

No. _____

In the Supreme Court of the United States

TARA NIKOLAO,

Petitioner,

v.

NICK LYON, individually and in his official capacity as
Director of the Michigan Department of Health and
Human Services, *et al.*,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The State of Michigan provides a statutory exemption, in the form of a waiver, to otherwise mandatory vaccination requirements for parents who object on religious or other grounds to vaccinating their school-age children. In December 2014, a new administrative rule was implemented in Michigan that requires parents seeking a waiver to attend a mandatory meeting with government health care workers. The Michigan Department of Health and Human Services (“MDHHS”) encourages state employees to use a government-created document (“Religious Waiver Note”) to respond to religious objections during these mandatory meetings. This Religious Waiver Note provides information (and misinformation) regarding specific religions. It includes a statement wrongly purporting to be from the Pope of the Roman Catholic Church condemning parents who refuse to inject their children with vaccines derived from aborted fetal cells. Government employees are encouraged to use the Religious Waiver Note to instruct objecting parents that their religious beliefs are wrong or are contrary to the teachings of their church.

The questions presented are:

- (1) Does the Establishment Clause prohibit the government from forcing a citizen to endure a religious inquisition and religious instruction from government employees in order to exercise a statutory right; and
- (2) Must a citizen submit to government coercion by changing her religious beliefs, or by acting contrary to those beliefs, in order to establish injury-in-fact under

the Free Exercise Clause, or is it enough that the government compels her to do so by subjecting her to religious instruction and interrogation.

PARTIES TO THE PROCEEDING

The Petitioner is Tara Nikolao.

The Respondents are Nick Lyon, individually and in his official capacity as Director of the Michigan Department of Health and Human Services; Wayne County Department of Health, Veterans, and Community Wellness, Dr. Mouhand Hammami, individually and in his official capacity as Director of the Wayne County Department of Health, Veterans, and Community Wellness, and Carol Austerberry, individually and in her official capacity as Division Director and Deputy Health Officer of the Wayne County Department of Health, Veterans, and Community Wellness, collectively referred to as Respondents.

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	iii
TABLE OF AUTHORITIES	vii
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS	2
INTRODUCTION	2
STATEMENT OF THE CASE	2
I. Factual Background	2
II. District Court Proceedings	5
III. Sixth Circuit Decision	5
REASONS FOR GRANTING THE WRIT	7
I. THE SIXTH CIRCUIT'S OPINION MISAPPLIES CRITICAL SUPREME COURT PRECEDENT REGARDING THE FIRST AMENDMENT'S ESTABLISHMENT CLAUSE CAUSING GREAT PERIL TO FUNDAMENTAL RELIGIOUS LIBERTY ..	8
A. The Religious Waiver Note Lacks A Valid Secular Purpose	9
B. The Primary Effect Of The Religious Waiver Note Is To Inhibit Certain Religious Beliefs	12

C. The Religious Waiver Note Creates Excessive Entanglement With Religion .	14
II. THE SIXTH CIRCUIT WRONGLY REQUIRES A PLAINTIFF TO CHANGE HIS OR HER RELIGIOUS BELIEFS, OR SUCCUMB TO GOVERNMENT PRESSURE IN ORDER TO DEMONSTRATE INJURY-IN-FACT FOR STANDING PURPOSES UNDER THE FREE EXERCISE CLAUSE .	16
III. THIS CASE IS A CLEAN VEHICLE TO RESOLVE PURELY LEGAL ISSUES OF FUNDAMENTAL CONSTITUTIONAL IMPORTANCE	19
CONCLUSION	20
APPENDIX	
Appendix A Opinion and Judgment in the United States Court of Appeals for the Sixth Circuit (November 7, 2017)	App. 1
Appendix B Amended Judgment in the United States District Court Eastern District of Michigan, Southern Division (December 28, 2017)	App. 21
Appendix C Opinion and Order Granting in Part and Denying in Part Defendants' Motions to Dismiss in the United States District Court Eastern District of Michigan, Southern Division (February 23, 2017)	App. 24

