No. 18-1151

In the

**Supreme Court of the United States**

ST. AUGUSTINE SCHOOL, et al.,

*Petitioners*,

v.

CAROLYN STANFORD TAYLOR, in her official capacity as Superintendent of Public Instruction, et al.,

*Respondents*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

# BRIEF IN OPPOSITION

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## QUESTIONS PRESENTED

Under Wisconsin law, a private school is not entitled to receive state transportation aid if its attendance area overlaps with the attendance area of another private school affiliated with or operated by a single sponsoring group, whether secular or religious. Did the Seventh Circuit Court of Appeals correctly conclude that Respondents did not violate the First Amendment's Free Exercise Clause by determining that St. Augustine School, a self-proclaimed Catholic school whose attendance area overlaps with another private Catholic school, was not eligible for school transportation aid under this statute?

Did the Seventh Circuit Court of Appeals correctly conclude that Respondents applied the Wisconsin school transportation aid statute in a manner that was consistent with the First Amendment's Establishment Clause and, in particular, its prohibition of excessive entanglement with religious doctrine and belief?

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## INTRODUCTION

This is a First Amendment case in which the Wisconsin Superintendent of Public Instruction (the "Superintendent") denied St. Augustine School (the "School") transportation benefits under a Wisconsin statute that is neutral and generally applicable. The School and individual Petitioners sued Wisconsin's Superintendent and Friess Lake School District (the "District") for declining to provide school transportation aid to the School's students. Petitioners assert that the state denied them transportation benefits in violation of the First Amendment's Free Exercise and Establishment Clauses.

The district court granted partial summary judgment to Respondents (as it pertained to the federal claims), and the Seventh Circuit Court of Appeals affirmed. The lower court rulings were grounded in the particular facts of the case. The record did not establish that Respondents withheld public benefits on the basis of non-neutral religious criteria. Nor did the record support the claim that Respondents impermissibly determined the School's affiliation on the basis of theology, ecclesiology, or ritual. "Instead, it shows that public officials applied a secular statute that limits benefits to a single school affiliated with *any* sponsoring group—and, when St. Augustine declared itself to be Catholic, they took the school at its word." (Pet. App. 2a.)

This case does not merit this Court's review. Petitioners allege no circuit split, nor could they. The

primary issue is one of state law, namely, whether Respondents properly applied Wis. Stat. § 121.51 in light of the Wisconsin Supreme Court's guidance. That application is consistent with this Court's First Amendment precedent. Rather than raise a serious constitutional question, Petitioners' arguments come down to a single theme: that, on the facts, the outcome should have been different. The petition should be denied.

## STATEMENT OF THE CASE

### I. Statutory framework.

In general, Wisconsin law requires every school board to provide each student with transportation to and from his or her public school, if the student resides two miles or more from the school. Wis. Stat. § 121.54(2)(a). Subject to exceptions not relevant here, school boards must also provide transportation to students who attend a private school located two miles or more from the student's residence, but only "if such private school is a school within whose attendance area the pupil resides" and only if the private school is located either within the school district or not more than five miles beyond the district's boundaries. Wis. Stat. § 121.54(2)(b)1.

A private school's "attendance area" is the geographic area designated by the private school as the area from which its students attend, which the relevant school board must also approve. Wis. Stat. § 121.51(1). The statute provides that "[t]he

attendance areas of private schools affiliated with the same religious denomination shall not overlap."[1] *Id*. To avoid any potential constitutional issues, the Wisconsin Supreme Court has construed this subsection as not limited to religious schools. Rather, it functions "as not authorizing or permitting overlapping in attendance area boundary lines as to all private schools affiliated or operated by a single sponsoring group, whether such school operating agency or corporation is secular or religious." *State ex rel. Vanko v. Kahl*, 52 Wis. 2d 206, 188 N.W.2d 460, 465 (1971).

If the private school and the school board cannot agree on the attendance area, the state superintendent must, upon the school and school board's request, make a final determination of the attendance area. Wis. Stat. § 121.51(1).

## II. Factual background.

The School is an independent, private Catholic school, organized as a Wisconsin non-stock corporation under Wis. Stat. ch. 181. (Dkt.1-2:2; 26-4:2; 34-4; Pet. App. 70a, 72a.) In spring 2015, the School asked the District to provide transportation for three of its students, all siblings, via a parent transportation contract. (Pet. App. 70a.) Under a parent transportation contract, a school district

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[1] An exception, not relevant here, is when one school limits its enrollment to students of the same sex and the other school limits its enrollment to students of the opposite sex or admits students of both sexes. Wis. Stat. § 121.51(1).

pays parents to transport children to school. (*Id*. at 70a–71a; *see also* Wis. Stat. § 121.55(3).)

