No. 24-1015

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

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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REASONS FOR GRANTING THE PETITION

I. This case presents a unique vehicle to vindicate important federal interests and preclude States from ignoring the plain text of federal law.

This case is an ideal vehicle to address the questions presented because the state law and Title VII are in conflict. If not corrected, the Second Circuit's decision would allow any state to pass a law ordering employers, educational institutions, and businesses to violate federal law, be it Titles VI (race discrimination in education), VII (employment), IX (sex discrimination in education), the Americans with Disabilities Act – and the list goes on.

"Title VII requires that an employer reasonably accommodate an employee's practice of religion, not merely that it assess the reasonableness of a particular possible accommodation." *Groff v. DeJoy*, 600 U.S. 447, 472 (2023). State Respondents vaccination mandate explicitly excluded Petitioners from obtaining any accommodation under Title VII for their religious beliefs because it compelled strict compliance with the vaccination requirement. App. 23a ("Rule 2.61 did not include a religious exemption" to the vaccination requirement); App.11a ("granting their sole request for a religious exemption would have required Private Defendants to violate the *state regulation*" (emphasis added)). Specifically, the Second Circuit held that granting any accommodation that included exemption from the vaccine requirement—even though plainly compelled by Title

VII—was an undue hardship because "such an exemption would have violated [State law]." App.11a. Under the Second Circuit's formulation, employers are excused from the requirements of federal law if any state law compels them to act to the contrary.

If that stands, all federal law becomes subservient to state governors and legislators who think they have a better idea.

Consider the Americans with Disabilities Act: Assume New York passed a law that "required public accommodations to discriminate against those with a disability—say, to get a business license," *Campbell v. Universal City Dev. Partners, Ltd.*, 72 F.4th 1245, 1257 (11th Cir. 2023) (citing 42 U.S.C. §12201(b)), and "subjected [businesses] to financial penalties or a suspension or revocation of their operating license" for refusing to comply with State law. App.11a. Under the Second Circuit's decision below, businesses that discriminate against individuals in wheelchairs could not be sued under the ADA and would face no liability because state law imposed financial penalties and a potential revocation of their license for compliance with the ADA and violation of the contrary State law. App.11a. That cannot be right.

Or, consider race-based discrimination under Title VI of the Civil Rights Act, 42 U.S.C. §2000d. Federal law prohibits discriminating against individuals in public education because of their race. Assume New York passed a law that, as a condition of state accreditation and funding, colleges are required to limit admission of white male applicants to 25% of the

admitted class and charge them a 25% tuition enhancement to assist with the tuition payments of minority students. Assume further that the State law imposed financial penalties and revocation of accreditation on New York colleges that refused to comply. Such a state law would plainly subject white male applicants to discrimination on account of their race in violation of Title VI. *See Students for Fair Admissions, Inc. v. Presidents and Faculty of Harvard Coll.*, 600 U.S. 181, 218 (2023) ("our cases have stresses that an individual's race may never be used against him in the admissions process"). Under the Second Circuit's decision below, the threat of such penalties by operation of New York law would excuse a New York college's compliance with Title VI because it faced penalties under State law.

Consider Title IX that prohibits discrimination "on the basis of sex" with regards to participation and benefits of "any education program." 20 U.S.C. §1681(a). At the same time, Title IX permits recipients of federal funds to operate teams "for members of each sex," 34 C.F.R. §106.41(b), and allows institutions to "maintain[] separate living facilities for different sexes." 20 U.S.C. §1686. Assume New York passed a law requiring that all colleges, as a condition of accreditation and state funding, permit any male who desires to live in the female dormitory to do so and permit any male to play on the women's teams. And, as in prior examples, New York imposes significant penalties on the institution for failure to do so. This scenario is currently on certiorari before this Court. *Little v. Hecox*, No. 24-38 (cert granted July 3, 2025); *West Virginia v. B.P.J.*, No. 24-43 (cert

granted July 3, 2025). The Second Circuit's decision below would allow these colleges to follow state law that is inconsistent with federal law. App.11a.