Appendix D	Judgment in the United States District Court Eastern District of Michigan, Southern Division (February 23, 2017)	App. 48
Appendix E	Order Denying Petition for Rehearing and Petition for Rehearing En Banc in the United States Court of Appeals for the Sixth Circuit (December 14, 2017)	App. 50
Appendix F	Mandate in the United States Court of Appeals for the Sixth Circuit (December 22, 2017)	App. 52
Appendix G	Complaint in the United States District Court for the Eastern District of Michigan (July 7, 2016)	App. 54
	Exhibit B: MDHHS document on Religion	App. 76

TABLE OF AUTHORITIES

CASES

<i>Agostini v. Felton</i> , 521 U.S. 203 (1997)	13
<i>County of Allegheny v. ACLU</i> , 492 U.S. 573 (1989)	13
<i>Engel v. Vitale</i> , 370 U.S. 421 (1962)	15, 17
<i>Epperson v. Arkansas</i> , 393 U.S. 97 (1968)	9
<i>Lee v. Weisman</i> , 505 U.S. 577 (1992)	<i>passim</i>
<i>Lemon v. Kurtzman</i> , 403 U.S. 602 (1971)	8, 12, 13, 15
<i>Lynch v. Donnelly</i> , 465 U.S. 668 (1984)	11, 12
<i>Lyng v. Nw. Indian Cemetery Protection Ass'n</i> , 485 U.S. 439 (1988)	18
<i>McCreary County v. ACLU</i> , 545 U.S. 844 (2005)	8
<i>Sch. Dist of Abington Twp v. Schempp</i> , 374 U.S. 203 (1963)	7, 10, 11, 18
<i>Sch. Dist. of Grand Rapids v. Ball</i> , 473 U.S. 373 (1985)	13, 14
<i>Sherbert v. Verner</i> , 374 U.S. 398 (1968)	18, 19

<i>Thomas v. Review Bd. of Ind. Employment Sec. Div.</i> , 450 U.S. 707 (1981)	15, 18, 19
<i>Trinity Lutheran Church of Columbia, Inc. v. Comer</i> , 137 S. Ct. 2012 (2017)	19
<i>Wallace v. Jaffree</i> , 472 U.S. 38 (1985)	9, 13
<i>Walz v. Tax Comm. Of New York</i> , 397 U.S. 664 (1970)	8

CONSTITUTION, STATUTES, AND RULES

U.S. Const. amend. I	<i>passim</i>
28 U.S.C. § 1254(1)	1
28 U.S.C. § 1291	1
Fed. R. Civ. P. 12(b)(6)	1, 5, 19
Mich. Admin. Code R. 325.176(12)	3
Mich. Comp. Laws § 333.9205	2
Mich. Comp. Laws § 333.9215(2)	2

PETITION FOR WRIT OF CERTIORARI

Petitioner Tara Nikolao respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit (App. 1-18) is reported at 875 F.3d 310 (6th Cir. 2017). The opinion of the district court granting Respondents' motions to dismiss Petitioner's federal claims pursuant to Fed. R. Civ. P. 12(b)(6) and declining to exercise supplemental jurisdiction over Petitioner's state law claims (App. 24-47) is reported at 238 F. Supp.3d 964 (E.D. Mich 2017).

JURISDICTION

The United States Court of Appeals for the Sixth Circuit entered judgment on November 7, 2017. App. 19-20. It had jurisdiction over the final judgment of the district court pursuant to 28 U.S.C. § 1291. The timely petition for rehearing or rehearing *en banc* was denied by the Sixth Circuit on December 14, 2017. App. 50-51. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

The First Amendment provides in pertinent part:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. I.

INTRODUCTION

Petitioner's case presents a serious and pressing threat to religious liberty that demands this Court's immediate attention. The State of Michigan provides a written guide to government employees showing them how to use religion to bend religious adherents to the will of the state. App. 77-88. The Sixth Circuit's faulty interpretation of the Free Exercise and Establishment Clauses of the First Amendment allows the government to create religious dogma falsely attributed to religious leaders as a means to manipulate and coerce faithful citizens to reject their own beliefs and to comply with the state's agenda.

