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NCLA Asks Wisconsin Supreme Court to Grant Catholic Charities Perfectly Lawful Tax Exemption

Catholic Charities Bureau, Inc., et al. v. State of Wisconsin Labor and Industry Review Commission, State of Wisconsin Department of Workforce Development

Washington, DC (November 18, 2025) – The New Civil Liberties Alliance has filed an *amicus curiae* brief in *Catholic Charities Bureau v. Wisconsin Labor and Industry Review Commission*. NCLA urges the Wisconsin Supreme Court to provide a constitutionally sound remedy for the State's unlawful religious discrimination against the Catholic Charities Bureau and its subsidiaries (the "Charities").

Wisconsin's statutes exempt certain nonprofit employers from paying payroll taxes for unemployment compensation. The exemption at issue in this case applies to organizations "operated primarily for religious purposes and operated, supervised, controlled or principally supported by a church…". The Wisconsin Supreme Court previously held that churches do not operate organizations for a primarily religious purpose unless "both the motivations and the activities of the organization" are religious. Remarkably, the Court held this court-created religious activities test disqualified the Charities from enjoying the statutory tax exemption because they do not proselytize when providing critical assistance to the needy. The U.S. Supreme Court *unanimously* rejected what it called the Wisconsin Supreme Court's "paradigmatic form of denominational discrimination."

On remand, the State insists that the proper remedy for this constitutional defect is not to put an end to the discrimination but is instead to end the tax exemption for all organizations that are operated by churches primarily for religious purposes. But that proposed remedy would violate the Wisconsin Constitution's separation of powers by striking down a facially valid tax exemption and imposing new tax liabilities on institutions all over the state (the vast majority of which are not even part of the suit). The only proper remedy for the State's unlawful behavior is to eliminate its denominational discrimination against Catholicism and grant the Charities access to the tax exemption on the same basis as all other denominations.

NCLA released the following statements:

"The State insists that if it can't discriminate against the Catholic Charities Bureau in the administration of a tax exemption, then the exemption must be eliminated. The Wisconsin Constitution forbids this petulance and instead requires the tax exemption be available without denominational discrimination."
— Daniel Kelly, Senior Litigation Counsel, NCLA

"The Wisconsin Supreme Court created a problem when it invented a discriminatory 'religious activities test.' Stopped short by the U.S. Supreme Court, it would be anomalous on remand to disallow the legislature's lawful tax exemption for a problem of the state supreme court's own creation. Besides which, the Wisconsin Supreme Court would be unlawfully legislating from the bench if it stooped to setting aside a perfectly lawful statute."
— Mark Chenoweth, President, NCLA

For more information visit the *amicus* page here.

ABOUT NCLA

NCLA is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar Philip Hamburger to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

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