No. 24-996

IN THE

Supreme Court of the United States

TAMMY M. HARVEY, *et al.*,

Petitioners,

v.

BAYHEALTH MEDICAL CENTER, INC.,

Respondent.

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

BRIEF IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT

Respondent Bayhealth Medical Center, Inc.'s parent corporation is Bayhealth, Inc. No publicly-held company owns 10% or more of Bayhealth Medical Center, Inc.'s stock.

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REASONS FOR DENYING THE PETITION

This Court should deny the employees' petition because it presents no compelling reason to grant review. S. Ct. R. 10. This is for at least four reasons.

First, the employees neither preserved their issue for this Court's review nor did the court of appeals or district court address it. The employees challenge the Third Circuit's use of the words "blanket privilege" in *Africa v. Commonwealth of Pennsylvania*, 662 F.2d 1025, 1031 (3d Cir. 1981), *cert. denied*, 456 U.S. 908 (1982). Pet. i, 17-18. But they did not make that challenge before either court in these proceedings. And neither undertook the exercise. If this Court grants review, it will be the first to decide the employees' question in this case.

Second, this is the wrong case for the Court to decide either the employees' "blanket privilege" issue or any weighty religious question. The Third Circuit issued a concise, non-precedential, fact-bound decision tailored to this dispute. It applied settled legal principles to the facts. The court ventured no further. The court mentioned "blanket privilege" only in passing and *dictum*.

Third, the employees' desire for this Court to rewrite *Africa* is not significant enough to merit the Court's attention. *Africa*'s use of "blanket privilege" is just shorthand for a line in *Wisconsin v. Yoder*, 406 U.S. 205 (1972). The court of appeals' jargon tracks *Yoder*; it does not depart from it. This has caused no controversy among either the Third Circuit's judges or the other courts of appeals.

Fourth, this Court does not need to step in to resolve a circuit split. All courts of appeals routinely apply *Yoder* and this Court's other decisions. Any conflicts among judicial decisions that may appear on the surface are merely the product of factual variances. Different facts produce different outcomes—especially in this setting, which involves the "delicate question" of individual religious beliefs. *Yoder*, 406 U.S. at 215.

For these reasons, detailed below, the Court should deny the petition.

A. The question presented was neither preserved for appellate review nor adequately addressed below.

The Court should deny review for threshold reasons. The employees waived their issue, and it was insufficiently addressed below. *See Clingman v. Beaver*, 544 U.S. 581, 598 (2005) ("[w]e ordinarily do not consider claims neither raised nor decided below"). The following recitation shows why.

Before the district court, the employees did not challenge *Africa*'s use of the term "blanket privilege." They did not ask the district court to resolve any challenge to that language. They instead accepted it as setting the standard. *See*, *e.g.*, App.45a ("Plaintiff's counsel argued that whether a belief amounted to a 'blanket privilege' presents an issue of sincerity that should be reserved for a jury."). The district court also never questioned the "blanket privilege" language on its own. It applied that and the Third Circuit's other guidance. *Id.*

The employees did not question the term "blanket privilege" before the Third Circuit, either. They did not ask that court to revise that aspect of *Africa* or anything else in that opinion. They instead embraced the concept, arguing that the district court misapplied it to the facts here. *See*, *e.g.*, Appellants' Brief, filed Apr. 22, 2024, at 49 (3d Cir. No. 24-1157) (arguing that, in the employees' cases, "there is no request for a blanket privilege of the type granted" in *Africa*). The Third Circuit certainly never understood the employees as making that challenge, as it never considered the question. The court only mentioned "blanket privilege" in a parenthetical and then in *dictum*. App.4a, 9a. The dissenting judge never referenced it at all. App.10a-16a.

The employees thus ask this Court to review a question they did not preserve for appellate review, the parties did not brief, and the trial and intermediate appellate courts never addressed. If this Court were to grant review, it would consider the issue on a clean slate, without the benefit of earlier study. The Court should decline to do so for that reason. *See Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 551 n.3 (1990) ("Applying our analysis . . . to the facts of a particular case without the benefit of a full record or lower court determinations is not a sensible exercise of this Court's discretion.").

B. The non-precedential, fact-bound court of appeals decision is unfit for this Court's review.

The Court also should deny review because this case is an inappropriate vehicle to decide the issue presented.

The Third Circuit's concise decision is not precedential.[1] App.3a n.*. Its recitation of law consists of a straightforward discussion of precedent, including this Court's decisions in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), and *United States v. Seeger*, 380 U.S. 163 (1965), and the Third Circuit's decisions in *Africa* and *Fallon v. Mercy Catholic Medical Center*, 877 F.3d 487 (3d Cir. 2017). App.4a-5a. The court applied the law to the facts, basing its decision exclusively on an examination of the specific circumstances here. App.6a-8a & nn.3-5.

