No. 24-1015

In the Supreme Court of the United States

JOHN DOES 1-2, ET AL., PETITIONERS

v.

KATHY HOCHUL, GOVERNOR OF NEW YORK, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION FOR THE HEALTH-CARE RESPONDENTS

JACQUELINE PHIPPS POLITO
ERIN M. TRAIN
LITTLER MENDELSON P.C.
375 Woodcliff Drive, Suite 2D
Fairport, NY 14450

MICHAEL J. KEANE
MARC A. SITTENREICH
GARFUNKEL WILD, P.C.
111 Great Neck Road
Great Neck, NY 11021

LIZA M. VELAZQUEZ
Counsel of Record
EMILY A. VANCE
KATHLEEN H. PIERRE
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019
(212) 373-3000
lvelazquez@paulweiss.com

ANNA M. STAPLETON
RUSSELL A.S. WIRTH
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
535 Mission Street, 25th Floor
San Francisco, CA 94105

QUESTIONS PRESENTED

Title VII of the Civil Rights Act of 1964 requires an employer to accommodate the religious practices of its employees unless doing so would impose an "undue hardship on the conduct of the employer's business." 42 U.S.C. 2000e(j). The questions presented are:

1. Whether providing a complete exemption from an employment practice requested by an employee on religious grounds would impose an "undue hardship" on an employer where state law mandates the practice; imposes significant penalties for noncompliance; and prohibits complete religious exemptions but still leaves available other accommodations for religious objections.

2. Whether such a state law is consistent with, and thus not preempted by, Title VII.

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioners are John Doe 2, Jane Does 1-3, Jack Does 1-750, and Joan Does 1-750.[*] Respondents are Kathleen C. Hochul, in her official capacity as Governor of New York; James V. McDonald, in his official capacity as Commissioner of the New York State Department of Health; New York-Presbyterian Healthcare System, Inc.; Trinity Health, Inc.; and Westchester Medical Center Advanced Physician Services, P.C. This brief is filed on behalf of all respondents except Governor Hochul and Commissioner McDonald.

New York-Presbyterian Healthcare System, Inc., has no parent corporation, and no publicly held company holds 10% or more of its stock.

Trinity Health, Inc., has no parent corporation, and no publicly held company holds 10% or more of its stock.

Westchester Medical Center Advanced Physician Services, P.C., has no parent corporation, and no publicly held company holds 10% or more of its stock.

[*] John Doe 1, who was not employed by any of the health-care respondents, has no live claims remaining in the suit. See Pet. App. 19a n.12.

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OPINIONS BELOW

The summary order of the court of appeals (Pet. App. 1a-12a) is unreported but available at 2024 WL 5182675. The opinion of the district court (Pet. App. 13a-62a) is reported at 632 F. Supp. 3d 120.

JURISDICTION

The judgment of the court of appeals was entered on December 20, 2024. The petition for a writ of certiorari was filed on March 20, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

This case presents two questions concerning Title VII of the Civil Rights Act of 1964: first, whether providing a complete exemption from an employment practice requested by an employees on religious grounds would impose an "undue hardship" on an employer where state law mandates the practice; imposes significant penalties for noncompliance; and prohibits complete religious exemptions but still leaves available other accommodations for religious objections; and second, whether such a state law is consistent with, and thus not preempted by, Title VII.

Respondents are two New York state officials and three health-care provider organizations that allegedly employed petitioners in New York during the COVID-19 pandemic. In 2021, the New York Department of Health adopted a rule requiring licensed health-care provider organizations to ensure that certain employees were fully vaccinated against COVID-19. That rule permitted covered organizations to accommodate the religious objections of employees in certain ways but did not permit complete exemptions from the vaccination requirement.

Each petitioner asked his or her respective employer to be exempted and, when the employers refused, filed suit in federal district court. As is relevant here, petitioners asserted that the employers' refusal to grant exemptions violated Title VII and that the state's vaccination mandate was preempted by Title VII. The district court dismissed petitioners' Title VII claims for failure to exhaust administrative remedies and on the merits, and the court of appeals affirmed.

