24-319

IN THE

Supreme Court of the United States

ROMAN CATHOLIC DIOCESE OF ALBANY, ET AL.,
Petitioners,

v.

ADRIENNE A. HARRIS, SUPERINTENDENT, NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES; NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
Respondents.

On Petition for a Writ of Certiorari to the New York State Court of Appeals

PETITIONERS' SUPPLEMENTAL BRIEF IN SUPPORT OF CERTIORARI IN LIGHT OF *CATHOLIC CHARITIES BUREAU, INC. V. WISCONSIN LABOR & INDUS. REV. COMM'N*

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INTRODUCTION

This Court's unanimous ruling in *Catholic Charities Bureau, Inc.* v. *Wisconsin Labor & Industry Review Commission*, 605 U.S. ----, 2025 WL 1583299 (June 5, 2025), controls the initial question presented in this matter. Unless the Court wishes to grant the petition for other reasons, summary reversal is warranted. Granting the petition to vacate the decision below for a second time and remanding for yet further consideration would needlessly prolong this matter, imposing significant burdens on Petitioners and other religious organizations.

ARGUMENT

In *Catholic Charities*, the Court re-emphasized that "[t]he First Amendment mandates government neutrality between religions and subjects any state-sponsored denominational preference to strict scrutiny." *Catholic Charities Bureau*, 2025 WL 1583299, at *2. A "denominational preference" results whenever a law "explicitly differentiat[es] between religions based on theological practices," including decisions "whether to proselytize or serve only co-religionists." *Id.* at *7. "A statute that excludes religious organizations from an accommodation on such grounds facially favors some denominations over others." *Id.* at *8.

It is undisputed that the New York law at issue differentiates in precisely that manner. It expressly requires New York employers to provide employee insurance coverage for medical abortions unless the employer is a "[r]eligious employer" for which all the following are true:

> (1) The inculcation of religious values is the purpose of the entity.
>
> (2) The entity primarily employs persons who share the religious tenets of the entity.
>
> (3) The entity serves primarily persons who share the religious tenets of the entity.
>
> (4) The entity is a [tax-exempt] nonprofit organization * * * .

Pet.App.176a; N.Y. Comp. Codes R. & Regs. tit. 11, § 52.2(y).

As a result, just as in *Catholic Charities*, New York exempts from its mandate religious organizations that proselytize and that hire and serve primarily co-religionists, while imposing its mandate on religious organizations like Petitioners who have made theological decisions to serve people of all faiths without seeking to proselytize. As Petitioners have consistently maintained, *see* Pet.28-31, this violates the Constitution's "fundamental" requirement of "neutrality between religion and religion" by "distinguish[ing] among religions based on theological differences in their provision of services," thus triggering "the highest level of judicial scrutiny." *Catholic Charities*, 2025 WL 1583299, at *9. Because New York has never attempted to meet its evidentiary burden to prove that its religious discrimination could satisfy strict scrutiny, *see* Pet.33, its refusal to accommodate Petitioners "must be invalidated." *Catholic Charities*, 2025 WL 1583299, at *8.

Absent a plenary grant, summary reversal is warranted. This case was filed in 2016—more than nine years ago—and it is back before this Court a second time after a previous grant, reversal, and remand in light of *Fulton* v. *City of Philadelphia*, 593 U.S. 522 (2021), which clarified the role exemptions play in triggering strict scrutiny. *See Roman Catholic Diocese of Albany* v. *Emami*, 142 S. Ct. 421 (2021).

On remand, the New York courts insisted that nothing had changed. The New York Appellate Division unanimously concluded it was still bound by a pre-*Fulton* New York Court of Appeals ruling in *Catholic Charities of Diocese of Albany* v. *Serio*, 859 N.E.2d 459 (N.Y. Ct. App. 2006). *Serio*—which involved a New York state contraception mandate with a religious exemption identical to this one—held that favoring religious organizations that proselytize and that primarily hire and serve co-religionists was neutral and generally applicable under *Smith* because the narrow religious exemption did not disfavor religion as a whole. 859 N.E.2d at 464. Notwithstanding this Court's contrary guidance in *Fulton* regarding the effect of exemptions on general applicability, the Appellate Division continued to apply *Serio*. *Roman Catholic Diocese of Albany* v. *Vullo*, 206 A.D.3d 1074, 1076 (N.Y. App. Div. 2022).

Two years later, the Court of Appeals affirmed that decision, holding that *Fulton* did not apply because Petitioners could "not point to any *secular* employers who [were] exempt from complying with the mandate" and "the Supreme Court's remand order does not ask or authorize us to innovate." *Roman Catholic Diocese of Albany* v. *Vullo*, 218 N.Y.S.3d 263, 275 (N.Y. 2024) (emphasis added).

Now, four years after their first petition for certiorari, the narrow legal issue remaining in this case—the proper level of scrutiny to be applied to the State's abortion mandate—is overripe for this Court's decision. Nothing remains for lower courts to resolve. Petitioners ought not be sent back to those same courts for yet another round.

Moreover, merely remanding in this context would impose significant, intrusive, and unnecessary costs on Petitioners, which would unjustly burden their religious exercise. *See NLRB* v. *Catholic Bishop*, 440 U.S. 490, 502 (1979) (it is "not only the conclusions" reached in litigation, but "the very process" that "may impinge on rights guaranteed by the Religion Clauses").

Petitioners are religious ministries that have limited resources and time to focus on their religious missions. For almost a decade now, New York's facially unconstitutional religious discrimination has diverted them from worshipping, teaching, and serving within their faith traditions. Being "force[d] * * * to defend themselves on matters of internal governance is itself a tax on religious liberty." *See McRaney* v. *North Am. Mission Bd.*, 980 F.3d 1066, 1074 (5th Cir. 2020) (Ho, J., joined by Jones, Smith, Elrod, Willett, and Duncan, JJ., dissenting from denial of rehearing en banc); *see also* Amicus Br. of Dr. Lael Weinberger, *O'Connell* v. *United States Conf. of Catholic Bishops*, No. 23-7173 (D.C. Cir. filed Sept. 13, 2024), https://perma.cc/7VCZ-LYGJ (detailing constitutional injuries inflicted through the process of litigation). Yet more unnecessary litigation over sensitive matters of internal religious governance fails to honor the "scrupulous policy of the Constitution in

guarding against a political interference with religious affairs." *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC*, 565 U.S. 171, 184 (2012) (quoting Letter from James Madison to Bishop Carroll (Nov. 20, 1806), reprinted in 20 Records of the American Catholic Historical Society 63, 63-64 (1909)).

CONCLUSION

The Court should grant the petition and summarily reverse the decision below.

JUNE 6, 2025

Respectfully submitted,

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