The District denied the School's request. (Pet. App. 71a.) The District explained that the School is a Catholic school, and further explained that the District already provides transportation for St. Gabriel Catholic School, another Catholic school with an overlapping attendance area. (Dkt. 34-3:1; Pet. App. 71a.)

The District and the School submitted a request to the Superintendent to determine whether the District must provide transportation to the School's students. (Pet. App. 69a.) The Superintendent gave the parties an opportunity to provide further information. (*Id*.) The School had previously submitted a copy of its bylaws as well as an amendment to its Articles of Incorporation, which changed the name of the School from Neosho Country Christian School, Inc. to St. Augustine School, Inc. (*Id*. at 70a; *see also* Dkt. 33:2; 33-4:8.) The School argued that the District could not look beyond the School's corporate status, name change, and bylaws to make its determination. (Pet. App. 74a; *see also* Dkt. 33-4:1.) To do otherwise, the School argued, would result in a constitutionally impermissible entanglement of state authority in religious affairs. (Pet. App. 74a; *see also* Dkt. 33-4:1.)

On March 10, 2016, the Superintendent made a final determination. (Pet. App. 68a–79a.) The Superintendent concluded that the School was

affiliated with the Roman Catholic denomination, and the District already provided transportation to another private school affiliated with the Roman Catholic denomination. (*Id.* at 77a–78a.) The Superintendent concluded that the District was not required to provide transportation to students attending the School. (*Id.* at 78a–79a.)

The Superintendent noted that the School had relied on *Holy Trinity Community School, Inc. v. Kahl*, 82 Wis. 2d 139, 262 N.W.2d 210 (1978), but that reliance was misplaced. (Pet. App. 74a–75a.) In *Holy Trinity*, the court found that statements in the school's bylaws provided evidence that the school was a private religious school and not affiliated with any religious denomination. (*Id.* at 75a); *see also Holy Trinity*, 262 N.W.2d at 211. Under the facts of that case, the superintendent's attempt to inquire into the school's religious practices resulted in excessive entanglement of state authority into religious affairs. (Pet. App. 75a); *see also Holy Trinity*, 262 N.W.2d at 214. Because there were no equivalent statements in the School's submitted documents, the Superintendent concluded that, in this particular case, it was appropriate for the District to look beyond those documents (namely, at the School's public website) for information to determine how to apply

Wis. Stat. § 121.51(1).[2] (Pet. App. 76a–77a.) Finding that the School's website contained statements from which any reasonable person would conclude the School is a religious school affiliated with the Roman Catholic denomination, the Superintendent determined that the District was not required to provide transportation to students attending the School. (*Id*. at 78a–79a.)

## III. Procedural history.

Petitioners sued the District and the Superintendent in Washington County Circuit Court for the State of Wisconsin. (*Id*. at 44a.) Petitioners contended that the District's and Superintendent's decisions were erroneous applications of Wis. Stat. § 121.51(1). (*Id*.) Petitioners further asserted claims under 42 U.S.C. § 1983, contending that the District and Superintendent's actions violated the First Amendment, as well as the Equal Protection Clause of the Fourteenth Amendment. (*Id*.)

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[2] While the School provided the Superintendent with an amendment to the School's Articles of Incorporation, it is undisputed that neither the District nor the Superintendent considered the full articles of incorporation in their respective decisions regarding the School's proposed attendance area. (Dkt. 36:4; Pet. App. 70a.) As the lower courts recognized, the Superintendent never received a copy, and Petitioners failed to carry their burden to show otherwise. (Dkt. 36:4; Pet. App. 7a–8a, 41a, 70a.)

The District and Superintendent removed the case to the United States District Court for the Eastern District of Wisconsin. (*Id*.) The parties moved for summary judgment.

Based on the facts and the evidence presented, the district court granted partial summary judgment to Respondents, and denied summary judgment to Petitioners. (*Id*. at 35a–67a.) The district court noted that the "central issue in this case is one of state law: did the school district and the superintendent properly interpret and apply the definition of 'attendance area' that appears in Wis. Stat. § 121.51(1)?" (*Id*. at 45a.) Though permitted to exercise supplemental jurisdiction over that question under 28 U.S.C. § 1367(a), the district court declined to do so. (*Id*. at 46a.)

