

No. 25-126

In the
Supreme Court of the United States

MICHAEL KANE, *et al.*,
Petitioners,

v.

CITY OF NEW YORK, NEW YORK, *et al.*,
Respondents.

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

**BRIEF OF *AMICUS CURIAE* PACIFIC JUSTICE
INSTITUTE
*in Support of Petitioners***

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF INTEREST	1
INTRODUCTION AND SUMMARY OF THE ARGUMENT	1
ARGUMENT	2
I. WITH ONE EXCEPTION, THERE IS A GENERAL CONSENSUS AMONG THE CIRCUITS THAT PERSONAL GUIDANCE AND REVELATION THROUGH PRAYER AND SPIRITUAL IMPRESSION IS PROTECTED UNDER THE FREE EXERCISE CLAUSE	2
A. The Majority of Circuits Recognize Prayer and Spiritual Guidance As Legitimate And Protected Sources Of Religious Belief	4
B. The Third Circuit Parses A Stated Belief To Determine Whether It Is Sufficiently Religious or Personal	7
II. THE FIRST AMENDMENT DOES NOT JUDGE FAITH ACCORDING TO LOGIC OR ORTHODOXY, ONLY SINCERITY	11
CONCLUSION	14

TABLE OF AUTHORITIES

Cases

<i>Barnett v. Inova Health Care Servs.</i> , 125 F. 4th 465 (4th Cir. 2025).....	4
<i>Bolden-Hardge v.</i> <i>Office of the Cal. State Controller</i> , 63 F. 4th 1215 (9th Cir. 2023).....	13
<i>Bube v. Aspirus Hosp., Inc.</i> , 108 F. 4th 1017 (7th Cir. 2024)	6
<i>Burwell v. Hobby Lobby Stores, Inc.</i> , 573 U.S. 682 (2014).....	8, 12, 13
<i>Callahan v. Woods</i> , 658, F. 2d 679 (9th Cir. 1981)	8
<i>Cantwell v. State of Connecticut</i> , 310 U.S. 296 (1940).....	10
<i>Davila v. Gladden</i> , 777 F. 3d 1198 (11th Cir. 2015)	11
<i>Davis v. Beason</i> , 133 U.S. 333 (1890).....	13
<i>Fallon v. Mercy Catholic Med. Ctr.</i> , 877 F. 3d 487 (3d Cir. 2017)	7
<i>Frazee v. Ill Dep't of Emp't Sec.</i> , 489 U.S. 829 (1989).....	3
<i>Hernandez v. Comm'r of Internal Revenue</i> , 490 U.S. 680 (1989).....	5-6, 12

<i>Lucky v. Landmark Med. of Mich., P.C.,</i> 103 F. 4th 1241 (6th Cir. 2024)	5
<i>Masterpiece Cakeshop, Ltd. v.</i> <i>Colorado Civil Rights Comm’n,</i> 584 U.S. 617 (2018).....	11
<i>McDowell v. Bayhealth Med. Ctr., Inc.,</i> 2024 U.S. App. LEXIS 29065 (3d Cir. Nov. 15, 2024).....	7, 8
<i>Passarella v. Aspirus, Inc.,</i> 108 F. 4th 1005 (7th Cir. 2024)	6
<i>Sturgill v. Am. Red Cross,</i> 114 F. 4th 803 (6th Cir. 2024)	5
<i>Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.,</i> 450 U.S. 707 (1981).....	11-12, 13
<i>Thornton v. Ipsen Biopharmaceuticals, Inc.,</i> 126 F. 4th 76 (1st Cir. 2025)	4
<i>United States v. Ballard,</i> 322 U.S. 78 (1944)	11, 13, 14
<i>United States v. Seeger,</i> 380 U.S. 163 (1965).....	12, 13
<i>Watson v. Jones,</i> 80 U.S. 679 (1871)	3
Other Authorities	
1 Corinthians 10:25	9
Buddha, <i>Dhammapada</i> , 405.....	10
Buddha, <i>Udāna</i> , 3-10.....	9

Colossians 2:21-22	9
Galatians 1:17	9
Imam Muhammad al-Bukhari, <i>Sahih al-Bukhari</i> Book 1, Hadith 4	9
<i>The Joseph Smith Papers</i> , The Church Historian	9

STATEMENT OF INTEREST¹

The **Pacific Justice Institute** (PJI) is a non-profit legal organization established under Section 501(c)(3) of the Internal Revenue Code. Since its founding in 1997, PJI has advised and represented in court and administrative proceedings thousands of individuals, businesses, and religious institutions, particularly in the realm of First Amendment and parental rights. PJI has over 180 cases in active litigation involving rights of religious conscience. As such, PJI has a strong interest in the development of the law in this area.

