No. _____

IN THE

Supreme Court of the United States

JOHN DOES 1-2, JANE DOES 1-3, JACK DOES 1-750, JOAN DOES 1-750,

Petitioners,

v.

KATHY HOCHUL, in her official capacity as Governor of the State of New York, JAMES MCDONALD, in his official capacity as Commissioner of the New York State Department of Health, TRINITY HEALTH, INC., NEW-YORK PRESBYTERIAN HEALTHCARE SYSTEM, INC., WESTCHESTER MEDICAL CENTER ADVANCED PHYSICIAN SERVICES, P.C.,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

"Reliance on state statutes to excuse non-compliance with federal law is simply unacceptable under the Supremacy Clause." *Barber ex rel. Barber v. Colorado Dep't of Revenue*, 562 F.3d 1222, 1233 (10th Cir. 2009). As Justice Gorsuch previously noted, "a state law at odds with a valid Act of Congress is no law at all. Accordingly, the demands of the federal [antidiscrimination law] do not yield to state laws that discriminate against the [protected class]; *it works the other way around*." *Id.* at 1234 (Gorsuch, J., concurring) (emphasis added). Simply put, "the Supremacy Clause of the Constitution requires a different order of priority. A discriminatory state law is not a *defense* to liability under federal law; it is a *source* of liability under federal law." *Id.* (quoting *Quinones v. City of Evanston*, 58 F.3d 275, 277 (7th Cir. 1995)).

The Second Circuit's decision below impermissibly flipped the Supremacy Clause on its head, holding that employers could be excused from compliance with Title VII when providing the accommodation for religious beliefs required under Title VII would purportedly violate state law. (App. 11a.) That can't be right. The questions presented are:

(1) Whether compliance with state laws directly contrary to Title VII's requirement to provide a reasonable accommodation for religious beliefs may serve as an undue hardship justifying an employer's noncompliance with Title VII of the Civil Rights Act of 1964.

(2) Whether a state law that requires employers to deny without any consideration all requests by employees for a religious accommodation, contrary to Title VII's religious nondiscrimination provision, is preempted by Title VII and the Supremacy Clause.

PARTIES

Petitioners are Johns Does 1-2, Jane Does 1-3, Jack Does 1-750, and Joan Does 1-750. Respondents are Trinity Health, Inc., New York-Presbyterian Healthcare System, Inc., and Westchester Medical Center Advanced Physician Services, as assignee of WMC Health. Additional Parties to the proceedings below are Kathy Hochul, in her official capacity as Governor of the State of New York, James V. McDonald, Commissioner of the New York State Department of Health.[1]

DIRECTLY RELATED PROCEEDINGS

John Does 1-2, et al. v. Hochul, et al., No. 22-2858 (2d Cir. Dec. 20, 2024), Summary Order Affirming Dismissal Of Plaintiff's Verified Complaint, reprinted in Appendix at 1a-12a.

John Does 1-2, et al. v. Hochul, et al., No. 1:21 cv-5067-AMD-TAM (E.D.N.Y. Sept. 30, 2022), Memorandum Decision and Order Dismissing Plaintiff's Verified Complaint, reprinted in Appendix at 13a-62a.

[1] Plaintiffs did not assert Title VII claims against the New York government officials, and thus the Additional Parties are not subject to the claims asserted in this Petition.

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The Second Circuit's summary order affirming the dismissal of Petitioners' complaint is not yet published but available electronically at 2024 WL 5182675 (2d Cir. Dec. 20, 2024) and reprinted in the Appendix at 1a-12a. The district court's order dismissing Petitioners' complaint is reported at 632 F. Supp. 3d 120 (E.D.N.Y. 2022) and reprinted in the Appendix at 13a-62a.

JURISDICTION

The Second Circuit entered its summary order and judgment, affirming the district court's final judgment dismissing Petitioners' Title VII claims, on December 20, 2024. (App. 1a-12a.) Petitioners invoke this Court's jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides, in relevant part, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." U.S. Const. amend. I.

The Supremacy Clause of the United States Constitution provides,

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or

> which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. Art. VI, Cl.2.

Title VII of the Civil Rights Act of 1964 provides, in relevant part, "It shall be an unlawful employment practice for an employer . . . to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's . . . religion," 42 U.S.C. §2000e-2(a), and, "The term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. §2000e(j). Also relevant to the instant Petition is 42 U.S.C. §2000e-7, which states,

> Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which

> would be an unlawful employment practice under this subchapter.

STATEMENT OF THE CASE

I. INTRODUCTION

Petitioners are all former healthcare workers in the State of New York who submitted, under Title VII of the Civil Rights Act of 1964, a request for a religious accommodation from the State's mandate that all healthcare workers in New York receive a COVID-19 vaccination as a condition of continued employment in the healthcare industry. (App. 121a, Verified Complaint ("Compl.") ¶8.) All Petitioners were unceremoniously terminated from their employment and suffered financial, personnel, and professional hardship as a result. (App. 11a.) When discussing a different, similarly situated group of healthcare workers, Justice Gorsuch described the plight of those, such as Petitioners, facing discrimination as follows:

> This case presents an important constitutional question, a serious error, and an irreparable injury. Where many other States have adopted religious exemptions, Maine has charted a different course. There, healthcare workers who have served on the front line of a pandemic for the last 18 months are now being fired and their practices shuttered. All for adhering to their constitutionally

> protected religious beliefs. *Their plight is worthy of our attention*.

Does 1-3 v. Mills, 142 S. Ct. 17, 22 (2021) (Gorsuch, J., dissenting from denial of injunctive relief) (emphasis added).) And, in a case dealing with the same vaccine mandate from New York, albeit on a different question, Justice Thomas noted that he "would not miss the change to answer this recurring question in the monal course on our merits docket." *Dr. A. v. Hochul*, 142 S. Ct. 2569, 2572 (2022).

In 2021, the State of New York issued a mandate the required every healthcare worker in the State of New York accept a COVID-19 vaccine as a condition of continued employment in the healthcare industry. (App. 121a, Compl. ¶6.) Though initially permitting religious accommodations to the vaccine, New York subsequently revoked that exemption. (App. 132a, Compl. ¶¶40-41.) *After the rule change, no healthcare worker in New York was permitted to seek or receive any accommodation for their sincerely held religious beliefs*. (*Id.*)

Despite the plain import of Title VII's requirement that employers provide accommodation for Petitioners' sincerely held religious convictions, 42 U.S.C. §2000e-2(a), Respondents all explicitly informed Petitioners that their religious convictions must be overridden by contrary state law, with no accommodation whatsoever. When rejecting Petitioners' request for religious accommodation, Respondents informed Petitioners that Title VII did not apply. Even a cursory review of Respondents'

positions with respect to accommodating religious beliefs under Title VII reveals the Second Circuit's grave error.

