No. 25-133

In the Supreme Court of the United States

JOSEPH MILLER, ET AL.,
Petitioners,

v.

JAMES V. MCDONALD, COMMISSIONER, NEW YORK STATE DEPARTMENT OF HEALTH, ET AL.,
Respondents.

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

BRIEF OF *AMICI CURIAE* PARENTAL RIGHTS FOUNDATION AND THE WAGNER CENTER IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

For more than 50 years, New York permitted both medical and religious exemptions to its school vaccine requirement. But in 2019, the New York Legislature categorically eliminated religious exemptions. Sponsors of that law denigrated "fake" and "garbage" religious beliefs that they deemed "selfish and misguided." But they kept in place a regime of medical exemptions. And they continued to permit nonvaccination of nonstudents (such as teachers) and children outside of school. Today in New York, if a vaccine would harm your lungs, you may be exempted; but if it would harm your soul, you may not.

This makes New York an outlier. Forty-six other States (and the District of Columbia) allow religious exemptions to their school vaccine requirements.

In this case, New York imposed existential penalties on three Old Order Amish schools for failing to require vaccines that violate their sincerely held religious beliefs. These private schools are in rural Amish communities on private Amish land and are attended only by Amish children. The Second Circuit invoked *Employment Division v. Smith*, 494 U.S. 872 (1990), to find that New York's law did not violate the Free Exercise Clause as applied to the Amish.

The questions presented are:

1. Whether a law that categorically disallows religious exemptions but permits secular exemptions and other comparable secular activity violates the

Free Exercise Clause as applied to these Amish parents and schools.

2. Whether *Smith* should be reconsidered.

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STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE*

Pursuant to Supreme Court Rule 37, *Amici Curiae*, *Parental Rights Foundation* and the *Wagner Center* submit this brief.[1]

The *Parental Rights Foundation* (PRF) is a national, nonprofit, nonpartisan advocacy organization with supporters in all fifty states. The PRF is concerned about the erosion of the legal protection of loving and fit parents to raise, nurture, and educate their children without undue state interference. The PRF is committed to protecting children by preserving the liberty of their parents. It advances this mission by educating public officials and the broader public about the urgent need to reverse intrusive state policies that have, in many cases, caused more harm than benefit to children. The PRF also works to strengthen fundamental parental rights at all levels of government.

Housed on the campus of Spring Arbor University, the Wagner Center serves as a national academic voice for freedom of thought, conscience, and religion. Most importantly for this case, the Wagner Center

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[1] Pursuant to Rule 37(2), *Amici curiae* gave 10-days' notice of its intent to file this brief to all counsel. *Amici Curiae* further state that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity, other than *Amici curiae*, its members or its counsel, made a monetary contribution to the preparation or submission of this brief.

works to preserve the religious freedom of parents to direct and control the upbringing of their children and is a leading voice in this area.

Amici Curiae hold a significant interest in the preservation of constitutional rights. *Amici Curiae* have special knowledge helpful to this Court in this case, about the inalienable fundamental nature of a parent's right to direct and control the religious upbringing of their children.

SUMMARY OF THE ARGUMENT

This Court should grant the Petition for a Writ of Certiorari because significant confusion exists among the federal courts as to how much protection the Constitution affords citizens when a state circumvents constitutional limits on its power by substantially infringing on their religious liberty in a neutral and generally applicable way.

The First Amendment to the United States Constitution prohibits governmental infringement on the free exercise of religion and religious expression. U.S. Const. amend. I. The writers of the First Amendment did not say "make no law prohibiting the free exercise of religion, unless you can find an unelected state regulatory regime or federal judge to say the law is neutral and generally applicable." Indeed, instead, the Framers of the First Amendment doubly protected freedom of religious conscience. *Kennedy v. Bremerton Sch. Dist.,* 597 U.S. 507, 523, 540 (2022).