INTRODUCTION AND SUMMARY OF THE ARGUMENT²

For more than a century and a half this Court has anathematized the hunt for heretics and hypocrites by state actors. Thus, at the workshop, the Free Exercise Clause raises a shield for government workers of sincere faith, defending them beyond the rights enjoyed by private-sector employees under Title VII. In this case, that First Amendment line of protection has been imperiled by City of New York officials who have found a sympathetic ear in the Second Circuit. In light of that, your *amicus* presents two points in support of the Petition.

¹ No counsel for any party authored this brief in whole or in part. No person or entity other than amicus and their counsel made a monetary contribution intended to fund the preparation or submission of this brief. Timely notice was given to all parties.

² The undersigned verifies that no part of this brief was drafted using artificial intelligence.

First, the U.S. Constitution shelters personal religious beliefs acquired through prayer, inner spiritual guidance, vision or revelation in equal measure as those beliefs handed down from major faith traditions, sacred text, or spiritual authorities seated at the top of a hierarchy.

Second, the First Amendment guards the sincere, not weighing the religious adherent on a scale to evaluate if the conviction is wanting in logic or objective validity.

ARGUMENT

- I. WITH ONE EXCEPTION, THERE IS A GENERAL CONSENSUS AMONG THE CIRCUITS THAT PERSONAL GUIDANCE AND REVELATION THROUGH PRAYER AND SPIRITUAL IMPRESSION IS PROTECTED UNDER THE FREE EXERCISE CLAUSE.

When determining whether to grant a religious exemption to a work-related requirement, many employers seek to determine the authenticity of faith by probing the alignment of the employee's profession with religious tenets. This can come in the form of the submission of a religious scripture or statement from a leader high up in the hierarchy of faith. But in this case, the City of New York found convictions arrived at through divine communication suspect.

It must be conceded that verification of a religious belief comes more easily when the employee belongs to an organized religious denomination with a specific

tenet on addressing the conflict between a faith-based request for an exception to a work requirement. *Frazee v. Ill. Dep't of Emp't Sec.*, 489 U.S. 829, 834 (1989). The same would hold true if the employee could produce sacred writ or explanation from a religious leader. That notwithstanding, this Court has explicitly rejected such requirements in order to receive the benefits of the Free Exercise Clause. *Id.* at 834-35. And rightly so, for many people of faith claim to hear from their Creator through private prayer, meditation, and even visions. Faith that is both boutique to the individual and comes through revelation is no less protected under the First Amendment than a belief centered in a major religion and within the scope of that faith tradition's own doctrinal orthodoxy.

In this country the full and free right to entertain any religious belief, to practice any religious principle and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect.

Watson v. Jones, 80 U.S. 679, 728 (1871).

The majority of panels sitting in the circuit courts are fully persuaded of this principle and remain protective of personal faith. What follows is a narrowly focused sampling of recent cases within the context of mandatory workplace vaccinations.

A. The Majority of Circuits Recognize Prayer and Spiritual Guidance as Legitimate and Protected Sources of Religious Belief.

Rigina Thornton worked as an associate director of patient safety for a research biopharmaceutical company. She requested a religious accommodation to a vaccination requirement. Thornton stated the belief that “[t]hrough much prayer and listening to the guidance of the Holy Spirit, it would violate my sincerely held religious beliefs and jeopardize my soul and eternal salvation to go against God by defiling my perfectly created body that He created in His image by receiving the vaccine.” In a challenge to the pleadings, the First Circuit determined that Thornton’s explanation stood as sufficient to state a bona fide religious belief. *Thornton v. Ipsen Biopharmaceuticals, Inc.*, 126 F.4th 76 (1st Cir. 2025).

Kristen Barnett is a registered nurse who requested a religious accommodation to vaccination. The Fourth Circuit concluded that “[a]n employee states a claim when she alleges that she is a sincere Christian who made life decisions after thoughtful prayer and biblical guidance.” Here Barnett claimed that “it would be sinful for her to consume or engage with a product . . . after having been instructed by God to abstain from it.” Her decision not to be vaccinated was based on her “study and understanding of the Bible and personally directed by the true and living God.” Based on these statements of her convictions, the panel concluded that Barnett’s beliefs were sufficiently religious in nature. *Barnett v. Inova Health Care Servs.*, 125 F.4th 465, 471 (4th Cir. 2025).