The Third Circuit upheld the district court—but was quick to point out that other cases presenting different facts can result in different outcomes. As the court noted, the same district court allowed eleven other lawsuits by Bayhealth employees to proceed. App.9a-10a n.7. In those cases, the employees' claims were deemed more substantial, including because they were rooted in religious objections to abortion. *Id.* The court of appeals thus appropriately recognized that cases in this area are nuanced and acutely fact-sensitive.[2]

What is more, the Third Circuit mentioned "blanket privilege" in *dictum*. The court held the employees failed to plausibly allege a sufficient nexus between their beliefs and their objections to inoculation. App.7a-8a. After that, the court noted—but only in "moreover" fashion—that permitting plaintiffs to broadly invoke overarching beliefs lacking a direct connection to objected-to employment

1. The employees incorrectly suggest the opposite in claiming the panel decision "has not yet been published." Pet. 1.

2. For instance, as *Fallon* noted, Christian Scientists regularly qualify for vaccine exemptions. 877 F.3d at 493 n.26.

terms creates a "blanket privilege" concern. App.8a-9a. This comment was *dictum*. It was not essential to the court's holding or core reasoning. *See In re McDonald*, 205 F.3d 606, 612 (3d Cir. 2000) (explaining that *dictum* is a judicial statement that could have been deleted without seriously impairing the holding's analytical foundations). This Court does not review *dictum*. *See California v. Rooney*, 483 U.S. 307, 311 (1987) ("This Court reviews judgments, not statements in opinions." (citation and internal quotation marks omitted)).

In short, the Third Circuit's brief decision here is not precedential, is tightly fact-bound, and the employees challenge only *dictum*. This case simply is not a good vehicle to decide the question presented.

C. This Court need not grant review to fine-tune a single court of appeals decision.

The employees' challenge to *Africa*'s "blanket privilege" comment is not worth this Court's review anyway. It is essentially just a request for correction of a turn of phrase by one court of appeals describing one precedent of this Court.

In *Africa*, a prisoner filed a civil rights action against a state, arguing it had to provide him with a special diet because of his religious beliefs. 662 F.2d at 1025-26. The Third Circuit thus had to decide, based on "the particular facts," if the inmate's beliefs constituted a religion under the First Amendment. *Id.* at 1026. As the court explained, few tasks "require more circumspection" than "determining whether a particular set of ideas constitutes a religion." *Id.* at 1031. Given judges are "ill-equipped to

examine the breadth and content of an avowed religion," they "must avoid any predisposition toward conventional religions so that unfamiliar faiths are not branded mere secular beliefs." *Id.* But when an individual seeks to "shield himself or herself from otherwise legitimate state regulation, [courts] are required to make such uneasy differentiations." *Id.* The court said this next:

> In considering this appeal, then, we acknowledge that a determination whether [the organization's] beliefs are religious and entitled to constitutional protection "present[s] a most delicate question"; at the same time, we recognize that "the very concept of ordered liberty precludes allowing" [the inmate], or any other person, a blanket privilege "to make his own standards on matters of conduct in which society as a whole has important interests." *Wisconsin v. Yoder*, 406 U.S. 205, 215-16 (1972).

Id. (emphasis added). That is the only time the words "blanket privilege" appear in *Africa*. As the above passage indicates, the Third Circuit was channeling this sentence in *Yoder*:

> Although a determination of what is a "religious" belief or practice entitled to constitutional protection may present a most delicate question, the very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests.

406 U.S. at 215-16 (footnote omitted). *Africa* thus used "blanket privilege" to restate what this Court said in *Yoder*. *See* Pet. 20 (quoting same *Yoder* passage), 22 (admitting "the *Africa* court borrows language from *Yoder*"). In *Yoder*, this Court said that courts must strike a "delicate" balance. On one hand, legitimate religious beliefs deserve protection. On the other, society cannot function if everyone makes up their own rules. *Africa* says the same thing.

Africa pays close attention to this Court's other precedents, too. It follows *Seeger* and the two cases cited in *Yoder*'s footnote to the above passage: *Welsh v. United States*, 398 U.S. 333 (1970); and *United States v. Ballard*, 322 U.S. 78 (1944). 662 F.2d at 1030 & n.8, 1031, 1032, 1033 n.15, 1034; 406 U.S. at 215 n.6. The Third Circuit also considered the Founders' perspective. 662 F.3d at 1030 n.7 (quoting Jefferson). The *Africa* opinion, by Judge Arlin Adams, is commendable for its scholarship. The same careful focus on this Court's precedents holds true of the Third Circuit's other decisions, including *Fallon*. It arose in the context of a hospital's flu vaccine policy for employees. 877 F.3d 487.