In *Employment Division v. Smith,* this Court drifted away from its constitutional jurisprudence that recognized freedom of religion as an inalienable First Amendment fundamental liberty interest. 494 U.S. 872 (1990). Even though the government's action in *Smith* substantially infringed on the free exercise of religious liberty, *Smith* required no justification by the government for its conduct. To reach this radical result, *Smith* deemed neutral laws of general applicability excepted from the constitutional protection contra-expressed in the plain language of

the Free Exercise Clause. *Smith* did so despite a dearth of any supporting jurisprudence deeply rooted in our Nation's history and traditions, or implicit in the concept of ordered liberty.

Unless a State affirmatively acts to restore fundamental right status to the free exercise of religious conscience, *Smith*, as a practical matter, denudes any meaningful constitutional protection for religious liberty as a limit on the exercise of the State's power.

This case provides this Court with an opportunity to overrule *Smith* and dispel the confusion among the federal courts by confirming that the First Amendment demands strict scrutiny of government actions infringing on fundamental inalienable religious liberty of citizens (e.g., as applied here, to direct and control the religious upbringing of their children)

ARGUMENT

I. THIS COURT SHOULD GRANT THE PETITION TO REVISIT *SMITH* AND RESTORE FULL FUNDAMENTAL RIGHT STATUS TO THE INALIENABLE LIBERTY PROTECTED BY THE FIRST AMENDMENT.

Ratified in 1791, the First Amendment to the United States Constitution provides that "Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech ...." U.S. Const. amend I. This Court holds liberty protected by the First Amendment applicable to the States via the Fourteenth Amendment. *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (Free Exercise); *Gitlow v. New York*, 268 U.S. 652, 666 (1925) (Free Speech); *Everson v. Board of Education*, 330 U.S. 1, 8 (1947).

Although the language in the First Amendment includes no exemption for laws the government labels as "neutral" or "generally applicable," *Employment Division v. Smith* wrongly held that it does. 494 U.S. 872 (1990). Whether government authorities can unconscionably (and unconstitutionally) burden a person's free exercise of their religious conscience via neutral and generally applicable lawmaking, is an important question this Court ought to revisit; this case provides the opportunity for the Court to correct its wrongly decided precedent in *Smith*.

The tyrannical applications of *Smith* extend far beyond the context of this case. Here, prohibiting

religious accommodations while permitting secular exemptions, a state infringed on parents' First Amendment religious liberty to direct and control the religious upbringing of their children. Elsewhere, under the guise of neutral and generally applicable lawmaking, state regimes increasingly trample religious conscience with impunity.

Moreover, significant confusion exists among the federal courts, due to *Smith*, as to how much protection the Constitution affords citizens when government substantially infringes on their First Amendment religious liberty by prohibiting religious accommodations while permitting secular exemptions. *Contrast, Miller et al. v. McDonald et al.,* No. 24-681 (2nd Cir. 2025); *Spivack v. City of Philadelphia*, 109 F.4th 158, 172-73 (3d Cir. 2024); and *Doe v. San Diego Unified Sch. Dist.*, 19 F.4th 1173, 1177-78 (9th Cir. 2021) (subjecting to rational basis review, under *Smith's* neutral and generally applicable rule, exercises of government power barring religious exemptions while permitting secular exemptions), with *Lowe v. Mills*, 68 F.4th 706, 709 (1st Cir. 2023); *Monclova Christian Academy v. Toledo-Lucas County Health Department*, 984 F.3d 477, 479 (6th Cir. 2020); *Midrash Sephardi, Inc. v. Surfside*, 366 F.3d 1214, 1232, 1234-35 (11th Cir. 2004); (subjecting to strict scrutiny, as falling outside of *Smith's* neutral and generally applicable rule, exercises of government power barring religious exemptions while permitting secular exemptions); See also*, Mitchell County v Zimmerman*, 810 N.W.2d 1, 4-6 (Iowa 2012) (same). And see, *Fulton v. City of Philadelphia*, 593 U.S. 522, 545 (2020) (Alito, J., concurring in the judgment)

This case provides this Court with an opportunity to overrule *Smith* and dispel the confusion among the federal courts by confirming that the First Amendment demands strict scrutiny of government actions infringing on fundamental inalienable religious liberty of citizens (e.g., as applied here, to direct and control the religious upbringing of their children)

A. Context

The State of New York amended its "school immunization law" in 2019 to prohibit religious accommodations while providing for secular medical exemptions. *Miller,* No. 24-681 at 3 (2nd Cir. 2025). Amish parents and others maintain the government action here "infringes on their free exercise rights under the First and Fourteenth Amendments" and "that the law is unconstitutional because it impairs Amish parents' right to control the religious upbringing of their children...." *Id.* at 3-4.