As the Eleventh Circuit noted in *Campbell*, "[t]hat can't be right," 72 F.4th at 1257. The reason is simple: federal law does not bow to contrary state laws, "it works the other way around." *Barber ex rel. Barber v. Colorado Dep't of Revenue*, 562 F.3d 1222, 1234 (10th Cir. 2009) (Gorsuch, J., concurring). This Court should grant the Petition.

II. Hospital Respondents' attempt to reframe the Questions Presented obfuscates the fact that the Second Circuit permitted employers to violate Title VII on the basis of conflicting state law in direct conflict with this Court's precedents.

A. Hospital Respondents categorically denied all religious accommodation requests on the basis of state law.

Hospital Respondents suggest that they were not prohibited from granting *any* accommodation, only that Petitioners' requested exemption was not permissible. This word game ignores the record and their own written statements to Petitioners when denying relief. They suggest that the State rule was not a complete prohibition because individuals could receive accommodations to engage in remote work. Hospital Opposition 16. This is not true.

Hospital Respondents categorically prohibited any and all religious accommodations. Petitioner John Doe 2 is a Christian Scientist who had received religious exemption *and* accommodation from compulsory vaccination *for 10 years* prior to COVID-19 and received an accommodation from the COVID-19 vaccine prior to the State's mandate. App.143a. When John Doe 2 inquired of New York-Presbyterian whether his decades-old religious accommodation would continue, New York-Presbyterian told him: "*Religious exemptions are no longer accepted*." App.143a-144a (emphasis added).

Petitioner Jane Doe 1 was told: "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. (emphasis added).

Petitioner Jane Doe 2 was told that her request for an accommodation *would not even be considered* because of state law. App.145a-146a ("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*.).

Petitioner Jane Doe 3 submitted a religious accommodation request and was initially approved for such an accommodation, App.146a, but was later informed "NYS DOH will not permit exemptions or deferrals for sincerely held religious beliefs." App.146a.

B. Hospital Respondents ignore Title VII's express exemption and liability shield by claiming that it would have been undue hardship to accommodate Petitioners' accommodation requests.

Hospital Respondents suggest that, contrary to the decisions of this Court and the plain language of Title VII, they were not required to even consider religious accommodation requests because to do so would have exposed them to liability for violation of state law and thus been an undue hardship. Hospital Opp. 2. The problem for Hospital Respondents and the Second Circuit decision below is that Title VII provides an express exemption for exactly this concern. Title VII compels compliance with its nondiscrimination provisions, and *shields* employers who may be required to violate contrary state law to meet their Title VII obligations. Indeed, "[a] discriminatory state law is not a *defense* to liability under federal law; it is a *source* of liability under federal law." *Quionones v. City of Evanston*, 58 F.3d 275, 277 (7th Cir. 1995).

For those employers who find themselves in a purportedly precarious position at the hands of state officials who ignore the demands of federal law, Congress provided an explicit, textual exemption.

> Nothing in this subchapter shall be deemed to exempt or relieve any person of 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 the doing of an act which would be an unlawful employment practice under this subchapter*.

42 U.S.C. 2000e-7 (emphasis added). *E.g.*, *Williams v. Gen. Foods Corp.*, 492 F.2d 399, 401 (7th Cir. 1974) ("Title VII provides that employers are exempted from liability under state laws which require the doing of acts which constitute unlawful employment practices."). In other words, contrary to Hospital Respondents' contention, they never faced any threat of liability for violation of contrary state law because Title VII explicitly immunized them from any such threat.

III. State and Hospital Respondents' suggestion that Petitioners' erred by only requesting an exemption ignores Title VII's accommodation requirement and the fact that all accommodations are predicated on an exemption to the objectionable employment requirement.