Petitioner John Doe 2 had received religious exemption and accommodation from compulsory vaccination *for 10 years* prior to COVID-19 and requested to continue receiving an accommodation for his sincerely held religious beliefs. (App., 143a, Compl. ¶81.) In fact, John Doe 2 received an accommodation from the COVID-19 vaccine—prior to the State's mandate—which was subsequently rescinded by his employer, New York-Presbyterian, after the Governor's mandate. (*Id.*) Prior to the rescission of his previously granted religious accommodation, John Doe 2 inquired of New York-Presbyterian whether his decades-old religious accommodation would continue, and New York-Presbyterian told him: "*Religious exemptions are no longer accepted*." (App. 143a-144a, Compl. ¶¶82-83 (emphasis added).)

Petitioner Jane Doe 1 was similarly afforded a religious accommodation prior to COVID-19 and was granted an initial accommodation from the COVID-19 vaccine. (App. 144a, Compl. ¶84.) Once the Governor instituted the COVID-19 vaccine mandate and revoked the availability of religious accommodations, Jane Doe 1's religious accommodation was revoked by her employer. (*Id.*, ¶85.) New York-Presbyterian stated: "As a health care institution in NYS, NYP must follow the NYS DOH requirements as they evolve. *This means that NYP can no longer consider any religious exemptions to the COVID vaccination*

even those previously approved." (*Id.*, ¶86 (emphasis added).)

Petitioner Jane Doe 2 submitted a religious accommodation request from the mandatory COVID-19 vaccine from her employer, Westchester Medical Center Advanced Physicians Services ("WMC"). (App. 145a, Compl. ¶88.) Jane Doe 2 was told that her request for an accommodation *would not even be considered* because of the state law prohibiting religious accommodations. (*Id.*, ¶89.) Specifically, WMC stated:

> On August 26, hospitals were notified that the New York State Department of Health was removing the option allowing hospitals to offer a religious exemption to health care workers from receiving the COVID-19 vaccination. Accordingly, WMC Health, in order to comply with DOH Regulations, *will no longer accept applications for a religious exemption and those applications already received will be not be considered*.

(App. 145a-146a, Compl. ¶89 (emphasis added).)

Jane Doe 3 submitted a religious accommodation request from her employer, Trinity Health, and was initially approved for such an accommodation. (App. 146a, Compl. ¶90.) After New York stated that state-law would no longer allow for religious accommodations, Jane Doe 3's previously accepted accommodation was revoked on the basis of state law. (*Id.*, ¶91.) Trinity Health stated: "NYS DOH will not

permit exemptions or deferrals for sincerely held religious beliefs," because it was purportedly "required to comply with state law," even if that state law violated Title VII's commands. (*Id.*, ¶¶92-93.)

Respondents refused to consider Petitioners' religious accommodation request under Title VII, and terminated Petitioners on the sole basis that compliance with Title VII would require violation of contrary state law. (App. 207a-212a, Compl. ¶¶72-86.)

One would search in vain for a merited justification for such a constitutionally inverted analysis, but the Second Circuit purportedly found one. As the Second Circuit saw it, "granting [Petitioner's] sole request for a religious exemption would have required the Private Defendants to violate the state regulation." (App. 11a.) But "[r]eliance on state statutes to excuse noncompliance with federal laws is simply unacceptable under the Supremacy Clause." *Barber ex rel. Barber v. Colorado Dep't of Revenue*, 562 F.3d 1222, 1233 (10th Cir. 2009). "[T]he demands of [federal antidiscrimination laws] do not yield to contrary state laws that discriminate against [protected classes]; *it works the other way around*." *Id.* at 1234 (Gorsuch, J., concurring) (emphasis added).

What should have been obvious to Petitioners' employers, and to the Second Circuit below, is that federal law is supreme over any contrary state law. U.S. Const. art. VI, cl. 2. "This Court has long made clear that federal law is as much the law of the several States as are the laws passed by their legislatures." *Haywood v. Drown*, 556 U.S. 729, 734 (2009). Indeed,

"it is a familiar and well-established principle that the Supremacy Clause invalidates state laws that interfere with, or are contrary to, federal law." *Hillsborough Cnty. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 712 (1985) (cleaned up). Thus, "state law is nullified to the extent that it actually conflicts with federal law." *Id.* at 713.

The Second Circuit charted a different course. It permitted compliance with contrary state laws to excuse noncompliance with Title VII. This cannot be the law, and the Nation's Charter demands a different outcome. This Court should grant the Petition.

II. FACTUAL BACKGROUND

A. The Governor's COVID-19 Vaccine Mandate.

On August 16, 2021, New York's Governor announced that the State will require healthcare workers satisfying the definition of "covered personnel" to accept one of the then-available COVID-19 vaccines to remain employed in the healthcare profession (the "Vaccine Mandate"). (App. 130a, Compl. ¶33.) The Vaccine Mandate defined "covered personnel" to include

> All persons employed or affiliated with a covered entity, whether paid or unpaid, including but not limited to employees, members of the medical and nursing staff, contract staff, students, and volunteers, who engage in activities such that if they were infected with COVID-19, they could potentially expose

> patients, residents, or personnel working for such entity to the disease."

(App. 131a, Compl. ¶36.)

The Vaccine Mandate provided that "covered entities must "continuously require all covered personnel to be fully vaccinated against COVID-19." (App. 130a, Compl. ¶34.) The Governor threatened to revoke the licenses of all covered healthcare employers failing to mandate that their employees receive a COVID-19 vaccine. (App. 11a.)

At first, New York followed the commands of federal law and included the option for religious adherents to obtain an accommodation for their sincerely held religious beliefs. (App. 131a, Compl. ¶37.) In its Order for Summary Action on August 18, New York included a religious exemption. (*Id.* ("Religious Exemption. Covered entities shall grant a religious exemption for COVID-19 vaccination for covered personnel if they hold a genuine and sincere religious belief contrary to the practice of immunization, subject to a reasonable accommodation by the employer.").)

That compliance with federal law, however, was short-lived. Eight days after initially permitting employees to obtain a religious accommodation, New York amended the rule completely revoking the religious accommodation option and prohibiting employers from considering or granting any such religious accommodations to the vaccine mandate. (App. 132a, Compl. ¶¶39-40.)

B. Petitioners' Sincerely Held Religious Beliefs Against Receiving the COVID-19 Vaccines.

Petitioners have sincerely held religious beliefs that precluded them from accepting or receiving any of the three then-available COVID-19 vaccines because of their connection to aborted fetal cell lines, whether in the vaccines' origination, production, development, or testing. (App. 132a, Compl. ¶42.) A fundamental component of Petitioners' sincerely held religious beliefs is that all life is sacred, from the moment of conception to natural death, and that abortion is a grave sin against God and the taking of an innocent life. (App. 132a-133a, Compl. ¶43.) Petitioners' sincerely held religious beliefs are rooted in Scripture's teachings that "[a]ll Scripture is given by inspiration of God, and is profitable for doctrine, for reproof, for correction, [and] for instruction in righteousness." (*Id.*, ¶44 (quoting *2 Timothy* 3:16 (KJV)).) Because of their sincerely held religious beliefs, Petitioners must conform their lives, including their decisions relating to medical care, to the commands and teaching of Scripture. (*Id.*, ¶45.)