Amici maintain: 1) that the First Amendment right to the Free Exercise of religious conscience protects the fundamental inalienable religious liberty of citizens (e.g., to direct and control the religious upbringing of their children); and 2) that government conduct infringing on this liberty ought to receive strict scrutiny – where government must demonstrate that its policy advances interests of the highest order and is narrowly tailored to achieve those interests. We contend this is especially so when, as here, government forbids religious accommodations while permitting secular exemptions in a way that infringes

upon a parents' right to direct and control the religious upbringing of their children.

Instead of applying strict scrutiny to New York's action infringing religious liberty, the appellate court, following *Smith,* applied mere rational basis review. *Miller,* No. 24-681 at 10-23, 23-28 (2nd Cir. 2025).

B. *Employment Division v. Smith* Erroneously Diminished the Free Exercise of Religious Conscience as a Fundamental Inalienable Right.

Reflecting an accurate historical understanding of the plain meaning of the Free Exercise Clause, this Court, in *Sherbert v. Verner* and *Wisconsin v. Yoder,* struck down government actions that substantially interfered with a person's sincerely held religious beliefs. *Sherbert,* 374 U.S. 398 (1963) (denying unemployment benefits to a person who lost her job when she did not work on her Sabbath); *Yoder*, 406 U.S. 205 (1972) (overturning convictions for violations of State compulsory school attendance laws incompatible with sincerely held religious beliefs).

Under these decisions, a person's inalienable right to the free exercise of religious conscience appropriately required government to provide a compelling interest to justify its interfering with such a fundamental liberty interest; this Court, in applying strict scrutiny to the government actions, further required the government to show it used the least restrictive means available to accomplish its interest. *Id.* at 215 (holding "only those interests of the highest

order and those not otherwise served can overbalance legitimate claims to the free exercise of religion"); See also, *Fulton*, 593 U.S. at 541 (2020).

In *Employment Division v. Smith,* this Court departed from its constitutional jurisprudence recognizing freedom of religion as a fundamental liberty interest protected by the First Amendment. 494 U.S. 872 (1990). Even though the government's action in *Smith* substantially infringed on the free exercise of religious liberty, *Smith* required no justification by the government for its conduct. To reach this radical result, *Smith* deemed neutral laws of general applicability excepted from the constitutional protection contra-expressed in the clear and plain language of the Free Exercise Clause.[2] *Smith* did so despite a dearth of any supporting First Amendment jurisprudence deeply rooted in our nation's history and traditions, or implicit in the concept of ordered liberty.

Justice Alito, concurring in *Fulton*, joined by Justices Thomas and Gorsuch, correctly recognized that:

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[2] *Cf. Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah,* 508 U.S. 520 (1993) (applying strict scrutiny to a law substantially infringing on religious liberty when, in the subjective view of the reviewer, the law is not a neutral law of general applicability). Given that the law in the case at bar primarily, if not exclusively, burdens religious conscience and expression, strong arguments exist that it is not a neutral law of general applicability.

> [*Smith*] abruptly pushed aside nearly 30 years of precedent and held that the First Amendment's Free Exercise Clause tolerates any rule that categorically prohibits or commands specified conduct so long as it does not target religious practice. Even if a rule serves no important purpose and has a devastating effect on religious freedom, the Constitution, according to *Smith*, provides no protection. This severe holding is ripe for reexamination.

Fulton, 593 U.S. at 545 (2020) (Alito, J., Thomas, J., and Gorsuch, J. concurring); see also, Justice Barrett, concurring in *Fulton*, joined by Justice Kavanaugh, documenting that "the textual and structural arguments against *Smith* are more compelling." *Id.* at 543.

