Case 2020AP002007

2025-12-15 Court Order

Filed 12-15-2025

Page 1 of 4

CLERK OF WISCONSIN

SUPREME COURT

FILED 12-15-2025

OFFICE OF THE CLERK



Supreme Court of Misconsin

110 EAST MAIN STREET, SUITE 215 P.O. BOX 1688 MADISON, WI 53701-1688

> TELEPHONE (608) 266-1880 FACSIMILE (608) 267-0640 Web Site: www.wicourts.gov

> > December 15, 2025

To:

Hon. Kelly J. Thimm Circuit Court Judge Electronic Notice

Michele Wick Clerk of Circuit Court Douglas County Courthouse Electronic Notice

Charlotte Gibson Electronic Notice

Eric C. Rassbach Electronic Notice Nicholas R. Reaves Electronic Notice

Colin Thomas Roth Electronic Notice

Andrew John Rubsam Electronic Notice

Jeffrey J. Shampo Electronic Notice

*Distribution list continued on Pages 3 & 4

You are hereby notified that the Court has entered the following order:

No. 2020AP2007 <u>Catholic Charities Bureau, Inc. v. Wisconsin Labor and Industry</u> Review Commission, L.C. #2019CV324

This case concerns decisions of the Labor and Industry Review Commission ("LIRC") that determined that Catholic Charities Bureau, Inc. and four of its sub-entities (collectively, "Catholic Charities et al.") are not organizations "operated primarily for religious purposes," Wis. Stat. § 108.02(15)(h)2., and therefore are not eligible for the religious purposes exemption to unemployment taxation. The circuit court reversed LIRC's decisions, the court of appeals reversed the circuit court, and we affirmed the court of appeals. See Catholic Charities Bureau, Inc. v. LIRC, 2024 WI 13, ¶19-21, 109, 411 Wis. 2d 1, 3 N.W.3d 666. On June 5, 2025, the United States Supreme Court issued its opinion in Catholic Charities Bureau, Inc. v. LIRC, 605 U.S. 238 (2025), which held that our interpretation of § 108.02(15)(h)2. violated the First Amendment because that interpretation, as applied to Catholic Charities et al., caused Catholic Charities et al.'s "eligibility for the exemption [to] ultimately turn[] on inherently religious choices (namely, whether to proselytize or serve only co-religionists)." Id. at 250. As such, the Supreme Court held, our "interpretation of § 108.02(15)(h)(2) facially differentiate[d] among religions based on

Case 2020AP002007 2025-12-15 Court Order Filed 12-15-2025 Page 2 of 4

Page 2

December 15, 2025

No. 2020AP2007

Catholic Charities Bureau Inc. v. Wisconsin Labor and Industry Review Commission, L.C. #2019CV324

theological choices." Id. at 251. The Supreme Court reversed the judgment of this court and remanded the case to us for further proceedings not inconsistent with its opinion.

On July 9 and 10, 2025, the parties filed letters stating their positions regarding the appropriate remedial measures to be taken in light of the Supreme Court's opinion. The court decided it would benefit from formal briefing on this issue, and it therefore solicited briefing by order of September 18, 2025.

Subsequently, and consistent with orders issued by this court, the court received three rounds of simultaneous briefs from the parties, as well as amicus briefs from the American Center for Law & Justice, the Wisconsin State Legislature, the Wisconsin Catholic Conference, the Wisconsin Council of Religious and Independent Schools et al., the Christian Legal Society et al., the New Civil Liberties Alliance, and The Church of Jesus Christ of Latter-day Saints et al.

In light of the Supreme Court's holding that this court "impose[d] a denominational preference" that does not survive strict scrutiny, id. at 254, we determine that Catholic Charities et al. is eligible for the religious purposes exemption to unemployment taxation under Wis. Stat. § 108.02(15)(h)2.

IT IS ORDERED that this matter is remanded to the circuit court with instructions to vacate LIRC's decisions and to remand the matter to LIRC with direction to declare Catholic Charities Bureau, Inc. and its sub-entities involved in this case eligible for the religious purposes exemption to unemployment taxation under Wis. Stat. § 108.02(15)(h)2.

