catholic Schools*, 2009 WI 88, ¶ 65.

³ *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 47, 271 Wis. 2d 633, 681 N.W.2d 110.

interpretations demonstrate that the religious purposes exemption is ambiguous.

If a statute is ambiguous, a court may consult extrinsic sources, such as legislative history.⁴ Accordingly, the House Report,⁵ relied upon by U.S. Supreme Court,⁶ is appropriately considered by this Court when interpreting the exemption at issue. The employers assert that congressional reports are unreliable,⁷ but, in doing so, they ignore that the U.S. Supreme Court relied on the House Report and the Wisconsin Supreme Court has relied on Congressional Committee Reports on bills amending the Federal Unemployment Tax Act (“FUTA”) when interpreting Wisconsin laws enacted to conform with FUTA.⁸

The employers also err by interpreting “purposes” in isolation. Interpreting purposes as “the reason something is done” still leaves the proper interpretation of the statute in doubt. Is the reason these employers operate to provide work

⁴ *Westmas v. Creekside Tree Serv., Inc.*, 2018 WI 12, ¶ 20, 379 Wis. 2d 471, 907 N.W.2d 68.

⁵ H.R. Rep. No. 91-612, p. 44 (1969).

⁶ *St. Martin Evangelical Lutheran Church v. South Dakota*, 451 U.S. 772, 781-82, 101 S. Ct. 2142, 68 L. Ed. 2d 612 (1981).

⁷ Employers’ brief at 31-35.

⁸ *Leissring v. DILHR*, 115 Wis. 2d 475, 485-488, 340 N.W.2d 533 (1983).

training skills and other services to people with disabilities or is it to fulfill a religious mission?

Courts interpret statutory language “in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.”⁹ The rest of the statute excludes from unemployment insurance coverage those who are employed directly by a church and those who are actively engaged in ministering religion.¹⁰ The “religious purposes” clause must be interpreted in relation to the language surrounding it.

II. The employers have the burden to establish entitlement to the tax exemption.

Relying on a Massachusetts’ case, the employers argue that the exemption should not be strictly construed and that they do not have the burden of establishing their entitlement to the exemption.¹¹ Their argument is inconsistent with Wisconsin precedent.

In addressing whether property owned and maintained by a religious order was exempt from property tax, the court

⁹ *State ex rel. Kalal*, 2004 WI 58, ¶ 46.

¹⁰ Wis. Stat. §§ 108.02(15)(h)1. and 3.

¹¹ Employers’ brief at 18.

held that “[t]axation is the rule, and exemption the exception. As a result, ‘statutes exempting property from taxation are to be strictly construed and all doubts are resolved in favor of its taxability.’”¹²

In determining whether church-owned property housing a church custodian qualified for a tax exemption, the court held that “the burden of proving entitlement to [a tax] exemption is on the one seeking the exemption.”¹³ “[T]he modern rule is that the statute must be given a ‘strict but reasonable’ construction.”¹⁴ “Consequently, any doubt under the ‘strict but reasonable’ construction rule must be resolved against the party seeking the exemption.”¹⁵

Wisconsin law requires that the employers establish that they fit within the “religious purposes” exemption; the burden is not on the state to prove that the exemption is inapplicable.

¹² *Dominican Nuns v. City of La Crosse*, 142 Wis. 2d 577, 579, 419 N.W.2d 270 (Wis. App. 1987) (internal citations omitted).

¹³ *Wauwatosa Ave. United Methodist Church v. City of Wauwatosa*, 2009 WI App 171, ¶ 7, 321 Wis. 2d 796, 776 N.W.2d 280 (internal citations omitted).

¹⁴ *Id.*

¹⁵ *Id.*

III. Private unemployment benefits do not negate the public policy goals of Wisconsin unemployment insurance law.

The employers assert that because “all Catholic entities” operate their own unemployment benefit system, public policy “is not a real-world concern.”¹⁶ However, the statute at issue applies to all religions. It cannot be interpreted one way for Catholic entities and another way for entities affiliated with different faiths.