The district court noted that it was "difficult to identify the precise contours of the [Petitioners'] federal legal theories" (*id*. at 57a), but concluded that they were alleging Respondents' actions violated their rights under the Religion Clauses and the Equal Protection Clause "by applying a test to St. Augustine that they would not have applied to a similarly situated nonreligious private school" (*id*. at 58a). The district court rejected the equal protection argument, concluding that Petitioners had pointed to no evidence from which a reasonable trier of fact could conclude that the District or Superintendent would grant overlapping attendance areas to secular private schools that are affiliated with the same sponsoring group. (*Id*. at 59a.)

Regarding Petitioners' "excessive entanglement" argument under the Establishment Clause, the district court concluded that, even assuming a single act of entanglement could give rise to liability under 42 U.S.C. § 1983, Respondents did not excessively entangle themselves in a religious matter. (*Id*. at 63a.) The district court stated that "because St. Augustine was obviously a religious school and did not submit any articles of incorporation or bylaws that identified or disclaimed its affiliation with a religious denomination, the defendants looked elsewhere to determine what St. Augustine 'purport[ed] to be,' as required by *Holy Trinity*." (*Id*. at 63a (alteration in original).) The district court concluded that it was permissible for the District to turn to the School's website, and to take the School's public professions at face value, to conclude that the School, a self-proclaimed Roman Catholic school, was affiliated with the Roman Catholic denomination. (*Id*. at 63a–64a.)

The district court granted Respondents' motion for summary judgment in part, as it pertained to the federal claims, denied Petitioners' motion for summary judgment, and remanded Petitioners' state-law claim for judicial review of the Superintendent's decision to state court. (*Id*. at 66a.) The district court noted that "[i]t is possible that the Wisconsin Supreme Court would build on these cases and interpret § 121.51(1) to require the superintendent to approve St. Augustine's proposed attendance area." (*Id*. at 56a.)

Petitioners appealed to the United States Court of Appeals for the Seventh Circuit. The Panel Majority affirmed the district court. (*Id*. at 2a.)

Petitioners argued that Respondents' application of Wis. Stat. § 121.51 violated the Free Exercise Clause by depriving the School of a public benefit on account of its religion. (*Id*. at 6a–7a.) The Panel Majority rejected that argument. As instructed by the Wisconsin Supreme Court, Wis. Stat. § 121.51 is a facially neutral and generally applicable law that does not allow any private school, whether religious or non-religious, to receive a subsidy already claimed by another school affiliated with the same group. (*Id*. at 7a, 9a–13a.)

Petitioners also argued that Respondents' application of Wis. Stat. § 121.51 violated the Establishment Clause. (*Id*. at 7a.) The court noted that, while a long line of cases prohibits secular courts from delineating religious creeds or assessing compliance with them, "the record contains no evidence of an impermissible inquiry into the religious character of St. Augustine, let alone a comparison of the respective doctrines and practices of St. Augustine, St. Gabriel, and other Catholic institutions." (*Id*. at 13a.) Respondents had merely read and credited the School's statements on its website and busing request form that it was a Roman Catholic school. (*Id*. at 15a.)

Judge Ripple issued a dissenting opinion, noting the difficulty of interpreting "affiliated" under Wis. Stat. § 121.51. (*Id*. at 21a–22a.) In the Dissent's view, the Panel Majority's decision did not amount to a proper application of that state statute. (*Id*. at 25a–29a.)

According to the Dissent, *Vanko* and *Holy Trinity* were the Wisconsin Supreme Court's effort to employ neutral principles of law, and here, the Superintendent failed to follow these Wisconsin decisions. (*Id*. at 25a.) The Dissent disagreed with the Panel Majority's acceptance of the Superintendent's reliance on the School's website as evidence that both schools were Roman Catholic. (*Id*. at 25a–28a.) The Dissent believed that Respondents should have accepted the School's independent corporate structure as proof that it was not "affiliated" with St. Gabriel. (*Id*. at 28a–29a.) The Dissent was concerned with the Panel Majority's use of "labels" as deciding whether two schools were affiliated under Wis. Stat. § 121.51, and cautioned that this case may affect "the future health of the Religion Clauses in this circuit." (*Id*. at 32a–33a.)

The Seventh Circuit denied Petitioners' request for a rehearing, and all members of the original panel voted to deny panel rehearing. (*Id*. at 80a–81a.)