STATEMENT OF THE CASE

I. Factual Background

The State of Michigan generally requires school-age children to be vaccinated before they can partake in public education, but it provides a statutory exemption that allows parents to refuse vaccinations for their children on religious or other grounds. Mich. Comp. Laws §§ 333.9205; 333.9215(2). In December 2014, the

Joint Committee on Administrative Rules, a small committee comprised of five state representatives and five state senators in the Michigan legislature, passed a rule requiring parents who wish to receive an exemption for non-medical reasons to visit a public health department to discuss their objections to vaccinations with a local health worker. Mich. Admin. Code R. 325.176(12). The health worker must certify that the parent “received education on the risks of not receiving the vaccines being waived and the health benefits of vaccination to the individual and the community.” *Id.* To use in this process, Michigan Department of Health and Human Services (“MDHHS”) created and published a document that was provided to local health departments, including Respondent Wayne County Department of Health, Veterans, and Community Wellness (“WCDH”) entitled Waiver Education: Religion (“Religious Waiver Note”). App. 77-88. Health care workers are instructed to use this document to respond to common objections, including religious objections, from parents seeking exemptions to the state’s vaccination requirements. App. 62-63, ¶¶ 26, 33.

As alleged in Petitioner’s complaint, this Religious Waiver Note contains misrepresentations about religious beliefs and religious teachings related to vaccines. App. 62, ¶¶ 26-33. Petitioner is a nurse, mother, and devout Catholic who sought to obtain an exemption from the vaccine requirement because of her sincerely held religious objections, as she had done approximately ten times in the past, prior to the December 14 certification rule. App. 64, ¶¶ 38-39. She traveled to her local health department where employees of WCDH used the Religious Waiver Note

created by MDHHS to inquire into Petitioner's religious beliefs and to argue that Petitioner should change her religious beliefs. *Id.* at ¶¶ 41-43. These government employees, identified as Jane Doe 1 and Jane Doe 2 in Petitioner's complaint, argued that Petitioner should change her beliefs because the "State's got documentation that a lot of the religions are now going for the vaccines" and "there are no religions that have objections to vaccines." App. 65, ¶¶ 45, 51. The government employees informed Petitioner that if she wanted to receive the religious waiver to exempt her children from the vaccine requirement, she needed to declare what religion she practices, explain her religious beliefs, and engage in a religious debate concerning her beliefs and practices. *Id.* at ¶ 51. Petitioner was given the Religious Waiver Note in an effort to convince her to change her religious beliefs so that she would submit to the state's vaccination demands for her children, rather than continue to conscientiously object as was her right under state law. App. 64-66, ¶¶ 41, 52.

As a devout Catholic, Petitioner was especially troubled by the following false statement contained in the Religious Waiver Note: "In 2005, Pope Benedict XVI addressed [vaccines made from aborted fetal cells]. It was determined that parents who chose not to give vaccines derived from these cells would be in 'more proximate cooperation with evil' than those who gave their children the vaccines in question because of the life-saving nature of vaccines." App. 62, ¶ 28; App. 83. Pope Benedict XVI never uttered or wrote the phrase that parents would be in "more proximate cooperation with evil," or any similar statement regarding vaccines. App. 62, ¶ 29. As a Roman Catholic, Petitioner believes

that the Pope, as the Vicar of Christ, “has full, supreme, and universal power over the whole Church, a power which he can always exercise unhindered.” App. 66, ¶ 53. Despite compulsion from government employees spawned by Respondents’ Religious Waiver Note and the religious statements contained therein, Petitioner did not forsake her religious beliefs and convictions. *Id.* at ¶ 55. She was ultimately allowed an exemption to the state vaccination requirement, but it was not classified as a religious exemption. *Id.*

II. District Court Proceedings

Petitioner filed her complaint alleging Respondents violated her rights under the Free Exercise Clause and the Establishment Clause of the First Amendment, and violated her rights under Michigan law. App. 55-75. She sought injunctive and declaratory relief along with nominal damages. The U.S. District Court for the Eastern District of Michigan dismissed Petitioner’s claims under the Free Exercise and Establishment Clauses of the First Amendment pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted, and declined to exercise jurisdiction over her state law claims. App. 24-27.