Hospital Respondents suggest that it was only because Petitioners sought an exemption rather than some other accommodation that precluded their consideration of the request. Hospital Opp. 16. In addition to playing words games with Title VII's requirements, Hospital Respondents ignore that every accommodation provided to an employee under Title VII's commands is necessarily predicated upon an exemption from the employment requirement to which the religious employee objects. Petitioners informed their employers that they had a sincere

religious objection to an employment requirement (the vaccine mandate), which is all that Title VII requires. Once that objection was noted, Title VII places the burden on Hospital Respondents to consider and offer reasonable accommodations. *See EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 773-74 (2015).

Petitioners were not required to use "magic words" to request a religious accommodation, *Broderick v. Donaldson*, 437 F.3d 1226, 1232 (D.C. Cir. 2006). Indeed, "Title VII requires that an employer reasonably accommodate an employee's practice of religion, not merely that it assess the reasonableness of a particular possible accommodation or accommodations." *Groff v. DeJoy*, 600 U.S. 447, 473 (2023).

Groff was "an Evangelical Christian who believes for religious reasons that Sunday should be devoted to worship and rest, not secular labor and the 'transportation' of worldly goods." *Id.* at 454. When he was employed by the Postal Service, his original job did not require that he work on Sundays. *Id.* That changed after a few years, and Groff was told he would be required to work on Sundays. *Id.* In order to consider Groff's accommodation request and whether the Postal Service could grant it, Groff first had to be exempted from Sunday work. If that exemption from the Sunday work requirement was not granted, he would have no need of any accommodation.

Or, take *Abercrombie & Fitch*, where Abercrombie admitted that it "imposes a Look Policy that governs

its employees' dress," and that its Look Policy prohibited any employee from wearing "headgear." 575 U.S. at 770. The prospective employee was a practicing Muslim who was required by her religious convictions to wear a headscarf. *Id.* There were only two available options (*i.e.*, accommodations) in that scenario: (a) permitting an employee to practice her religion while being exempted from the "no headgear" policy, a result mandated by Title VII; or (b) enforcing a total prohibition on "headgear" and refusing to hire a prospective employee because her religion requires her to wear a headscarf. It was an "all or nothing" scenario. This Court held that Title VII gives religious practices "favored treatment, affirmatively obligating employers not to . . . discharge any individual because of such individual's religious observance and practice." *Id.* at 775 (cleaned up).

This Court held that Abercrombie violated Title VII by refusing to hire the prospective employee on the basis of her Muslim faith. *Id.* The necessary corollary of this Court's discussion concerning the accommodations for the "no headgear" policy is that the prospective employee must have been first exempted from the prohibition on wearing headgear and then accommodated by being permitted to wear her religious headgear during work hours. If the prospective employee was not exempted from the prohibition on wearing headgear during work hours, then she would have no need for any accommodation. The exemption and accommodation were inextricably intertwined. Title VII does not permit categorical denials of otherwise protected nondiscrimination characteristics.

Other times, the accommodation is not an all or nothing scenario, but rather requires an exemption to precede the available accommodation. Take, for example, the "no beard" policy at issue in the Fifth Circuit's decision in *Hebrew v. Texas Dep't of Crim. Justice*, 80 F.4th 717 (5th Cir. 2023). There, a member of the Hebrew Nation religion was terminated from his position for failure to shave his beard and cut his hair. *Id.* at 719. To shave his beard would have been a "violation of his religious vow." *Id.* The employee submitted a request for a religious accommodation, but he was ultimately terminated because of his refusal to comply with the "no-beard" policy. *Id.* The employee requested a religious accommodation on the basis of his religious vow to keep his hair and beard long. *Id.* at 720. The Fifth Circuit held that a refusal to extend an "exception for Hebrew" violated Title VII because this Court's "decision in *Groff* enables Americans of all faiths to earn a living without checking their religious beliefs and practices at the door." *Id.* at 725. Hebrew needed an exemption for the no beard policy before any available accommodations were even relevant. The Fifth Circuit noted that, notwithstanding the requirement that Hebrew be excepted from the policy, the employer must show that it "considered" "possible accommodations" and engaged in a thorough "examination of 'any and all' alternatives" to termination." *Id.* at 723.

