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WISCONSIN SUPREME COURT

Appeal No. 2020AP002007
Circuit Court Case No. 2019CV000324

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 Appeal from the Court of Appeals
reversing the Douglas County Circuit Court,
The Hon. Kelly J. Thimm, presiding
Case No. 2019CV000324

**NON-PARTY *AMICUS CURIAE* BRIEF OF CATHOLIC CHARITIES USA
IN SUPPORT OF PETITIONERS-RESPONDENTS-PETITIONERS**

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INTERESTS OF THE NON-PARTY *AMICUS CURIAE*

Catholic Charities USA (“CCUSA”) is a nonprofit national voluntary membership organization representing Catholic Charities member agencies throughout the United States and its territories, including the Petitioner-Respondent-Petitioner Catholic Charities Bureau, Inc.’s Diocese of Superior and its sub-entities. There are 176 Arch/Dioceses in the United States; 167 (95%) of these have a Catholic Charities agency that is a member of CCUSA.

The questions presented in this case are of substantial importance to CCUSA’s members, who operate more than 3,500 service locations across 50 states, the District of Columbia, and five U.S. Territories. The diverse array of social services offered by Catholic Charities agencies helped more than 14 million people in need last year who are among the most vulnerable members of our society. These agencies help all people, regardless of their faith, who are struggling with poverty and other complex issues. The Wisconsin Supreme Court’s determination of whether their operations are for “primarily religious purposes” is crucial to their ability to continue to serve persons living in poverty and in vulnerable populations.

Catholic Charities agencies perform the charitable work of the Catholic Church in America. They are the social services arm of the Catholic Church and are guided by Catholic Social Doctrine and bound by Catholic canon law. The work of Catholic Charities is inseparable from the Catholic faith; indeed, it is compelled by the Catholic faith and is the very essence of religious practices by Catholics in America. The Catholic Church believes that charity and promoting the gospel are inseparable. The Court of Appeals ruling to the contrary, in which the Court substituted its interpretation of

the Catholic faith for that of the Church, is not only factually incorrect, it also imperils the work of the Church in Wisconsin and throughout the United States. CCUSA submits this non-party amicus curiae brief to educate the Court on both Catholic Social Doctrine and Catholic canon law as they pertain to the religious activities of Petitioner-Respondent-Petitioner Catholic Charities Bureau, Inc., its sub-entities, and all Catholic Charities agencies.

As the national office for Catholic Charities agencies, CCUSA is uniquely situated to speak to the religious purposes of its member agencies' activities and to educate the Court about the centrality of charitable works to the Catholic faith.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Wisconsin Court of Appeals, District III, reversed the order of the Circuit Court for Douglas County that found the Petitioners-Respondents-Petitioners ("Petitioners") met the requirements of the religious purpose exemption under Wis. Stat. § 108.02(15)(h)2 (2019-20). In reversing the Circuit Court's decision, the Court of Appeals concluded that Petitioners "are not organizations operated primarily for religious purposes." Opinion at ¶ 3 (citing Wis. Stat. § 108.02(15)(h)2). The Court of Appeals did not consider Catholic Social Doctrine, papal encyclicals, or Catholic canon law regarding the purpose and mission of Catholic Charities organizations; rather, the Court of Appeals substituted its own interpretation of the Catholic faith notwithstanding the well-established rule that judges are precluded from making decisions that require evaluating and determining the substance of religious doctrine. *See, e.g., County of Allegheny v. ACLU*,

492 U.S. 573, 678 (1989) (Kennedy, J., concurring in the judgment in part and dissenting in part); *Thomas v. Review Bd. Ind. Employment Sec. Div.*, 450 U.S. 707, 715 (1981).

The work of Petitioners is an integral part of the mission of the Catholic Church performed by an integrated organization of the Church. Their charitable work is at the heart of the Church's social doctrine, and it is impossible to separate the Church's works of charity from the evangelizing of the Catholic Church. Therefore, all such works are carried out for religious purposes. Catholic Charities agencies are the designated vehicles in Catholic dioceses for the Church's charitable works. The opinion of the Court of Appeals should be reversed.

