No. 25-113

IN THE

Supreme Court of the United States

BREANNA RENTERIA, *et al.*,

Petitioners,

v.

NEW MEXICO OFFICE OF THE SUPERINTENDENT OF INSURANCE, *et al.*,

Respondents.

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

PETITIONERS' REPLY TO BRIEF IN OPPOSITION

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INTRODUCTION AND SUMMARY OF THE ARGUMENT

Over 1.5 million Americans participate in healthcare sharing ministries ("HCSMs") nationwide. AHCSM Amicus Brief 5. Petitioners' HCSM, Gospel Light, had over 130,000 members in 2023, Pet.App.C.118a,[1] and it continues to add new members.

Most HCSMs abide by a shared set of religious views. And many of their members, including Petitioners, are people with sincere religious convictions who exercise those beliefs by participating in HCSMs and foregoing insurance with its objectionable requirements. Petition for Writ of Certiorari ("Pet.") 6-10.

The New Mexico Office of the Superintendent of Insurance ("OSI") stipulated below that Gospel Light qualifies as a legitimate HCSM within the meaning of the Affordable Care Act ("ACA"). Vol.II.0274. OSI admits HCSMs "exist to coordinate voluntary sharing of costs," are not legally required to pay health care costs, and are not insurance companies. OSI Brief 2. Despite these admissions, OSI seeks to shutter Gospel Light's operations by labeling it an insurer and depriving Petitioners of their religious ministry. *Id.* at 26.

Yet OSI claims its efforts to shut down Gospel Light cause no real First Amendment harm because only 490 Gospel Light members reside in New Mexico. *Id*. at 22. Violating the religious liberties of two New

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[1] All Pet.App.__" citations are to the Petition for Writ of Certiorari Appendix. All "Vol.__" citations are to the record on appeal filed in the Tenth Circuit in *Renteria v. Kane*, Case No. 23-2123.

Mexicans is sufficient to warrant this Court's intervention; violating those of nearly 500 is a crisis.

And the harm extends beyond New Mexico's borders. OSI's actions will impact *all* Gospel Light members nationwide. Both the ACA and Internal Revenue Code require HCSMs to operate uniformly in all States; exclusion from a single State jeopardizes their legal statuses. 26 U.S.C. § 5000A(d)(2)(B)(ii)(II). Likewise, the ACA requires HCSMs to only admit those who share their beliefs; the New Mexico Insurance Code ("NMIC") requires the opposite. *Id.*; N.M. Stat. § 59A-16-12. And once an HCSM loses its ACA-compliant status—even for a fleeting moment—that status is lost for good. 26 U.S.C. § 5000A(d)(2)(B)(ii)(IV) (requiring HCSMs to have existed and shared expenses "*continuously and without interruption* since at least December 31, 1999" (emphasis added)).

And the harm does not end with Gospel Light. OSI has targeted other HCSMs. *See, e.g.*, *Samaritan Ministries Int'l v. Kane*, No. 24-2187 (10th Cir. filed Dec. 31, 2024). Its clear mission is to stop *all* HCSMs from operating within the State and, as a result, nationwide.

While OSI's hostile attacks on HCSMs are the most brazen of any state regulator, other States are not far behind. AHCSM Amicus Brief 16; *see, e.g.*, *Alliance of Health Care Sharing Ministries v. Conway*, No. 25-1035 (10th Cir. filed Jan. 28, 2025). Absent intervention from this Court, the HCSM model that has existed for hundreds of years and was formally recognized in the ACA may soon see its final day. These "outsized effects" warrant review. *Apache Stronghold v. United States*, 145 S. Ct. 1480, 1488

(2025) (mem.) (Gorsuch, J., dissenting from the denial of certiorari).

Finally, and critically, over-zealous regulators are not the only threat to religious liberty. The court of appeals' impossibly stringent misinterpretation of the neutrality and general applicability standards from *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), at times alongside other circuits, threaten religious adherents nationally. Those threats to religious liberty are sharpened in the context of the ACA, which formally recognized the importance of HCSMs and struck a delicate balance to preserve religious rights.

This case, like others where this Court has granted certiorari in this procedural posture, presents issues of national importance that, if left unresolved, threaten a fundamental constitutional right. *See, e.g.*, *Mahmoud v. Taylor*, 145 S. Ct. 2332 (2025) (implicating First Amendment religious rights); *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755 (2018). And the court of appeals' decision creates or deepens a circuit split. *See, e.g.*, *Chiles v. Salazar*, 116 F.4th 1178 (10th Cir. 2024), *cert. granted*, 145 S. Ct. 1328 (2025) (mem.).