> Samuel A. Christensen Clerk of Supreme Court

Page 3

December 15, 2025

No. 2020AP2007 Catholic Charities Bureau Inc. v. Wisconsin Labor and Industry

Review Commission, L.C. #2019CV324

Address list continued:

Kyle H. Torvinen Electronic Notice

Daniel M. Vitagliano Electronic Notice

Rohit P. Asirvatham Sarah M. Harris Mark S. Storslee Williams & Connolly LLP 680 Maine Avenue SW

Washington, DC 20024

Jon P. Axelrod J. Wesley Webendorfer DeWitt Ross & Stevens S.C. 2 E. Mifflin St., Ste. 600 Madison, WI 53703-2865

Robert S. Driscoll Reinhart Boerner Van Deuren S.C. P.O. Box 2965 Milwaukee, WI 53202

David Earleywine Wisconsin Catholic Conference 106 E. Doty St., Ste. 300 Madison, WI 53703

Patrick C. Elliott Freedom From Religion Foundation P.O. Box 750 Madison, WI 53701

Zachary Faircloth Bradley G. Hubbard Elizabeth A. Kiernan Jason J. Meuhlhoff Gibson, Dunn & Crutcher LLP 2001 Ross Avenue Dallas, TX 75201-2923 Timothy John Feldhausen Amundsen Davis LLC 318 South Washington Street Green Bay, 54301

Matthew M. Fernholz Cramer, Multhauf & Hammes, LLP 1601 East Racine Avenue, Suite 200 Waukesha, WI 53187

Caleb Raymond Gerbitz James M. Sosnoski Meissner, Tierney, Fisher & Nichols S.C. 111 E. Kilbourn Avenue, Ste. 1900 Milwaukee, WI 53703

Samuel Grover Freedom From Religion Foundation 10 N. Henry St. Madison, WI 53703

Benjamin Hayes Levi Swank Goodwin Law 1900 N. Street N.W. Washington, DC 20036

Gregory Heinen David W. Simon Foley & Lardner LLP 777 E. Wisconsin Ave., Ste. 3600 Milwaukee, WI 53202-5306

Jonathan Judge ArentFox Schiff LLP 233 South Wacker Dr., Ste. 7100 Chicago, IL 60606

Stephen M. Judge South Bank Legal 100 E. Wayne Street, Ste. 300 South Bend, IN 46601 Page 4

December 15, 2025

No. 2020AP2007

<u>Catholic Charities Bureau Inc. v. Wisconsin Labor and Industry</u> Review Commission, L.C. #2019CV324

Address list continued:

Tiernan Kane South Bank Legal 100 E. Wayne Street, Ste. 300 South Bend, IN 46601

Dina Ljekperic Goodwin Law 620 Eighth Ave. New York, NY 10018-1618

James C. Phillips Schaerr Jaffe LLP 1717 K. Street N.W., Ste. 900 Washington, DC 20006

Gene C. Schaerr Schaerr Jaffe LLP 1717 K. Street N.W., Ste. 900 Washington, DC 20006

Howard Slugh Jewish Coalition For Religious Liberty 2400 Virginia Ave. N.W., Apt. C619 Washington, DC 20037

Daniel R. Suhr Hughes & Suhr LLC 747 LaSalle St., Ste. 210 Chicago, IL 60654

John David Tripoli Eimer Stahl LLP 224 S. Michigan Ave., 11th Floor Chicago, IL 60654

Ryan J. Walsh Eimer Stahl LLP 10 E. Doty St., Ste. 621 Madison, WI 53703 Tiffany E. Woelfel Amundsen Davis LLC 318 South Washington Street Green Bay, WI 54301

Daniel Kelly New Civil Liberties Alliance 4250 N. Fairfax Dr., Ste. 300 Arlington, VA 22203

Francis H. LoCoco Husch Blackwell LLP 511 N. Broadway, Ste. 1100 Milwaukee, WI 53202

Geoffrey R. Surtees American Center for Law & Justice P.O. Box 60 New Hope, KY 40052

Clare Chiodini Eimer Stahl LLP 224 S. Michigan Ave., Ste. 1100 Chicago, IL 60604