Petitioners have sincerely held religious beliefs that God forms children in the womb and knows them prior to their births, and that life is sacred from the moment of conception. (*Id.*, ¶46 (quoting, *inter alia*, *Psalm* 139:13–14 (ESV); *Psalm* 139:16 (ESV); *Isaiah* 44:2 (KJV)).) Petitioners also believe that every child's life is sacred because each child is made in the image of God. (App. 134a, Compl. ¶47 (quoting *Genesis* 1:26–27 (KJV)).) And, because life is sacred

from the moment of conception, the killing of that innocent life is the murder of an innocent human in violation of Scripture. (*Id.*, ¶48 (quoting, *inter alia*, *Exodus* 20:13 (KJV); *Exodus* 21:22–23 (KJV); *Exodus* 23:7 (KJV)).)

Petitioners also have the sincerely held religious belief that it would be better to tie millstones around their necks and be drowned in the sea than bring harm to an innocent child. (App. 134a, Compl. ¶49 (quoting *Matthew* 18:6; *Luke* 17:2).) Petitioners have sincerely held religious beliefs that anything that condones, supports, justifies, or benefits from the taking of innocent human life via abortion is sinful, and contrary to the Scriptures. (App. 134a-135a, Compl. ¶50.) Petitioners believe that it is an affront to Scripture's teaching for them to use a product derived from or connected in any way with abortion. (*Id.*, ¶51.) Petitioners' sincerely held religious beliefs therefore precluded them from accepting any one of the three available COVID-19 vaccines because of their connections to aborted fetal cell lines. (*Id.*, ¶52.)

Petitioners have sincerely held religious objections to the Johnson & Johnson (Janssen Pharmaceuticals) vaccine because it unquestionably used aborted fetal cells lines to produce and manufacture the vaccine. (App. 135a, Compl. ¶53.) As reported by the North Dakota Department of Health, "[t]he non-replicating viral vector vaccine produced by Johnson & Johnson did require the use of fetal cell cultures, specifically PER.C6, in order to produce and manufacture the vaccine." (*Id.*, ¶54.) Petitioners have sincerely held religious objections to the Moderna and

Pfizer/BioNTech COVID-19 vaccines because both of these vaccines, too, have their origins in research using aborted fetal cell lines. (App. 136a, Compl. ¶57.) In fact, "[e]arly in the development of mRNA vaccine technology, fetal cells were used for 'proof of concept' (to demonstrate how a cell could take up mRNA and produce the SARS-CoV-2 spike protein) or to characterize the SARS-CoV-2 spike protein." (*Id.*, ¶58.) The Louisiana Department of Health's publications also confirm that aborted fetal cells lines were used in the "proof of concept" phase of the development of their COVID-19 mRNA vaccines. (App. 137a, Compl. ¶59.)

Because all three of the COVID-19 vaccines available to Petitioners were developed and produced from, tested with, researched on, or otherwise connected with the aborted fetal cell lines HEK-293 and PER.C6, Petitioners' sincerely held religious beliefs compelled them to abstain from injecting any of these products into their bodies.

Petitioners also conveyed to their employers that they have other sincerely held religious objections, rooted in Holy Scripture, that compelled them to abstain from receiving one of the COVID-19 vaccines. (App. 137a-139a, Compl. ¶¶61-66.)

Petitioner John Doe 2 is a member of the Church of Christ, Scientist, and has a sincerely held religious objection to all vaccines. (App. 139a-140a, Compl. ¶67.) John Doe 2 believes that all healing comes through prayer, rather than vaccination. (*Id.*) As John Doe 2's 10-years of religious accommodations

demonstrated (App. 143a, Compl. ¶¶81-82), John Doe 2 has held sincere religious objections to vaccines *his entire life* and had lived his life consistent with those beliefs long prior to New York's mandate. (App. 140a, Compl. ¶69.)

C. Respondents Relied On Contrary State Law to Excuse Their Noncompliance with Title VII and Deny Without Any Consideration The Religious Accommodation Requests of the Petitioners.

Consistent with his sincerely held religious beliefs, John Doe 2, for the last 10 years of his employment with New York-Presbyterian, has received an exemption from mandatory vaccines. (App. 143a, Compl. ¶81.) And, on July 28, 2021, Defendant New York-Presbyterian approved John Doe 2 for an accommodation from the COVID-19 vaccine. (*Id.*) After an announcement from his employer that the Governor's mandate precluded New York-Presbyterian from offering or accepting religious accommodations, John Doe 2 communicated with his superiors to inquire whether his previously granted religious accommodation would be honored. (*Id.*, Compl. ¶82.) John Doe 2's employer responded to him that, "*Religious exemptions are no longer accepted*." (*Id.*, Compl. ¶83 (emphasis added).)

Petitioner Jane Doe 1 also requested and received a religious accommodation for her sincerely held objections to the COVID-19 vaccine, but had that previously granted accommodation revoked by her

employer after the State removed the option for religious accommodations from the vaccine mandate. (App. 143a, Compl. ¶84.)

Specifically, New York-Presbyterian stated:

> Late last week, the Public Health and Health Planning Council of the NYS Department of Health formally approved and adopted the state's COVID-19 vaccination requirement for health care workers. In addition, the Council made the determination to exclude religious exemptions as an alternative to receiving the vaccine. . . . *As a health care institution in NYS, NYP must follow the NYS DOH requirements as they evolve. This means that NYP can no longer consider any religious exemptions to the COVID vaccination – even those previously approved*.

(App. 144a-145a, Compl. ¶86 (emphasis added).)

In short, Jane Doe 1's employer told her it was required to ignore Title VII and federal law on the basis of contrary state law. (*Id.*)

Jane Doe 2 submitted a request for a religious accommodation to Respondent WMC Health outlining her religious beliefs against receipt of the COVID-19 vaccine. (App. 145a, Compl. ¶88.) The very next day, WMC Health responded to Jane Doe 2 informing her that because of the Governor's mandate, WMC Health was not even considering and reviewing, much less

granting, religious exemption or accommodation requests. (*Id.*) Specifically, Jane Doe 2's employer informed her:

> On August 26, hospitals were notified that the New York State Department of Health was removing the option allowing hospitals to offer a religious exemption to health care workers from receiving the COVID-19 vaccination. Accordingly, *WMC Health, in order to comply with DOH Regulations, will no longer accept applications for a religious exemption and those applications already received will be not be considered*.