With the increasing number of HCSM members and the increasing threats of extinction to HCSMs from over-zealous regulation, there will never be a better time for this Court to decide the questions presented and protect religious adherents.

REASONS FOR GRANTING THE WRIT

I. THE COURT OF APPEALS' ACTIONS THREATEN THE FREE EXERCISE RIGHTS OF RELIGIOUS ADHERENTS.

The court of appeals committed several grave errors that contradict this Court's well-established precedents on *Smith*'s neutrality and general applicability standards. This Court should intervene to protect religious litigants, clarify *Smith*, and prevent doctrinal decline.

A. OSI's Actions Were Not Generally Applicable.

To begin, the court of appeals erred in holding OSI's actions were generally applicable. *Tandon v. Newsom*, 593 U.S. 61 (2021) (per curiam), largely ignored by OSI, decides this case but must be further clarified to protect religious adherents. Laws are not generally applicable "whenever they treat *any* comparable secular activity more favorably than religious exercise." *Tandon*, 593 U.S. at 62 (citation omitted). "[W]hether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue." *Id.* (citation omitted). "Comparability is concerned with the risks various activities pose, not the reasons why people gather." *Id.* (citation omitted). The *Tandon* rule requires States to identify the unique risks of exemptions for religious activities before it grants exemptions to secular but not religious organizations.

The court of appeals departed from this clear precedent in issuing its comparable purposes and ancillary conduct rules. It erroneously held the NMIC is generally applicable because Gospel Light's

purposes differ from purposes of exempt, secular organizations—including fraternal benefit societies and labor unions—and because secular organizations' provision of health insurance is only "incidental or ancillary" to their primary purposes. Pet.App.A.23a-24a; *see also* Pet.24-26. The Free Exercise Clause does not tolerate such distinctions. *Tandon*, 593 U.S. at 61; *see also* Pet.App.A.52a.

OSI does not shy away from this departure from precedent. Instead, it doubles down on these rules. It openly admits the State decides which entities to regulate based on their "primary purpose[s]" and argues it was free to regulate Gospel Light because, as the court of appeals found, Gospel Light's "sole purpose is to act as an HCSM." OSI Brief 15 (quoting Pet.App.A.23a). But in doing so, OSI never identifies *any* danger to its interests, much less why HCSMs' religious health care sharing is more dangerous than health care sharing in other exempt organizations. It fails to meet its burden under *Tandon*.

In fact, OSI urges this Court to rubber stamp a more stringent rule of general applicability than *Smith* contemplated. OSI misconstrues the law in several key ways:

First, it argues that a law lacks general applicability *only* when the law regulates religious conduct and exempts all others. OSI Brief 16. But that is not the law. *Tandon*, 593 U.S. at 62; *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 17-19 (2020) (per curiam).

Second, it argues that because the record does not show exempt organizations engage in health care sharing, the law is generally applicable. OSI Brief 14.

But the NMIC facially permits exempt organizations to do so free of objectionable requirements. Whether they capitalize on their exemptions or not is irrelevant.

Third, OSI argues that because its primary purposes and ancillary conduct distinctions are "not based on religion," there is "no disfavored treatment of religion in any way." *Id*. at 15. But regardless of what *ex post facto* reasons the State provides for the law and its targeted enforcement scheme, the law is not generally appliable because (1) it exempts other organizations but not Gospel Light, whose conduct is undoubtedly "motivated by religious beliefs," *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 524, 534 (1992), and (2) OSI has never identified any greater risk to its interests if it grants Gospel Light an exemption, *Tandon*, 593 U.S. at 62-63.

Finally, OSI argues that because the New Mexico Legislature exempted some organizations and not others, regulators are off the hook. It seeks to treat legislative action as deserving of special protection. But legislative religious gerrymandering is no more permissible than regulatory religious gerrymandering. *See, e.g.*, *Lukumi*, 508 U.S. at 526-28.

B. OSI's Actions Were Not Neutral.

Nor were OSI's actions neutral. OSI's discussion of neutrality is telling. OSI Brief 10-14. OSI does not cite a single precedential case from this Court. OSI does not grapple with the court of appeals' decision, improper standard, and erroneous analysis. OSI does not even explain what it believes the correct standard is for neutrality. Instead, OSI relies on

sweeping conclusions and its own opinions about the neutrality of its statements and asks this Court to trust its interpretation of the law and facts—notwithstanding glaring errors on both.

