

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.

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

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTIONS PRESENTED

1. Whether, under the Free Exercise Clause of the First Amendment, New Mexico's state insurance code is neutral and generally applicable under *Employment Division v. Smith*, 494 U.S. 872 (1990).

2. Whether New Mexico's application of the state insurance code to petitioners' health care sharing ministry is preempted by federal law.

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INTEREST OF THE UNITED STATES

This brief is submitted in response to the Court’s order inviting the Solicitor General to express the views of the United States. In the view of the United States, this Court should hold the petition for a writ of certiorari pending its decision in *St. Mary Catholic Parish v. Roy*, cert. granted, No. 25-581 (Apr. 20, 2026), which overlaps with the first question presented, and then dispose of this petition as appropriate. Further review as to the second question presented is unwarranted.

INTRODUCTION

This case presents two distinct questions, neither of which warrants this Court’s plenary review at this juncture. The first involves the Constitution’s Free Exercise Clause, U.S. Const. Amend. I. Petitioners—

members of Gospel Light Mennonite Church Medical Aid Plan (Gospel Light), a health care sharing ministry (HCSM) that facilitates voluntary sharing of healthcare expenses consistent with its members’ religious beliefs, see Pet. 1—bring a Free Exercise challenge to parts of New Mexico’s insurance code. New Mexico ordered Gospel Light to comply with that law or cease operating in-state. But petitioners contend that forcing Gospel Light to abide by certain provisions—including the mandate that insurers pay for contraceptives, N.M. Stat. Ann. § 59A-22-42 (2023)¹—would violate Gospel Light’s religious mission.

Central to resolving that Free Exercise challenge is whether (as the Tenth Circuit below held) New Mexico’s insurance provisions are neutral and generally applicable—such that rational-basis review applies under *Employment Division v. Smith*, 494 U.S. 872 (1990). See Pet. App. 13a-25a. Petitioners instead contend (Pet. 16-30) that New Mexico’s treatment of HCSMs and exemptions from insurance regulations defeat neutrality and general applicability.

After inviting the Solicitor General’s views in this case, this Court granted a writ of certiorari to consider similar Free Exercise questions in *St. Mary Catholic Parish v. Roy*, No. 25-581 (Apr. 20, 2026). Specifically, the Court granted a writ of certiorari to address: (1) “Whether proving a lack of general applicability under *Employment Division v. Smith*, [494 U.S. 872 (1990),] requires showing unfettered discretion or categorical exemptions for identical secular conduct,” and (2) “[w]hether *Carson v. Makin*, [596 U.S. 767 (2022),] dis-

¹ All citations to New Mexico state law reference the statutes in effect in 2023, when the state’s final enforcement action occurred in this case, except where otherwise specified.

places the rule of *Employment Division v. Smith* only when the government explicitly excludes religious people and institutions.” Pet. at i-ii, *St. Mary Catholic Parish*, No. 25-581 (filed Nov. 3, 2025). Given the overlap with *St. Mary Catholic Parish*, the Court should hold this petition for a writ of certiorari pending its decision in that case, then dispose of this petition as appropriate.

The second question here is whether federal law governing HCSMs is incompatible with, and thus preempts, certain provisions of New Mexico’s insurance code with which Gospel Light must otherwise comply. See Pet. ii; Br. in Opp. i. For instance, petitioners contend (Pet. 31, 35-36), federal law governing HCSMs requires HCSMs to be federally recognized nonprofits, 26 U.S.C. 5000A(d)(2)(B)(ii)(I), which under the federal tax code cannot substantially provide “commercial-type insurance,” 26 U.S.C. 501(m)(1), whereas New Mexico requires insurers to register as for-profit insurance companies, see N.M. Stat. Ann. § 59A-6-1. Further, petitioners contend (Pet. 35), federal law requires HCSMs’ members to “share a common set of ethical and religious beliefs,” 26 U.S.C. 5000A(d)(2)(B)(ii)(II), whereas New Mexico requires insurers to offer membership regardless of religious beliefs, N.M. Stat. Ann. § 59A-16-12. To avoid these requirements, petitioners contend (Pet. 34), Gospel Light would have to cease operations in New Mexico, see Pet. App. 131a, which petitioners view as conflicting with federal law requiring that HCSMs share members’ medical expenses “without regard to the State in which a member resides or is employed,” 26 U.S.C. 5000A(d)(2)(B)(ii)(II).