## REASONS FOR DENYING THE PETITION

### I. This case is consistent with this Court's Free Exercise decisions.

The First Amendment's Free Exercise Clause protects "the right to believe and profess whatever religious doctrine one desires," including being free from government punishment of the expression of religion. *Emp't Div., Dep't of Human Res. of Or. v. Smith*, 494 U.S. 872, 877 (1990). "[T]he right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).'" *Id.* at 879 (citation omitted).

That established rule resolves the Free Exercise issue in this case. Wisconsin Stat. § 121.51(1), as interpreted by the Wisconsin Supreme Court, imposes a neutral and generally applicable limitation on transportation funding. It confers a public benefit on private school students, subject to certain attendance area requirements. The ban on overlapping attendance areas applies "to all private schools affiliated or operated by a single sponsoring group, whether such school operating agency or corporation is secular or religious." (Pet. App. 11a (citing *Vanko*, 188 N.W.2d at 465).) Petitioners have never argued that the object or purpose of the law is the suppression or restriction of practices because of their

religious motivation. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532–33 (1993); *see also Smith*, 494 U.S. at 878–79, 882. Nor does Respondents' application of Wisconsin law represent an attempt to regulate or discriminate against religious beliefs.

Petitioners argue that this case conflicts with this Court's recent decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017). (Pet. 17–23.) They are mistaken. In that case, the Trinity Lutheran Church challenged a state grant program that expressly prohibited a state Department of Natural Resources from awarding funds to any entity owned or controlled by a religious organization, regardless of whether they met the program's other qualifications. *Trinity Lutheran*, 137 S. Ct. at 2021. Even though Trinity Lutheran qualified for funding, it was denied solely because it was a religious institution. *Id*. Trinity Lutheran was "put to the choice between being a church and receiving a government benefit" in that the state had established a "[n]o churches need apply" rule. *Id*. at 2024.

Petitioners have not made a facial challenge to the statutory scheme at issue. But in any event, no such categorical ban, or unconstitutional choice, exists. Wisconsin Stat. § 121.51 expressly allows for public transportation funds to go to private schools, secular and religious alike. Funding is limited by neutral and generally applicable criteria of affiliation and attendance area. The School reported its Catholic

affiliation in its attendance area proposal and its public website. The proposed attendance area already included a Catholic school, so Respondents denied the request. There is no evidence in this record that Respondents would apply Wis. Stat. § 121.51 differently to non-religious private schools.

In an effort to make this case seem like the prohibited law in *Trinity Lutheran*, Petitioners argue that Respondents' decision, affirmed by the lower courts, imposes an unconstitutional choice on the School to disavow its beliefs in order to participate in the government benefit. (Pet. 20–21.) But they do not put this Court's discussion of "choice" in proper context. In *Trinity Lutheran*, the choice was that the church "may participate in an otherwise available benefit program or remain a religious institution." *Trinity Lutheran*, 137 S. Ct. at 2021–22. While the church had the freedom to continue operating as a church, "that freedom comes at the cost of automatic and absolute exclusion from the benefits of a public program for which the Center is otherwise fully qualified." *Id*. at 2022.

That is not the choice, or the exclusion, at issue here. The School is not automatically and absolutely excluded from the benefits of the school transportation statute because it is choosing to stay a religious institution. Rather, the School is not fully qualified and is excluded under the particular facts of this case because it professes to be affiliated with a group that already has a school in the same attendance area. Respondents did not deny benefits

because the School is Catholic, or even a particular kind of Catholic; rather, they denied benefits because they found the School was second in line. (Pet. App. 12a.) Petitioners may disagree as to whether Respondents' findings as to affiliation were correct, but that is an issue for the state courts to decide.

Because this case is distinguishable from *Trinity Lutheran* in important ways, and because Petitioners' arguments amount to a request for fact-based error correction as to Respondents' allegedly discriminatory application of the statute, this case is not the proper vehicle to clarify or elaborate on the Court's recent holding in that case.

Petitioners have failed to show that this case is inconsistent with this Court's Free Exercise precedent, or that it is in conflict with any decision from another United States court of appeals or a state court of last resort.

## II. This case is consistent with this Court's Establishment Clause decisions.

The First Amendment's Establishment Clause provides that "Congress shall make no law respecting an establishment of religion." U.S. Const. amend. I. The Establishment Clause prohibits excessive government entanglement with religious affairs. *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971). The Wisconsin Supreme Court interprets this to mean that officials may not determine the affiliation of a religious school by monitoring and evaluating its

practices or personnel. *Holy Trinity*, 262 N.W.2d at 213, 217. Instead, public officials "are obliged to accept the professions of the school and to accord them validity without further inquiry." *Id*. at 217. This is a factual inquiry. *Id*.