Indeed, *Smith's* rule diverges drastically from the protections afforded to religious practice during the founding period. When "important clashes between generally applicable laws and the religious practices of particular groups" occurred, "colonial and state legislatures were willing to grant exemptions—even when the generally applicable laws served critical state interests." *Id.* at 582.

Under the original understanding of the Free Exercise Clause, the Constitution protected a person against government actions violating the person's religious conscience. Thus, even when a generally applicable law, such as taking an oath or military

conscription, interfered with religious conscience, the First Amendment provided protection. *Id.* at 582-583.

The accommodation for religious conscience during the revolutionary war "is especially revealing because during that time the Continental Army was periodically in desperate need of soldiers, the very survival of the new Nation often seemed in danger, and the Members of Congress faced bleak personal prospects if the war was lost. Yet despite these stakes, exemptions were granted." *Id.* at 583-584. In the face of a highly compelling governmental interest (the survival of the nation) and the presence of a generally applicable neutral law (military conscription), the willingness of the founders to grant exemptions based on religious conscience demonstrates how extensively the Free Exercise Clause was meant to protect religious conscience. "In sum, based on the text of the Free Exercise Clause and evidence about the original understanding of the free exercise right, the case for *Smith* fails to overcome the more natural reading of the text. Indeed, the case against Smith is very convincing." *Id.* at 594.

Undeniably, the only real limit on religious liberty during the founding period, according to the constitutions and laws of the States, was whether conduct would endanger "'the public peace" or "safety."' *Id.* at 575. These words had precise meanings during the founding period. Peace meant, "1. Respite from war. . . . 2. Quiet from suits or disturbances. . . . 3. Rest from any commotion. 4. Stillness from riots or tumults. . . . 5. Reconciliation of differences. . . . 6. A state not hostile. . . . 7. Rest;

quiet; content; freedom from terror; heavenly rest. . . ." While Safety was understood as "1. Freedom from danger. . . . 2. Exemption from hurt. 3. Preservation from hurt. . . ." *Id.* at 579 (citations omitted).

In comparison to the very specific meaning of the "public-peace-or-safety" carveouts limiting the free exercise of religion during the founding period, the *Smith* test inappropriately restricts the free exercise of religion under "neutral and generally applicable" laws.

Unsurprisingly, therefore, in response to *Smith*, Congress enacted the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb, *et seq.* The act expressly provides that:

> Government shall not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, [unless] … it demonstrates that application of the burden to the person— (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000bb-1.

In promulgating the RFRA, Congress correctly acknowledged: "the framers of the Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution." 42 U.S.C. § 2000bb(a)(1).

Congress stated the purpose of the legislation was:

> (1) to restore the compelling interest test as set forth in *Sherbert v. Verner* and *Wisconsin v. Yoder*, and to guarantee its application in all cases where free exercise of religion is substantially burdened; and (2) to provide a claim or defense to persons whose religious exercise is substantially burdened by government.

42 U.S.C. § 2000bb(b)(1)-(2).

Although this Court upheld the RFRA as applied to federal government actions, *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006), it also held Congress acted outside the scope of its constitutional authority as applied to the states, *City of Boerne v. Flores*, 521 U.S. 507 (1997). Thus, notwithstanding the plain language of the Free Exercise Clause, and despite Congress' attempt to statutorily reinstate an accurate understanding of the correct constitutional standard, *Smith* wrongly continues to allow State authorities to substantially interfere with the free exercise of religious conscience and expression. Consequently, unless a State affirmatively acts to restore fundamental right status to the free exercise of religion, *Smith* extinguishes critical constitutional limits on the exercise of the State's power. Given our nation's history, and the history of those who have fled to our shores, the framers rightly made religious liberty our First Liberty. For only as long as this Court preserves the freedom of conscience protected under the First

Amendment, will our other freedoms remain secure. This Court, therefore, ought to grant the Petition, revisit, and reverse *Smith*.

