No. 19-1392

In the Supreme Court of the United States

THOMAS E. DOBBS, M.D., M.P.H., IN HIS OFFICIAL CAPACITY AS STATE HEALTH OFFICER OF THE MISSISSIPPI DEPARTMENT OF HEALTH ET AL.,

Petitioners,

v.

JACKSON WOMEN'S HEALTH ORGANIZATION, ON BEHALF OF ITSELF AND ITS PATIENTS, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF AMICUS CURIAE JEWISH COALITION FOR RELIGIOUS LIBERTY IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS CURIAE[1]

The Jewish Coalition for Religious Liberty (JCRL) is a nondenominational organization of Jewish communal and lay leaders. JCRL is devoted to ensuring that First Amendment jurisprudence enables the flourishing of diverse religious viewpoints and practices in the United States. Given the arguments made in prior cases, JCRL is concerned that proponents of a constitutional right to abortion will assert a novel "religious-veto" view of religious liberty that, if accepted, would make it more difficult for sincere religious adherents to obtain accommodations in future cases. JCRL advocates for religious liberty protections that allow religious adherents to practice their faith while fully participating in American life. JCRL has an interest in preserving this traditional view of religious liberty by rebutting the novel "religious-veto" claims that it anticipates will be presented in this case.

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[1] Pursuant to Supreme Court Rule 37.3(a), amicus states that all parties have submitted their written consent to the filing of this brief. Pursuant to Supreme Court Rule 37.6, amicus states that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from amicus, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief.

SUMMARY OF ARGUMENT

Religious liberty is fundamental to the American ideal.[2] By accommodating a wide variety of religious beliefs, America has thrived as a "Nation of unparalleled pluralism and religious tolerance." *See Salazar v. Buono*, 559 U.S. 700, 723 (2010) (Alito, J. concurring).[3] It is essential that this broad accommodationist view of religious liberty be maintained. Religious proponents of a constitutional right to abortion have previously offered a novel view under which their religious views would dictate what laws may govern every American, even those with different faiths or no faith at all. This Court should reject that novel "religious-veto" view as it would ultimately diminish religious liberty for everyone.

Free exercise protections traditionally take several forms. They may prohibit government entities

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[2] Letter From George Washington to the Hebrew Congregation in Newport, Rhode Island, 18 August 1790, FOUNDERS ONLINE, https://bit.ly/2ZqkLLu (last visited July 13, 2020) ("[T]he Government of the United States, which gives to bigotry no sanction, to persecution no assistance requires only that they who live under its protection should demean themselves as good citizens, in giving it on all occasions their effectual support." In this country, "every one shall sit in safety under his own vine and fig tree, and there shall be none to make him afraid.").

[3] *Zorach v. Clauson*, 343 U.S. 306, 313 (1952) ("We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary. We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma.").

from targeting religious activity,[4] require state actors to treat religious conduct as favorably as comparable secular conduct,[5] or prevent the government from substantially burdening religious activity unless doing so is necessary to further a compelling government interest.[6] These traditional Free Exercise protections require that the state accommodate religious exercise, but they do not prevent government entities from enforcing laws against Americans who lack religious objections.[7] Such protections help ensure that religious adherents can fully participate in civil society without having to abandon their faith.[8] Importantly, they protect religious adherents without requiring that the rest of society follow their faith.[9]

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[4] *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993).

[5] *Tandon v. Newsom*, 141 S. Ct. 1294 (2021).

[6] *Holt v. Hobbs*, 574 U.S. 352 (2015).

[7] *Wisconsin v. Yoder*, 406 U.S. 205, 236 (1972) (creating a religious accommodation to exempt Amish parents from having to send their children to formal high-school while confirming that, "[n]othing we hold is intended to undermine the general applicability of the State's compulsory school-attendance statutes … .").

[8] *Sherbert v. Verner*, 374 U.S. 398, 404 (1963) (finding it unconstitutional for the government to force a religious adherent to "choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand."); *Braunfeld v. Brown*, 366 U.S. 599, 616 (1961) (Stewart, J. dissenting) ("Pennsylvania has passed a law which compels an Orthodox Jew to choose between his religious faith and his economic survival. That is a cruel choice. It is a choice which I think no State can constitutionally demand.")