III. Sixth Circuit Decision

A panel of the Sixth Circuit Court of Appeals affirmed the district court’s dismissal under Fed. R. Civ. P. 12 (b)(6) of Petitioner’s Establishment Clause claims. App. 1-18. It directed reversal as to Petitioner’s claims under the Free Exercise Clause and remanded with instructions that the district court dismiss those claims for lack of subject matter jurisdiction. The Panel found that Petitioner lacked

standing to bring a Free Exercise claim because she could not demonstrate that she suffered an “injury in fact” under the Free Exercise Clause. The Panel held that, although Petitioner “presented facts suggesting that she was exposed to religious information with which she did not agree, she has given no indication that the information coerced her into doing or not doing anything.” App. 8. The Panel noted that Petitioner received a vaccination exemption, was not legally entitled to have the basis for the exemption documented, and that “it is clear that the state’s religious information did not coerce her into changing her religious beliefs in order to obtain the waiver.” *Id.*

As to Petitioner’s Establishment Clause claims, the Sixth Circuit held that the requirement that parties seeking a religious objection meet with state employees to discuss their objections (“the Certification Rule”) does not entail excessive government entanglement, even though state officials discuss religion and “the state may offer its own take on the parent’s objections.” App. 14. The Panel held that excessive entanglement was not present because (despite falsely quoting the Pope) “the state is merely voicing its own opinion on religious objections in an effort to prevent the outbreak of communicable diseases.” App. 14-15. The panel noted that state officials could not withhold an exemption based on the legitimacy of an individual’s objections. App. 14. The Panel excused the fact that the state-created Religious Waiver Note “contains information about specific religions, as well as the disputed Pope Benedict XVI quote” because “the purpose of providing this information is secular.” App. 15.

Judge Kethledge entered a concurring opinion stating his belief that Petitioner “has standing to assert her claims because if her claims are valid she has suffered a legal injury,” and stating that on the merits he would decide the case on more narrow grounds than the majority. App. 17-18.

REASONS FOR GRANTING THE WRIT

At issue in this case is the fundamental right of conscience. It is well-settled that the government has no role in directing or instructing a person’s religious beliefs. But that is exactly what the Sixth Circuit has allowed to occur by affirming dismissal of Petitioner’s complaint. Petitioner’s complaint is not about a state’s vaccination policy; it is about government officials taking on the guise of priests and pastors to instruct parents in the tenants of their religion in an attempt to compel them to comply with the state’s agenda. “From the beginning this Court has recognized that while government may regulate the behavioral manifestations of religious beliefs, it may not interfere at all with the beliefs themselves.” *Sch. Dist of Abington Twp v. Schempp*, 374 U.S. 203, 254 (1963) (Brennan, J., concurring). Regardless of how important the state believes vaccination to be, it cannot use an individual’s religious beliefs as a tool to manipulate religious adherents to conform to the state’s will. “A state-created orthodoxy puts at grave risk that freedom of belief and conscience which are the sole assurance that religious faith is real, not imposed.” *Lee v. Weisman*, 505 U.S. 577, 592 (1992).

I. THE SIXTH CIRCUIT’S OPINION MISAPPLIES CRITICAL SUPREME COURT PRECEDENT REGARDING THE FIRST AMENDMENT’S ESTABLISHMENT CLAUSE CAUSING GREAT PERIL TO FUNDAMENTAL RELIGIOUS LIBERTY.

The Sixth Circuit’s opinion misapplies the test elucidated by this Court decades ago in *Lemon v. Kurtzman*. 403 U.S. 602 (1971). Justice Scalia once noted that “[a]s bad as the *Lemon* test is, it is worse for the fact that, since its inception, its seemingly simple mandates have been manipulated to fit whatever the Court aimed to achieve. *McCreary County v. ACLU*, 545 U.S. 844, 900 (2005) (Scalia, J., dissenting). His words ring true in this case.

