

STATE OF WISCONSIN   CIRCUIT COURT   JEFFERSON COUNTY

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ARCHDIOCESE OF MILWAUKEE  
3501 South Lake Drive  
St. Francis, WI 53235,

Plaintiff,

v.

Case Type: Declaratory Judgment  
Case Code: 30701

WISCONSIN DEPARTMENT  
OF CORRECTIONS  
3099 East Washington Ave.  
Madison, WI 53704, and

KEVIN A. CARR, in his official  
capacity as Secretary of the Wisconsin  
Department of Corrections,  
3099 East Washington Ave.  
Madison, WI 53704,

Defendants.

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**SUMMONS**

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THE STATE OF WISCONSIN, To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is: **Clerk of Circuit Court, Jefferson County Courthouse, 311 S.**

Center Avenue, Room 115, Jefferson, WI 53549, and to Wisconsin Institute for Law & Liberty, Plaintiff's attorney, whose address is: **330 East Kilbourn Avenue, Suite 725, Milwaukee, WI 53202**. You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 7th day of May, 2021.

WISCONSIN INSTITUTE FOR LAW & LIBERTY  
Attorneys for Plaintiff

/s/ Electronically signed by Anthony F. LoCoco

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## COMPLAINT

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Plaintiff, through its undersigned counsel, as and for its complaint against Defendants, alleges as follows:

### INTRODUCTION

1.     The Wisconsin Department of Corrections and its Secretary (“DOC”) have, as a means of addressing COVID-19, adopted a policy banning all volunteer religious ministers from visiting inmates in the DOC’s care. This policy, which has now been in place for over a year, contains no exceptions such as for vaccinated clergy or instances where religious services cannot be conducted virtually. It therefore

violates the statutory and constitutional rights of the Archdiocese of Milwaukee to minister to the religious needs of Wisconsin's prisoners.

2. The Archdiocese brings this suit for itself and on behalf of its priests and deacons and respectfully requests that this Court order DOC to immediately begin complying with its statutory and constitutional obligations and allow Archdiocesan clergy access to prisoners seeking religious services.

### **THE PARTIES**

3. Plaintiff Archdiocese of Milwaukee is a Wisconsin non-stock, non-profit corporation organized under Chapter 181 of the Wisconsin Statutes. It maintains its principal office at 3501 South Lake Drive, St. Francis, Wisconsin 53235.

4. Under the Code of Canon Law of the Roman Catholic Church, a diocese is partly defined as "a portion of the people of God which is entrusted to a bishop for him to shepherd with the cooperation of the presbyterium [*i.e.* the priests]." 1983 Code c. 369. The Archdiocese of Milwaukee was established on November 28, 1843 and was created an archbishopric on February 12, 1875. It covers 4,578 square miles in southeast Wisconsin representing, as of November 2019, 193 parishes, 533,963 registered Catholics, 291 diocesan priests, and 176 permanent deacons.

5. The Archdiocese states its mission as follows: "To proclaim the Gospel of Jesus Christ through his saving death and resurrection by calling, forming and sending disciples to go and make new disciples. As a people, we are called to encounter Jesus and grow as disciples through the sacramental life of the Church."

6. As part of its mission, the Archdiocese sends members of its clergy to state correctional facilities throughout its territory to minister to prisoners, including by providing sacraments in-person such as the Eucharist, Penance, and the Anointing of the Sick. The DOC's policy is preventing the Archdiocese from furthering this mission.

7. Defendant Wisconsin Department of Corrections is an administrative agency of the State of Wisconsin, created by statute. *See* Wis. Stat. § 15.14. The DOC's principal office is located at 3099 East Washington Ave., Madison, WI 53704. The DOC is the state agency required by law to "maintain and govern the state correctional institutions." Wis. Stat. § 301.02. It adopted the illegal policy challenged herein.

8. Defendant Kevin A. Carr is the Secretary of the Wisconsin Department of Corrections, and is sued in his official capacity only. Secretary Carr's principal office is located at 3099 East Washington Ave., Madison, WI 53704. By state law Secretary Carr has "direction and supervision" of Defendant DOC. Wis. Stat. § 15.14.