ARGUMENT

I. CHARITABLE WORKS ARE AT THE CORE OF THE CATHOLIC FAITH

A. Charitable Works Constitute Evangelizing

The Court of Appeals conceded that Petitioners "have a professed religious motivation. We acknowledge that the professed reason that CCB and its sub-entities administer these social services programs is for a religion purpose: to fulfill the Catechism of the Church." Opinion at ¶ 57. However, the Court of Appeals then sought to separate the Church's charitable works from what it considers true "religious activities" and asserted the social service programs provided by Petitioners "are neither inherently nor primarily religious activities" based on the following findings:

CCB and its sub-entities do not operate to inculcate the Catholic faith; they are not engaged in teaching the Catholic religion, evangelizing, or participating in religious rituals or worship services with social service participants; they do not

require their employees, participants, or board members to be of the Catholic faith; participants are not required to attend any religious training, orientation, or services; their funding comes almost entirely from government contracts or private companies, not from the Diocese of Superior; and they do not disseminate any religious material to participants. Nor do CCB and its sub-entities provide program participants with an “education in the doctrine and discipline of the church.”

Opinion at ¶ 58.

The Court of Appeals’ opinion as to what does or does not constitute “religious practices” of the Catholic Church is not determinative and violates the well-established rule that judges are precluded from making decisions that require evaluating and determining the substance of religious doctrine. See, e.g., *Thomas v. Review Board of Indiana Employment Security Division*, 450 U.S. 707, 716 (1981). Rather, the teachings of the Catholic Church and its centuries-old interpretation of what constitute the religious doctrine and required “religious purposes” of the Church must be given deference. Those teachings and purposes are clear: the core of the religious practices of the Catholic Church includes providing services to those living in poverty, in vulnerable communities, and in need without regard to a person’s faith or other characteristics.

The opinion issued by the Court of Appeals demonstrated a troubling lack of understanding of the Catholic faith and the crucial role of Catholic Charities in the evangelization of the faith. Catholic Charities help all persons in need, regardless of a person’s religious tradition or lack thereof, because the Catholic faith requires them to do so. They do not proselytize or force the Catholic faith on people who are suffering; they simply help

them as Jesus Christ and the Church require them to do.¹ The Court of Appeals also demonstrated an extremely narrow and incorrect understanding of what “evangelizing” means in the Catholic Church. The Catholic Church believes that charity and evangelizing are inseparable: “Practicing charity is the best way to evangelize.” Pope Frances (@Pontifex), Twitter (January 24, 2015, 4:24 AM), https://twitter.com/pontifex/status/558918164604399617?s=46&t=_wydb7OtauxFk1LsgQ9Mxw.

The Court of Appeals failed to understand that in the Catholic Church, evangelizing is best done not by words, but by good acts that show the beauty and power of the Catholic faith.

B. Charity Is an Indispensable Expression of the Church’s Very Being

The Court of Appeals failed to consider any of the great volumes of Catholic social teaching, including the Compendium of the Social Doctrine of the Church and papal teachings, on the topic of charitable activities as the core mission of the Catholic Church and essential to the Catholic religion. See, e.g., Pontifical Council for Justice and Peace, *Compendium of the Social*

¹ The Court of Appeals used as a basis for its decision denying the applicability of the “religious purposes” exemption the fact that Petitioners’ funding “comes almost entirely from government contracts or private companies, not from the Diocese of Superior.” Opinion at ¶ 58. Nationally, approximately 35-40% of Catholic Charities’ funding comes from local, state, and federal government contracts. Government at all levels in the United States recognizes that Catholic Charities agencies are better suited than government to provide essential social services to people who are suffering and in need. If Petitioners followed the Court of Appeals’ apparent criteria for the religious purposes exemption, such as requiring recipients of their social services to participate in religious training or disseminating religious materials to the people they serve (Opinion at ¶ 58), then they would violate state and federal laws regarding the use of government funds and would likely lose those funds. *Hunt v. McNair*, 413 U.S. 734, 743 (1973); *Mitchell v. Helms*, 530 U.S. 793, 808 (2000) (plurality opinion).

Doctrine of the Church, ¶¶ 66-67, 184, 208, 581 (2004). Catholic social doctrine is rooted in the teachings of Jesus Christ. In the Gospel of St. Matthew, Catholics are taught that serving others is a requirement of the faith:

Whoever wants to be a leader among you must be your servant, and whoever wants to be first among you must become your slave. For even the Son of Man came not to be served but to serve others and to give his life as a ransom for many.