[9] *Fulton v. City of Philadelphia, Pa.*, No. 19-123, 2021 WL 2459253, at *9 (U.S. June 17, 2021) ("CSS seeks only an

In the past, religious supporters of a right to abortion have advocated for a novel conception of religious liberty that is incompatible with this traditional understanding. In their view, the fact that some religions may allow or even require women to obtain abortions should cause this Court to recognize a general constitutional right to abortion. *See* Brief for 178 Organizations as Amici Curiae in Support of Respondents at app. a, *Planned Parenthood of Se. Pa. v. Casey*, Nos. 91-744, 91-902, 505 U.S. 833 (1992) ("in the face of the great moral and religious diversity in American society over abortion and in the light of Jewish traditions which in some cases command abortion, and in many others permit it, the existing constitutional rules, set down by *Roe v. Wade*, should be maintained ... .") (citation omitted). The "right" that such advocates propose would not be limited to protecting the religious exercise of objectors. Instead, it would prohibit states from pursuing their interest in protecting the lives of unborn children, *even in instances that would not impact adherents' exercise of their faith*.[10] The proponents of such a right thus do

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accommodation that will allow it to continue serving the children of Philadelphia in a manner consistent with its religious beliefs; it does not seek to impose those beliefs on anyone else"); *id.* at *20 (Alito, J. concurring) ("the text of the Free Exercise Clause gives a specific group of people (those who wish to engage in the 'exercise of religion') the right to do so without hindrance").

[10] *See e.g.*, Brief for American Jewish Congress, et. al., as Amici Curiae at 4, *Webster v. Reprod. Health Servs.*, No. 88-605, 492 U.S. 490 (1989) ("given the dramatically contrasting religious views about whether and when abortion is permitted or required, state statutes drastically curtailing access to abortion

not seek to ensure that they can fully participate in society without compromising their religious exercise; they seek to yoke the rest of society to their theological preferences.

This novel "religious-veto" view of religious liberty is inconsistent with this Court's precedents and, if given credence, would make it more difficult to protect religious liberty in the future. At first glance, a doctrine that would allow religious adherents to entirely block the state from pursuing goals with which they disagree—extending beyond protecting their own free exercise—might seem appealing to religious liberty advocates. However, such a novel and imperious regime would quickly prove untenable, especially in a large and religiously diverse country. Under the religious-veto view of the Free Exercise Clause, every decision in favor of a religious adherent would entirely foreclose the state from pursuing its chosen interests. Such paralysis is not desirable, nor should it be the goal of those who seek to foster a religiously free and diverse nation. In the long term, the novel "religious-veto" view would diminish protections for religious exercise.

In *Employment Division, Department of Human Resources of Oregon v. Smith*, this Court worried that applying the then existing system of religious accommodations might be "courting

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unacceptably interfere with constitutionally protected religious and private conscience."); *id.* at 8 ("the right of privacy and the right to religious liberty exclude the state from personal decisions about the critical issues of family life, reproduction and child-reading.").

anarchy." 494 U.S. 872, 888 (1990). Amicus vigorously disagrees that granting religious accommodations poses such a risk and believes the Court should overrule *Smith*. In fact, this Court has recently loosened *Smith*'s strictures, and has signaled that it may reconsider them entirely. However, the novel religious-veto rule proposed by supporters of a right to abortion would legitimize *Smith*'s concerns. Granting every religious person in America an absolute veto over any law that burdens his faith might in fact be "courting anarchy." In order to avoid the negative consequences that would predictably follow from accepting a religious-veto theory of religious liberty, courts would likely either double-down on *Smith*'s restrictive reading of the First Amendment or adopt a new and even less favorable framework for granting relief to religious adherents. Fortunately, religious vetoes are not what the First Amendment or this Court's precedents require.