Petitioners now seek this Court's review, but both questions they present are premised on the erroneous assertion that state law forbade the employers from providing any religious accommodation whatsoever. It did not. Rather, state law did not allow *complete exemptions* on

religious grounds. Because state law did not prohibit employers from providing other reasonable accommodations to employees with religious objections, the court of appeals correctly held that state law did not conflict with Title VII and that requiring employers to violate the requirement would impose an undue hardship for purposes of Title VII. There is no conflict on the questions this case actually presents. In any event, this case would be an exceedingly poor vehicle for resolving the questions asserted in the petition, because petitioners did not exhaust their administrative remedies, as required by Title VII, and reversing the judgment below would not fully resolve the case. The petition for a writ of certiorari should therefore be denied.

A. Background

1. Title VII of the Civil Rights Act of 1964 forbids employers 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)(1). The statute defines "religion" as those "aspects of religious observance and practice" that an employer is able to "reasonably accommodate * * * without undue hardship on the conduct of the employer's business." 42 U.S.C. 2000e(j). Title VII thus does not require employers to accommodate the religious beliefs or practices of their employees when "doing so would impose an 'undue hardship on the conduct of the employer's business.'" *Groff* v. *DeJoy*, 600 U.S. 447, 453-454 (2023) (quoting 42 U.S.C. 2000e(j)).

Whether or not a plaintiff has established a prima facie claim for religious discrimination, a defendant employer may prevail by showing that it "has done everything that would be required of [it] if the plaintiff had properly made

out a prima facie case." *Ansonia Board of Education* v. *Philbrook*, 479 U.S. 60, 67-69 (1986). To satisfy that requirement, the employer need not "choose any particular reasonable accommodation." *Id.* at 68. Rather, if any reasonable accommodation is available, Title VII is satisfied. See *ibid.*

As a precondition to filing a Title VII claim in federal court, a complainant must first timely file a charge with the Equal Employment Opportunity Commission (EEOC). See *Fort Bend County* v. *Davis*, 587 U.S. 541, 543-544 (2019). Only when the EEOC has dismissed the charge and issued the complainant a "right-to-sue" letter may the complainant "commence a civil action against the allegedly offending employer." *Id.* at 545. Although not jurisdictional, exhaustion of that administrative remedy is mandatory, meaning that courts must enforce the requirement as long as it is timely raised. See *id.* at 551.

Title VII contains an express preemption clause. It provides that "[n]othing 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." 42 U.S.C. 2000e-7. As this Court has explained, that provision has a "narrow scope," such that Title VII preempts a state law only if it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *California Federal Savings & Loan Association* v. *Guerra*, 479 U.S. 272, 281-283 (1987) (internal quotation marks and citation omitted).

2. Like many States, New York requires hospitals and other health-care provider organizations to obtain and maintain a license for operation. Licensed hospitals

and other providers are obligated to comply with applicable regulations of the New York Department of Health. See N.Y. Pub. Health Law §§ 12, 2806(1). Failure to comply can result in significant penalties, including suspension or loss of an entity's license to operate. See *id.* § 2806(1)(a).

On August 26, 2021, the Department of Health adopted an emergency rule requiring specified types of licensed health-care facilities to ensure that certain personnel were vaccinated against COVID-19. See 10 N.Y. Comp. Codes R. & Regs. § 2.61 (Aug. 26, 2021). Rule 2.61 defined "covered entities" to include hospitals, home health programs, hospices, and adult care facilities. *Id.* § 2.61(a)(1)(i)-(iv). And it defined "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 other covered personnel, patients or residents to the disease." *Id.* § 2.61(a)(2).

Rule 2.61 mandated that all covered entities "continuously require personnel to be fully vaccinated against COVID-19, with the first dose for current personnel received by September 27, 2021 for general hospitals and nursing homes, and by October 7, 2021 for all other covered entities absent receipt of an exemption as allowed below." 10 N.Y. Comp. Codes R. & Regs. § 2.61(c) (Aug. 26, 2021). The rule provided an exemption where "any licensed physician or certified nurse practitioner certifies that immunization with COVID-19 vaccine is detrimental to the [employee's] health." *Id.* § 2.61(d). Otherwise, employees who wished to avoid vaccination would need to cease all "activities such that if they were infected with COVID-19, they could potentially expose other covered

personnel, patients or residents to the disease," thereby removing them from the category of covered personnel. *Id.* § 2.61(a)(2). That could have potentially been achieved by switching from in-person work to remote work. See Pet. App. 60a n.30.