Matthew 20:25-28. In addition to serving others generally, helping persons in need is foundational to the Catholic faith: “For I was hungry and you gave me something to eat, I was thirsty and you gave me something to drink, I was a stranger and you invited me in.” *Id.* at 25:35.

In his papal encyclical *Deus Caritas Est* (God is Love), Pope Benedict XVI wrote:

Thus far, two essential facts have emerged from our reflections:

a) The Church's deepest nature is expressed in her three-fold responsibility: of proclaiming the word of God (*kerygma-martyria*), celebrating the sacraments (*leitourgia*), and exercising the ministry of charity (*diakonia*). These duties presuppose each other and are inseparable. For the Church, charity is not a kind of welfare activity which could equally well be left to others, but is a part of her nature, an indispensable expression of her very being.

b) The Church is God's family in the world. In this family no one ought to go without the necessities of life. Yet at the same time *caritas- agape* extends beyond the frontiers of the Church. The parable of the Good Samaritan remains as a standard which imposes universal love towards the needy whom we encounter “by chance” (cf. *Lk* 10:31), whoever they may be. Without in any way detracting from this commandment of universal love, the Church also has a specific responsibility: within the ecclesial family no member should suffer through being in need.

Pope Benedict XVI, *Deus Caritas Est*, ¶ 25 (2005) (citations omitted). In a subsequent encyclical, *Caritas in Veritate*, Pope Benedict XVI wrote:

Charity is at the heart of the Church's social doctrine. Every responsibility and every commitment spelt out by that doctrine is derived from charity which, according to the teaching of Jesus, is the synthesis of the entire Law (cf. Mt 22:36-40). It gives real substance to the personal relationship with God and with neighbour; it is the principle not only of micro-relationships (with friends, with family members or within small groups) but also of macro-relationships (social, economic and political ones). For the Church, instructed by the Gospel, charity is everything because, as Saint John teaches (cf. 1 Jn 4:8, 16) and as I recalled in my first, "God is love" (*Deus Caritas Est*): *everything has its origin in God's love, everything is shaped by it, everything is directed towards it*. Love is God's greatest gift to humanity, it is his promise and our hope.

Pope Benedict XVI, *Caritas in Veritate*, ¶ 2 (2009) (emphasis in the original).

The teachings of Pope Benedict establish that: (1) exercising the ministry of charity is an essential element of the Catholic Church's three-fold responsibility; (2) charity is "an indispensable expression of [the Church's] very being;" (3) the Church has a specific responsibility to help those who are suffering; and (4) charity is "at the heart of the Church's social doctrine." Therefore, it is impossible to separate the Church's works of charity from the essence of the Catholic Church. All such charitable works are carried out for religious purposes.

In addition to papal edicts, the Church has developed an entire body of religious law contained in the Code of Canon Law, which is the fundamental body of ecclesiastical laws for the Church and which further reflects the Catholic command for charity. "The Church engages not only in divine worship but also in apostolic and charitable works. These vary according to the conditions of time and place but along with word and sacrament are constitutive of the mission of the Church and are to be supported by all." Coriden, J. A., et al., *The Code of Canon Law: A Text and Commentary*, 156 (1985).

Jesus taught the Corporal Works of Mercy, the “charitable actions by which we help our neighbors in their bodily needs.” United States Conference of Bishops, *The Corporal Works of Mercy*, www.usccb.org/beliefs-and-teachings/how-we-teach/new-evangelization/jubilee-of-mercy/the-corporal-works-of-mercy. Among the Corporal Works of Mercy are the mandates from Jesus to feed the hungry, give drink to the thirsty, shelter the homeless, and support the poor. The Court of Appeals is correct that secular organizations also do these things; however, that does not change the fact that Catholic Charities members do them as a requirement of the Catholic faith and as an integral part of the Church’s evangelization.

In short, the charitable works of the Catholic Church are fundamental to and inseparable from the core of the Catholic faith. Overseen by our Bishops, they are, in all respects, carried out for “religious purposes.” Wis. Stat. § 108.02(15)(h)2. Charitable works in the Catholic tradition are not merely examples of faith; they are the essence of the faith.