Real-world public policy concerns include claimants having sufficient wages to qualify for unemployment benefits if laid off from work subsequent to their employment with the employers. Wages earned in excluded employment negatively affect claimants’ eligibility for benefits. Real-world public policy concerns also include claimants having access to additional federal benefits in times of high unemployment, such as existed during the pandemic.¹⁷ There is no factual basis or legal justification for disregarding the

¹⁶ Employers’ brief at 18.

¹⁷ **Federal Pandemic Emergency Unemployment Compensation** provides claimants with additional weeks of benefits. Section 2107 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020. **Federal Pandemic Unemployment Compensation** provides claimants with additional benefits each week. Section 2104 of the CARES Act.

state's public policy concerns expressed in Wis. Stat. § 108.01(1).

IV. The department's interpretation gives meaning to each part of the statute and the employers' interpretation does not.

The employers argue that the department's argument makes the term "primarily" surplusage.¹⁸ An organization can be operated for both religious and secular purposes. For example, the Illinois Appellate Court concluded that a center providing religious services and guidance and also social services was operated primarily to provide secular assistance.¹⁹ That case is notable because the employer was found **not** to have a religious purpose, even though it provided religious services and guidance – which the employers in this case **do not do**.

Contrary to the employers' assertion, the department does not argue that if a service could be operated by a secular organization, it could not be performed for religious purposes. As the Supreme Court explains in *Coulee*, the same service

¹⁸ Employers' brief at 20.

¹⁹ *St. Augustine's Center for American Indians, Inc. v. Dept. of Labor*, 114 Ill. App. 3d 621, 626, 70 Ill. Dec. 372, 449 N.E.2d 246 (1983).

can be performed with a religious mission or without a religious mission.²⁰

In response to the department's assertion that the employers' interpretation renders the religious purposes clause superfluous, the employers argue that the religious purposes clause would apply if a church engaged in lucrative, competitive, commercial activity.²¹ Yet, the exemption applies only to nonprofit organizations described in section 501(c)(3) of the Internal Revenue Code.²² Thus, the intent of the clause would not have been to disqualify commercial enterprises from the exemption, because such enterprises would already be disqualified.

V. The employers' discussion of *Coulee Catholic Schools* ignores the first step of the Wisconsin Supreme Court's analysis.

The employers argue that *Coulee* is inapplicable by ignoring the first step of the test articulated in *Coulee*. In *Coulee*, the Wisconsin Supreme Court held that "[t]he first step is an inquiry into whether the organization in both statement and practice has a fundamentally religious mission. That is, does the organization exist primarily to worship and

²⁰ *Coulee Catholic Schools*, 2009 WI 88, ¶ 48.

²¹ Employers' brief at 23.

²² Wis. Stat. § 108.02(19).

spread the faith?”²³ The Court then looked at the activities of the organization to complete this analysis and determine if the organization was operated primarily for a religious mission.

If the organization is operated primarily for a religious mission, the Court considers the second step of whether the employee bringing the discrimination claim is closely linked to that mission. The employers’ brief jumps straight to the second step of the analysis, intentionally bypassing the first step.²⁴

The first step is integral to the analysis of whether an employee may bring a discrimination claim because *Coulee* protects a religious organization’s ability to choose its leaders. *Coulee* balanced the state’s strong interest in eradicating discrimination²⁵ with a religious organization’s interest in choosing its leaders. The *Coulee* Court’s balancing of these interests applies to other cases where the state’s strong interest in protecting individuals, with unemployment insurance, for example,²⁶ must be balanced with a religious organization’s First Amendment interests.

²³ *Coulee Catholic Schools*, 2009 WI 88, ¶ 48.

²⁴ Employers’ brief at 21-22.

²⁵ *Coulee*, 2009 WI 88, ¶ 40.