By operation of state law, emergency rules such as Section 2.61 are effective for no more than 90 days unless renewed. See N.Y. A.P.A. Law § 202(6)(b). Rule 2.61 was renewed three times before being adopted as a permanent rule. It was ultimately repealed effective October 4, 2023. See Pet. App. 6a.

B. Facts And Procedural History

1. Respondents are New York Governor Kathy Hochul and Department of Health Commissioner James McDonald (the state respondents), together with three nonprofit corporations that operate health-care facilities in New York and are covered entities under Rule 2.61: New York-Presbyterian Healthcare System, Inc.; Trinity Health, Inc.; and Westchester Medical Center Advanced Physician Services, P.C. (the health-care respondents). Petitioners are four individual health-care workers identified anonymously. Each of the four petitioners alleged that they were formerly employed by the health-care respondents. Each petitioner sought an exemption from Rule 2.61's vaccination requirement on religious grounds and was denied. See Pet. App. 4a, 15a-16a, 25a.

On September 10, 2021, petitioners filed suit in the federal district court for the Eastern District of New York asserting, as relevant here, violations of Title VII of the Civil Rights Act of 1964 and the Supremacy Clause. Petitioners did not submit a complaint to the EEOC and did not receive a "right-to-sue" letter before filing their civil complaint. See Pet. App. 25a. Petitioners sought reme-

dies in the form of injunctive relief barring the state respondents from enforcing Rule 2.61 against petitioners; injunctive relief requiring the health-care respondents to grant religious exemptions from their vaccination requirements; a declaratory judgment that Rule 2.61 was unconstitutional both facially and as applied to petitioners; and damages for any adverse employment action arising from enforcement of Rule 2.61. See Pet. App. 113a-117a.

2. Petitioners filed a motion for a temporary restraining order and preliminary injunction. The district court denied the motion as moot following the Second Circuit's unanimous decision in *We The Patriots USA, Inc.* v. *Hochul*, 17 F.4th 266, opinion clarified, 17 F.4th 368 (2021), cert. denied, 142 S. Ct. 2569 (2022), which affirmed the denial of a temporary restraining order and vacated a preliminary injunction in a case presenting materially similar claims challenging Rule 2.61. See Pet. App. 27a-28a, 30a.

3. Respondents subsequently filed a motion to dismiss, and the district court granted the motion. Pet. App. 13a-62a.

With respect to petitioners' claims under Title VII, the district court determined that petitioners had failed to plead facts showing that they had administratively exhausted their claims—an independently sufficient basis for dismissal. See Pet. App. 54a-55a. Even absent that failure, however, the district court concluded that it would have dismissed petitioners' Title VII claim on the merits. See *id.* at 55a-56a. As the court explained, petitioners' claim was based on the health-care respondents' denial of the "sole 'accommodation' [petitioners sought]—a religious exemption from the vaccine requirement." *Id.* at 55a. But, the district court continued, that requested accommodation would impose an undue hardship on health-

care respondents in two ways: first, it would require them to violate state law, see *ibid.*, and second, it would "expose vulnerable patients and nursing home residents, as well as other healthcare workers, to the COVID-19 virus," *id.* at 56a.

The district court also rejected petitioners' assertion that Title VII preempted Rule 2.61 because the two are in conflict. See Pet. App. 56a-60a. As the court explained, in order to prevail on that argument, petitioners would have needed to show that "[it] is impossible for employers to comply with Title VII and Section 2.61 or that Section [2.61] is an obstacle to the achievement of federal objectives as expressed in Title VII." Pet. App. 58a (internal quotation marks and citation omitted). Petitioners asserted that the "absence of a religious exemption in Section 2.61 is the equivalent of denying them a religious accommodation under Title VII." *Id.* at 59a. But "to avoid Title VII liability," the court reasoned, "an employer is not required to offer the accommodation the employee prefers." *Ibid.* (internal quotation marks and citation omitted). The court determined that Rule 2.61's prohibition on complete religious exemptions "does not prevent employees from seeking a religious *accommodation* allowing them to continue working consistent with the Rule, while avoiding the vaccination requirement." *Id.* at 60a (citation omitted). Because the rule did not foreclose employees' opportunity to obtain reasonable accommodations for their religious beliefs, Title VII did not preempt the rule. See *ibid.*

4. In a summary order, the court of appeals dismissed petitioners' appeal in part, affirmed in part, and remanded to the district court. Pet. App. 1a-12a.