(App. 145a-146a, Compl. ¶89 (emphasis added).)

Jane Doe 3 submitted a request for a religious accommodation from Defendant Trinity Health, and was initially approved for the religious exemption. (App. 146a, Compl. ¶90.) Trinity Health sent a communication to Jane Doe 3 informing her that her religious exemption had been revoked. (*Id.*, Compl. ¶91.) Specifically, Jane Doe 3's employer informed her: *"[u]nder the emergency regulations the NYS DOH will not permit exemptions or deferrals for: Sincerely held religious beliefs, Pregnancy, Planning to become pregnant*." (*Id.*, Compl. ¶92 (emphasis added).)

Jane Doe 3's employer went further, explicitly noting that its refusal to provide a Title VII accommodation was based on state law that contradicted Title VII's requirements: "*we are required to comply with state law*" to the exclusion of

any contrary federal law. (*Id.*, Compl. ¶93 (emphasis added).)

III. PROCEDURAL HISTORY.

Petitioners initiated this action on September 10, 2021, with the filing of a Verified Complaint and a Motion for Temporary Restraining Order and Preliminary Injunction. On September 13, the district court held a temporary restraining order (TRO) hearing. *See Does 1-2 v. Hochul*, 2022 WL 836990 (E.D.N.Y. Mar. 18, 2022). After taking the matter under advisement, the district court denied the TRO as moot in light of a statewide TRO that was issued by the United States District Court for the Northern District of New York in *Dr. A. v. Hochul*, 2021 WL 4189533 (N.D.N.Y. Sept. 14, 2021). *See Does 1-2*, 2022 WL 836990, *2. Subsequent proceedings were held concerning the preliminary injunction in *Dr. A*, but the district court never acted upon Petitioner's motion for preliminary injunction until August 2, 2022. (App. 30a.) All defendants moved to dismiss Petitioner's complaint, which the district court granted on September 30, 2022. (App. 14a.)

Petitioners timely appealed to the Second Circuit, which issued its summary order dismissing Petitioners' Complaint on December 20, 2024. (App. 1a.)

REASONS FOR GRANTING THE PETITION

I. THE SECOND CIRCUIT'S HOLDING THAT AN EMPLOYER MAY DISREGARD TITLE VII'S PROHIBITION ON RELIGIOUS DISCRIMINATION ON THE BASIS OF CONTRARY STATE LAW DIRECTLY CONFLICTS WITH DECISIONS FROM THE SECOND, FOURTH, SIXTH, SEVENTH, NINTH, TENTH, AND ELEVENTH CIRCUITS.

A. The Second Circuit Held that Employers May Disregard Title VII's Requirements to Provide Religious Accommodations Solely on the Basis of Contrary State Law.

As a threshold matter, no one disputes that, in their Complaint, Petitioners adequately raised a *prima facie* case of religious discrimination under Title VII. (App. 10a.) Thus, Petitioners' appeal below turned on Respondents' undue hardship defense. (*Id.*) Respondents' sole defense below was that providing a religious accommodation to Petitioners would have required them to violate contrary state law and thus constituted an undue hardship. The Second Circuit held that the state law could trump Title VII's requirements to provide a religious accommodation. (App. 10a ("Plaintiffs were all covered personnel under Section 2.61, which meant that granting their sole request for a religious exemption would have required the Private Defendants to violate *the state regulation*.").) As its sole rationale, the Second Circuit

stated that following the commands of Title VII to provide a reasonable accommodation to Petitioners' religious objections "would have subjected the Private Defendants to financial penalties or a suspension or revocation of their operating license," which the Second Circuit found was "more than suffic[ient] to demonstrate that the Private Defendants were subject to such hardships here." (App. 11a.)

Simply put, the Second Circuit held that Respondents were excused from compliance with Title VII because reliance on a state law directly contrary to Title VII constituted an undue hardship. (App. 11a.)

The Second Circuit's decision below reflects a larger problem percolating in the lower courts that permits noncompliance with federal law to be excused if a contrary State requires violating federal law. The First Circuit similarly held that compliance with state law can excuse an employer's non-compliance with Title VII in *Lowe v. Mills*, 68 F.4th 706 (1st Cir. 2023). There, the First Circuit noted that "[t]he only reasonable inference from [Petitioners' complaint] and from the *relevant Maine law* . . . is that granting the requested accommodation would have exposed the Providers to a substantial risk of license suspension, as well as monetary penalties [for violating the state mandate]." *Id.* at 720. And, the First Circuit was unequivocal in its acceptance of contrary state law as a basis to excuse non-compliance with federal law. "[G]ranting [a religious] accommodation would have exposed the Providers to penalties for violating [the

State] Mandate, and thus constituted an undue hardship not required by Title VII." *Id.* at 724.

The Second Circuit's decision below relied upon another decision from the same court that likewise held that state laws directly contrary to Title VII serve as a justification for ignoring the nondiscrimination requirements in Title VII. (App. 11a (citing *D'Cunha v. Northwell Health Sys.*, 2023 WL 7986441, *3 (2d. Cir. Nov. 17, 2023) (affirming dismissal of a Title VII claim against a healthcare provider that refused to provide a religious vaccination accommodation because such an accommodation would have violated state law)).

And, this problem is likewise repeated in *United States v. Bd. of Educ. for Sch. Dist. of Philadelphia*, 911 F.2d 882 (3d Cir. 1990) and *Bhatia v. Chevron U.S.A., Inc.*, 734 F.2d 1382 (9th Cir. 1984)).) The Third Circuit's decision in *United States v. Board of Education* held that an employer need not provide an accommodation unquestionably required by Title VII when doing so would allegedly violate state law. 911 F.2d at 891.

The Ninth Circuit's decision in *Bhatia* reached the same conclusion. 734 F.2d at 1384 (holding that an employer is excused from compliance with Title VII's nondiscrimination requirements to avoid the risk of "liability for violating the California Occupational Safety and Health Administration standards").

The Second Circuit's decision in *We The Patriots USA, Inc. v. Hochul*, 17 F.4th 266 (2d Cir. 2021)

compounds this problem even further. There, the Second Circuit likewise held that employers are permitted to follow state law to excuse their noncompliance with Title VII's requirements to provide employees with a religious accommodation. *Id.* at 291-92. In *We The Patriots*, the Second Circuit reversed the district court's conclusion that "Plaintiffs' adequately demonstrated that [New York's vaccine mandate] effectively forecloses the pathway to seeking a religious exemption that is guaranteed by Title VII." *Id.* at 261.

The essence of the Second Circuit's decision, like that of other decisions mentioned *supra*, was that state law excused noncompliance with Title VII's requirements to provide a religious accommodation. 17 F.4th at 292-93. The decision of the Second Circuit below, along with the decisions of the First, Second, Third, and Ninth Circuits, are in direct conflict with the decisions of other circuits and represent a question of exceptional importance this Court should resolve. The holding that compliance with state law excuses noncompliance with Title VII and federal antidiscrimination law simply cannot be reconciled with the decisions of several other circuits or the Constitution.