Amie Sturgill is a devout Christian who makes “daily decisions, including those regarding her vaccination status and other medical decisions, through prayer and by reading scripture.” Her employer required vaccination for which Sturgill requested a religious accommodation because she said the ingredients in the vaccine are dangerous. Sturgill believes that her body is the temple of the Holy Spirit and that engaging in conduct harmful to her body clashed with her religious beliefs. The district court wrongly concluded that Sturgill’s opinion was medical rather than religious. The Sixth Circuit said, not so. *Sturgill v. Am. Red Cross*, 114 F.4th 803 (6th Cir. 2024).

Najeane Lucky describes herself as “a non-denominational Christian.” Like many in the present case, she holds the conviction that she “should not have any vaccination enter her body such that her body would be defiled, because her body is a temple.” Lucky “seeks to make all decisions, especially those regarding vaccination and other medical decisions, through prayer.” Beyond that and as to the COVID-19 vaccine in particular, Lucky claims that “God spoke to [her] in her prayers and directed her that it would be wrong to receive the COVID-19 vaccine.” *Lucky v. Landmark Med. of Mich., P.C.*, 103 F.4th 1241, 1243 (6th Cir. 2024). Considering all of that, the Sixth Circuit found that prayer is enough. The panel relied on language from this Court which cautioned that “[i]t is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants’ interpretations of those creeds.” *Hernandez*

v. Comm’r of Internal Revenue, 490 U.S. 680, 699 (1989).

Christine Bube is a “baptized and a practicing Catholic” who “follows her conscience of refusing the Covid vaccine at this time.” Finding Bube’s claim to be adequately religious, the Seventh Circuit observed, “[C]ourts should avoid putting themselves in the impossible position of trying to define religious legitimacy and viewpoint sufficiency.” *Bube v. Aspirus Hosp., Inc.*, 108 F. 4th 1017, 1020 (7th Cir. 2024).

Megan Passarella and Sandra Dottenwhy worked at a Wisconsin hospital which required vaccination. Passarella explained her Christian belief that her body “is [the Lord’s] dwelling place” and that “[a]fter prayerful consideration, I don’t feel at peace about receiving the COVID vaccine” and instead “must trust God with my body (His temple) and that he will provide for me and protect me as he has already proven time and time again during my life.” She likewise stated that “God knows my body better than anyone because He is the maker of it.” Passarella said that she “obey[s] scripture and the divine wisdom and discernment imparted to me by the Holy Spirit through prayer.” *Passarella v. Aspirus, Inc.*, 108 F.4th 1005, 1007 (7th Cir. 2024). Dottenwhy wrote, “I have prayed about this and have asked GOD for guidance, and believe that HE is with me on this decision.” *Id.* at 1008 (caps in original). In reversing a dismissal by the district court, the Seventh Circuit ruled that both exemption requests are based on their face and at least in part on a dimension of these employees’ religious beliefs. *Id.* at 1009.

B. The Third Circuit Parses a Stated Belief to Determine Whether it is Sufficiently Religious or Personal.

Although a majority of circuits have found that personal prayer and spiritual guidance qualifies as a source of religious beliefs, there is one outlier. Last year the Third Circuit took a step backwards from protecting private views on faith. A divided panel wrote, “In religious objection cases, courts must examine whether a belief is a religious one, as opposed to a personal belief cloaked in religion.” *McDowell v. Bayhealth Med. Ctr., Inc.*, 2024 U.S. App. LEXIS 29065 (3d Cir. Nov. 15, 2024). Here again employees at a medical facility, who are Christians of various denominations, sought a religious exception to a vaccine policy based on the view that their bodies are temples of the Holy Spirit and, as such, they cannot ingest or inject something that could cause physical harm. Prayer, discernment, and scriptural study informed their opinions.

Yet, the appellate court opined that “[e]ven viewing the objection as religiously inspired, a ‘concern that [a] vaccine may do more harm than good is a medical belief, not a religious one[,] and a ‘general moral commandment’ drawn from religion cannot transform a medical objection into a religious one.” *Id.* (quoting *Fallon v. Mercy Catholic Med. Ctr.*, 877 F.3d 487, 492 (3d Cir. 2017)). Because they questioned the reliability of employees’ spiritual claims, the Third Circuit yielded to the temptation of parsing out the stated convictions of the employees. By partaking of the forbidden fruit of second-guessing beliefs, they eventually deemed those beliefs as personal and thus

religiously dubious. But in his dissent, Judge Matey was skeptical about his colleagues' skepticism. Citing this Court, he wrote that "courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim." *Id.* at *10.