### **JURISDICTION AND VENUE**

9. This Court has jurisdiction pursuant to Wis. Stat. § 806.04(1)-(2), (5).

10. Venue in this Court is proper pursuant to Wis. Stat. § 801.50(3)(a).

### **STATEMENT OF CLAIM**

11. On March 13, 2020, the DOC announced that, "out of an abundance of caution," in order to "minimize the risk of bringing COVID-19 (Coronavirus) into [its]

facilities,” “[a]ll visits, including volunteer visits, are temporarily suspended at all Department of Corrections Institutions.”

12. By its terms, this blanket suspension applies to all volunteer religious ministers who visit DOC facilities to provide religious services, including priests and deacons of the Archdiocese. It applies even when a desired religious activity cannot be conducted virtually and contains no exceptions for visits by priests who, for example, are vaccinated and/or can comply with health and safety protocols designed to prevent the transmission of COVID-19.

13. This means that means that, for over one year, Archdiocesan clergy have been unable to meet in-person with inmates to provide spiritual direction, to conduct Masses, or to administer sacraments that cannot be administered virtually such as the Eucharist, Penance, and the Anointing of the Sick.

14. The DOC website notes that “several religious accommodations” “may” still be available to inmates, such as the ability to receive “self-study materials,” assistance from the on-duty chaplain (who will often not share an inmate’s faith), and/or “secular/non-denominational information” such as “uplifting stories.”

15. The DOC’s no-visitors policy does not apply to other classes of individuals who may enter DOC facilities from outside, such as employees (which would include psychologists, social workers, and teachers) and professional and legal visitors.

16. While individuals in these groups sometimes work or visit remotely, DOC has, since March 13, 2020, allowed employees and professional and legal visitors

to enter its facilities when remote options are not feasible. In such circumstances, these individuals are instead subject to health and safety protocols.

17. Yet the DOC does not apply the same standard to religious ministers. For example, although the Roman Catholic sacrament of Penance cannot be administered through video conferencing or telephone calls, the DOC will not permit priests to visit inmates in-person to administer the sacrament, even if the priests comply with health and safety protocols.

18. The DOC had promised to “review[]” its decision to suspend volunteer entry “on a daily basis.” One year later, the policy remains in place. The DOC had further explained that it was “working with local health officials and the Wisconsin Department of Health Services to determine criteria that indicate[] it is safe to resume in-person visitation.” No such criteria have yet been announced.

19. On April 1, 2021, counsel for Plaintiff notified Defendant Secretary Carr of the illegality of the DOC’s no-visitors policy and asked that the DOC immediately reassess the policy and explain what steps it planned to take to bring itself into legal compliance. On April 15, 2021, a DOC administrator notified counsel for Plaintiff that the DOC would not be changing its policy at this time.

20. In sum, DOC claims the authority to indefinitely deny priests access to inmates in DOC’s care for the purpose of providing religious services. Besides shocking the conscience, the DOC’s draconian policy violates state statutory and constitutional law.

**Claim I – Violation of Wis. Stat. § 301.33(1)**

21. Plaintiff realleges and incorporates by reference the allegations set forth above as if fully set forth herein.

22. Wisconsin Statute § 301.33 provides: “Subject to reasonable exercise of the privilege, members of the clergy of all religious faiths shall have an opportunity, at least once each week, to conduct religious services within the state correctional institutions.”

23. Contrary to the plain terms of Wis. Stat. § 301.33, the DOC is not allowing the Archdiocese and its priests to exercise this statutory privilege at all, much less once per week. Its policy barring members of the clergy from ministering to inmates is utterly incompatible with this statute.

24. The Defendants are a state administrative agency and one of its officials.

25. As administrative agencies, the Defendants are “creature[s] of the legislature” and have “only those powers as are expressly conferred or necessarily implied from the statutory provisions under which [they] operate[.]” *Brown Cty v. DHSS*, 103 Wis. 2d 37, 43, 307 N.W.2d 247 (1981). The DOC has no authority to override the plain terms of Wis. Stat. § 301.33 based on its own estimation of whether admitting clergy to state correctional institutions is sufficiently important. The Legislature has already made that decision. It enacted Wis. Stat. § 301.33(1) precisely to ensure that DOC never bars religious ministers from entrance as it is doing now.