The court of appeals first held that the repeal of Rule 2.61 had mooted petitioners' claims against the state respondents. See Pet. App. 6a. The court held, however,

that petitioners' Title VII claims for damages against the health-care respondents remained live. See *id.* at 6a, 9a.

With respect to those claims, the court of appeals affirmed their dismissal on the merits. See Pet. App. 11a. Recognizing that this Court had recently clarified that the undue hardship faced by an employer "must be 'substantial in the overall context of an employer's business,'" *id.* at 10a (quoting *Groff* v. *DeJoy*, 600 U.S. 447, 468 (2023)), the court concluded that the health-care respondents' need to violate Rule 2.61 in order to grant petitioners' requested exemption would impose such a hardship. See Pet. App. 11a. The court reasoned that, even assuming that petitioners had "plausibly alleged a *prima facie* case of Title VII religious discrimination," *id.* at 10a, "the risk of [the] potential penalties" that the health-care respondents would face for that violation "more than suffices to demonstrate that the [health-care respondents] were subject to such hardships here," *id.* at 11a. That outcome, the court recognized, was consistent with its previous decisions, as well as those of other courts of appeals. See *ibid.*

ARGUMENT

In the decision below, the court of appeals held that petitioners' requested exemption from a COVID-19 vaccination requirement would impose an "undue hardship" on the health-care respondents because New York's Rule 2.61 mandated the requirement and permitted only religious accommodations short of a complete exemption. Because Rule 2.61 did not prohibit all religious accommodations, this case does not present, nor did the court of appeals decide, either of the questions presented by the petition. There is no conflict among the courts of appeals on the questions actually presented by the decision below. And even if this case did raise the questions identified in

the petition, it would be a poor vehicle for this Court's review for several reasons, including that alternative grounds supported the dismissal of petitioners' claims. The petition for a writ of certiorari should be denied.

A. This Case Does Not Present The Questions Identified In The Petition

Petitioners frame the questions presented in this case as, first, "[w]hether 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," and second, "[w]hether a state law that requires employers to deny without any consideration all requests by employees for a religious accommodation * * * is preempted by Title VII." Pet. i, ii. Neither question is properly presented here.

Both questions assume that New York Rule 2.61 forbids any religious accommodations whatsoever and is therefore "directly contrary" to Title VII. But as the court of appeals explained in an earlier challenge to Rule 2.61, the rule does not "bar an employer from providing an employee with a reasonable accommodation that removes the individual from the scope of the [r]ule." *We The Patriots USA, Inc.* v. *Hochul*, 17 F.4th 266, 292, opinion clarified, 17 F.4th 368 (2d Cir. 2021), cert. denied, 142 S. Ct. 2569 (2022). Rather, it merely "bars an employer from granting a religious *exemption* from the vaccination requirement" while permitting employees to "seek[] a religious *accommodation* allowing them to continue working consistent with the [r]ule, while avoiding the vaccination requirement." *Ibid.* The court of appeals determined that such a rule does not directly conflict with Title VII, because it does not "foreclose all opportunity" for employees to obtain a reasonable religious accommodation, and Title

VII requires an employer only to offer a "reasonable accommodation," not "the accommodation the employee prefers." *Ibid.* (citation omitted).

So considered, Rule 2.61 did not prohibit the health-care respondents from granting any accommodation whatsoever to petitioners. It merely prohibited the particular accommodation on which petitioners insisted: namely, a complete exemption. For that reason, the relevant question below was whether granting petitioners' "sole request for a religious exemption" would impose an undue hardship on the health-care respondents, because the requested exemption "would have required [them] to violate the state regulation," which would have then subjected them to "financial penalties or a suspension or revocation of their operating licenses." Pet. App. 11a; see N.Y. Pub. Health Law §§ 12, 2806(1)(a). The court of appeals concluded only that granting the exemption under those circumstances—as opposed to granting some other possible accommodation—would give rise to an undue hardship. See Pet. App. 11a.