No jurist serving on the Third Circuit in the four-plus decades since *Africa* was decided appears to have challenged or even questioned it.[3] This includes the dissenting judge here. He never even mentioned it. He

3. The Third Circuit instead applies *Africa* as a matter of course, including in circumstances like those here. *See*, *e.g.*, *Kennedy v. Pei-Genesis*, 2025 WL 602159 (3d Cir. 2025) (applying *Africa* in employment dispute over COVID-19 vaccination); *Brown v. Children's Hosp. of Phila.*, 794 Fed. Appx. 226 (3d Cir. 2020) (applying *Africa* in employment dispute over flu vaccination).

cited *Fallon*, but treated it as settled circuit precedent. App.12a, 15a n.2. To be sure, the dissenting judge did suggest—in a footnote—that the legal definition of religion could benefit from further evaluation "in a suitable case." App.13a n.1. Perhaps a future case will be an appropriate vehicle for that kind of assessment. But this is not that case.[4]

In a nutshell, the petition asks for this Court's evaluation of a 44-year-old shorthand description of one sentence in *Yoder*, nothing more. Fine-tuning a decades-old court of appeals opinion is not a good reason for review. Even if the Third Circuit did misapply *Yoder* way back when, that still is not a good reason to grant certiorari. *See* S. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law."). And if the employees' issue is really with how district courts within the Third Circuit have been applying *Africa*, Pet. 24-26, then there is even less reason for review here. This Court does not error-correct district courts. That function belongs to the courts of appeals.

D. There is no broad circuit split for this Court to resolve.

The petition does not warrant review because it is a Third Circuit-specific challenge. And while the employees

4. The employees' claims arose in the midst of the COVID-19 pandemic. The employer, Bayhealth, is comprised of hospitals, emergency departments, urgent care centers, physician practices, and other facilities. In 2021, the federal and state governments required all health care employees to be vaccinated against COVID-19, submit to regular testing, or seek exemption. App.35a.

do try to draw other circuits into the mix, the gambit fails, as there is no widespread circuit split this Court needs to resolve.

To begin, no judge of the Third Circuit (including the dissenting judge in this case) has argued that its approach materially differs from that of any other court. Nor have other courts of appeals suggested there is a circuit split. None of them have even mildly criticized *Africa* for its "blanket privilege" shorthand.

On the contrary, the other-circuit cases the employees cite are consistent with the Third Circuit's. They, too, apply *Yoder* and this Court's other key cases. *See*, *e.g.*, *Barnett v. Inova Health Care Servs.*, 125 F.4th 465, 470 (4th Cir. 2025) (citing and quoting *Seeger*); *DeVore v. Univ. of Kentucky Bd. of Trs.*, 118 F.4th 839, 845 (6th Cir. 2024) (quoting, citing, and relying on *Yoder*, *Welsh*, and *Seeger*), *cert. denied*, 2025 WL 1020384 (2025); *Ringhofer v. Mayo Clinic*, 102 F.4th 894, 900 (8th Cir. 2024) (quoting *Yoder*); *Passarella v. Aspirus, Inc.*, 108 F.4th 1005, 1010-11 (7th Cir. 2024) (quoting *Welsh* and *Seeger*). Like the Third Circuit, those courts have developed tests as they apply this Court's guidance. *See*, *e.g.*, *Barnett*, 125 F.4th at 470; *DeVore*, 118 F.4th at 845-46; *Sturgill v. American Red Cross*, 114 F.4th 803, 808 (6th Cir. 2024); *Bazinet v. Beth Isreal Lahey Health, Inc.*, 113 F.4th 9, 15 (1st Cir. 2024); *Passarella*, 108 F.4th at 1009; *Ringhofer*, 102 F.4th at 900. There may be some modest semantic variances among these tests. But that is a matter of parlance, not substance. It is not outcome-determinative in cases like this one.

That reasonable courts and judges may reach differing results after reviewing the same set of refined facts does

not change this. After all, courts are deciding a "most delicate question." *Yoder*, 406 U.S. at 215. Reasonable judges can see the same facts differently. This does not suggest a problem with any test that this Court needs to fix. It is just a matter of differing perspectives and good faith judicial efforts to apply settled, neutral standards to fine-grained facts.

These minute differences show why the other-circuit cases were decided as they were. Those cases involved detailed facts showing how the employees' objections to inoculation were based on specific aspects of their religious beliefs—including about abortion. *See*, *e.g.*, *Bazinet*, 113 F.4th at 16 (employee "grounded her objection to taking the vaccine in a religious belief connecting the COVID-19 vaccine to opposition to abortion"); *Ringhofer*, 102 F.4th at 901 (employee stated her "religious beliefs prevent her from putting into her body the Covid-19 vaccines . . . because they were all produced with or tested with cells from aborted human babies"); *see also Lucky v. Landmark Med. of Michigan, P.C.*, 103 F.4th 1241, 1243 (6th Cir. 2024) (employee pleaded that "God spoke to [her] in her prayers and directed her that it would be wrong to receive the COVID-19 vaccine"). Those decisions dovetail neatly with the district court decisions mentioned above allowing other Bayhealth employees' claims to proceed. App.9a-10a n.7.

Here, by contrast, the employees' allegations were vague and often personal, secular, or medical. App.7a n.4, 8a n.5; *see* Pet. 6 (employees' admission that "some requests were more eloquently stated than others"). The district court and Third Circuit reasonably found them insufficient under settled standards. *See also DeVore*, 118

F.4th at 846-47 (holding employee's similar claim failed), *cert. denied*, 2025 WL 1020384 (2025). This case thus does not present a circuit split. All we have here are courts and judges doing their level best to apply *Yoder*'s "delicate" balance to particularized sets of facts. 406 U.S. at 215.

CONCLUSION

For these reasons, the Court should deny the employees' petition.

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