That preemption question does not warrant review. Complicated ongoing state-court litigation involving Gospel Light—which is not a petitioner here—renders

this case a poor vehicle for consideration of the preemption issue. Further, the preemption issue rests on a state-law question (namely, whether Gospel Light is engaged in the business of insurance under New Mexico law) that no federal court below reached and that state-court proceedings may further elucidate. The preemption question also does not implicate any disagreement among the courts of appeals.

STATEMENT

A. Legal Background

In a provision known as the individual mandate, the Patient Protection and Affordable Care Act (ACA), Pub. L. No. 111-148, 124 Stat. 119, “requires most Americans to maintain ‘minimum essential’ health insurance coverage.” *NFIB v. Sebelius*, 567 U.S. 519, 539 (2012) (quoting 26 U.S.C. 5000A (2012)). The ACA provides specified religious exemptions from the individual mandate, including an exemption for “‘health care sharing ministr[ies]’” (HCSMs)—organizations whose members “share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs and without regard to the State in which a member resides or is employed.” 26 U.S.C. 5000A(d)(2)(B)(ii)(II). HCSMs allow individuals like petitioners, whose religious beliefs compel them to “share healthcare costs” and “to abstain from health insurance that requires insureds to subsidize religiously objectionable treatments,” Pet. i, to pool funds for healthcare expenses consistent with those beliefs.

Under the ACA and the McCarran-Ferguson Act, ch. 20, 59 Stat. 33 (15 U.S.C. 1011 *et seq.*), insurance plans generally remain subject to state insurance regulation. See 15 U.S.C. 1012(a) (“The business of insurance * * * shall be subject to the laws of the several

States.”). The New Mexico Insurance Code (NMIC) regulates insurers that operate in the state and imposes various requirements on their operation. See N.M. Stat. Ann. ch. 59A.

Generally, entities that offer health insurance must be authorized by New Mexico to transact that business. N.M. Stat. Ann. § 59A-16-21.2. And they must abide by various NMIC requirements, such as paying to obtain state-issued certificates of authority, *id.* § 59A-6-1; offering insurance regardless of the religion of the insured, *id.* § 59A-16-12; and covering various contraceptives, *id.* § 59A-22-42.

However, the NMIC provides select exemptions from its requirements, two of which are relevant to petitioners’ claims here. First, the NMIC “shall not apply to * * * a labor organization that, incidental only to operations as a labor organization, issues benefit certificates to members or maintains funds to assist members and their families in times of illness, injury or need, and is not for profit.” N.M. Stat. Ann. § 59A-1-16. Second, only specified provisions of the NMIC apply to “fraternal benefit societies.” *Id.* § 59A-1-15(A); see *id.* § 59A-44-41.

No provision of the NMIC specifically refers to HCSMs. But in the last several years, the New Mexico Office of the Superintendent of Insurance (OSI) has made public statements regarding HCSMs operating in New Mexico, including Gospel Light. An OSI press release dated December 3, 2019, stated:

A few health care sharing ministries (also known as health care sharing organizations) operate in New Mexico. These organizations do not offer insurance, but may present plans in a way that look and feel similar to a health insurance plan. Members of these

organizations “share” health costs on a voluntary basis. Consumers should be aware that these plans have no obligation to pay for any medical services and have no requirement to cover any particular categories of health care services, such as preventive care.

Pet. App. 3a (citation omitted). Several months later, OSI issued another press release describing HCSMs as “an unauthorized insurance product” that lacks “the protections of an authorized” and ACA-compliant major medical plan. *Id.* at 4a (citation omitted). OSI “urged consumers to purchase ‘an ACA compliant plan’” and “listed examples of potential gaps in coverage a [HCSM] consumer could face.” *Ibid.* (citation omitted). Further, a 2021 OSI “[c]onsumer [a]dvisory” stated that “there are scammers trying to lure people into purchasing low-quality health insurance or health insurance-like products.” *Ibid.* (citation omitted). The advisory identified “health care sharing ministries” as an example of such plans, which it further described as “bad plans” and “low-quality products.” *Ibid.* (citation omitted).