The First Amendment protection of religious liberties by necessity requires guarding the individual's ability to refuse to participate in activities that their faith prescribes. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014). Surely that includes vaccination.

So long as one's faith is religiously based at the time it is asserted, it should not matter, for constitutional purposes, whether that faith derived from revelation, study, upbringing, gradual evolution, or some source that appears entirely incomprehensible. Nor can the courts easily distinguish between beliefs springing from religious or secular origin. A secular experience can stimulate a spiritual response. Lives are not so compartmentalized that one can readily keep the two separate.

Callahan v. Woods, 658 F.2d 679, 687 (9th Cir.1981).

In view of that, the Third Circuit's *McDowell* decision presents a problematic position under this Court's line of Free Exercise decisions. The split among the circuit courts should be put to rest by granting this Petition. In addition to the U.S. Supreme Court cases cited here, consider the impact

that the dismissiveness of decisions based on prayer and discernment would hypothetically have on prominent religious figures. For example, St. Paul received his Gospel through revelation,³ which included the view that Gentile believers were not bound by Jewish law—including dietary restrictions.⁴ Joseph Smith, founder of the Church of Jesus Christ of Latter-day Saints, proclaimed that all forms of Christianity were in error after a series of visions and dreams from 1820 to 1844.⁵ The origin of Islam arose when the Prophet Muhammad was meditating in a cave and had a visitation from the angel Gabriel.⁶ Consider the genesis of Buddhism. Buddha left home, living a life of ascetism and meditation. He achieved enlightenment while meditating under a Bodhi tree.⁷

It is doubtful whether these historical, religious figures would qualify for **any sort** of religious accommodation under the Third Circuit’s framework if their convictions conflicted with a work-related requirement. Considering the stature of these persons in the pantheon of the history of religion, the irony verges on the comical. Moreover, they would undoubtedly have come up short under the City of New York’s protocol because they had neither religious hierarchy to vouch for their claims nor an outside religious text.

³ Galatians 1:17.

⁴ 1 Corinthians 10:25; Colossians 2:21-22.

⁵ *The Joseph Smith Papers*, The Church Historian, accessed at: <https://www.josephsmithpapers.org/site/accounts-of-the-first-vision>.

⁶ 1 Imam Muhammad al-Bukhari, *Sahih al-Bukhari* Book 1, Hadith 4.

⁷ Buddha, *Udāna*, 3-10.

The City is agnostic on the manner in which some of their employees arrive at their faith-based views. But these officials have backslidden from First Amendment doctrine. By way of illustration, consider the emphasis of a vegetarian diet in Buddhism. Like the employees who decline vaccination by prayer and guidance by the Holy Spirit, The Buddha would face resistance because he arrived at his conviction through meditation leading to enlightenment. The Buddha's second problem would be his explanation about a vegetarian diet which emanates from the belief in compassion and respect for life.⁸ Under the Third Circuit's reasoning, this conviction is insufficiently religious because it converts personal views about love of animals and diet into a religious view. This parsing of beliefs to determine whether they are personal or religious is the sort of inquisition that merits this Court's review.

This Court set down the premise that the religion clauses not only prevent state-sponsored compulsion on the one hand, but also "safeguard[] the chosen form of religion." *Cantwell v. State of Connecticut*, 310 U.S. 296, 303 (1940). Convictions formed through prayer, meditation, or enlightenment sit as a protected form of religion. Surely the Free Exercise of Religion Clause prevents state actors from casting stones of judgment at those who claim that their personal faith comes from divine revelation. Instead, the primary requirement for a religious belief is that it is sincere, not how it is derived. This brief turns to that issue.

⁸ "He who has renounced violence towards all living beings, weak or strong, who neither kills nor causes others to kill — him do I call a holy man." Buddha, *Dhammapada*, 405.

II. THE FIRST AMENDMENT DOES NOT JUDGE FAITH ACCORDING TO LOGIC OR ORTHODOXY, ONLY SINCERITY.

Faith is intrinsically subjective. A panel sitting for the Eleventh Circuit explained that it is self-evident that “faith is, by definition, impossible to justify through reason.” *Davila v. Gladden*, 777 F.3d 1198, 1204 (11th Cir. 2015). Based on a long line of decisions, the Court should give no quarter to an employer who puts an employee through a crucible of state-determined objective criteria to prove a religious belief. Liberty of conscience centered in the First Amendment allows employees to believe what they cannot prove. Certainly “[t]hey may not be put to the proof of their religious doctrines or beliefs.” *United States v. Ballard*, 322 U.S. 78, 86 (1944). When it comes to religious convictions—or any idea for that matter—the First Amendment includes the right to be wrong.