²⁶ See Wis. Stat. § 108.01(1) and *Princess House, Inc. v. DILHR*, 111 Wis. 2d 46, 63, 330 N.W.2d 169 (1983).

Coulee employed a fact-based inquiry to balance the competing interests and demonstrates how the commission and courts should not delve into matters of doctrine and belief when determining “religious purposes.” In contrast, the employers’ methodology would require the department to take one of two approaches. The first approach would be to interpret a religious organization’s doctrines and beliefs and examine whether an affiliated entity’s activities are consistent with those religious beliefs. The other approach would be to determine that the operations of an entity affiliated with a religious organization are consistent with the religious organization’s beliefs in every case, thus rendering the “religious purposes” clause superfluous. Neither of these approaches is consistent with controlling precedent.

The department may not examine religious beliefs, nor may it disregard a portion of the statute. The commission applied the statute correctly.

VI. Wisconsin’s unemployment insurance law does not burden the employers’ free exercise of religion.

The employers argue that the department is burdening its free exercise of religion.²⁷ *Fifth Avenue Presbyterian*

²⁷ Employers’ brief at 25-26.

*Church*²⁸ demonstrates when the government imposes a substantial burden on a church's First Amendment Free Exercise rights. There, the **city refused to allow the church** to provide an outdoor sanctuary for the homeless to sleep. The court found that the church was effectuating a sincerely held religious belief to minister to the homeless and that the city's actions in dispersing the homeless from the church's property was a substantial burden on that protected religious belief.

Here, unlike the city's action in *Fifth Avenue Presbyterian Church*, the commission's decision does not prohibit the employers from providing services. The U.S. Supreme Court stated that "the Free Exercise Clause does not require an exemption from a governmental program unless, at a minimum, inclusion in the program actually burdens the claimant's freedom to exercise religious rights."²⁹

²⁸ *Fifth Avenue Presbyterian Church v. City of New York*, 293 F.3d 570, 575 (2d Cir. 2002).

²⁹ *Tony and Susan Alamo Found. v. Sec'y Labor*, 471 U.S. 290, 303, 105 S. Ct. 1953, 85 L. Ed. 2d 278 (1985).

Similarly, the Wisconsin Supreme Court held, with respect to the Wisconsin Constitution's protection of religious liberty clause,³⁰ that:

We do not mean to suggest that anything interfering with a religious organization is totally prohibited. **General laws related to building licensing, taxes, social security, and the like are normally acceptable.**³¹

The department has not prohibited the employers from operating, nor has it instructed the employers to operate in a particular manner. Catholic Charities Bureau has been subject to Wisconsin Unemployment Insurance laws since 1972.³² A number of related entities that provide housing for senior citizens and for people with disabilities, daycare and work training services have been subject for more than 20 years.³³ The employers have not shown that their coverage under the Wisconsin unemployment insurance law – a law that is neutral and of general applicability – has burdened their free exercise of religion or that providing unemployment insurance coverage to their employees is inconsistent with their sincerely held religious beliefs.

³⁰ This clause is interpreted as providing greater protections than the Free Exercise Clause of the First Amendment. *Coulee Catholic Schools*, 2009 WI 88, ¶ 60.

³¹ *Coulee Catholic Schools*, 2009 WI 88, ¶ 65 (emphasis added).

³² R. 67:17.

³³ R. 60:33 & 41-46 and R. 67:7 & 11.

The employers cite *Pritzlaff v. Archdiocese of Milwaukee*³⁴ to assert that the department is using the internal beliefs of the church against them and undertaking an evaluation of religious norms.³⁵ This is absurd. *Pritzlaff* involved claims against the Archdiocese of Milwaukee for the negligent hiring and retention and the negligent supervision and training of a priest accused of sexual misconduct. The Wisconsin Supreme Court rejected the claims due to concerns of excessive entanglement and because an evaluation of the claims “would require interpretation of church canons and internal church policies and practices.”³⁶

Pritzlaff does not hold that any examination of a religiously affiliated organization’s operations is forbidden. Yet, that is what the employers’ brief suggests. “[E]xamination of an organization’s activities – even those of a religious organization – is not only permissible in the

³⁴ 194 Wis. 2d 302, 533 N.W.2d 780 (1995).