Contrary to petitioners' contention, therefore, the court of appeals did not address whether a state law that prohibits all religious accommodations can give rise to an undue hardship or whether Title VII would preempt such a state law. The court of appeals instead held that a state law that prohibits one particular accommodation can give rise to an undue hardship with respect to a request for that particular accommodation. As a result, the only questions properly presented here are whether *that* kind of state law can give rise to an undue hardship or is preempted as directly conflicting with Title VII. This case thus provides the Court with no occasion to address the questions petitioner identifies.

B. The Decision Below Does Not Conflict With Any Decision Of This Court Or Any Federal Court Of Appeals

There is no conflict on the questions actually presented here. To the contrary, the court of appeals' decision is consistent with decisions of other courts of appeals analyzing the interaction between similar state laws and Title VII. Because the court of appeals did not address a state law that forbid all reasonable religious accommodations or that otherwise directly conflicted with Title VII, the decision below does not conflict with any of the cases petitioner cites. Further review is unwarranted.

1. Four courts of appeals, including the Second Circuit in the decision below, have held that a requested religious accommodation can impose an undue hardship on an employer where granting the accommodation would require the employer to violate a valid state law.

a. In *Lowe* v. *Mills*, 68 F.4th 706, cert. denied, 144 S. Ct. 345 (2023), the First Circuit addressed Title VII religious-accommodation claims asserted by health-care workers challenging the denial of their requested exemptions from a Maine law requiring vaccination against COVID-19 for covered health-care employees. Like Rule 2.61, the Maine law did not allow exemptions for religious reasons. *Id.* at 709. Health-care employers who failed to comply with the law would "risk[] onerous penalties, including license suspension." *Id.* at 719.

The First Circuit held that granting the plaintiffs' requested exemption from the vaccination requirement would have imposed an undue hardship on their employers. See 68 F.4th at 719. As the court explained, the plaintiffs had made clear that they "would accept only one accommodation: a religious exemption allowing them to continue in their roles without receiving vaccination while observing other precautions, such as masking and testing." *Ibid.* But the complaint also "acknowledge[d] the

threat to the [employers'] licenses" if they "fail[ed] to mandate that all employees receive the COVID-19 vaccine." *Id.* at 720. The court reasoned that the plaintiffs' sole requested accommodation would impose an undue hardship insofar as it was "difficult to imagine a penalty that would cause a healthcare provider more significant difficulty '[i]n the conduct of [its] business' than license suspension." *Id.* at 721 (quoting 42 U.S.C. 2000e(j)). And although the First Circuit decided the case before this Court had issued its decision in *Groff* v. *DeJoy*, 600 U.S. 447 (2023), clarifying the standard for assessing whether a requested religious accommodation imposed an "undue hardship," the First Circuit explained that "the plaintiffs' requested accommodation would have constituted an undue hardship under any plausible interpretation of the statutory text." 68 F.4th at 721.

b. The Third Circuit has likewise held that a valid state law may create an undue hardship for an employer. In *United States* v. *Board of Education*, 911 F.2d 882 (1990), the court addressed a Title VII challenge to a Pennsylvania criminal statute prohibiting public school teachers from wearing religious garb while teaching. See *id.* at 885. The law imposed penalties, including fines and potential removal from office, on administrators who failed to enforce its requirements. See *ibid.* The United States, suing on behalf of an individual teacher, did not seek "alternative means of accommodation" other than permitting the teacher to wear clothing in accordance with her religious beliefs. *Id.* at 887.

The Third Circuit held that requiring the employing school board to exempt the teacher from the otherwise-valid state law against religious garb would have imposed an undue hardship on the school board. See 911 F.2d at 891. In so doing, the court invoked this Court's decision in *Trans World Airlines* v. *Hardison*, 432 U.S. 63 (1977),

which held that a requested accommodation that would require an employer to violate its collective bargaining agreement would constitute undue hardship. See 911 F.2d at 891. It "follow[ed] *a fortiori*," the Third Circuit reasoned, that it would likewise "be an undue hardship to require a school board to violate an apparently valid criminal statute, thereby exposing its administrators to criminal prosecution and the possible consequences thereof." *Ibid.*

c. In *Bhatia* v. *Chevron U.S.A., Inc.*, 734 F.2d 1382 (1984) (per curiam), the Ninth Circuit similarly confirmed that a requested religious accommodation that would require an employer to violate a valid state law could impose an undue hardship on the employer. That case addressed a newly promulgated California safety standard requiring employees whose work might expose them to toxic gases to wear a mask with a gas-tight face seal, something that was not possible for individuals with beards. See *id.* at 1383. After the defendant employer imposed a policy requiring all of its machinists to shave their beards, an employee whose religious faith forbade cutting or shaving of any body hair challenged his termination under Title VII. See *ibid.*