The school immunization law in the case at bar, as well as other so-called neutral anti-discrimination laws, exacerbate the threat to the free exercise of religious conscience. These government actions necessarily require Christian people to: 1) relinquish their religious identity; and 2) surrender their right to freely exercise and express their religious conscience. State enforcement of "neutral" political preferences often weaponize State action to eliminate the First Amendment as important constitutional constraint on the exercise of State authority. Indeed, since *Smith,* religious people in our nation face a far more horrific predicament than the drafters and ratifiers of the Constitution and Bill of Rights could ever have imagined.[3]

[3] This is so, for example, in any regulated profession where the government, in a neutral and generally applicable way, recharacterizes religious conscience and expression as the regulation of professional conduct.

C. This Court's Precedents Point Toward Fully Restoring the Free Exercise of Religious Conscience as an Unalienable Fundamental Right, Justifying Strict Scrutiny -- Especially when a State Infringes on the Liberty of Parents to Direct the Religious Upbringing of Their Children.

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *West Virginia Bd. of Ed. v. Barnette,* 319 U.S. 624, 642 (1943). Bearing witness to the intolerant laws of seventeenth century England that persecuted individuals because of their religious conscience, the First Amendment balances the need for freedom of religious conscience with the need of a well-ordered central government. *See, e.g.*, Mark A. Knoll, *A History of Christianity in the United States and Canada* 25-65 (1992); F. Makower, *The Constitutional History and Constitution of the Church of England* 68-95 (photo. reprt. 1972) (1895). The First Amendment embodies an ideal that is uniquely American—that true liberty exists only where men and women are free to hold and express conflicting political and religious conscience. Under this aegis, the government must not interfere with its citizens living out and expressing their freedoms but embrace the security and liberty only a pluralistic society affords. That is why the First Amendment protects exercise of a religious person's conscience, subjecting a State to the strictest of

scrutiny if it substantially interferes. See, e.g., *Masterpiece Cakeshop, LTD. v. Colorado Civil Rights Commission,* 584 U.S. 617, 663-64 (2018) (Thomas, J., concurring) (noting, the necessity of applying "the most exacting scrutiny" in a case where Colorado's law penalized religious expression of cake designer) citing *Texas v. Johnson*, 491 U.S. 397, 412 (1989); accord, *Holder v. Humanitarian Law Project*, 561 U.S. 1, 28 (2010); see also, *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 164 (2015).

The writers of the First Amendment did not say "make no law prohibiting the free exercise of religion, unless you can find state regulatory regime or federal judge to say the law is neutral and generally applicable."

In *Fulton* a government law interfering with the free exercise of religious conscience included "a mechanism for individualized exemptions." 593 U.S. 522, 533 (2021). *Fulton* confirmed that when First Amendment religious liberty is at stake under such circumstances:

> A government policy can survive strict scrutiny only if it advances "interests of the highest order" and is narrowly tailored to achieve those interests. *Lukumi*, 508 U.S. at 546 (internal quotation marks omitted). Put another way, so long as the government can achieve its interests in a manner that does not burden religion, it must do so.

Fulton, 593 U.S. at 541 (2020).

While the government action in *Fulton* was held not generally applicable, nothing in the Court's holding suggests the fundamental nature of the constitutional protection ought to diminish where it is.

In *Tandon v. Newsom*, this Court likewise applied strict scrutiny to a state law that treated "comparable secular activity more favorably than religious exercise." 593 U.S. 61, 62-65 (2021) (holding that "strict scrutiny requires the State to further interests of the highest order by means narrowly tailored in pursuit of those interests").

Subsequently, in *Kennedy*, this Court confirmed that the First Amendment "does perhaps its most important work by protecting the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through 'the performance of (or abstention from) physical acts.'" *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022) (citation omitted). *Kennedy* further confirmed that "…[a] natural reading" of the First Amendment leads to the conclusion that "the Clauses have complementary purposes" where constitutional protections "work in tandem," doubly protecting a person's religious conscience. *Id.*at 523, 533. *Kennedy* reaffirmed the application of strict scrutiny to government action interfering with religious conscience where the government policy is "specifically directed at religious practice." *Id.*at 525-527 (cleaned up).