Respondents' actions in this case are fully consistent with the Establishment Clause and relevant precedent. The amendment to the Articles of Incorporation and the bylaws the School submitted to the Superintendent were nondescript, so Respondents turned to other sources. (Pet. App. 70a, 76a–77a.) In communications to the District, the School identified itself as an "independent private Catholic school." (Dkt. 26-4.) The School openly proclaimed its affiliation with Catholicism and its leadership in the Vatican. (Dkt. 33-6.)

Rather than inquire as to the nature of the School's religious curriculum and content (and whether it mirrored that of St. Gabriel), Respondents accepted the School's own profession of Catholic affiliation. As the Panel Majority found, Respondents did not improperly define or police religious orthodoxy in violation of the Establishment Clause. No religious test was applied. Rather, they took the School at its word. The Panel Majority correctly found this consistent with the Establishment Clause. (Pet. App. 7a.)

Petitioners have pointed to no authority showing that it offends the Establishment Clause to take at face value an institution's public professions of

affiliation. Indeed, the alternative rule they offer—to inquire as to what the School "means" by the name it gives itself—imposes a more problematic standard to meet, one that is more likely to result in excessive entanglement.

That aside, the salient point is that Petitioners disagree with Respondents' application of Wisconsin law, namely, Wis. Stat. § 121.51(1), as interpreted by the Wisconsin Supreme Court's decision in *Holy Trinity*. Their contentions amount to an argument for fact-based error correction. This issue is not worthy of the Court's review.

Seemingly aware of the failure of their arguments and evidence below, Petitioners now raise a new argument that was not raised in the lower courts: that Respondents have allegedly interfered with the School's right to define its own faith, and that by allegedly taking it upon themselves to define the word "Catholic," Respondents have offended both Religion clauses. (Pet. 38–41.)

Petitioners argue that "when a religious school decides to describe itself using a word like 'Catholic,' it is making 'an internal church decision that affects the faith and mission of the church itself.'" (*Id.* at 41 (citation omitted).) Thus, the new argument goes, this case runs afoul of *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171 (2012), in which this Court prohibited government interference with an internal church decision. (Pet. 40–41.)

As an initial matter, this Court should not consider this new argument. As Petitioners acknowledge, it was not raised below. There was no meaningful discussion of *Hosanna-Tabor* in merits briefing before the district court or Seventh Circuit. *Hosanna-Tabor* was not cited, let alone discussed, in Petitioners' petition for rehearing en banc.

This Court's normal practice is to refrain from addressing claims and issues not raised in the lower courts. *EEOC v. Fed. Labor Relations Auth.*, 476 U.S. 19, 24 (1986); *Taylor v. Freeland & Kronz*, 503 U.S. 638, 645–46 (1992); *Yee v. City of Escondido*, 503 U.S. 519, 533 (1992). This principle helps to maintain the integrity of the process of certiorari. *Taylor*, 503 U.S. at 646. Petitioners have given no compelling reason to depart from this rule here.

Petitioners argue that, because they brought claims under the Free Exercise and Establishment Clauses, their new argument with respect to *Hosanna-Tabor* should be considered. Not so. The fact that Petitioners raised challenges to the Religion Clauses does not give them free rein to make completely new substantive arguments with respect to those Clauses. Respondents did not have the opportunity to refute this argument, nor did the lower courts consider it. Thus, this Court should decline to use this argument as a basis to grant certiorari, and should decline to include the argument as part of the issues if it does.

Regardless, this new argument is without merit because *Hosanna-Tabor* does not govern this case. There, this Court held that it violated both the Free Exercise and the Establishment Clauses when the government interfered with the decision of a religious group to fire one of its ministers. *Hosanna-Tabor*, 565 U.S. at 181. This Court explained that "[r]equiring a church to accept or retain an unwanted minister . . . interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs." *Id*. at 188. "By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments." *Id*. Further, to give the state the power "to determine which individuals will minister to the faithful also violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions." *Id*. at 189.

This case is distinguishable from the state action at issue in *Hosanna-Tabor*. Respondents' denial of Petitioners' request for transportation funding did not interfere with the internal governance of the School or deprive the School of control over its beliefs.

