Wisconsin Religious Definition

By Paul Engel

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- Is Catholic Charities are part of the Roman Catholic Church?
- Does Catholic Charities exist primarily for religious purposes?
- Why does the State of Wisconsin think the answer to those question is “No”?

Back in March, the Supreme Court argued the case Catholic Charities Bureau, Inc., et al. v. Wisconsin Labor And Industry Review Commission et al. I reviewed those arguments in my article Are You Religious Enough? In June, the court released its decision, and thankfully, the court came to what I believe is the correct decision though that’s not to say they came to the conclusion for the right reasons.

Decision

This case revolves around what at first seems to be a simple question: Does Catholic Charities operate for primarily religious purposes? The Wisconsin Labor and Industry Review Commission said no, and the Wisconsin Supreme Court agreed.

Wisconsin law exempts certain religious organizations from paying unemployment compensation taxes. The relevant statute exempts non-profit organizations “operated primarily for religious purposes” and “operated, supervised, controlled, or principally supported by a church or convention or association

of churches." … Petitioners, Catholic Charities Bureau, Inc., and four of its subentities, sought this exemption as organizations controlled by the Roman Catholic Diocese of Superior, Wisconsin. The Wisconsin Supreme Court denied the exemption, holding that petitioners were not "operated primarily for religious purposes" because they neither engaged in proselytization nor limited their charitable services to Catholics.

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However, the Supreme Court of the United States found otherwise. Justice Sotomayor wrote the opinion.

Held: The Wisconsin Supreme Court's application of §108.02(15)(h)(2) to petitioners violates the First Amendment.

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I believe the court is correct that the State of Wisconsin violated the Constitution, but are they right about the reason why?

First Amendment

Did the way the Wisconsin Labor and Industry Review Commission and the decision of the Wisconsin Supreme Court violate the First Amendment?

(a) The First Amendment mandates government neutrality between religions and subjects any state-sponsored denominational preference to strict scrutiny.

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Actually, that's not what the First Amendment says.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;

U.S. Constitution – First Amendment

So the First Amendment does not mandate general government neutrality, but that Congress not get involved in religion. Congress cannot establish a religion, nor regulate religious practices, but the First Amendment specifically states this limitation is on Congress.

That's not to say that Wisconsin's actions do not violate the Constitutions, both of the United States and the State of Wisconsin. Let's start with the Constitution of the United States.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; … nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Constitution – Amendment XIV

The decision of both the labor board and the Wisconsin Supreme Court violated the equal protection clause of the Fourteenth Amendment.

The Wisconsin Supreme Court's interpretation of §108.02(15)(h)(2) imposes a denominational preference by differentiating between religions based on theological lines. Petitioners' eligibility for the exemption ultimately turns on inherently religious choices (namely, whether to proselytize or serve only co-religionists in the course of charitable work), not "'secular criteria' " that "happen to have a 'disparate impact' upon different religious organizations." … Because that regime explicitly differentiates between religions based on theological practices, strict scrutiny applies.

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So Wisconsin protects some religious organizations, but not others. That's the definition of denying the equal protection of the law.

If that's the United States Constitution's view, what about Wisconsin's? If it prohibits giving preference to religious establishments or modes of worship, why is that exactly what both the Labor and Industry Review Commission and Supreme Court of Wisconsin did?

Wisconsin's Arguments

Next, Justice Sotomayor gets into the arguments of the State of Wisconsin.

(b) The State argues that, when it comes to religious accommodations afforded by the government, courts should ask whether the accommodation's eligibility criteria are the product of "invidious discrimination" to determine if strict scrutiny applies. In support of that rule, the State draws on Gillette v. United States, 401 U. S. 437. Gillette, however, is inapposite.

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Wisconsin argued that when government makes an accommodation, the courts should look to see if any discrimination is invidious or obnoxious. In support of this argument, Wisconsin points to the case Gillette v. United States. Justice Sotomayor says this argument is inapposite or not pertinent.

Unlike the conscientious objector status in Gillette, which was equally available to members of all religions, the Wisconsin Supreme Court's interpretation of §108.02(15)(h)(2) facially differentiates among religions based on inherently

theological choices.

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The remedies available to Gillette were available to members of all religions, but since that is the exact opposite of what the Wisconsin Supreme Court decided, they basically said that these entities of Catholic Charities were not religious enough.

The State next disputes the premise that petitioners were denied coverage because they do not proselytize or serve only Catholics in the course of performing charitable work. The State instead claims that petitioners were excluded because they engaged in no "distinctively religious activity," meaning "activities that express and inculcate religious doctrine."

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So the State claims that Catholic Charities doesn't engage in "distinctively religious activity"? I guess all of those verses about feeding the poor and helping the needy aren't religious enough for the Wisconsin Supreme Court. Justice Sotomayor agreed.

That understanding of the Wisconsin Supreme Court's ruling, even if assumed correct, cannot save the statute from strict scrutiny because decisions about whether to "express and inculcate religious doctrine" while performing charitable work are fundamentally theological choices driven by religious doctrine.

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Notice Justice Sotomayor's analysis. Even if the state's argument was correct, it would still be wrong not because it

was unconstitutional, but because it would trigger strict scrutiny. That is the court created rule about how hard a government entity has to work to infringe on your rights.

(c) Section 108.02(15)(h)(2), as applied, cannot survive strict scrutiny because the State has not met its burden to show that the law's application is narrowly tailored to further a compelling government interest.