The Ninth Circuit rejected the employee's Title VII claim. See 734 F.2d at 1384. It held that the employer had "established that if it were to retain [the plaintiff] as a machinist * * * it would risk liability for violating California Occupational Safety and Health Administration standards." *Ibid.* After considering and rejecting other potential accommodations as unduly burdensome under the facts of the case, the court affirmed summary judgment for the employer on the plaintiff's Title VII claim. See *ibid.*

2. Petitioners argue (Pet. 17-41) that the decision below conflicts with decisions from this Court and other

courts of appeals in two ways: first, by holding that "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"; and second, by holding that Title VII does not preempt a state law that "requires employers to deny * * * all requests by employees for a religious accommodation." Pet. i, ii. Because the court of appeals did not so hold, see pp. 10-11, *supra*, the conflicts identified by the petition are illusory.

a. With respect to the first question presented, petitioners cite cases (Pet. 20-25) in which courts of appeals have refused to excuse race-based or sex-based discrimination in violation of Title VII on the ground that state law required the alleged discrimination. For example, the Second Circuit has held that, where rank-ordering job candidates based on exam scores creates a disparate impact on members of a racial minority, any state law that "purports to require or permit" rank-ordering is preempted and thus cannot excuse continued use of such practices. *Guardians Association of the New York City Police Department, Inc.* v. *Civil Service Commission*, 630 F.2d 79, 104-105 (1980) (citation omitted), cert. denied, 452 U.S. 940 (1981). Other courts of appeals addressing analogous schemes have reached the same conclusion. See, *e.g.*, *Palmer* v. *General Mills Inc.*, 513 F.2d 1040, 1042-1044 (6th Cir. 1975) (state laws requiring the categorical exclusion of women from certain workplaces); *Williams* v. *General Foods Corp.*, 492 F.2d 399, 402 (7th Cir. 1974) (sex-based overtime policies); *Rosenfeld* v. *Southern Pacific Co.*, 444 F.2d 1219, 1225-1226 (9th Cir. 1971) (the exclusion of female employees from certain workplace tasks).

None of those cases addresses Title VII's provisions regarding religious discrimination, which require only

reasonable accommodations and do not mandate that employers grant employees' preferred accommodations. See *Ansonia Board of Education* v. *Philbrook*, 479 U.S. 60, 67-69 (1986). Title VII's provisions concerning racial and sexual discrimination impose materially different obligations on employers. See 42 U.S.C. 2000e-2(a), (e), (k). This case thus presents a unique question that arises in the context of alleged religious discrimination: namely, whether a state law that prohibits an employee's preferred religious accommodation, but creates room for other reasonable accommodations, directly conflicts with Title VII. The cases cited by petitioners holding that a state law conflicted directly with Title VII's provisions regarding racial and sexual discrimination do not address that issue.

Petitioners separately contend (Pet. 25-31) that the decision below conflicts with decisions from other courts of appeals involving federal antidiscrimination laws other than Title VII. But again, in each of those cases, the court of appeals concluded that the state law in question must conflict directly with the relevant federal statute to be preempted, and addressed a federal statute with substantive requirements different from Title VII's religious-discrimination provisions. See *Campbell* v. *Universal City Development Partners*, 72 F.4th 1245 (11th Cir. 2023) (Americans with Disabilities Act); *National Federation of the Blind* v. *Lamone*, 813 F.3d 494 (4th Cir. 2016) (same); *Mary Jo C.* v. *N.Y. State & Local Retirement System*, 707 F.3d 144 (2d Cir. 2013) (same); *Barber ex rel. Barber* v. *Colorado Department of Revenue*, 562 F.3d 1222 (10th Cir. 2009) (Rehabilitation Act); *Quinones* v. *City of Evanston*, 58 F.3d 275 (7th Cir. 1995) (Age Discrimination in Employment Act). Because none of those cases addressed the question whether the need to violate state law in order to grant a particular religious accommodation

created an "undue hardship" for purposes of Title VII, those cases do not create a conflict within the meaning of this Court's certiorari criteria. See Sup. Ct. R. 10.