In the case at bar, New York's school immunization law is especially egregious because it substantially

infringes upon fundamental religious liberty of parents directing and controlling the religious upbringing of their children.[4]

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[4] See over a century of precedents affirming the inalienable nature of this fundamental right: *Meyer v. Nebraska,* 262 U.S. 390 (1923) (striking down state law making it unlawful to teach any subject in languages other than English); *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925) (striking down an Oregon law requiring children between 8 and 16 to attend only public schools); *Prince v. Massachusetts*, 321 U.S. 158 (1944) (recognizing parental rights); *Wisconsin v. Yoder*, 406 U. S. 205, 218 (1972) (reaffirming the fundamental nature of parental rights under both the First and Fourteenth Amendments); *Washington v. Glucksberg*, 521 U.S. 702 (1997) (recognizing parental rights as fundamental while finding no fundamental right to assisted suicide); *Troxel v. Granville*, 530 U.S. 57 (2000) (plurality opinion)(recognizing fundamental nature of parental rights); See also, *Board of Education v. LaFleur*, 414 U.S. 632, 639-640 (1974) (confirming "freedom of personal choice in matters of marriage and family life" as constitutionally protected liberties); *Moore v. East Cleveland*, 431 U.S. 494, 503-504 (1977) (holding that "the institution of the family is deeply rooted in this Nation's history and tradition."; *Smith v. Organization of Foster Families,* 431 U.S. 816, 845 (1977) (documenting the fundamental nature of liberty associated with family matters as deeply rooted in history and tradition of the American nation, predating even the Bill of Rights); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) (confirming that "the relationship between parent and child is constitutionally protected"); *Stanley v. Illinois*, 405 U.S. 645, 651 (1978) (reaffirming the fundamental nature of parental rights); *Parham v. J. R.,* 442 U.S. 584, 602-604 (1979) (reaffirming the fundamental nature of parental rights, rejecting "any notion that a child is the mere creature of the State"); *Santosky v. Kramer*, 455 U.S. 745, 753, 760 (1982) (reaffirming "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child); *Reno v. Flores,* 507 U.S. 292, 303-304 (1993) (confirming that parental rights must be respected as a constitutional limit on the exercise of state power, even if nonparents think they would do a

Here, the proposed rule, masquerading as a *neutral law*, effectively eliminates the ability of parents to raise their children consistent with their religion. Moreover, the school immunization law seeks to compel these parents to engage in activity conflicting with it. The disturbing diminishment of First Amendment religious conscience protection, as a practical matter, denudes any meaningful constitutional protection for liberty as a limit on the exercise of State power.

This Court in *Wisconsin v. Yoder,* decisively confirmed the fundamental nature of parental rights under both the First and Fourteenth Amendments. 406 U.S. 205 (1972) (confirming "the fundamental interest of parents" in overturning convictions of Amish citizens convicted of violating a state compulsory attendance statute).

The *Yoder* Court reasoned,

> "[t]he values of parental direction of the religious upbringing and education of their children in their early and formative years have a high place in our

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better job making decisions for a child than the child's parents); And see, John Locke, Second Treatise of Civil Government, 1690, Sec. 56, Sec. 63. (stating authority "to govern the minority of their children" rests with parents); 1 W. Blackstone, Commentaries * 447; 2 J. Kent, Commentaries on American Law * 190 (recognizing that natural bonds of affection lead parents to act in the best interest of the children); Wagner, *Revisiting Divine, Natural, and Common Law Foundations Underlying Parental Liberty to Direct and Control the Upbringing of Children,* 5 W. Australian Jurist 1 (2014).

> society … this case involves the fundamental interest of parents, as contrasted with that of the State, to guide the religious future and education of their children. The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." *Yoder*, 406 U.S. at 213-214, 232.