Under the familiar *Lemon* test, government action must satisfy three distinct prongs in order to comport with the Establishment Clause: (1) the government action must have a secular purpose; (2) the “principal or primary effect must be one that neither advances nor inhibits religion;” and (3) the government action “must not foster ‘an excessive entanglement with religion.’” *Lemon*, 403 U.S. at 612-13 (quoting *Walz v. Tax Comm. Of New York*, 397 U.S. 664, 674 (1970)). Rather than treating each prong as a significant factor requiring analysis, the Sixth Circuit determined that Respondent’s use of religious doctrine, statements falsely attributed to religious leaders, and encouragement to government employees to engage in a religious debate with objecting citizens during mandatory meetings, was constitutionally permissible because it was done for the secular purpose of encouraging widespread vaccination. The notion that

the government can lecture citizens on the correctness of their religious beliefs, and can even falsely attribute quotes to religious leaders, thereby using religion to control the beliefs and, consequently, the actions of its citizens, is completely abhorrent to our entire system of government. This notion is not supported by Supreme Court precedent and, accordingly, this Court's review is warranted.

A. The Religious Waiver Note Lacks A Valid Secular Purpose.

There is not a valid secular purpose for the state to create and distribute a document purporting to quote the Pope of the Roman Catholic Church as a means to convince adherents that refusing to vaccinate one's children is evil. The Sixth Circuit's opinion held that Respondents' Religious Waiver Note had a valid secular purpose of "promot[ing] health and safety among school-age children by educating parents about vaccinations. Part of this education requires the state to be able to respond to certain objections—including religious objections—by offering its own point of view." App. 15. But, as this Court has held, government "may not aid, foster, or promote one religion or religious theory against another or even against the militant opposite." *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968). And it may not convey or attempt to convey "a message that religion or a particular religious belief is favored or preferred." *Wallace v. Jaffree*, 472 U.S. 38, 70 (1985) (O'Connor, J. concurring)). Thus, while promoting health and safety may be a valid secular purpose generally, offering a state's point of view regarding religious beliefs is not a valid secular purpose justifying the state's creation and distribution

of the Religious Waiver Note. Further, “government may not employ religious means to serve secular interests, however legitimate they may be, at least without the clearest demonstration that nonreligious means will not suffice.” *Sch. Dist of Abington Twp.*, 374 U.S. at 265 (Brennan, J., concurring). No such demonstration has been made in this case.

Critically, Petitioners’ Religious Waiver Note contains much more than factual information about vaccines; it includes reference to and reliance on religious doctrine and purported statements of religious leaders to convince parents that vaccination is morally good and that refusal to vaccinate one’s children is sinful. App. 80-87. For example, under the heading “Christianity” the Religious Waiver Note states “[v]accines with remote fetal implications are morally acceptable,” and “[c]oncern that ‘the body is a temple not to be defiled’ contrasts with other Scripture passages and modern quality-control requirements for vaccines and immune globulins.” App. 80-81. Under the heading “Islam” the Religious Waiver Note states “[c]onsider the law to protect life, the principle of preventing harm (izalat aldharar,) and the principle of the public interest (maslahat al-ummah).” App. 81.

Further, the Religious Waiver Note does not simply offer the government’s “own point of view” as the Sixth Circuit’s opinion states. App. 15. Rather, it highlights what is purportedly the Pope’s point of view, that “parents who chose not to give vaccines derived from [aborted fetal] cells would be in ‘more proximate cooperation with evil’ than those who gave their children the vaccines in question because of the life-saving nature of vaccines.” App. 83. There is no

legitimate secular purpose in telling parents that the Pope considers their actions “evil” if they do not vaccinate their children. The purpose of using this information, is to convince parents to look to religious authority as a basis for disregarding their previously held beliefs about vaccination, in favor of complying with the state’s demands. And the government may not “use religious authority to pursue secular ends.” *Lee v. Weisman*, 505 U.S. at 608 (Blackmun, J., concurring) (noting that “Madison warned that government officials who would use religious authority to pursue secular ends exceed the commission from which they derive their authority and are Tyrants.”) (internal quotation marks and citation omitted). “[T]he States may not employ religious means to reach a secular goal unless secular means are wholly unavailing.” *Sch. Dist. of Abington Twp.*, 374 U.S. at 294 (Brennan, J., concurring). While there is a secular purpose to vaccinating children, there is not a valid secular purpose for using the Pope as a source of law to encourage parents to vaccinate their children. See *Lynch v. Donnelly*, 465 U.S. 668, 691 (1984) (O’Connor, J., concurring) (noting that the proper inquiry to determine whether a secular purpose exists “is whether the government intends to convey a message of endorsement or disapproval of religion”).