B. Procedural History

1. Petitioners are two members of Gospel Light, which is not a petitioner here. Pet. iii. Petitioners believe that “Christians must share healthcare costs with other believers” and “must abstain from health insurance given the objectionable services and procedures it provides.” Pet. 1. They make monthly voluntary gifts to Gospel Light to contribute to other members’ medical expenses; under this arrangement, members like petitioners remain responsible for their own medical bills and may not request reimbursement for certain medical expenses that are contrary to Gospel Light’s values, such

as contraceptives, abortion, or transgender-related procedures and interventions. Pet. App. 5a.

2. State administrative proceedings. Following consumer complaints, respondents—OSI and the Superintendent of Insurance—began an enforcement action against Gospel Light.

After a hearing, OSI’s hearing officer determined that Gospel Light was an insurance carrier under New Mexico law because it entered into legally enforceable contracts with its members to pay for certain healthcare expenses. Pet. App. 6a. The officer further determined that because Gospel Light was an insurance carrier but lacked “the requisite certificate of authority” under state law, Gospel Light had violated the NMIC. *Id.* at 95a-96a.

Pursuant to the hearing officer’s recommendation, in February of 2023 OSI ordered Gospel Light to “cease and desist from soliciting, offering to sell, selling, collecting membership fees or monthly share amounts, or servicing [HCSMs] in New Mexico” until it “comple[d] with the requirements of the [NMIC].” Pet. App. 131a; see *id.* at 124a-132a. OSI also fined Gospel Light \$2,510,000. *Id.* at 132a.

3. State court proceedings. Gospel Light appealed OSI’s February 2023 order in New Mexico state court. See Pet. App. 72a. Those state-court proceedings are ongoing and occurred in tandem with this federal suit.

The state court first ruled on Gospel Light’s appeal in August 2023. D. Ct. Doc. 51-1 (Aug. 24, 2023); Order, *Office of the Superintendent of Ins. v. Gospel Light Mennonite Church Med. Aid Plan*, No. D-101-CV-2023-660 (N.M. Dist. Ct., Santa Fe Cnty., Aug. 17, 2023). In an unreasoned order, it issued a temporary restraining

order enforcing OSI's cease-and-desist order against Gospel Light for 60 days. *Id.* at 2.

In June 2024, the state court affirmed OSI's order, concluding that it was "not arbitrary or capricious" and was "otherwise in accordance with law as supported by substantial evidence." Order at 2, *Office of the Superintendent of Ins. v. Gospel Light Mennonite Church Med. Aid Plan*, No. D-101-CV-2023-660 (N.M. Dist. Ct., Santa Fe Cnty., June 18, 2024). The court rejected Gospel Light's argument that it was denied procedural due process because OSI was not an impartial decisionmaker, but did not resolve Gospel Light's Free Exercise and preemption claims. *Id.* at 1-4.²

Gospel Light sought review of that order in the New Mexico Court of Appeals. But because the state trial court had not resolved all of Gospel Light's claims, the state court of appeals dismissed its appeal and denied review for lack of a final order. See *New Mexico Office of the Superintendent of Ins. v. Gospel Light Mennonite Church Med. Aid Plan*, No. A-1-CA-42047 (N.M. Ct. App., Feb. 18, 2025).

The state trial court then amended its original decision affirming OSI's order. It "adopt[ed] and incorporate[d] the analyses of the Federal Courts" in the litigation below and rejected Gospel Light's Free Exercise and preemption arguments. See Order at 4-5, *Office of*

² Gospel Light filed another lawsuit in state court in June 2024. See *Gospel Light Mennonite Church Med. Aid Plan v. Catechis*, No. D-506-CV-2024-603 (N.M. Dist. Ct., Lea Cnty., June 27, 2024). In that suit, Gospel Light claims that OSI's cease-and-desist order violates the New Mexico Religious Freedom Restoration Act, N.M. Stat. Ann. §§ 28-22-1 *et seq.* See Compl., *Catechis, supra* (filed June 27, 2024). An evidentiary hearing related to defendants' motion for summary judgment in that proceeding is scheduled to begin on October 5, 2026. See Docket, *Catechis, supra* (Mar. 13, 2026).

the Superintendent of Ins. v. Gospel Light Mennonite Church Med. Aid Plan, No. D-101-CV-2023-660 (N.M. Dist. Ct., Santa Fe Cnty., Sept. 24, 2025).