³⁵ Employers’ brief at 26-28.

³⁶ *Pritzlaff*, 194 Wis. 2d at 326.

context of deciding an institution's tax-exempt status, but it is necessary."³⁷ The commission's examination of the employers' activities, and its decisions that the employers are not covered by the exemption, does not violate the employers' free exercise rights.³⁸

VII. The religious purposes exemption is a facially neutral law that does not demonstrate a preference for any religion.

The employers assert that the department "tilts the playing field against Catholics,"³⁹ contrary to the Establishment Clause of the First Amendment's prohibition against denominational preference by the government.⁴⁰ In a case involving an Establishment Clause challenge, the U.S. Supreme Court found a Minnesota law, which imposed reporting requirements on religious organizations that received more than half of their contributions from nonmembers, was unconstitutional, because "the history of

³⁷ See, e.g., *United States v. Dykema*, 666 F.2d 1096, 1102 (7th Cir. 1981) *cert. denied*, 456 U.S. 983, 102 S. Ct. 2257, 72 L. Ed. 2d 861 (1982) (noting that the IRS had to be permitted to examine the religious activities of an organization because "[i]f such examination were not permitted, it is difficult to see how any church could qualify as a tax-exempt organization for 'religious purposes.'").

³⁸ See, e.g., *Wis. Evangelical Lutheran Synod v. City of Prairie du Chien*, 125 Wis. 2d 541, 554, 373 N.W.2d 78 (Ct. App. 1985) ("We conclude that a determination denying a tax exemption is similarly not a violation of the religion clauses of the federal constitution.").

³⁹ Employers' brief at 26.

⁴⁰ *Larson v. Valente*, 456 U.S. 228, 246, 102 S. Ct. 1673, 72 L. Ed. 2d 33 (1982).

[the law] demonstrates that the provision was drafted with the explicit intention of including particular religious denominations and excluding others.”⁴¹

Unlike the Minnesota law, the unemployment exemption is not directed at a particular religion. In fact, schools operated to provide “education in the Catholic tradition” are covered by the exemption.⁴²

VIII. The state and the courts should not interpret church doctrine.

Whether a law involves excessive entanglement in religion is one prong of the test set forth in *Lemon v. Kurtzman*⁴³ to determine whether a law violates the Establishment Clause of the First Amendment. The employers assert that the department’s analysis of excessive entanglement is incomplete.

However, both the U.S. Supreme Court and the Wisconsin Supreme Court did not rely on the *Lemon* test to determine that excessive entanglement would arise from analyzing church doctrine. For example, *Pritzlaff* held that certain claims could not be maintained against a religious

⁴¹ *Larson*, 456 U.S. at 254.

⁴² *MHS, Inc.*, UI Dec. Hearing No. 8852 S (LIRC July 12, 1991) (A-App. 225)

⁴³ *Lemon v. Kurtzman*, 403 U.S. 602, 619-20, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971).

governing body due to concerns of excessive entanglement and that other claims required an inquiry into church laws, practices and policies.⁴⁴ The U.S. Supreme Court found that Georgia judicial precedent that “require[d] the civil courts to engage in the forbidden process of interpreting and weighing church doctrine” unconstitutional.⁴⁵

A religious entity’s **motivation** should not determine whether it qualifies for a religious exemption. An opposite conclusion would impermissibly require the department to examine religious doctrine and raise concerns of excessive entanglement.

IX. The IRS has not determined that the employers are operated exclusively for religious purposes.

The employers’ argument that the IRS has determined they are operated exclusively for a religious purpose is contradicted by the record.⁴⁶ The IRS **did not** issue rulings that the employers are operated exclusively for religious purposes.