B. The Second, Sixth, Seventh, and Ninth Circuits Have Held that Contrary State Laws Must Yield to Title VII's Antidiscrimination Requirements.

The Second Circuit's decision below, along with the decisions of the First, Third, and Ninth Circuits

discussed *supra*, directly conflict with other decisions of the Second, Sixth, Seventh, and Ninth Circuits that contrary state laws must yield to Title VII's commands. *See, e.g.*, *Guardians Ass'n of N.Y.C. Police Dep't v. Civil Serv. Comm'n*, 630 F.2d 79 (2d Cir. 1980); *Rosenfeld v. Southern Pac. Co.*, 444 F.2d 1219 (9th Cir. 1971); *Palmer v. General Mills Inc.*, 513 F.2d 1040 (6th Cir. 1975); *Williams v. General Foods Corp.*, 492 F.2d 399 (7th Cir. 1974).

In *Guardians Association*, the Second Circuit rejected an employer's reliance on conflicting state laws to justify its use of a practice prohibited by Title VII. 630 F.2d at 104-05. "[T]he City cannot use rank-ordering not shown to be job-related when test scores produce a disparate racial impact. Nor can the City justify the use of rank-ordering by reliance on what it contends are the requirements of state law." *Id.* at 104. Indeed, "Title VII explicitly relieves employers from any duty to observe a state hiring provision 'which purports to require or permit' any discriminatory employment practice." *Id.* at 105 (quoting 42 U.S.C. §2000e-7).

That *Guardians Association* involved racial discrimination rather than the religious discrimination at issue here (App. 10a-11a) is of no moment because Title VII equally prohibits both religious and racial discrimination, 42 U.S.C. §2000e-2, and the purported distinction between the two provides no basis for a contrary holding on preemption. It cannot be countenanced that compliance with state law excuses noncompliance with Title VII. The Supreme Clause demands a

different pecking order. The Second Circuit's decision below directly conflicts, and cannot be reconciled, with the *Guardians Association*.

The Second Circuit's decision below is also in direct conflict with the Ninth Circuit's decision in *Rosenfeld*. In *Rosenfeld*, a female employee was "refused assignments" to certain employment positions because "she could not perform the task of such a position without placing the company in violation of California laws." 444 F.2d at 1225. Indeed, to employ her in certain positions, the employer would have run afoul of California's Industrial Welfare Order No. 9-63 and certain California labor code provisions. *Id.* The female employee filed suit, alleging that such practices violated Title VII's prohibition on discrimination on the basis of sex. *Id.* The employer's sole defense for its discriminatory employment practices was that "its policy is compelled by California labor laws." *Id.*

The Ninth Circuit rejected the employer's defense, holding that Title VII's nondiscrimination requirements could not be overridden by contrary state law. *Id.* "It would appear that these state law limitations imposed upon female labor run contrary to the general objectives of Title VII [and] are therefore, by virtue of the Supremacy Clause, supplanted by Title VII." *Id.* Contrary to the Second Circuit's decision below, the Ninth Circuit correctly noted that recognizing such a defense would ignore the purpose of Title VII's broad remedial scheme. *Id.* The employer's "argument assumes that Congress, having established by Title VII the policy that

individuals must be judged as individuals, and not on the basis of characteristics generally attributed to racial, religious, or sex groups, was willing for this policy to be thwarted by state legislation to the contrary." *Id.* Such is not the law.

Indeed, by enacting Title VII's protection from religious discrimination, Congress mandated "that an employer reasonable accommodate an employee's practice of religion, not merely assess the reasonableness of a particular possible accommodation or accommodations." *Groff v. DeJoy*, 600 U.S. 447, 473 (2021). And, Congress included in that same statute an express exemption relieving employers from compliance with state law that demands "the doing of any act which would be an unlawful employment practice under this subchapter." 42 U.S.C. §2000e-7. Thus, Congress explicitly exempted employers from liability for alleged violations of state law that require unlawful employment practices under Title VII. It cannot be gainsaid that the inclusion of such an exemption prohibits employers from relying on state laws to violate Title VII.

As the Ninth Circuit pointed out, the preemption sections of Title VII were "added to the Act to save state laws aimed at preventing or punishing discrimination . . . *not to save inconsistent state laws*." *Id.* at 1226 (emphasis added). Simply put, the Ninth Circuit held that "state labor laws inconsistent with the general objectives of the Act must be disregarded." *Id. Rosenfeld* cannot be reconciled with the Second Circuit's decision below.

The Seventh Circuit's decision in *Williams* is also in direct conflict with the Second Circuit's decision below. 492 F.2d at 403-04. There, much like in *Rosenfeld*, the employer distributed overtime opportunities and benefits primarily to men and discriminated against women in such decisions because it believed Illinois law required it to do so. *Id.* at 404 (noting "the Corporation's reliance on the Illinois Female Employment Act in the structuring of employment opportunities"). Citing 42 U.S.C. §2000e-7, the Seventh Circuit held that an employer was not excused from liability for a violation of Title VII merely because state law required such a discriminatory employment practice. *Williams*, 492 F.2d at 404 ("[T]he scheme of Title VII provides that employers are exempted from liability under state laws which require the doing of acts which constitute unlawful employment practices, *not that reliance on state statutes resulting in discriminatory practices bars Title VII liability*." (emphasis added) (cleaned up)). "It would have been incongruous for Congress to have intended a defense resulting in the perpetuation of discriminatory employment practices (even if based on state law) in a federal law designed to achieve equality of educational opportunity." *Id.*

The Sixth Circuit's *Palmer* decision is also in direct conflict with the Second Circuit's decision below. The Sixth Circuit held that "an employer's compliance, even in good faith, with the requirement of a state law . . . does not render the company's actions any less a violation of Title VII." 513 F.2d at 1042. *See also Ash v. Hobart Mfg. Co.*,483 F.2d 289, 292 (6th Cir. 1973)

("even good faith reliance by an employer upon a conflicting state female employment statute . . . would not render that employer's actions any less a violation of the Federal Civil Rights Act").

Guardians Association, *Rosenfeld*, *Williams*, *Palmer*, and *Ash* cannot be reconciled with the Second Circuit's decision below. The decisions of the Second, Sixth, Seventh, and Ninth Circuits directly conflict with the Second Circuit's decision below and reflect an ever-increasing problem among the lower courts that are permitting employers to excuse their noncompliance with federal law by relying on discriminatory state law directly at odds with Title VII. This Court should grant the Petition and resolve the conflict.

C. The Second, Fourth, Seventh, Tenth, and Eleventh Circuits Have Held that Contrary State Laws Must Yield to Federal Nondiscrimination Requirements.