A proper consideration of Petitioners' sincere religious beliefs necessarily means that they be exempted from the vaccination mandate, and once exempted, Respondents were required to then

consider reasonable accommodation options. But what Respondents cannot do is what they did here – categorically deny *all* requests that were based on religion. *See, e.g.*, *Horvath v. City of Leander*, 946 F.3d 787, 790-792 (5th Cir. 2020) (noting that employee was first granted an exemption to the flu vaccine requirement and then the accommodation offered was a transfer to a different position).

Hospital Respondents efforts to suggest a dichotomy between exemptions and accommodations is mere word play. All accommodations require the employee be excused (*i.e.*, exempted) from the religiously objectionable work requirement, and then possible accommodations be explored. Indeed, if Petitioners were not first excused from the COVID-19 vaccination requirement, what need would they have of any accommodation? If they complied with the Mandate and accepted the vaccine (*i.e.*, did not receive some exemption first), they would have been in compliance with the Mandate with no need of any accommodation. They had to be excused first. Respondents' suggestion to the contrary belies common sense and conflicts with this Court's precedents.

IV. State Respondents' callously indifferent suggestion that the Court should not review claims arising from their blatantly unconstitutional State laws because it was repealed ignores Petitioners' suffered actual damages under Title VII.

State Respondents, while admitting Petitioners seek review of only the Hospital Respondents' Title VII violations and not State Respondents, State Opp. 1, contend that this Court should not grant the Petition because the Court "should not . . . wade into stale issues about a bygone rule." State Opp. 14. In other words, State Respondents suggests this Court should not review the Petition because "it's too late." The State's callous indifference to the life-altering damage inflicted by Hospital Respondents' discriminatory and unlawful denial of Petitioners' religious accommodation request pours salt in the wounds suffered by Petitioners here, and ignores the fact that Petitioners have claims for damages that merit careful consideration. App.117a (praying for "damages for adverse employment action resulting in lost wages and other compensatory damages"). Thus, Petitioners' questions before this Court and their claims against Hospital Respondents remain alive and well. *Genesis Healthcare Corp. v. Symcyzk*, 569 U.S. 66, 77 (2013) ("a claim for damages . . . remains live until it is settled [or] judicially resolved"). As such, the State's contentions are irrelevant and offensive to the health care workers who worked tirelessly to protect the public.

Hospital Respondents wrongly contend that the case is a "remarkably poor vehicle" to address Petitioners' life-altering injuries because Petitioners purportedly did not exhaust their administrative remedies. Hospital Opp. 17. First, Petitioners' timely filed charges of discrimination with the EEOC, R.2161-2162, though the EEOC never acted upon those requests. Because of the EEOC's failure to timely act, Petitioners' claims ripened after 180 days automatically. 42 U.S.C. §2000e-5(f)(1). *See also Occidental Life Ins. Co. of Cal. v. EEOC*, 432 U.S. 355, 361 (1977). Moreover, Petitioners were not required to wait to file their claims in the first instance because a Title VII plaintiff has the right to resort to an Article III court's incidental equity jurisdiction to preserve the status quo while seeking to satisfy the exhaustion requirement. *See, e.g.*, *Sheehan v. Purolator Courier Corp.*, 676 F.2d 877, 844 (2d Cir. 1981). Petitioners exhausted every remedy they could and sought equitable relief prior to being fired. Though they did not secure that injunctive relief, it did not preclude adjudication of their claims.

This case presents an ideal vehicle to address the Second Circuit's decision allowing employers to disregard binding federal law by relying on a contrary state law. The implications are staggering. If unchecked, this decision will allow states to pass laws that force employers, educational institutions, and businesses to violate applicable federal laws.

CONCLUSION

For the foregoing reasons, and for those outlined in the Petition, the Court should grant the Petition.

Respectfully submitted,

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