For federal income tax purposes, the employers are covered, as subordinate organizations, by a Group Exemption

⁴⁴ *Pritzlaff*, 194 Wis. 2d at 330.

⁴⁵ *Presbyterian Church v. Hull Church*, 393 U.S. 440, 451, 89 S. Ct. 601, 21 L. Ed. 2d 658 (1969).

⁴⁶ Employers’ brief at 40.

the IRS issued to the United States Conference of Catholic Bishops (“USCCB”).⁴⁷ The subordinate organizations do not need to be religious organizations to be covered by the USCCB Group Exemption. The USCCB Group Exemption covers USCCB’s **educational, charitable and religious** subordinate organizations listed in the Official Catholic Directory.⁴⁸

The USCCB explained to its subordinate organizations that the IRS **does not** determine which organizations are included in a group exemption and organizations exempt under a group exemption **do not** receive their own IRS determination letter.⁴⁹

Contrary to the employers’ argument, the IRS did not determine that the employers are operated exclusively for religious purposes because: (1) the IRS group exemption applies to educational and charitable institutions, not just religious institutions, and (2) the IRS does not issue determination letters to subordinate organizations.⁵⁰ The IRS Group Ruling did **not** require a finding that the employers here were operated exclusively for religious purposes.

⁴⁷ R. 57:24 and 32.

⁴⁸ R. 57:22-23, emphasis added.

⁴⁹ R. 57:25.

⁵⁰ R. 57:22.

CONCLUSION

For the reasons cited in this brief and its initial brief, the department requests that this Court hold that the employers remain subject to Wisconsin Unemployment Insurance law and confirm the commission's decisions.

Dated: June 17, 2021

Respectfully submitted,

Electronically signed by:

Christine L. Galinat

Christine L. Galinat
Attorney for Respondent-Appellant
State of Wisconsin Department of
Workforce Development
State Bar No. 1000693

201 E. Washington Ave.
P.O. Box 8942
Madison, WI 53708-8942
(608) 266-3171
christine.galinat@dwd.wi.gov

**CERTIFICATIONS REQUIRED
BY RULES OF APPELLATE PROCEDURE
Wis. Stat. §§ 809.19(8)(d) and 809.19(12)**

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The number of words in the Argument and Conclusion portions of this brief, including footnotes, is: 2,997.

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of s. 809.19(12).

Dated: June 17, 2021

Electronically signed by:

Christine L. Galinat

Christine L. Galinat
Attorney for Respondent-Appellant
State of Wisconsin Department of
Workforce Development
State Bar No. 1000693

**CERTIFICATION REQUIRED BY INTERIM
RULE FOR WISCONSIN'S APPELLATE
ELECTRONIC FILING PROJECT
ORDER No. 19-02**

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of the Interim Rule for Wisconsin's Appellate Electronic Filing Project, Order No. 19-02.

I further certify that a copy of this certificate has been served with this brief filed with the court and served on all parties either by electronic filing or by paper copy.

Dated: June 17, 2021

Electronically signed by:

Christine L. Galinat

Christine L. Galinat
Attorney for Respondent-Appellant
State of Wisconsin Department of
Workforce Development
State Bar No. 1000693

CERTIFICATION OF MAILING

I, Christine L. Galinat, certify that I am, and at all times during this service was, not less than 18 years of age and not a party to the matter concerning which service was made. I further certify that service of the Reply Brief of Respondent-Appellant Department of Workforce Development, was made on June 17, 2021, by electronic service on all parties.

Under penalty of perjury, I declare the foregoing is true and correct.

Dated: June 17, 2021

Electronically signed by:

Christine L. Galinat

Christine L. Galinat
Attorney for Respondent-Appellant
State of Wisconsin Department of
Workforce Development
State Bar No. 1000693