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So the court claims that the application of the law does not survive strict scrutiny because it is not narrowly tailored enough. All of the justices agree, but two justices wrote concurring opinions.

Thomas Concurrence

Let's start with Justice Thomas' concurrence.

A nonprofit organization is entitled to an exemption from Wisconsin's unemployment-insurance tax on employers if it is controlled by a church and "operated primarily for religious purposes." … The Wisconsin Supreme Court concluded that Catholic Charities Bureau (Catholic Charities) and its subentities are not such organizations, reasoning in two steps.

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This is Justice Thomas' style, break the arguments down, then investigate them one by one.

First, the court held that the relevant "organization" is Catholic Charities and each of its subentities, not the broader Catholic Diocese of Superior of which it is a part.

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Commission

What's in a name? Is a Catholic Charity, even one directed by the Catholic Diocese, still controlled by the Catholic Church and thereby religious?

Second, it held that the purposes of Catholic Charities and its subentities are primarily secular, not religious.

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Since when is Christ's command to feed the hungry, care for the poor, and take care of the least of these a secular endeavor?

The Court concludes that the latter holding of the Wisconsin Supreme Court unconstitutionally discriminates against Catholic Charities and its subentities. I agree and join the Court's opinion in full. I write separately because, in my view, the Wisconsin Supreme Court's first holding was also wrong.

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Although Justice Thomas agrees with the court, he wants to argue that Wisconsin's first argument, that Catholic Charities is not part of the Catholic Diocese, is wrong.

The Wisconsin Supreme Court disregarded this structure of Catholic Charities and its subentities in adjudicating the case below. The court acknowledged Catholic Charities' status as an "arm" of the Diocese of Superior subject to the bishop's "control." … It nonetheless viewed Catholic Charities and its subentities as distinct, nonreligious organizations merely because they are separately incorporated.

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Justice Thomas points out that even though the court acknowledged that Catholic Charities was an arm of the Diocese, they then claimed it as a distinct entity. It went further, claiming that this arm of a church, overseen by a Bishop of the church, was a nonreligious organization.

By failing to defer to the Bishop of Superior's religious view that Catholic Charities and its subentities are an arm of the Diocese, the Wisconsin Supreme Court violated the church autonomy doctrine.

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Notice that Justice Thomas does not claim that the Wisconsin Supreme Court violated the law, but the court's doctrine. This leads to the conclusion Justice Thomas came to.

The Court correctly holds that Catholic Charities and its subentities have suffered unconstitutional religious discrimination even on the assumption that those entities should be considered in isolation. … I would reverse for an additional reason—that the Wisconsin Supreme Court violated the church autonomy doctrine. However incorporated, Catholic Charities and its subentities are, from a religious perspective, a mere arm of the Diocese of Superior. The Wisconsin Supreme Court should have deferred to that understanding, and its failure to do so amounted to an unlawful attempt by the State to redefine the Diocese's internal governance.

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So Justice Thomas thinks the violation of a court "doctrine," not a law or even a court order, is an additional reason why the Wisconsin Supreme Court violated the rights of Catholic Charities.

Jackson Concurrence

When it comes to the Supreme Court, Justices Thomas and Jackson would seem to be an odd-couple. However, in this case they both wrote concurrences adding to the opinion of the court.

I write separately because, in my view, FUTA's religious-purposes exemption does not distinguish between charitable organizations based on their engagement in proselytization or their service to religious adherents. Nor does that exemption differentiate based on religious motivation, as the Government (as amicus) insists. Rather, both the text and legislative history of FUTA's religious-purposes exemption confirm that Congress used the phrase "operated primarily for religious purposes" to refer to the organization's function, not its inspiration. Put differently, §3309(b)(1)(B) turns on what an entity does, not how or why it does it.

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Justice Jackson is referring to the Federal Unemployment Tax Act, and its religious-purposes exemption. Specifically, she is referring to the language "an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches." As she describes Congress' intent:

Here, Congress sought to extend to most nonprofit workers the stability that unemployment insurance offers, while exempting a narrow category of church-affiliated entities most likely to cause significant entanglement problems for the unemployment system—precisely because their work involves preparing individuals for religious life. It is perfectly consistent with the opinion the Court hands down today for States to align their §3309(b)(1)(B)-based religious-purposes exemptions

with Congress's true focus.

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Except the language she quoted says nothing about preparing individuals for religious life, only that it have a religious purpose. As I've already pointed out, there are numerous verses in the Bible that tell adherents they are to take care of the poor and needy, which is what Catholic Charities in general does.

Conclusion

As is so often that case, I believe the court once again came to the correct conclusion, but not entirely for the right reasons. As I've pointed out too many times to count, the First Amendment states that "Congress shall make no law…" Congress did not make this law, and the State of Wisconsin could not violate the First Amendment. And no, the Fourteenth Amendment didn't rewrite the First, as the court generally claims. This is a violation of the Fourteenth Amendment's Equal Protection Clause, since the State of Wisconsin treats different organizations operated for religious purposes differently based on how their churches work. Justice Thomas also found the State of Wisconsin violated Catholic Charities rights, not by violating a law or the Constitution, but court precedent, which is neither a law nor legally binding. Add to that Justice Jackson's rewriting the law passed by Congress to meet her own agenda, and I think I've exposed the erroneous logic of the court. I guess even a blind squirrel can find a nut every so often.

I guess we can take the win, but personally, I want more. I want a court, a judiciary, an entire legal system, that follows the law and doesn't make it up for themselves as they see fit. That's why I cannot be satisfied with this court's decision.

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