26. The DOC's violation of Wis. Stat. § 301.33 harms the Archdiocese and its clergy by denying them this statutory right to minister to inmates and by impeding their religious mission.

**Claim II – Violation of Wis. Const. art. I, § 18**

27. Plaintiff realleges and incorporates by reference the allegations set forth above as if fully set forth herein.

28. Wisconsin Constitution art. I, § 18 provides that “[t]he right of every person to worship Almighty God according to the dictates of conscience shall never be infringed; . . . nor shall any control of, or interference with, the rights of conscience be permitted.”

29. The DOC is violating this provision by barring the Archdiocese and its clergy from freely exercising their religion, which directs them to minister to prisoners, while allowing similarly-situated individuals in-person access to its prisons.

30. Specifically, art. I, § 18 provides expansive protections for religious exercise—more expansive than those that obtain under the federal constitution. *See, e.g., State v. Miller*, 202 Wis. 2d 56, 65, 68-69, 549 N.W.2d 235 (1996) (declaring that “the drafters of our constitution created a document that embodies the ideal that the diverse citizenry of Wisconsin shall be free to exercise the dictates of their religious beliefs” and declining to follow more lenient federal approach).

31. Where a challenger can show that the state is burdening a religious belief he or she holds sincerely, the state must show that the measure furthers a

compelling state interest and cannot be served by a less restrictive alternative. *Id.* at 66.

32. The DOC is burdening the sincerely held religious beliefs of the Archdiocese and its clergy by barring them from ministering to the religious needs of inmates, including their sacramental needs, an essential part of the Archdiocese's mission. *See, e.g.*, Mt. 25:34-36 (RSV) ("Then the King will say to those at his right hand, 'Come, O blessed of my Father, inherit the kingdom prepared for you from the foundation of the world; for . . . I was in prison and you came to me.'").

33. The DOC cannot make the considerable showing necessary to justify such a restriction, because regardless of whether combatting COVID-19 qualifies as a compelling interest, less restrictive alternatives are available. The agency could apply to religious ministers the same or similar health and safety protocols it requires of employees and professional and legal visitors. It could, for example, require temperature checks, COVID tests, masking, hygiene procedures, social distancing, outside visits, or even proof of vaccination.

34. But the DOC has attempted none of these measures and has not proven that any of these options (widely used in sensitive settings like nursing homes and hospitals) are inadequate. Instead it has simply adopted a blanket ban, while permitting many other individuals to access its facilities. The Wisconsin Constitution forbids this approach.

35. The DOC's violation of art. I, § 18 harms the Archdiocese and its clergy by denying them their constitutional right to minister to inmates and by impeding their religious mission.

### **RELIEF REQUESTED**

WHEREFORE, the Plaintiff respectfully requests that this Court:

A. Enter a declaratory judgment that the Defendants' refusal to permit members of the clergy to access state correctional institutions to provide religious services to inmates violates Wis. Stat. § 301.33(1);

B. Enter a declaratory judgment that the Defendants' refusal to permit members of the clergy to access state correctional institutions to provide religious services to inmates violates Wis. Const. art. I, § 18;

C. Issue a writ of mandamus requiring the Defendants to comply with Wis. Stat. § 301.33(1) by immediately allowing members of the clergy to access state correctional institutions to provide religious services to inmates;

D. Enter an order permanently enjoining Defendants from violating Plaintiff's statutory and constitutional rights to access state correctional institutions to provide religious services to inmates;

E. Award the Plaintiff such costs as allowed by law; and

F. Grant the Plaintiff such other and further relief as the Court deems appropriate.

Dated this 7th day of May, 2021.

WISCONSIN INSTITUTE FOR LAW & LIBERTY  
Attorneys for Plaintiff

/s/ Electronically signed by Anthony F. LoCoco

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