Gospel Light moved for reconsideration and rehearing of the state trial court's order, which the court denied in January 2026. See Orders, *Office of the Superintendent of Ins. v. Gospel Light Mennonite Church Med. Aid Plan*, No. D-101-CV-2023-660 (N.M. Dist. Ct., Santa Fe Cnty., Jan. 5, 2026). Gospel Light then appealed; that appeal remains pending in the New Mexico court of appeals. See Pet. at 2, *New Mexico Office of the Superintendent of Ins. v. Gospel Light Mennonite Church Med. Aid Plan.*, No. A-1-CA-43232 (N.M. Ct. App. Feb. 4, 2026).

4. ***Federal court proceedings.*** As that state-court litigation unfolded, Gospel Light, together with petitioners, also filed a federal suit after OSI issued its February 2023 final order. In March 2023, they sued respondents in the United States District Court for the District of New Mexico. Pet. App. 97a; see D. Ct. Doc. 1 (Mar. 31, 2023). They sought a preliminary injunction to bar enforcement of OSI's cease-and-desist order, contending that enforcing the order would violate their Free Exercise rights and that OSI's application of New Mexico insurance law was preempted by the ACA. D. Ct. Doc. 3 (Mar. 31, 2023). OSI moved to dismiss. D. Ct. Doc. 8 (Apr. 25, 2023).

The district court resolved both motions on July 14, 2023. Pet. App. 92a-123a. The court first dismissed Gospel Light's claims without prejudice, applying the *Younger* abstention doctrine because Gospel Light's ongoing state-court appeal from OSI's order provided an adequate forum for its claims and the state's substantial

interest in insurance regulation was at play. *Id.* at 106a-120a; see *Younger v. Harris*, 401 U.S. 37 (1971).³

The district court then addressed and denied petitioners' request for a preliminary injunction, finding it "entirely possible that the state court will invalidate the hearing officer's order and resolve the question in Gospel Light's favor" in the pending state proceeding. Pet. App. 122a. The court thus considered petitioners' alleged injury from OSI's order "too speculative" to constitute irreparable harm. *Id.* at 123a. It declined to reach the remaining preliminary-injunction factors, including petitioners' likelihood of success on their Free Exercise Clause or federal preemption claims. *Id.* at 122a-123a.⁴ Petitioners appealed that order. *Id.* at 8a-9a.

Thereafter, as detailed above, the New Mexico state court entered a temporary restraining order enforcing OSI's February 2023 order against Gospel Light. D. Ct. Doc. 51-1, at 2. Petitioners then filed an emergency motion asking the federal district court to reconsider its denial of the preliminary injunction. D. Ct. Doc. 44 (Aug. 9, 2023); see Pet. App. 69a-70a.

³ The district court also dismissed the plaintiffs' state-law claims under the New Mexico Civil Rights Act, N.M. Stat. Ann. §§ 41-4A-1 *et seq.*, and the New Mexico Religious Freedom Restoration Act, N.M. Stat. Ann. §§ 28-22-1 *et seq.*, on sovereign-immunity grounds. Pet. App. 101a-103a.

⁴ The district court discussed preemption in considering whether an important state interest was at play for purposes of *Younger* abstention. See Pet. App. 109a-112a. In responding to Gospel Light's argument that no important state interest exists when there is a "facially conclusive claim" of federal preemption, *New Orleans Pub. Serv., Inc. v. Council*, 491 U.S. 350, 367 (1989) (emphasis omitted), the court found that "no facially conclusive claim of federal preemption exists here." Pet. App. 110a.

The federal district court denied that motion and again declined to grant a preliminary injunction, this time reasoning that petitioners were unlikely to succeed on the merits. Pet. App. 69a-91a. The court held that petitioners' Free Exercise challenge was unlikely to succeed under *Employment Division v. Smith*, 494 U.S. 872 (1990). The court reasoned that the NMIC is generally applicable—despite its exemption for fraternal benefit organizations—by identifying multiple ways in which those organizations differ from HCSMs. Pet. App. 81a-82a. It further found that OSI acted neutrally because its press releases made “accurate statements” regarding HCSMs and did not “demonstrate[] * * * that the Superintendent is hostile towards religion.” *Id.* at 83a-85a. The court thus applied rational-basis review and found no constitutional violation. *Id.* at 86a-87a. The court did not address petitioners' preemption argument. See *id.* at 69a-91a.