The Second Circuit's decision below also exacerbated a larger conflict among the circuits concerning whether contrary state law creates a reasonable justification for ignoring federal nondiscrimination requirements. *See, e.g.*, *Campbell v. Universal City Dev. Partners, Ltd.*, 72 F.4th 1245 (11th Cir. 2023); *Mary Jo C. v. New York State & Local Ret. Sys.*, 707 F.3d 144 (2d Cir. 2013); *Barber ex rel. Barber v. Colorado Dep't of Revenue*, 562 F.3d 1222 (10th Cir. 2009); *Nat'l Fed'n of the Blind v. Lamone*, 813 F.3d 494 (4th Cir. 2016); *Quinones v.*

City of Evanston, 58 F.3d 275 (7th Cir. 1995). In each of these conflicting circuit decisions, the courts held that—regardless of the nature of the federal antidiscrimination statute at issue—reliance on contrary state laws was no excuse from liability for a violation of federal law.

In *Campbell*, an employer refused to provide an accommodation under the Americans with Disabilities Act because it claimed doing so would require it to violate state law. 72 F.4th at 1256. The Eleventh Circuit noted: "The first reason Universal gives for why it must exclude Campbell is because state law requires it. *We are not persuaded*." *Id.* (emphasis added). "In other words, Universal says, it can impose discriminatory eligibility criteria when state law requires it to do so." *Id.* at 1257. *Campbell* rejected this argument.

Much like Title VII does here—*see* 42 U.S.C. §2000e-7—"the ADA explicitly provides that the ADA does not preempt state laws that provide greater protection to those with a disability." 72 F.4th at 1257 (citing 42 U.S.C. §12201(b)). "So by implication, a state law that provides *less* protection than the ADA to those with a disability is preempted." *Id.*

To illustrate the preemption point, the Eleventh Circuit used an example strikingly similar to the issue here: "For instance, if a state passed a law that required public accommodations to discriminate against those with a disability—say, to get a business license—that law would be preempted by the ADA." *Id.* (*Cf.* App. 11a (noting that the vaccine mandate

required as a condition of business licensure that Respondents refuse to provide religious accommodation to COVID-19 vaccination).)

Universal's defense was premised on the notion that state law demanded it discriminate against the plaintiff in violation of federal law. 72 F.4th at 1257. The Eleventh Circuit disagreed. "[W]e must conclude that the text of the ADA precludes us from finding that it is [excusable] to comply with state law when state law otherwise requires a public accommodation to violate the ADA." *Id.* "If compliance with state law were 'necessary,' then any state could unilaterally nullify the ADA by enacting a state law requiring discrimination. *That can't be right*." *Id.* (emphasis added). Simply put, the Eleventh Circuit held that compliance with contrary state laws cannot excuse noncompliance with federal antidiscrimination requirements. *Id.* ("We hold the compliance with state law does not qualify as 'necessary' . . . Therefore, it does not excuse from ADA liability a public accommodation that imposes discriminatory eligibility criteria because of state law.").

To make the conflict with the Second Circuit's decision below even more clear, the Eleventh Circuit noted that federal law demands a finding that a covered entity is excused from compliance with contrary state laws. "Universal also resists the conclusion that compliance with state law does not qualify as necessary on the ground that if Universal fails to follow Florida law, Florida will subject Universal to closure or criminal or civil penalties, or all those things." *Id.* This is virtually identical to the

defenses accepted by the Second Circuit below. (App. 10a-11a (noting that "granting their [religious accommodation] request would have required Private Defendants to violate the state regulation").) The Eleventh Circuit noted the constitutionally inverted nature of this reasoning: "We don't agree. If the ADA requires allowing Campbell to ride, then Universal doesn't face criminal and civil penalties in Florida. The Supremacy Clause requires 'a different order of priority.'" 72 F.4th at 1258. "If federal law requires Universal to allow Campbell to ride, and state law forbids it, then Universal must let Campbell ride." *Id.* This is in direct conflict with the Second Circuit's decision below. (App. 11a.) The Second Circuit below flipped that analysis and said, in essence, if Title VII required Respondents to accommodate Petitioners' religious beliefs, and state law forbids it, the Respondents are free to follow state law. To use the Eleventh Circuit's words: *that can't be right*.

The Second Circuit's decision in *Mary Jo* likewise directly conflicts with the decision below. 707 F.3d 144. There, plaintiffs brought a claim arguing that defendants had violated Title II of the Americans with Disabilities Act by failing to grant a reasonable accommodation concerning state-imposed deadlines for applying for disability benefits. 707 F.3d at 149. The district court dismissed plaintiff's complaint, holding that requiring defendant to grant a reasonable accommodation that would otherwise violate state law is not required by federal law. *Id.* at 161. The Second Circuit held that state laws which are inconsistent with federal nondiscrimination

statutes must yield to the federal command. *Id.* at 163.

The Second Circuit noted that Title II "requires preemption of inconsistent state law when necessary to effectuate a required 'reasonable modification.'" *Id.* Its rationale was directly contrary to the decision below: "If all state laws were insulated from Title II's reasonable modification requirement solely because they were state laws, state law would serve as an obstacle to the accomplishment and execution of the full purposes and objective on Congress in enacting Title II." *Id.* "We conclude that the ADA's reasonable modification requirement contemplates modification to state laws, thereby permitting preemption of inconsistent state laws when necessary to effectuate Title II's reasonable modification provision." *Id.* Were it otherwise, federal law "would be powerless" to accomplish its antidiscrimination requirements when contrary to state law. *Id.* Under the Second Circuit's reasoning below, Title VII is powerless to accomplish its protection of religious beliefs when states decide such accommodation is not necessary.

The Seventh Circuit's decision in *Quinones* conflicts with the Second Circuit's decision below. 58 F.3d 275. There, Illinois state law prohibited the provision of certain employment benefits to a class of individuals because of their age. *Id.* at 277. The city claimed that providing the benefits sought by the plaintiff under federal law would require it to violate state law. *Id.* The Seventh Circuit rejected that rationale: "Evanston believes that it is compelled to follow the directives from the state, but the

Supremacy Clause of the Constitution requires a different order of priority." *Id.* Indeed, "[a] discriminatory state law is not a *defense* to liability under federal law; it is a *source* of liability under federal law." *Id.* The Seventh Circuit rejected the City's attempt to excuse its noncompliance with federal law on the basis of compliance with contrary state law.

The Fourth Circuit, too, has rejected the Second Circuit's rationale below. *Lamone*, 813 F.3d at 508. There, Maryland state law imposed certain requirements on the conduct of elections and prevented certain accommodations for individuals with disabilities. *Id.* The Fourth Circuit noted that "the strong form of defendants' argument [was] the mere fact of a state statutory requirement insulates public entities from making otherwise reasonable modifications to prevent disability discrimination." *Id.* As the Fourth Circuit held, that "cannot be correct." *Id.* The reason was simple: "The Constitution's Supremacy Clause establishes that valid federal legislation can preempt state laws," and Title II of the ADA "trumps state regulations that conflict with its requirements." *Id.* As such, the defendants could not rely on contrary state requirements as an excuse for failure to follow federal antidiscrimination laws. *Id.* at 508-09.