Additionally, even accepting the Sixth Circuit’s position that what is contained in the Religious Waiver Note is the state’s point of view regarding religious objections to vaccines, it is not the government’s role to offer its “own point of view” regarding a citizen’s religious beliefs. This is antithetical to the purpose and history of the Establishment Clause, which recognizes that “in the hands of government what might begin as

a tolerant expression of religious views may end in a policy to indoctrinate and coerce.” *Lee*, 505 U.S. at 591-92. “Under our system the choice has been made that government is to be entirely excluded from the area of religious instruction and churches excluded from the affairs of government.” *Lemon*, 403 U.S. at 625. Because “[t]he Constitution decrees that religion must be a private matter for the individual,” the Sixth Circuit erred when it permitted Respondents to continue to engage in religious instruction and debate regarding citizens’ religious beliefs. *Id.*

B. The Primary Effect Of The Religious Waiver Note Is To Inhibit Certain Religious Beliefs.

The Sixth Circuit held that neither the Religious Waiver Note, nor its use by government health officials during the mandated meetings with religiously objecting parents, lead to the inhibition of religion because it “provides state workers with information necessary to promote its secular goal of vaccinating as many school children as it can in an effort to protect the health and safety of those children.” App. 16. The Sixth Circuit did not engage in any real analysis of this prong of the *Lemon* test, because it determined that the secular goal of vaccination is important to public safety. But even assuming a government action has a secular purpose, this does not mean that the same action does not also advance or inhibit religion. Government action must not constitute “purposeful or surreptitious effort to express some kind of subtle governmental advocacy of a particular religious message.” *Lynch*, 465 U.S. at 680. This Court has “repeatedly recognized, government inculcation of religious beliefs has the

impermissible effect of advancing religion.” *Agostini v. Felton*, 521 U.S. 203, 223 (1997).

Respondents’ Religious Waiver Note demonstrates a clear preference for certain religious beliefs over others, and is used by government employees to compel citizens to adopt the state’s favored views. This is not permissible under the Establishment Clause. “[T]he prohibition against governmental endorsement of religion ‘preclude[s] government from conveying or attempting to convey a message that religion or a particular religious belief is *favored or preferred*.’” *County of Allegheny v. ACLU*, 492 U.S. 573, 593 (1989) (quoting *Wallace v. Jaffree*, 472 U.S. at 70 (O’Connor, J., concurring)).

The Establishment Clause “mean[s] that government may not promote or affiliate itself with any religious doctrine or organization” among other prohibitions. *Id.* at 590. “[T]he Establishment Clause does not limit only the religious content of the government’s own communications. It also prohibits the government’s support and promotion of religious communications by religious organizations.” *Id.* at 600. Consequently, the state may not invoke religious doctrine or statements from church leaders in an attempt to convince religious adherents that their understanding of their own religion is erroneous. This is true, even if a different interpretation would benefit the government. Government action violates the effects prong of the *Lemon* Test when it “is sufficiently likely to be perceived by adherents of the controlling denomination as an endorsement, and by nonadherents as a disapproval, of their individual religious choices.” *Id.* at 597 (quoting *Sch. Dist. of Grand Rapids v. Ball*,

473 U.S. 373, 390 (1985)). An objective observer would view a government employee using a government-created document to inform a Catholic parent that the Pope considers her individual religious choices “evil” as disapproval of her individual religious choices. “When the government puts its imprimatur on a particular religion, it conveys a message of exclusion to all those who do not adhere to the favored beliefs. A government cannot be premised on the belief that all persons are created equal when it asserts that God prefers some.” *Lee v. Weisman*, 505 U.S. at 606-07 (Blackmun, J., concurring).