b. As to the second question presented: petitioners argue (Pet. 32-41) that the decision below conflicts with decisions from this Court and other courts of appeals holding that Title VII preempts directly conflicting state laws. Again, because the Second Circuit did not address that issue here, the decision below does not conflict with petitioners' cited decisions, each of which simply applied ordinary rules of conflict preemption. See *California Federal Savings & Loan Association* v. *Guerra*, 479 U.S. 272, 281 (1987); *Bradshaw* v. *School Board of Broward County*, 486 F.3d 1205, 1211 (11th Cir. 2007); *Bridgeport Guardians, Inc.* v. *Delmonte*, 248 F.3d 66, 74 (2d Cir. 2001).

C. This Case Would Be A Poor Vehicle For Addressing The Questions Identified In The Petition

Even if this case did present the questions identified in the petition, this case would provide a remarkably poor vehicle for addressing them. As a threshold matter, the district court determined that petitioners did not exhaust their administrative remedies, and thus never received a right-to-sue letter from the EEOC, after the health-care respondents timely raised the issue in their motion to dismiss. See Pet. App. 53a-55a. Although the court of appeals did not address the exhaustion issue (and petitioners have been conspicuously silent about it here), petitioners' failure to exhaust requires dismissal of their claims. See *Fort Bend County* v. *Davis*, 587 U.S. 541, 551 (2019).

In addition, resolution of the questions presented in petitioners' favor would not fully resolve the merits of their Title VII claims. Separately from its decision on the question of whether New York Rule 2.61 creates an undue

hardship here, the district court determined that exempting petitioners from Rule 2.61 entirely "would expose vulnerable patients and nursing home residents, as well as other healthcare workers, to the COVID-19 virus, which is obviously a significant hardship." Pet. App. 55a-56a & n.28; accord *Melino* v. *Boston Medical Center*, 127 F.4th 391 (1st Cir. 2025); *Wise* v. *Children's Hospital Medical Center of Akron*, No. 24-3674, 2025 WL 1392209, at *4 (6th Cir. May 14, 2025). Accordingly, even if petitioners were to prevail on the questions identified in the petition, the result would merely be a remand for the court of appeals to consider whether the district court correctly dismissed petitioners' claims on that independent basis.

Finally, the state law at issue is no longer in effect. Rule 2.61 was repealed effective October 4, 2023, in response to changed conditions surrounding the COVID-19 pandemic, including the termination of the federal government's own vaccination requirements and of the national state of emergency. See Pet. App. 7a. Although the repeal did not moot petitioners' claims for damages against the health-care respondents, it significantly diminishes the importance of any decision by this Court.

Because there are independent bases to support the judgment below and the challenged state law has been repealed, any decision by this Court on the questions presented in the petition would have little practical effect. Given that this case does not actually present those questions, and that the decision below does not implicate any circuit conflict, further review is unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

JACQUELINE PHIPPS POLITO
ERIN M. TRAIN
LITTLER MENDELSON P.C.
375 Woodcliff Drive,
Suite 2D
Fairport, NY 14450

Counsel for Respondent
Trinity Health, Inc.

MICHAEL J. KEANE
MARC A. SITTENREICH
GARFUNKEL WILD, P.C.
111 Great Neck Road
Great Neck, NY 11021

Counsel for Respondent
Westchester Medical Center
Advanced Physician Services, P.C.

LIZA M. VELAZQUEZ
EMILY A. VANCE
KATHLEEN H. PIERRE
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019
(212) 373-3000
lvelazquez@paulweiss.com

ANNA M. STAPLETON
RUSSELL A.S. WIRTH
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
535 Mission Street, 25th Floor
San Francisco, CA 94105

Counsel for Respondent
New York-Presbyterian
Healthcare System, Inc.

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