

Howard Slugh: Major religious liberty case before Wisconsin Supreme Court with profound effects for Jewish community

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How would you determine whether an organization “is operated primarily for religious purposes”? While this question may sound academic, it lies at the heart of an important case currently before the Wisconsin Supreme Court. The effects will be profound for religious minorities in Wisconsin, including Wisconsin’s Jewish community.

Numerous states and the federal government have laws exempting organizations operated for religious purposes from certain obligations. Qualifying for such exceptions helps many religious charities fulfill their missions. The key questions are therefore: *who* decides what qualifies as “religious” and *how* should they decide? Correctly answering those questions is crucial to ensuring fair and equal treatment for religious Americans. If the court were to get this wrong, it would most likely result in the exclusion of religious minorities, including Jews, from benefits that are available to larger and more well-known religions.

On September 11, the Wisconsin Supreme Court heard argument in this case. On one side is the Catholic Charities Bureau (“CCB”). CCB argues that it is operated for religious purposes because its mission and motivation are undisputedly religious. Its mission is to “provide services to the poor and disadvantaged as an expression of the social ministry of the Catholic Church.” It fulfills this religious imperative by operating programs for the poor. If the court accepts CCB’s explanation of its faith, CCB will be allowed to opt-out of the State’s unemployment compensation system and to join the Wisconsin Catholic Church’s system which it argues provides equivalent benefits at a lower cost.

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On the other side is Wisconsin's Labor and Industry Review Commission (LIRC). LIRC maintains that it is not sufficient for an organization to have a religious motivation or mission. According to LIRC, the state must additionally determine whether it recognizes the organization's activities as religiously significant. In other words, the government must engage in a "highly fact-sensitive" inquiry into the theological significance of a given charity's actions—even after it accepts that the organization is religiously motivated.

For example, LIRC argues that Catholic Charities is not operated for religious purposes because it does things like serve people who *aren't* Catholic and provide food to the hungry *without* trying to convert them. LIRC does not dispute that CCB has a religious motivation and mission, how could it? Instead, LIRC maintains that CCB's actions are secular—regardless of what CCB itself thinks. In doing so, LIRC substitutes its own views regarding what Catholicism demands for those of the Catholic Bishop who oversees the charity.

Essentially, LIRC thinks that it can distinguish between secular and religious activities in an "objective" and "neutral" manner. This approach would give bureaucrats the authority to grant or deny religious exemptions based on whether a charity's activities matched their own preconceived notions about what is or is not "religious."

If this new standard were accepted by the Wisconsin Supreme Court, it would disproportionately harm religious minorities who engage in unfamiliar religious activities. That's why the Jewish Coalition for Religious Liberty filed a [brief](#) supporting Catholic Charities and highlighting this case's importance for religious minorities.

LIRC's attempt to parse various activities based on whether the government thinks they are 'religious enough' displayed a lack of familiarity with Jewish theology. That unawareness is reasonable given Judaism's status as a minority faith, but it also highlights why courts and government commissions must not second-guess sincere religious believers' understanding of their faith.

Judaism contains 613 commandments or “mitzvot.” Those commandments govern interactions between man-and-man as well as between man-and-God. There is no notion that esoteric commandments such as honoring the Sabbath or studying Torah are “more religious” than humanitarian commandments such as visiting the sick or giving charity. LIRC’s framework prioritizes one type of religious activity over another and imposes an entirely alien religious hierarchy on Jewish Wisconsinites.

LIRC specifies teaching the faith, evangelizing, and participating in rituals as textbook examples of religious behavior. These examples may potentially make sense based on the court’s observation of some larger and more commonly practiced faiths. But they do not translate to every faith and cannot justifiably be used to create an “objective” standard that separates religious from secular behavior.

Jewish charities feed the hungry, comfort the sick, and clothe the poor. Within a Jewish framework, they undeniably engage in religious operations. The possibility that those activities may not conform to the majority’s notions of what religious behavior looks like cannot justify denying such charities benefits available to religious organizations. Instead, courts should accept that any organization sincerely motivated to fulfill a religious mission “operates primarily for religious purposes.”

—Howard Slugh is the General Counsel of the Jewish Coalition for Religious Liberty.