Even if courts continued to apply something resembling the current standards, religious liberty proponents would be less likely to prevail under the religious-veto approach than they are under the existing religious-accommodation approach. Currently, the government can only burden an adherent's religious exercise if it can show that "the asserted harm of granting specific exemptions to *particular religious claimants*" is of the highest magnitude.[11] That analysis, which is favorable to religious objectors, only makes sense so long as the remedy is an individual exemption. Under the

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[11] *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 431 (2006) (emphasis added).

religious-veto approach, courts would have to analyze the harm of completely negating a law because exemptions would no longer be limited to the specific objectors. In other words, courts would have to determine whether the government has a compelling interest in enforcing a law at a societal rather than to any one person at an individual level. Such an analysis is far less favorable to religious adherents than the current test.

In order to avoid weakening clearly established religious liberty protections, this Court should resist the invitation to discover a right to abortion concealed in the Free Exercise Clause.

ARGUMENT

I. The Court Should Reject Claims That the Free Exercise Clause Contains or Even Suggests a Broad Constitutional Right to Abortion.

A. Religious liberty protections help religious adherents flourish by allowing them to exercise their faith while fully participating in public life.

Religious liberty protections safeguard the American ideal of religious pluralism. They do so by granting religious adherents accommodations from some laws that would otherwise interfere with their

ability to exercise their faith.[12] The consequence of this traditional accommodationist view of religious liberty is to enable the flourishing of religious adherents amidst their neighbors who are either secular or follow other faiths.[13]

This Court has enforced free exercise protections in several ways. For example, it has held that, under the First Amendment, "a law targeting religious beliefs as such is never permissible." *Church of the Lukumi Babalu Aye, Inc.*, 508 U.S. at 533. Therefore, denying religious organizations access to public benefits solely because of their faith is "odious to our Constitution." *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2025 (2017).

Second, the Court has held that facially neutral laws that prohibit certain activities but provide limited exceptions cannot "treat *any* comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 141 S. Ct. 1294, 1296-97 (2021) (emphasis in original). If a law contains accommodations for secular objections, it must grant

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[12] *Sherbert*, 374 U.S. at 415-16 (Stewart, J. Concurring) ("the guarantee of religious liberty embodied in the Free Exercise Clause affirmatively requires government to create an atmosphere of hospitality and accommodation to individual belief or disbelief").

[13] *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 641 (1943). ("As governmental pressure toward unity becomes greater, so strife becomes more bitter as to whose unity it shall be."); *id.* ("Ultimate futility of such attempts to compel coherence is the lesson of every such effort from the Roman drive to stamp out Christianity" to "the Inquisition, as a means to religious and dynastic unity … .").

similar accommodations to those who object for religious reasons. *Id.*; *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 68-69 (2020) (enjoining "severe restrictions on the applicants' religious services" because houses of worship were treated more harshly than comparable secular facilities without sufficient justification).

As a final example, in some instances,[14] government entities may not substantially burden religious exercise unless doing so is necessary to further a compelling government interest. *Burwell v. Hobby Lobby Stores, Inc.,* 573 U.S. 682 (2014) (holding that the department of Health and Human Services' abortifacient mandate violated RFRA as applied to religious objectors because the government had not proven that applying the mandate to them was the least restrictive means of furthering a compelling government interest); *Holt v. Hobbs*, 574 U.S. 352 (2015) (holding that a prison's grooming policy violated RLUIPA insofar as it prevented a Muslim prisoner from growing a beard in accordance with his faith).

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[14] Amicus recognizes that, under *Employment Division v. Smith*, religiously neutral and generally applicable laws do not receive strict scrutiny. However, amicus has previously argued that this Court should reverse *Smith* and apply strict scrutiny to any law that substantially burdens adherents' religious exercise. Therefore, amicus will demonstrate that the Free Exercise Clause would not contain a general right to abortion even if this Court were to replace *Smith* with a test similar to the one embodied in statutes like the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb-1, and the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc-2.