II. CATHOLIC CHARITIES ARE THE CHARITABLE ARM OF THE CATHOLIC CHURCH

The Church's charitable organizations, on the other hand, constitute an *opus proprium*, a task agreeable to her, in which she does not cooperate collaterally, but acts as a subject with direct responsibility, doing what corresponds to her nature.

Deus Caritas Est, ¶ 29

The Church exercises its “direct responsibility” to do charitable work through an international network of charitable organizations under the umbrella name *Caritas Internationalis*. In the United States, these organizations are known as Catholic Charities. CCUSA is a member of *Caritas Internationalis* (“*Caritas*”), the pontifical charitable entity located in

the Vatican and under the jurisdiction of the Holy See. *Caritas'* vision statement provides:

Caritas Internationalis is at the heart of the Church's mission.

Its member organizations link together in a confederation to serve the world's poor, vulnerable, dispossessed and marginalized. Caritas is inspired by Scripture, Catholic Social Teaching and by the experiences and hopes of people who are disadvantaged and living in poverty.

We work with people of all faiths and those who have none.

Caritas, Our Vision, www.caritas.org/who-we-are/vision.

The purpose of these organizations is not to attempt to compel people who are suffering to join the Catholic faith, as the Court of Appeals would require, but rather to serve people living in poverty, in vulnerable populations, and in need – terms the Church defines broadly. They provide help and hope to all suffering persons regardless of those persons' faith.

In a recent address to the General Assembly of *Caritas*, Pope Francis stated that

[t]he identity of *Caritas Internationalis* depends directly on the mission it has received. What distinguishes it from other agencies working in the social sphere is its ecclesial vocation. And what specifies its service within the Church, compared to many other ecclesial associations and institutions devoted to charity, is its task of assisting and supporting the Bishops in their exercise of pastoral *caritas*

Address of His Holiness Pope Francis to the Participants in the General Assembly of *Caritas Internationalis*, Clementine Hall (May 11, 2023). In his

*motu proprio*² *On the Service of Charity*, Pope Benedict XVI established and decreed:

In addition to observing the canonical legislation, the collective charitable initiatives to which this *Motu Proprio* refers are required to follow Catholic principles in their activity and they may not accept commitments which could in any way affect the observance of those principles.

. . . [Any] agency [of the Church] has the duty to inform the Bishops of other Dioceses where it operates and to respect the guidelines for the activities of the various charitable agencies present in those Dioceses.

It is the responsibility of the diocesan Bishop to ensure that in the activities and management of these agencies the norms of the Church's universal and particular law are respected, as well as the intentions of the faithful who made donations or bequests for these specific purposes [].

The Bishop is to encourage in every parish of his territory the creation of a local *Caritas* service or a similar body.

Pope Benedict XVI, *On the Service of Charity*, Articles 1, 3-4, 9 (2012) (citations omitted).

Each Catholic Charities agency is a separate legal entity under the auspices of the Catholic bishop in the diocese where the agency is located. The agencies serve as the charitable arm of the bishop and are integral to the work and service of the bishop to the people of his diocese. Suggesting otherwise, as the Court of Appeals opinion does, impermissibly substitutes the Court's interpretation of the Catholic faith for that of its Popes and Bishops.

As a matter of Church law, America's Bishops are responsible for creating a Catholic Charities (*Caritas*) agency in their diocese, requiring the agency to

² A *motu proprio* is a legal document issued by a pope under his personal authority to the Roman Catholic Church. A *motu proprio* has the effect of a binding law in the Church.

follow Catholic Social Doctrine and Church guidelines including those regarding charity, overseeing the activities of the agency, and “ensur[ing] that in the activities and management of these agencies, the norms of the Church’s universal and particular law are respected.” Catholic Charities agencies and their activities are inextricably tied to the Bishops’ role and therefore are inherently and necessarily religious activities.

CONCLUSION

For the reasons stated, the decision of the Court of Appeal should be overturned.

Dated: July 14, 2023

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stats. §§ 809.19(8)(b), (bm) and 809.19(8)(c)(3) for a brief produced with a proportional serif font. The length of the brief, not including the caption, tables of contents and authorities, signature blocks, and certification is 2,968 words.

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CERTIFICATION OF E-FILING AND SERVICE

I certify that on July 14, 2023, I electronically filed this document with the Clerk of Court using the Wisconsin Appellate Court Electronic Filing System, which will accomplish electronic notice and service for all parties.

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