Petitioners argue that Respondents interfered with the School's right to define its faith by forcing it to choose between receiving state aid and using the religious name the School prefers. (Pet. 40.) This is a repackaging of its argument made in its petition with

respect to *Trinity Lutheran*, which Respondents have already explained misses the mark.

Petitioners also argue that Respondents improperly defined the word "Catholic," in violation of the principles stated in *Hosanna-Tabor*. (*Id*. at 40–41.) Without any support or explanation, they argue that when a school describes itself using a word like "Catholic," it is making "an internal church decision that affects the faith and mission of the church itself." (*Id*. at 41 (citation omitted).) Petitioners misstate the facts and the record. Respondents did not engage in an inquiry as to what the word "Catholic" means to Petitioners. (*Id*. at 15, 40–41.)

The Panel Majority correctly determined that, when assessing affiliation for purposes of the school transportation statute, the District and Superintendent must take organizations at their word. (Pet. App. 11a (citing *Holy Trinity*, 137 S. Ct. 2012).) Petitioners never demonstrated how taking the School's professions at face value interferes with an internal church decision. Indeed, it does not. Petitioners' new argument is without merit.

Petitioners have failed to show that the lower courts' rulings in this case violate this Court's Establishment Clause and Free Exercise precedent.

## III. This case would be a poor vehicle to decide whether to overrule *Smith* because this case is confined to its facts and evidentiary record, its impact would be narrow in scope, and Respondents' actions in this case were correct.

The Panel Majority correctly decided the case in favor of Respondents. This record does not establish that the Superintendent or the District withheld public benefits on the basis of non-neutral religious criteria. Nor does any evidence support the claim that Respondents impermissibly determined the School's affiliation on the basis of theology, ecclesiology, or ritual. "Instead, it shows that public officials applied a secular statute that limits benefits to a single school affiliated with *any* sponsoring group—and, when St. Augustine declared itself to be Catholic, they took the school at its word." (Pet. App. 2a.)

The central issue in this case has always been a fact-bound dispute regarding whether Respondents correctly applied a Wisconsin statute, as interpreted by Wisconsin case law. This issue was remanded. Wisconsin courts should be left to develop the law as to the correct interpretation of "affiliated" in Wis. Stat. § 121.51(1).

Given the fact-bound nature of this case and the relatively narrow population it would affect, it is not a proper vehicle to reexamine *Smith*. Petitioners argue otherwise, but do not come to terms with the foregoing—the case turns, in important respects, on disagreements about state law.

And even if Petitioners could overcome that hurdle, they have failed to overcome the rule of stare decisis. "Stare decisis is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Janus v. Am. Fed'n of State, Cty., & Mun. Employees, Council 31*, 138 S. Ct. 2448, 2478 (2018). This Court will not overturn a past decision unless there are strong grounds for doing so. *Id*.

Petitioners have failed to make this showing here. While they cite some factors this Court has considered in determining whether to overrule precedent, the bottom line is that they simply disagree with *Smith*'s holding. But they have not shown a compelling reason as to why *this case* is a proper vehicle to reconsider *Smith*. Indeed, they cannot. This is not a case concerning whether Petitioners should be "excused" from compliance with generally-applicable laws, which Petitioners assert is a major flaw in the *Smith* opinion. (Pet. 26–27.) Nor is this a case that "encompass[es] [ ] the internal faith decisions of religious organizations." (*Id*. at 41.) To the contrary, Petitioners have asserted from the beginning that Respondents should have *ignored* professed statements of religious affiliation, and instead heeded only the corporate documents to assess criteria under the statute. Moreover, as shown above, Petitioners' First Amendment rights were not wrongly denied.

For the Wisconsin statute at issue to have any meaning (without offending the Constitution), an organization's self-imposed classification must be allowed to be given effect. Otherwise, an organization, religious or non-religious, could simply thwart the statute by saying that the organization's self-imposed classification means something different than it says. While Petitioners would prefer the state to only engage in reviewing corporate documents, whether that's the rule in Wisconsin is for the Wisconsin courts to decide. The Superintendent maintains that that is not necessary in every case.

This case is based on narrow facts, and pertains to a Wisconsin statute whose interpretation has yet to be fully developed in the Wisconsin courts. Given the facts, and Petitioners' failure to properly develop the record, this case would be of little relevance to anyone beyond the immediate parties. This is not the proper case to decide whether to overrule *Smith*.

## CONCLUSION

The petition should be denied.

Respectfully submitted,

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