While those examples demonstrate that this Court has offered robust protection for religious liberty, those doctrines do not prevent the state from applying its laws to nonobjecting citizens. In *Wisconsin v. Yoder*, this Court held that Wisconsin could not require Amish parents with religious objections to send their children to formal high schools. 406 U.S. at 234. However, the court was quick to point out that its holding did not "undermine the general applicability of the State's compulsory school-attendance" law. *Id.* at 236. The Amish religious objectors would receive an exemption, but that would not prevent the State from applying the law to other parents who did not share their religious objection. In *Burwell,* this Court held that RFRA required the Department of Health and Human Services to offer an accommodation to religious objectors. It did not prohibit the agency from enforcing its mandate against non-objecting businesses. 406 U.S. at 735-36. In *Holt*, this Court held that "the Department's grooming policy violates RLUIPA insofar as it prevents petitioner from growing a ½–inch beard in accordance with his religious beliefs." 574 U.S. at 369. It did not hold that every prisoner, even those with no religious objections, was entitled to grow such a beard. Most recently, in *Fulton*, this Court held that the City of Philadelphia had to grant Catholic Social Services a religious accommodation. It did not require the City to drop its non-discrimination policy entirely. 2021 WL 2459253, at *9 ("CSS seeks only an accommodation that will allow it to continue serving the children of Philadelphia in a manner consistent with its religious beliefs; it does not seek to impose those beliefs on anyone else."); *id.* at

*20 (Alito, J. concurring) ("the text of the Free Exercise Clause gives a specific group of people (those who wish to engage in the 'exercise of religion') the right to do so without hindrance").

The Court should maintain this traditional view of religious liberty—which allows believers of all faiths as well as non-believers to coexist and flourish in the public square by accommodating religious practice.

B. Some religious proponents of a constitutional right to abortion do not seek individual accommodations, instead they suggest a novel concept of religious liberty that allows religious adherents to veto laws that they consider religiously objectionable and to entirely prevent the state from pursuing its chosen policy.

In past cases, proponents of the alleged "Free Exercise right to abortion" have presented a novel view of religious liberty that would force the state to adhere to the dictates of their faith. Such proponents did not merely request that they be granted religious accommodations in appropriate circumstances.[15]

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[15] The question of whether applying a given abortion regulation to a particular religious adherent in a specific instance is the least restrictive means of furthering a compelling government interest is a fact-based inquiry that is beyond the scope of this

Instead, they argued that this Court should protect their religious objections by creating a generally applicable constitutional right to abortion. Rather than a traditional accommodation, they requested a complete veto over all abortion regulations that they considered religiously objectionable. This novel version of religious liberty, which is out of step with this Court's precedent, would prevent the state from applying abortion regulations even to those citizens lacking religious objections.

In *Casey v. Planned Parenthood*, petitioners attempted to partially ground a constitutional right to abortion in the Free Exercise Clause. Brief of Petitioners and Cross Respondents Planned Parenthood of Central Pennsylvania, et. al., at 19 n.27, *Planned Parenthood of Se. Pa. v. Casey*, Nos. 91-744, 91-902, 505 U.S. 833 (1992) ("In addition to the 'liberty' guarantee of the Fourteenth Amendment, the right to abortion may be grounded in other constitutional rights" including " freedom of religion."). This was not a request for an accommodation for those women whose religious exercise might be burdened by abortion regulations, it was an attempt to claim that the Free Exercise Clause housed a universally applicable "fundamental right" to abortion. *Id.*

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case. Amicus is not suggesting anything about the appropriateness of such accommodations in a future case. It is instead arguing that religious adherents who believe that abortion regulations burden their faith must bring individual claims for accommodations rather than claiming that all pre-viability prohibitions on elective abortions are facially unconstitutional.

This claim was furthered by amici. Brief for 178 Organizations as Amici Curiae in Support of Respondents at app. a, *Planned Parenthood of Se. Pennsylvania v. Casey*, ("The American Jewish Congress believes that, in the face of the great moral and religious diversity in American society over abortion and in the light of Jewish traditions which in some cases command abortion . . . the existing constitutional rules, set down by *Roe v. Wade*, should be maintained . . . "); *Id.* (The Anti-Defamation League "believes that a woman's decision whether or not to terminate a pregnancy should be made in accordance with her own religious and moral convictions, without government interference."). This argument has been repeated in the years following *Casey*. *See e.g.*, Brief of the Religious Coalition for Reproductive Justice as Amici Curiae in Support of Respondents at 14, *Ayotte v. Planned Parenthood of N. New England*, No. 04-1144, 546 U.S. 320 (2006) ("The plurality of religious views regarding abortion . . . justifies its protection from undue governmental mandates or interference); *Id.* at 17 ("The Right to Decide to Terminate a Pregnancy in Accordance with Religious Values and Free From Undue Government Interference Extends to Minors.").