Finally, the district court held that petitioners' unlikelihood of success on the merits prevented them from demonstrating irreparable constitutional injury and that the balance of the equities and the public interest weighed against an injunction. Pet. App. 88a-90a. Petitioners did not file a notice of appeal from that ruling.

5. On appeal of the district court's first denial of a preliminary injunction, the United States Court of Appeals for the Tenth Circuit affirmed in an unpublished, nonprecedential opinion. Pet. App. 1a-32a.

As an initial matter, the court of appeals determined that only the district court's original denial of a preliminary injunction—not its later disposition of petitioners' motion for reconsideration—was properly before it. Pet. App. 13a.

On petitioners' Free Exercise claim, the court of appeals concluded that New Mexico law is neutral and generally applicable such that rational-basis review applies under this Court's decision in *Smith*, 494 U.S. at 879. Specifically, the court of appeals held, OSI had acted neutrally with respect to Gospel Light because its press releases and consumer advisory were not "official expression[s] of hostility" or "based on religious animus." Pet. App. 20a-21a. As to general applicability, the court held that the exemptions for secular conduct that petitioners identified in the NMIC were not sufficiently comparable to undermine the NMIC's general applicability. *Id.* at 21a-24a. The court acknowledged that "fraternal benefit societies and labor organizations are partially exempted under the NMIC." *Id.* at 22a. But it concluded that those secular activities are not "comparable" to Gospel Light's religious activity because "Gospel Light's sole purpose is to act as an HCSM," while "any medical payments provided by the fraternal benefit societies or labor organizations is incidental or ancillary to their other, primary purposes for being." *Id.* at 23a (emphasis omitted). The court thus applied rational-basis review under *Smith* and found no Free Exercise violation.

As to preemption, the court of appeals concluded that petitioners "pressed their preemption claim enough to preserve it for appeal" even though the district court "did not analyze the preemption arguments related to the motion for a preliminary injunction." Pet. App. 25a-26a. The court of appeals then rejected petitioners' arguments on the merits, *id.* at 25a-32a, viewing them in light of the McCarran-Ferguson Act's background anti-preemption principle, which protects

States' traditional authority to regulate the insurance industry, see *id.* at 29a-30a.

First, the court of appeals held, the ACA's requirement that HCSMs maintain nonprofit status and the federal tax law governing nonprofits did not preempt the NMIC "because any nonprofit could flout state law by arguing that compliance would cause their organization to land outside of the [Internal Revenue Code's (IRC's)] definition of a nonprofit," and there was no conflict in forcing Gospel Light to "choose between functioning as a nonprofit and selling commercial insurance." Pet. App. 28a-29a.

Second, the court of appeals held, other provisions of the ACA did not preempt the NMIC. Petitioners had argued that ceasing operations in New Mexico would make it impossible for Gospel Light to comply with the ACA's "uniformity requirement"—that members must share expenses "without regard to the State in which a member resides or is employed," see 26 U.S.C. 5000A(d)(2)(B)(ii)(II); Pet. App. 29a. The court found no conflict because Gospel Light had no "legal right to remain a HCSM." Pet. App. 29a. It declined to consider petitioners' argument that complying with the NMIC's nondiscrimination provision would require Gospel Light to violate the ACA's requirement that HCSM members "share a common set of ethical or religious beliefs" because petitioners failed to preserve that argument in the district court. *Id.* at 27a n.11 (quoting 26 U.S.C. 5000A(d)(2)(B)(ii)(II)).

Finally, the court of appeals observed that the district court had taken no position regarding "whether Gospel Light was engaged in the 'business of insurance,' as defined by state or federal law," on abstention grounds, and Gospel Light did not appeal the abstention

decision. Pet. App. 31a. It therefore concluded that on appeal from the denial of a preliminary injunction, petitioners could not advance a preemption argument that Gospel Light does not sell insurance. *Ibid.*

Because the court of appeals deemed petitioners unlikely to succeed on the merits, it did not address irreparable harm or the other preliminary-injunction factors. Pet. App. 32a.