The Sixth Circuit’s opinion sets a horrible precedent of ignoring the government’s overt favoritism of certain religious beliefs, and attempts to inhibit other religious beliefs, so long as the government submits a secular purpose for doing so.

C. The Religious Waiver Note Creates Excessive Entanglement With Religion.

Although the Religious Waiver Note relies on disputed information about religious beliefs and falsely quotes the Pope of the Roman Catholic Church, the Sixth Circuit found that neither the Religious Waiver Note nor its use by government officials to attack parents’ religious beliefs amount to excessive entanglement under the First Amendment’s Establishment Clause. The Panel concluded that the Religious Waiver Note was permissible as “an educational tool” because it “does not require [government] employees to involve themselves in the activities of any religious organizations” and does not condition receipt of an exemption on a finding that a parent’s religious beliefs are sincerely held. App. 16.

Contrary to the Sixth Circuit's opinion, excessive entanglement exists here where Respondents have created a document and instructed government employees to use said document, wherein Respondents control what religious views to present, how to present them, and how to interpret religious tenants all in an effort to convince citizens that their religion commands them to act in a way that is consistent with the state's ultimate goals. *See Lemon*, 403 U.S. at 620 ("We cannot ignore here the danger that pervasive modern governmental power will ultimately intrude on religion and thus conflict with the Religion Clauses.").

Respondents are responsible for promulgating documents and enforcing a policy that allows health department officials to interrogate religious parents, interpret tenants of faith, and instruct parents in the state's interpretation of religious dogma. Consequently, the government has stamped certain religious beliefs with "the imprint of the State." *Lee*, 505 U.S. at 590. The Religious Waiver Note was used by government employees and given to Petitioner in an effort to change her religious beliefs. *Engel v. Vitale*, 370 U.S. 421, 429 (1962) (noting that "one of the greatest dangers to the freedom of the individual to worship in his own way lay in the Government's placing its official stamp of approval upon one particular kind of prayer or one particular form of religious services"). But just as "Courts are not arbiters of scriptural interpretation" neither are government employees, and it is not the function of government to inquire whether an adherent has correctly perceived the commands of her faith. *Thomas v. Review Bd. of Ind. Employment Sec. Div.*, 450 U.S. 707, 716 (1981).

Justice Blackmun, in his concurring opinion in *Lee v. Weisman*, described quite clearly why the government is forbidden from using religion as a means of manipulating American citizens:

Democracy requires the nourishment of dialog and dissent, while religious faith puts its trust in an ultimate divine authority above all human deliberation. When the government appropriates religious truth, it ‘transforms rational debate into theological decree.’ Those who disagree no longer are questioning the policy judgment of the elected but the rules of a higher authority who is beyond reproach.

Lee, 505 US at 607 (Blackmun, J., concurring) (internal citation omitted). The Sixth Circuit’s opinion ignores this vital warning by allowing Respondents to continue to interrogate parents regarding their religious beliefs and to use the Religious Waiver Note that falsely quotes religious leaders to pressure parents to change their religious beliefs regarding vaccination. The First Amendment forbids such conduct and this Court should definitively say so.

II. THE SIXTH CIRCUIT WRONGLY REQUIRES A PLAINTIFF TO CHANGE HIS OR HER RELIGIOUS BELIEFS, OR SUCCUMB TO GOVERNMENT PRESSURE IN ORDER TO DEMONSTRATE INJURY-IN-FACT FOR STANDING PURPOSES UNDER THE FREE EXERCISE CLAUSE.

The Sixth Circuit’s opinion fails to recognize that government engages in impermissible coercion for purposes of the First Amendment’s Free Exercise

Clause when it uses religious statements or quotes religious leaders to convince adherents that failure to comply with the government's demands in a given case is sinful or evil under church doctrine. Here, by invoking the authority of the Pope, the government wields a power much more substantial than threat of civil penalty—threat of mortal sin. The perceived threat to a believer's soul is far greater than any penalty the civil authorities may levy against an individual's pocketbook.