These religious proponents of a constitutional right to abortion do not seek religious accommodations for the limited number of people who have religious objections to abortion regulations. Instead, they seek to impose their religious convictions on the state by preventing abortion regulations even in situations where no religious

objection exists. Where the traditional view of religious liberty is about coexistence and mutual flourishing, the novel religious-veto view is about domination and imposition. The Court should reject that view and preserve the traditional model that has so greatly benefited religious minorities in America.

C. This Court should reject the novel concept of religious liberty put forward by proponents of a constitutional right to abortion because adopting that approach would undermine existing Free Exercise rights.

i. Presented with the consequences of completely invalidating laws that burden any religious adherent's faith, courts might refrain from even considering granting relief in all but the most extreme of cases.

In *Employment Division v. Smith*, this Court shrunk the reach of the First Amendment's Free Exercise protections due to the fear that extending such protection to religiously neutral and generally applicable laws would be "courting anarchy." 494 U.S. at 888. The Court claimed that, "we cannot afford the luxury of deeming *presumptively invalid,* as applied to the religious objector, every regulation of conduct that does not protect an interest of the highest order … ." *Id.* (emphasis in original). The *Smith* Court

worried that granting accommodations to religiously neutral laws "would be to make the professed doctrines of religious belief superior to the law of the land … ." *Id.* at 879.

In order to mitigate its concerns, the *Smith* Court announced that it would no longer apply the protections of the Free Exercise Clause to generally applicable and religiously neutral laws. This significantly limited the number of cases in which courts would even consider granting religious liberty accommodations.[16] Under the novel religious-veto view, the potential harms are far greater than under the traditional accommodationist view, and therefore courts may respond by even further limiting the types of cases in which relief might be granted.

As Amicus has maintained while arguing that the Court should reconsider *Smith*, this Court has proven itself capable of granting religious exemptions to generally applicable laws without facing the consequences *Smith* feared.[17] In applying statutes such as RFRA and RLUIPA, this Court has demonstrated that it can exempt religious adherents without unduly disrupting the government's ability to pursue its interests or maintain stability. *See e.g.*,

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[16] *See City of Boerne v. Flores*, 521 U.S. 507, 547 (1997) (O'Connor, J., Dissenting) ("[L]ower courts applying Smith no longer find necessary a searching judicial inquiry into the possibility of reasonably accommodating religious practice.").

[17] *See* Brief for Jewish Coalition for Religious Liberty, as Amicus Curiae Supporting Respondents at 15-19, *Fulton v. City of Philadelphia, Pa.*, No. 19-123, 2021 WL 2459253 (U.S. Aug. 16, 2019).

Holt, 574 U.S. at 352 (unanimously exempting a Muslim inmate from a prison's grooming requirement in order to allow him to wear a religiously obligatory beard). That system of religious accommodation has proven effective and manageable.

That established framework, which this Court and other courts have utilized for thirty years, has allowed religious adherents to flourish and has not unleashed anarchy. In light of that track-record, this Court has felt comfortable limiting *Smith*'s reach and applying Free Exercise scrutiny in an increasing number of cases. For example, it has narrowly interpreted what it means for a law to be "generally applicable" and thus found that fewer laws qualify for *Smith*'s safe harbor.[18] A majority of the Justices on the Court has even suggested that they would consider reversing *Smith*.[19]

Under the religious-veto approach, however, *Smith*'s critique would have force. That view, under which religious adherents could block the state from pursuing any policy that they objected to—*even as to those Americans who do not share the religious objection*—could in fact be seen as making "the professed doctrines of religious belief superior to the law of the land." *Smith*, 494 U.S. at 879. Under the religious-veto approach, *Smith*'s supposed danger of "courting anarchy" would actually exist. Recognizing

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[18] *See, Fulton*, 131 S. Ct. at 1926-28.