Judge Carson dissented. Pet. App. 33a-68a. He would have held that OSI had regulated Gospel Light, “a religious organization, more stringently than it regulates similarly secular organizations like labor unions and fraternal organizations,” in violation of the Free Exercise Clause. *Id.* at 33a; see *id.* at 40a-55a. He also would have held OSI’s order conflict preempted. See *id.* 55a-65a. In his view, both the ACA and the IRC preempt respondents’ attempt to enforce the NMIC here because Gospel Light cannot comply with both OSI’s order and its obligations as a nonprofit HCSM under federal law. *Id.* at 57a-59a. He further reasoned that Gospel Light’s operations do not resemble the “business of insurance.” *Id.* at 62a-65a. Finally, he would have found all the other preliminary-injunction factors satisfied. *Id.* at 66a-68a.

The court of appeals denied rehearing and rehearing en banc. Pet. App. 133a-134a.

DISCUSSION

The questions presented encompass two separate issues: (1) Free Exercise Clause questions regarding the neutrality and general applicability of laws that burden religious exercise; and (2) questions as to whether the federal ACA and IRC preempt respondents’ attempt to apply New Mexico insurance law to Gospel Light and other HCSMs. See Pet. i-ii (separating the Free Exer-

cise issues into three questions presented); Br. in Opp. i (framing the Free Exercise issues as a single question presented). The Free Exercise issues overlap with the questions presented in *St. Mary Catholic Parish v. Roy*, cert. granted, No. 25-581 (Apr. 20, 2026). See Pet. at i-ii, *St. Mary Catholic Parish, supra* (No. 25-581). The Court should therefore hold the petition for a writ of certiorari in this case pending resolution of *St. Mary Catholic Parish*.

The preemption issues do not warrant this Court’s review. There is no division among the courts of appeals on that issue, which is factbound, subject to ongoing litigation in state court, and partially unpreserved, and which involves an unresolved state-law question material to the preemption inquiry.

A. This Court Should Hold The Petition Pending Resolution Of *St. Mary Catholic Parish*

This Court granted a writ of certiorari in *St. Mary Catholic Parish* to address: (1) “Whether proving a lack of general applicability under *Employment Division v. Smith*, [494 U.S. 872 (1990),] requires showing unfettered discretion or categorical exemptions for identical secular conduct,” and (2) “[w]hether *Carson v. Makin*, [596 U.S. 767 (2022),] displaces the rule of *Employment Division v. Smith* only when the government explicitly excludes religious people and institutions.” Pet. at i-ii, *St. Mary Catholic Parish, supra* (No. 25-581). Because this Court’s resolution of those questions may affect the Tenth Circuit’s judgment in this case, the Court should hold the petition for a writ of certiorari pending its decision in *St. Mary Catholic Parish*.

The Tenth Circuit’s decision below rested on its conclusion that the NMIC is generally applicable. See Pet. App. 13a-25a. That Tenth Circuit decision employed

reasoning similar to the Tenth Circuit’s reasoning in *St. Mary Catholic Parish*. For example, the decision below determined that partial exemptions for labor unions and fraternal benefit organizations did not undermine general applicability because HCSMs exist for a different purpose than those other organizations. *Id.* at 23a. The panel in *St. Mary Catholic Parish* similarly concluded that because the secular exemptions in Colorado’s non-discrimination law for preschools did not undermine the state’s asserted interest “in a similar way” as petitioners’ religious exemption, those exemptions did not undermine general applicability. See Pet. App. at 38a, *St. Mary Catholic Parish, supra* (No. 25-581).

Thus, the Court’s resolution of whether “categorical exemptions for *identical* secular conduct” are required for a religious plaintiff to demonstrate that a law is not generally applicable may bear on the resolution of petitioners’ Free Exercise claims. Pet. at i, *St. Mary Catholic Parish, supra* (No. 25-581) (emphasis added). This Court should hold this petition pending the disposition of *St. Mary Catholic Parish* and proceed in light of that opinion.

B. The Tenth Circuit’s Preemption Ruling Does Not Warrant Further Review

Petitioners also raise a panoply of federal-law requirements that they contend conflict with New Mexico insurance law. Pet. 30-36. Their basic gist is that New Mexico has effectively eliminated the ACA provision exempting members of HCSMs from the individual mandate by imposing requirements on HCSMs that conflict with their obligations under federal law, thus violating the Supremacy Clause. Those contentions rest on fact-intensive determinations that are subject to ongoing state-court litigation by Gospel Light, which is not a pe-

tioner here, and whose state-court litigation may significantly affect the scope of relief available. Further, it is unclear whether Gospel Light is engaged in the business of insurance as a matter of New Mexico law. Petitioners also failed to preserve one of their preemption arguments. And the preemption issue does not implicate any division in authority among the courts of appeals. The preemption issue thus does not warrant this Court’s review.