But the Court need not (and should not) rely on OSI's gloss. All OSI's relevant statements, the court of appeals' decision, and precedent are before this Court. There is no need for further factual development. *Infra* Part III. The court of appeals resorted to a heightened hostility standard, notwithstanding this Court's clear precedents. *Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 249-52 (2025); *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rts. Comm'n*, 584 U.S. 617, 634-35 (2018). And the court refused to consider the blatant disparate treatment of Gospel Light and other religious HCSMs compared to other exempt organizations in its neutrality analysis, notwithstanding precedent. *Roman Cath. Diocese*, 592 U.S. at 17; *Lukumi*, 508 U.S. at 534, 542-45.[2] These errors demand this Court's immediate intervention to safeguard the constitutional rights of Petitioners and future litigants.

These errors also exacerbate an existing and growing circuit split. Pet.20-22. The Tenth Circuit joined the Second and Third Circuits, which explicitly rely on subjective motivations at the neutrality stage, and departed from others that hold there is no intent requirement. OSI's attempt to skirt those holdings is futile. *See, e.g.*, *Spivack v. City of Philadelphia*, 109 F.4th 158, 167 (3d Cir. 2024) ("The neutrality inquiry, with its focus on the purpose of or motivation behind a policy, asks us to examine policymakers' subjective

[2] OSI does not even mention the latter error in its Brief.

intent." (citing *We the Patriots USA, Inc. v. Conn. Off. of Early Childhood Dev.*, 76 F.4th 130, 149 (2d Cir. 2023) (other citation omitted)); Pet.18-22. OSI relies on a quote from *Spivack* that discusses the neutrality *and* general applicability prongs together. OSI Brief 19-20 (citing *Spivack*, 109 F. 4th at 167). And all the Second Circuit's factors (as cited by OSI) merely inform the court's subjective hostility analysis. *Id.* at 20 (citing *We the Patriots*, 76 F.4th at 145). Finally, even if there was no existing circuit split, the Tenth Circuit's departure from this Court's precedent and split with the Seventh and Eleventh Circuits is reason enough to grant cert. If left unchecked, this heightened subjective hostility standard could spread to other circuits.

Finally, OSI's statements indicate the State's animus toward religious adherents. HCSMs are by and large religious and grounded in Christian beliefs around fellowship and health-care sharing. Pet.6-7; AHCSM Amicus Brief 4-6. OSI plainly targeted Gospel Light, other HCSMs, and their participants, including Petitioners, for holding and exercising these beliefs through religiously motivated health care sharing. Pet.22-24. For example, OSI criticized HCSMs for "subject[ing] [members] to religious or moral restrictions . . . , which may leave members responsible for the full costs of health care that result from an activity the ministry does not agree with." Pet.App.B.84a. But the congruence between religious beliefs and cost sharing is a requirement for HCSMs. 26 U.S.C. § 5000A(d)(2)(B)(ii)(II). It is a feature, not a bug. In making this statement and others, OSI unconstitutionally "favor[ed] certain religions" over others, conveyed to Petitioners "that they are outsiders, not full members of the political

community," *Cath. Charities Bureau*, 605 U.S. at 248 (quotation omitted), and characterized Petitioners' religious beliefs "as merely rhetorical—something insubstantial and even insincere." *Masterpiece Cakeshop*, 584 U.S. at 635. OSI is not a mere rogue regulator. Its actions are reflective of a growing animosity toward the religious beliefs of HCSMs and their over one 1.5 million participants. AHCSM Amicus Brief 5, 15-16.

C. The Court of Appeals and OSI Cannot Dictate how HCSM Members Practice Their Religious Beliefs.

Perhaps most egregiously, the court of appeals and OSI suggest that Petitioners are not harmed because they can simply practice their faith without health care sharing and without Gospel Light's ministry. Pet.App.C.115a; OSI Brief 22. In doing so, they wrongly undermine and question the sincerity of Petitioners' beliefs on their chosen ministry and means of religious exercise. *Thomas v. Review Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 714-16 (1981).

These clear doctrinal errors demonstrate that religious HCSMs are no longer welcome in New Mexico. This threat extends beyond HCSMs to all believers in the Tenth Circuit. This case is the best vehicle to resolve any confusion over *Smith* and ensure First Amendment protections for religious HCSMs and religious adherents nationwide.

II. THE CONTINUED VIABILITY OF THE ACA'S CARVEOUT FOR HCSMS MAKES THIS AN ESPECIALLY IMPORTANT ISSUE FOR THE COURT'S CONSIDERATION.