The Tenth Circuit's decision in *Barber* also directly conflicts with the Second Circuit. 562 F.3d at 1233. There, the Tenth Circuit noted that the only reason a defendant was excused from compliance with federal antidiscrimination requirements was that the state

law at issue was *not* in direct conflict. *Id.* But, had there been an actual conflict between the state and federal schemes, the state law would not have excused noncompliance with federal law. *Id.* "*Reliance on state statutes to excuse non-compliance with federal laws is simply unacceptable under the Supremacy Clause*." *Id.* (emphasis added).

Then-Judge Gorsuch highlighted the conflict in his concurrence. "If Colorado law *had* discriminated on the basis of disability, in violation of the Rehabilitation Act, the State defendants argue they still shouldn't be held liable, in part because they were bound to follow state law." *Id.* at 1234 (Gorsuch, J., concurring). But, as Justice Gorsuch concluded, "a state law at odds with a valid Act of Congress is no law at all." *Id.* "Accordingly, the demands of the Rehabilitation Act do not yield to state laws that discriminate against the disabled; *it works the other way around*." *Id.* (emphasis added). "State officials who rely on their compliance with discriminatory state laws as evidence of their reasonableness will normally find themselves proving their own liability, not shielding themselves from it." *Id.*

The decisions of the Second, Fourth, Seventh, Tenth, and Eleventh Circuits cannot be reconciled with the Second Circuit's decision below. State laws that are contrary to federal nondiscrimination laws must yield to the demands of federal law. This Court should grant the Petition to resolve the conflict among the circuits.

II. THE SECOND CIRCUIT'S DECISION BELOW DIRECTLY CONFLICTS WITH DECISIONS FROM THIS COURT AND THE SECOND AND ELEVENTH CIRCUITS CONCERNING WHETHER THE PLAIN TEXT OF TITLE VII PREEMPTS CONTRARY STATE LAWS.

The plaint text of Title VII explicitly provides that employers are not excused from compliance with Title VII's accommodation requirements on the basis of a conflicting state law:

> Nothing in this subchapter shall be deemed to exempt or relieve any person from liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, *other than any such law that purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter*.

42 U.S.C. §2000e-7 (emphasis added).

Congress also made plain that it intended to preempt any state law that conflicts with its nondiscrimination objectives in Title VII.

> Nothing contained in any title of this Act shall be construed as indicating an intent on the part of Congress to occupy the field in which such title operates to the

> exclusion of State laws on the same subject matter, nor shall any provision of this Act be construed as invalidating any provision of State law *unless such provision is inconsistent with any of the purposes of this Act, or any provision thereof*.

42 U.S.C. §2000h-4 (emphasis added).

The Second Circuit below ignored Title VII's statutory preemption of contrary state laws. Its refusal to invalidate contrary state laws explicitly preempted by Title VII is in direct conflict with the plain language of Title VII and the decisions of this Court and the Second and Eleventh Circuits.

A. The Second Circuit Ignored Title VII's Express Language Preempting Contrary State Laws.

Despite Title VII's explicit provision relieving employers from liability for violations of contrary state laws, the Second Circuit nevertheless held that Respondents would have suffered "financial penalties or a suspension or revocation of their operating license" for complying with state law. (App. 11a.) The Second Circuit ignored Section 2000e-7 providing a complete exemption from such penalties based on compliance with the requirements of Title VII. The decision below exacerbates a conflict among the circuits.

B. The First Circuit Has Held That Title VII Does Not Always Preempt Contrary State Laws.

Despite Title VII's unequivocal pronouncement that employers are not excused from liability for compliance with a state law "that purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter" 42 U.S.C. §2000e-7, the First Circuit has held that employers are excused from compliance with Title VII when such compliance would violate contrary state law. *Lowe*, 68 F.4th at 723-24. Specifically, the First Circuit held that Section 2000e-7 does not demonstrate that a state's refusal to allow religious accommodations from a virtually identical vaccine mandate is preempted because Title VII does not require such an accommodation. *Id.* "Title VII could preempt the Mandate only if it required the Providers to grant the plaintiffs' requested accommodation. But granting that accommodation would have exposed the Providers to penalties for violating the Mandate." *Id.* at 724.

That reasoning is entirely circular. Title VII plainly *does* require reasonable accommodation of sincerely held religious beliefs. Maine law, however, purported to outlaw all such accommodations. Concluding that Title VII does not require employers to provide reasonable accommodations because Maine law prohibits all accommodations circularly guts the intended protection of federal law and nullifies both Title VII and the Supremacy Clause.

The First Circuit noted petitioners' position that Section 2000e-7 preempts the State's COVID-19 Vaccine Mandate. *Id.* at 724 (noting the plaintiff's contention that 42 U.S.C. §2000e-7 "exempts the Providers from liability for violating the Mandate, which, they assert, purports to require the Providers to violate Title VII by denying them their preferred accommodation.").) The court rejected that contention stating that it was "an extremely broad view of Title VII's requirements," *id.*, and that a violation of state law excused compliance with Title VII. *Id.*

The First Circuit's only basis for so holding was that "[t]he plaintiffs cite no case holding that Title VII preempted a state law in analogous circumstances involving religion." *Id.* (emphasis original). As discussed *supra*, however, the First Circuit noted that there is precedent for the proposition that Title VII preempts contrary state laws in the race discrimination context. *Id.* at 725 (citing *Guardians Ass'n*, 630 F.2d at 79). The First Circuit ignored that 42 U.S.C. §2000h-4, in addition to 42 U.S.C. §2000e-7, explicitly invalidates and preempts state law directly contrary to Title VII's purposes and prohibited employment practices.

Despite the fact that simultaneous compliance with the State's COVID-19 Vaccine Mandate and Title VII is not possible, the First Circuit held that the contrary state law was not preempted. The Second Circuit's decision below tacitly agreed with this notion by rejecting Petitioners' reliance on Section 2000e-7. (App. 10a-11a.) Specifically, the First Circuit acknowledged that while the state law creates a

scenario where "the need to comply with the Mandate, on the one hand, and with Title VII, on the other hand, placed the Providers in a 'damned-if-you-do, damned-if-you-don't situation," the contrary state law was nevertheless not preempted by Title VII. *Lowe*, 68 F.4th at 725.

The First Circuit's analysis flips the Supremacy Clause on its head and excuses employers' noncompliance with Title VII solely on the basis of contrary state law. The Second Circuit's decision ignores that problem. This Court should grant the Petition to resolve the conflict.