In view of that, can a state actor adjudicate the logic or validity of a party’s belief? This Court has given a “hard *no*.” “It hardly requires restating that government has no role in deciding or even suggesting whether the religious ground for [a] conscience-based objection is legitimate or illegitimate.” *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n*, 584 U.S. 617, 639 (2018). A state actor lacks the actual and legal capacity to second guess an employee’s faith. Religious convictions to the nonadherent may come across as illogical, incomprehensible, or inconsistent. Nonetheless, a belief sincerely held rests as fully protected under the First Amendment. *Thomas v.*

Rev. Bd. of Ind. Emp. Sec. Div., 450 U.S. 707, 714 (1981).

Within the context of free exercise, this Court cautions against second-guessing the reasonableness of an individual's assertion that a requirement burdens religious beliefs. The "narrow function . . . is to determine whether the line drawn reflects an honest conviction." *Burwell*, 573 U.S. at 725 (quoting *Thomas*, 450 U.S. at 716 (inner quotes removed)). Limiting the review of religious beliefs to sincerity is not cabined to the courts. It has also been applied to other government entities. *Hernandez v. Commissioner*, 490 U.S. 680, 693 (1989) ("[T]he IRS can reject otherwise valid claims of religious benefit only on the ground that a taxpayers' alleged beliefs are not sincerely held."). Here the City of New York improperly reached beyond the sincerity inquiry.

Just as the courts "have no business addressing whether the religious belief asserted in a case is reasonable," *Burwell*, 573 U.S. at 724, so too **all** state actors have the same restrictions because they are equally bound by the Free Exercise Clause. Neither federal nor state employment laws provide a safe harbor for unconstitutional inquiries into the logic of a professed religious belief. Rather, the only task is to determine whether religious beliefs are sincerely held. *United States v. Seeger*, 380 U.S. 163, 184-85 (1965).

The inquisitorial posture of the city examiners in this case is of the most noxious kind under the First Amendment. Since the Virginia Declaration of Rights (J. Madison, Memorial and Remonstrance Against

Religious Assessment, in 2 Writings of James Madison, 184), followed by the ratification of the First Amendment, the “citizen’s relation to his God was made no concern of the state.” *United States v. Ballard*, 322 U.S. 78, 87 (1944). Since that is the case, “[l]ocal boards and courts . . . are not free to reject beliefs because they consider them ‘incomprehensible.’” *Seeger*, 380 U.S. at 184-85.

The logic or validity of the religious employee stands outside of the bounds of inquiry by the employer in this case. An employee—particularly one working for a government employer—cannot be called “to answer . . . for the verity of his religious views.” *Ballard*, *Id.* Justice William O. Douglas articulated this well, writing, “With man’s relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted” *Davis v. Beason*, 133 U.S. 333, 342 (1890). Although established law, the decisions by the lower courts in this case chip away at what should be an unquestioned principle.

Since “second-guessing the reasonableness of an individual’s assertion that a requirement burdens her religious beliefs,” the government employer should confine itself as to whether the stated belief “reflects an honest conviction.” *Bolden-Hardge v. Office of the Cal. State Controller*, 63 F.4th 1215, 1223 (9th Cir. 2023) (citing *Burwell*, 573 U.S. at 725, quoting *Thomas*, 450 U.S. at 716 (inner quotes removed)). In other words, the New York City Panel could deny accommodations if it concluded that a claimant was not personally devout in the belief underlying the

objection, but it could not deny accommodations because it cast judgment on the nature of the religious objection raised.

CONCLUSION

The Supreme Court has historically been very protective of the rights of conscience secured by the First Amendment, writing, “Freedom of thought, which includes freedom of religious belief, is basic in a society of free men.” *Ballard*, 322 U.S. at 86. State suspicion of personal religious beliefs derived through prayer or divine revelation finds no support in the Constitution. The simple in faith enjoy the same constitutional succor under the Free Exercise Clause as the theologically sophisticated. The notion that an employee must explain validity or logic of her faith to the satisfaction of a government employer—even in connection with employment laws—cannot be reconciled with the religion clauses. The constitutional guarantee of religious liberty is not only for the articulate apologist of church doctrine. It is available to the common man.

Respectfully submitted this 2nd day of September 2025.

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