Preemption provides further reason to grant certiorari. New Mexico's failure to recognize the

supremacy of federal law threatens to unravel a religious liberty compromise at the core of the ACA. In passing the ACA, Congress recognized the need for religious and conscience objections to its insurance mandate. So Congress allowed consumers to participate in HCSMs rather than purchase insurance. 26 U.S.C. § 5000A(d)(2)(B)(i); Pet.5-6.

OSI seeks to displace this carefully calibrated federal compromise through state regulatory enforcement, claiming "nothing in federal law prohibits New Mexico from forcing Gospel Light to choose between being an HCSM and being an insurance company." OSI Brief 23.[3] But HCSM participants are exempt from the ACA's minimum coverage mandates because HCSMs are *alternatives* to health insurance plans. Pet.34. If HCSMs were insurers, there would be no need for exemptions.

OSI also suggests that the ACA enables individuals to "*create* a health care sharing ministry." OSI Brief 1 (emphasis added). But Congress did not draft on a blank slate. ACA-recognized HCSMs must have existed before December 31, 1999, 26 U.S.C. § 5000A(d)(2)(B)(ii)(IV), more than a decade *before* the ACA's passage.[4] And Christians have recognized the HCSM tradition for centuries. Vol.II.0357; AHCSM Amicus Brief 4-5. "New" HCSMs cannot be created,

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[3] OSI has taken contradictory positions on this point, claiming HCSMs are not insurers until they do the very thing they exist to do: coordinate the voluntary sharing of health care costs. Then, per OSI, HCSMs are, by default, insurers. OSI's doublespeak is perplexing to say the least and is even more reason for the Court to grant cert.

[4] Gospel Light was founded in 1995, and its members have shared medical expenses continuously and without interruption since. Vol.II.0357-59.

rendering any threat to the few existing HCSMs all the more worthy of attention.

OSI's attempt to distinguish the Ninth Circuit's determination that the ACA individual mandate preempts conflicting state laws is unpersuasive. OSI Brief 25; *see also Coons v. Lew*, 762 F.3d 891 (9th Cir. 2014). Petitioners do not seek "a *reduction* in coverage requirements," OSI Brief 25, because there are no coverage requirements that apply to them. If any such "reduction" occurs, it is only because that was Congress's intent when it included the HCSM-exception to its own individual mandate. Petitioners' use of the very mechanism Congress provided in the ACA cannot be an "impediment" to the same statute.

III. THIS FACTUAL RECORD IS SUFFICIENTLY DEVELOPED FOR THE COURT TO DECIDE THE QUESTIONS PRESENTED.

OSI complains that this case arrives without sufficient factual development to resolve the questions presented, OSI Brief 4-5, 21, while simultaneously asserting that the facts in its favor are uncontested. *Id.* at 4-6, 9. The Court should reject this charade. The relevant facts—at least those on which Petitioners bore the burden—are well established.

The religious gerrymander and ACA issues are primarily legal questions to be resolved based on the text of the NMIC, including its exemptions for secular activity. Pet.11, 32 n.5. The evidence of OSI's hostility toward Gospel Light (and HCSMs, generally) is well developed. *Id.* at 11-12. OSI simply disagrees with how those facts should be viewed, not their existence. OSI Brief 10-14.

The factual ripeness is underscored by OSI's eleventh hour admission that HCSMs are not insurers. *Id.* at 2. That admission comports with OSI's

repeated admonitions to consumers that Gospel Light and other HCSMs are not legally obligated to pay health care costs. OSI Brief 4 (quoting Pet.App.A.3a). Of course they aren't; that is what distinguishes them from insurance carriers. But with OSI's admissions and the legitimacy of Gospel Light's HCSM status stipulated to below, Vol.II.0274, this Court need not, and will not, find itself playing factfinder if the Petition is granted.

Finally, OSI claims this case is a bad vehicle to resolve the important questions at issue because there is no evidence of the state interests at stake, OSI Brief 21, which OSI identifies as "protecting consumers who are purchasing health insurance." *Id.* at 4. But OSI had the burden to develop this record below in defending its actions under strict scrutiny. *Tandon*, 593 U.S. at 62-63; *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525 (2022); *Lukumi*, 508 U.S. at 546. This tacit admission that it failed to do so may doom it on the merits, but it is no reason to deny the Petition. And regardless, any alleged interests in "protecting consumers who are purchasing health insurance" are not at issue, given OSI's admission that HCSMs are not health insurers. OSI Brief 2, 4.

CONCLUSION

This case presents issues of national importance that, if left unresolved, threaten fundamental constitutional rights of over a million people across the country. And the court of appeals' decision creates or deepens a circuit split. This Court should grant the Petition.

Respectfully submitted,

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