C. This Court and the Second and Eleventh Circuits Have Held that the Plain Language of Title VII Explicitly Preempts Contrary State Laws.

In addition to the plain text of Section 2000e-7, the decision below and the First Circuit's decision in *Lowe* conflict with the decisions from this Court and the Second and Eleventh Circuits.

1. The decision below directly conflicts with this Court's precedents.

As this Court recognized in a different context, federal nondiscrimination laws are intended to be "a floor beneath which [protections] may not drop—not a ceiling above which they may not rise." *California Fed. Savings & Loan Ass'n v. Guerra*, 479 U.S. 272, 285 (1987) (cleaned up). In *Guerra*, the Court was

faced with a California law that required employment protections and benefits *in excess* of those required by Pregnancy Discrimination Act, not—as here—requiring *diminished protection* for protected categories. *Id.* at 290. Contrary to New York's discriminatory COVID-19 Vaccine Mandate at issue here, the law in *Guerra* did not "prevent employers from complying with both federal law (as petitioners construe it) and the state law." *Id.* Indeed, the California law, which provided greater protections for protected classes, did not stand as an obstacle to compliance with federal law—it supplemented it to provide enhanced protection. *Id.* at 291 ("This is not a case where compliance with both federal and state regulations is a physical impossibility or where there is an inevitable collision between the two schemes of regulation."). As the Court noted, the Pregnancy Disability Act "does not compel California employers to treat pregnant workers *better* than other disabled employees; it merely establishes benefits that employers must, at a minimum, provide to pregnant workers." *Id.* (emphasis original). And, because California provided *greater* protection than required by federal law, the statutory scheme was "not inconsistent with the purposes of the federal statute, nor does it require the doing of an act which is unlawful under Title VII." *Id.* at 292.

The Court noted that Title VII explicitly preempts state laws that permit or require the doing of an act—here, denying all religious accommodation requests from the COVID-19 Vaccine Mandate—that cannot be reconciled with the requirements of Title VII. *See id.* at 290 n.29. In fact, the arguments of the

petitioners in *Guerra* largely mirror the conclusion reached by the Second Circuit below. "Petitioners assert that even if [the Pregnancy Disability Act] does not *require* employers to treat pregnant employees differently than other disabled employees, it *permits* employers do so because it does not specifically prohibit different treatment." *Id.* (emphasis original). The logical conclusion of the *Guerra* petitioners' argument was that it required a finding that federal law "permits any employer action that it did not expressly prohibit." *Id.* This is largely what the Second Circuit allowed below. (App. 11a.) This Court explicitly and unequivocally rejected that conclusion: "We conclude that 'permit' in [Section 2000e-7] must be interpreted to pre-empt only those state laws that expressly *sanction* a practice unlawful under Title VII; the term does not pre-empt state laws that are silent on the issue." *Id.* (emphasis original).

Here, the State's COVID-19 Vaccine Mandate explicitly sanctioned—indeed, *required*—a practice of blanket rejection of all religious accommodation request under Title VII in relation to the COVID-19 Vaccine Mandate, irrespective of whether such accommodations were reasonable, and irrespective of whether such accommodations could be provided without undue hardship. (App. 10a-11a.) Allowing state law to trump Title VII's requirements directly conflicts with this Court's precedent.

The direct conflict between the First and Second Circuits and this Court's precedent is further demonstrated by the Court's corollary holding concerning Section 2000e-7 in *Shaw v. Delta Air*

Lines, Inc., 463 U.S. 85 (1983). In *Shaw*, this Court noted that "Title VII expressly preserves *nonconflicting* state laws." *Id.* at 101 (emphasis added). "Insofar as state laws prohibit employment practices that are lawful under Title VII, however, preemption would not impair Title VII." *Id.* at 103. This is so because "Title VII does not itself prevent States from extending their nondiscrimination laws to areas not covered by Title VII." *Id.* Citing Section 2000e-7, this Court held that Title VII's preemption analysis is concerned with state laws—such as New York's mandate here—that permit or require employment practices that Title VII explicitly prohibits. *Id.* ("Quite simply, Title VII is neutral on the subject of all employment practices it does not prohibit."). The reason for the distinction is plain: "Title VII would prohibit precisely the same employment practices, and be enforced in precisely the same manner, even if no State made additional employment practices unlawful." *Id.*

As this Court stated in *Albermarle Paper Co. v. Moody*, Section 2000e-7 explicitly preempts "state statutes inconsistent with it." 423 U.S. 405, 423 n.18 (1975). Finding that a state law directly conflicting with Title VII is not preempted and can be used to justify noncompliance with Title VII cannot be reconciled with this Court's precedents.

2. The decision below and the First Circuit's decision in *Lowe* directly conflict with decisions of the Second and Eleventh Circuits.

The decision below and the First Circuit's holding in *Lowe* also conflict with decisions of the Second and Eleventh Circuits. In *Bradshaw v. Sch. Bd. of Broward Cnty.*, 486 F.3d 1205 (11th Cir. 2007), the Eleventh Circuit held that state laws that directly conflict with Title VII are preempted as a matter of the plain language of the statute. *Id.* at 1211. There, Florida imposed various compensatory damages caps on employment discrimination cases that did not conflict with Title VII's damages caps. *Id.* ("In the present case, Florida does not want to impose liability for compensatory damages beyond Title VII's cap."). Because Florida's statutory scheme did not permit or require a damages award that was inconsistent with or contrary to Title VII, it was not preempted. *Id.* ("Title VII will not be 'deemed' (that is, construed) to prevent states from imposing liability in any way they see fit, *so long as the states do not interfere with Title VII by requiring or permitting acts that Title VII would forbid*." (emphasis added)).

The Second Circuit's decision in *Bridgeport Guardians, Inc. v. Delmonte*, 248 F.3d 66 (2d Cir. 2001) recognized that Title VII preempts contrary state laws. There, the Second Circuit held that "Title VII explicitly relieves employers from any duty to observe state law 'which purports to require or permit' any discriminatory employment practice." *Id.* at 74 (quoting 42 U.S.C. §2000e-7). *See also id.* at 72 (it is

"axiomatic" that Title VII "would preempt any contrary state law").

The decision below cannot be reconciled with these precedents, this Court's precedent, or the plain language of Title VII. The Court should grant the Petition and resolve the conflict.

CONCLUSION

The Second Circuit's decision below conflicts with the precedent of this Court and the precedent of Second, Fourth, Sixth, Seventh, Ninth, Tenth, and Eleventh Circuits concerning whether compliance with a state law directly contrary to Title VII can excuse noncompliance with Title VII. The Second Circuit's decision below also conflicts with this Court's precedent and the precedent of the Second and Eleventh Circuits concerning whether the plain language of Title VII explicitly requires the preemption of contrary state laws. This Court should grant the Petition and resolve the conflicts.

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