Threats and condemnation from the government satisfy the religious burden test; it is not necessary that Petitioner cave to government pressure and change her beliefs or allow her children to be vaccinated due to government employees' arguments regarding her religion. As this Court has recognized, "[e]ven subtle pressure diminishes the right of each individual to choose voluntarily what to believe." *Lee*, 505 U.S. at 605. "When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain." *Engel*, 370 U.S. at 431. Here, Petitioner was told by government employees, via the state-sanctioned Religious Waiver Note, that the Pope condemned her refusal to accept the state's vaccination requirements and that he said "parents who chose not to give vaccines derived from these cells [from aborted fetuses] would be in 'more proximate cooperation with evil' than those who gave their children the vaccines in question because of the life-saving nature of vaccines." App. 83. Petitioner could not walk away from the intrusive questioning and coercion exhibited by the government

employees or refuse the Religious Waiver Note, because she was required to submit to this meeting in order to receive a religious waiver to Michigan's vaccination requirement. Petitioner's complaint plausibly alleged a violation of the Free Exercise Clause by describing how she was subjected to government conduct which demonstrated a "tendency to coerce individuals into acting contrary to their religious beliefs." *Lyng v. Nw. Indian Cemetery Protection Ass'n*, 485 U.S. 439, 450 (1988). The fact that Petitioner had the fortitude and knowledge to withstand the compulsion does not negate the fact that she was compelled—or urged forcefully—to violate her beliefs.

The purpose of the Free Exercise Clause is "to secure religious liberty in the individual by prohibiting any invasions thereof by civil authority." *Sch. Dist. of Abington Twp. Penn.*, 374 U.S. at 223. Here, Petitioner was faced with "substantial pressure . . . to modify [her] behavior and to violate [her] beliefs" in violation of the Free Exercise Clause. *Thomas*, 450 U.S. at 718; *Sherbert v. Verner*, 374 U.S. 398, 404 (1968). Petitioner was forced to endure a burdensome religious inquisition filled with fabricated statements about her faith and was subjected to ridicule from government employees regarding her religious beliefs. She was forced to submit to the government's questioning and religious instruction in order to obtain a vaccination waiver or she would face the loss of public education for her children. App. 64-67. The Sixth Circuit wrongly excused the government's conduct by finding Petitioner had not suffered an injury-in-fact. "As the Court put it more than 50 years ago, '[i]t is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions

upon a benefit or privilege.” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2022 (2017) (quoting *Sherbert*, 374 U.S. at 404).

Under the Sixth Circuit’s interpretation, the extent of a person’s rights under the Free Exercise Clause would shift based on his or her ability to withstand torturous religious interrogation; those of extreme fortitude would be forced to endure longer and more egregious interrogation by the government, while those who caved quickly to the government’s demand would not receive as harsh an interrogation, yet would have a claim under the Free Exercise Clause. When the government attempts to change the beliefs or actions of devoutly religious people, fear of sin can be a far more useful tool than even fear of fine or imprisonment. Respondents’ use of the Religious Waiver Note to manipulate and coerce religious individuals to change their sincerely held beliefs and comply with the state’s agenda, created an unwarranted and substantial burden on Petitioner’s ability to freely exercise her religion. Nothing more is required to demonstrate injury under the Free Exercise Clause. *Thomas*, 450 U.S. at 718. The Sixth Circuit’s finding to the contrary warrants this Court’s review.

III. THIS CASE IS A CLEAN VEHICLE TO RESOLVE PURELY LEGAL ISSUES OF FUNDAMENTAL CONSTITUTIONAL IMPORTANCE.

The record in this case is not extensive; Petitioner’s complaint was dismissed under Fed. R. Civ. P. 12(b)(6) prior to any discovery taking place. The significant questions presented by this case do not involve complicated facts and are ripe to be reviewed by this

Court. The Sixth Circuit's opinion permits government officials to use religion as a means to coerce believers into complying with the state's agenda, and this departure from Supreme Court precedent requires this Court's review and reversal.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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