[19] Justices Barrett, Kavanaugh, Alito, Thomas, and Gorsuch all joined concurrences suggesting that *Smith* was wrongly decided. *See*, *id*.

a religious liberty right would no longer have a relatively minor systemic impact, as in the case of exempting one adherent or set of adherents. Instead, each new Free Exercise right would create an earthquake that would entirely disrupt the legal system.

Faced with those consequences, this Court may reverse course and reinvigorate *Smith*'s restrictive reading of the Free Exercise Clause. Even worse, courts may choose to go even further down the path charted by *Smith* and end up interpreting the Free Exercise Clause as applying to vanishingly few cases. The Court should reject the invitation to start down that path and instead continue following the accommodationist path that has proven successful.

ii. Even assuming that courts did not take a step as drastic as further narrowing the scope of the Free Exercise Clause, adopting a religious-veto view in place of a religious-accommodation view would make the calculus that courts undertake when determining whether to grant relief to religious objectors less favorable to such objectors.

Under the current system, the question is not whether the government "has a compelling interest in enforcing its non-discrimination policies generally, but whether it has such an interest in denying an

exception to" a particular religious objector. *Fulton*, 2021 WL 2459253, at *8. A government entity cannot deny an accommodation by merely showing that its law furthers an important or even compelling interest. Rather it must show that granting a limited exception to a religious objector "will put those goals at risk." *Id.* at *9.[20] By engaging in such a targeted review, courts minimize the likelihood that state actions that burden an adherent's religious exercise will pass strict scrutiny. This targeted review is appropriate because when such an accommodation is deemed appropriate, it is only granted to the objecting individual. Limiting accommodations to particular religious claimants benefits religious adherents because it maximizes the likelihood that they will be granted.

That favorable analysis would no longer make sense if the Court were to abandon religious accommodations and *entirely invalidate* laws that impinge on any adherent's religious exercise instead. Under that novel religious-veto system, courts would have to consider the effect of negating a law entirely and not merely weigh the effect of exempting particular objectors. That test would make it substantially easier for the government to show that granting relief to religious adherents would put compelling goals at risk. Courts would naturally be far

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[20] *Holt*, 574 U.S. at 362-63. (In determining whether to grant an accommodation, courts scrutinize "the asserted harm of granting specific exemptions to particular religious claimants" and weigh the "marginal interest in enforcing the challenged government action in that particular context.") (quotation omitted).

more reluctant to grant relief to religious objectors—relief which would utterly vitiate the Government's goals, even as to non-objectors. While the remedy under the novel approach may seem more robust, because it goes further than is necessary to protect religious adherents' religious exercise, it would make it less likely for a court to grant any relief at all.

iii. The current accommodation-based approach effectively balances between two important governmental interests: protecting religious exercise and allowing the state to pursue otherwise legitimate interests with minimal interference.

The accommodation-based approach to religious liberty is compatible with *Smith*'s view that, "[v]alues that are protected against government interference through enshrinement in the Bill of Rights are not thereby banished from the political process." 494 U.S. at 890. As long as Free Exercise rights are protected by appropriate accommodations, the political process can continue to pursue its goals. The traditional regime recognizes that the state has an interest in applying its laws against non-objecting citizens, even while it has an interest in protecting its religious citizens by granting them exemptions. Under the accommodation-based approach, the state can satisfy both of those interests simultaneously.

The novel religious-veto approach would declare any area of law that touches on values protected by the Bill of Rights entirely off limits to the political process. Instead of allowing the state's two interests to flourish simultaneously, it would pit them against each other and ensure that where one is satisfied the other is ignored. In this case, that means arguing that all pre-viability abortion regulations are facially unconstitutional because some women may have religious objections to such laws. Such a heavy-handed zero-sum approach is not required by the text of the Constitution, American history, this Court's Free Exercise jurisprudence, or any other source of law. Endorsing the novel religious-veto theory would ultimately contract rather than expand religious liberty because it would rightly make courts extremely wary of granting relief in free exercise cases.

CONCLUSION

This Court should reject arguments urging it to root a generalized right to abortion in the Free Exercise Clause or other laws protecting religious liberty.

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