1. First, Gospel Light’s state-court appeal of OSI’s cease-and-desist order is ongoing—and could either obviate petitioners’ injury or preclude meaningful relief. Although the state trial court affirmed OSI’s order, Gospel Light’s appeal remains pending, and the New Mexico Court of Appeals has yet to consider its arguments. Accordingly, the state courts may ultimately determine that Gospel Light is *not* engaged in the business of insurance and therefore is not subject to the NMIC. Such a holding would render any preemption ruling moot. See *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 90-91 (2013).

Alternatively, the state appellate courts may render a final judgment affirming OSI’s order against Gospel Light before this Court reaches the preemption question. If that occurs, complicated questions would arise as to what relief the individual petitioners here could obtain as individual members of Gospel Light. It is unclear what federal courts could do to “afford [petitioners] complete relief” given the state court’s final and preclusive order against Gospel Light itself. *Trump v. CASA, Inc.*, 606 U.S. 831, 851 (2025); see *Allen v. McCurry*, 449 U.S. 90, 96 (1980) (“Congress has specifically required all federal courts to give preclusive effect to state-court judgments whenever the courts of

the State from which the judgments emerged would do so.”); *Potter v. Pierce*, 342 P.3d 54, 57 (N.M. 2015) (“Federal law and New Mexico law are consistent on the general standards governing claim preclusion.”).

Further, if the New Mexico courts rule against Gospel Light in its state-court appeal, Gospel Light itself may ask this Court to review the same federal preemption question (and Free Exercise question) that petitioners present here. A reversal in that scenario would serve to set aside OSI’s order, providing relief to Gospel Light and its members. See N.M. Stat. Ann. § 59A-4-20 (2025); *id.* § 39-3-1.1.

2. Complicating the preemption inquiry, the key underlying question of state law—whether Gospel Light was engaged in the business of insurance—went unresolved by the federal courts below. See Pet. App. 31a. The district court refrained from opining on that question based on the doctrine of *Younger* abstention, citing ongoing state-court proceedings that could resolve the question. *Ibid.*; see *Younger v. Harris*, 401 U.S. 37 (1971). Gospel Light did not appeal that abstention decision. *Ibid.* But resolution of petitioners’ preemption arguments would necessarily require addressing that state-law question. As discussed, if Gospel Light is not, in fact, engaged in the business of insurance, then the NMIC would not apply at all. This case is accordingly a poor vehicle to consider the preemptive effect of federal law on the NMIC.

3. Further, the Tenth Circuit expressly refused to consider one of petitioners’ preemption arguments—that the NMIC’s nondiscrimination provision is preempted by the ACA’s requirement that HCSM members share ethical or religious beliefs, Pet. 35—because petitioners “did not present th[e] argument in the rele-

vant briefing before the district court.” Pet. App. 27a n.11. This Court “ordinarily do[es] not decide in the first instance issues not decided below,” *Cooper Indus., Inc. v. Aviall Servs., Inc.*, 543 U.S. 157, 168-169 (2004) (citation omitted), and petitioners do not dispute the court of appeals’ finding that they failed to preserve an argument with respect to the NMIC’s nondiscrimination provision, see Pet. 35.

4. Finally, there is no division of authority on the preemption question. Contra Pet. 30-36. Petitioners note (Pet. 32) that the Ninth Circuit has endorsed the general proposition that “the ACA individual mandate preempts conflicting state laws,” but petitioners’ cited case did not concern the HCSM exemption. See *Coons v. Lew*, 762 F.3d 891, 901-902 (2014), cert. denied, 575 U.S. 935 (2015). In any event, the decision below recognized that “federal law”—including the ACA individual mandate—“preempts contrary state law.” Pet. App. 26a (citation omitted). The court of appeals did not “depart from its sister circuit” (Pet. 31-32) in declining to find that the IRC or the HCSM exemption from the individual mandate preempts the particular state insurance provisions at issue here. No disagreement among the courts of appeals here warrants this Court’s review.

CONCLUSION

The petition for a writ of certiorari should be held pending this Court's disposition of *St. Mary Catholic Parish v. Roy*, cert. granted, No. 25-581 (Apr. 20, 2026), and then be disposed of as appropriate.

Respectfully submitted.

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