After affirming the inalienable nature of the parental rights, *Yoder* made clear that government actions infringing on this constitutional liberty must face strict scrutiny:

> The essence of all that has been said and written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion. We can accept it as settled, therefore, that, however strong the State's interest in universal compulsory education, it is by no means absolute to the exclusion or subordination of all other interests. *Id.* at 215.

The reason for this high-level of constitutional protection cannot be overstated. As in *Yoder*, the

Amish parents here sincerely hold "a fundamental belief that salvation requires life in a church community separate and apart from the world and worldly influence," including, in this case, abstaining from vaccines. *Id.* at 210. At stake in this case, therefore, is the parents' "own salvation and that of their children." *Id.* at 209

In *Mahmoud v. Taylor*, No. 24-297, slip op. (U.S. June 27, 2025) this Court reaffirmed the longstanding recognition of parental rights as fundamental and application of strict scrutiny to government actions infringing on this inalienable liberty. See generally, *supra* note 4.

Mahmoud reasserted the lesson in *Yoder* that "[a] government burdens the religious exercise of parents when it requires them to submit to [a policy] that poses "a very real threat of undermining" the religious beliefs and practices that the parents wish to instill. *Mahmoud*, No. 24-297, slip op. at 1-2 *quoting, Yoder*, 406 U. S. at 218.

In *Mahmoud,* the State of Maryland "introduced a variety of LGBTQ+ inclusive storybooks into the elementary school curriculum." *Id.* The government mandated attendance of children and refused to notify parents. *Id.* Relying on *Yoder,* the parents there contended the government's no parental notification / no opt out policy "infringed on their right as parents to the free exercise of their religion" in violation of the First Amendment. *Id* at 14.

Based on the record before it, this Court agreed:

> We hold that the Board's introduction of the "LGBTQ+-inclusive" storybooks—combined with its decision to withhold notice to parents and to forbid opt outs—substantially interferes with the religious development of their children and imposes the kind of burden on religious exercise that *Yoder* found unacceptable. *Id.* at 21-22

Relying on *Yoder,* the *Mahmoud* Court stated:

> Here, the Board requires teachers to instruct young children using storybooks that explicitly contradict their parents' religious views, and it encourages the teachers to correct the children and accuse them of being "hurtful" when they express a degree of religious confusion. Such instruction "carries with it precisely the kind of objective danger to the free exercise of religion that the First Amendment was designed to prevent." *Yoder*, 406 U. S. at 218. (cleaned up) *Mahmoud*, No. 24-297, slip op. at 26

Mahmoud confirmed that "when a law imposes a burden of the same character as that in *Yoder,* strict scrutiny is appropriate" even if the "law is neutral or generally applicable." *Id.* at 36 In *Mahmoud,*

> the board's policies, like the compulsory-attendance requirement in

> *Yoder*, substantially interfered with the religious development of the parents' children. And those policies pose a very real threat of undermining the religious beliefs and practices that the parents wish to instill in their children. *Id.* at 37 (cleaned up).

Because the burden in *Mahmoud* was "of the exact same character as the burden in *Yoder*," the Court applied strict scrutiny to the government action. *Id.* The Court then reaffirmed that "[t]o survive strict scrutiny, a government must demonstrate that its policy advances interests of the highest order and is narrowly tailored to achieve those interests." *Id.,* citing, *Fulton*, 593 U. S. at 541. Under this standard of review, the Court found Maryland's action unconstitutional.

Mahmoud acknowledged a century of U.S. Supreme Court precedents firmly establishes that the Constitution protects the right of a parent to direct and control the religious upbringing of their children as a fundamental right. As such, government infringement of such inalienable liberty requires judicial review using a strict scrutiny analysis where government must demonstrate that its policy advances interests of the highest order and is narrowly tailored to achieve those interests.

Notwithstanding the deeply rooted legal history and tradition affirming parents' religious liberty rights as fundamental, significant jurisprudential confusion exists among the federal courts. Reflecting

this division, federal appellate courts, as outlined in the Petition, continue to split over how to decide these kinds of issues. This case provides an opportunity for this Court to resolve the significant jurisprudential disagreement evident in these Circuit splits. It should do so now, since predictability in the law is necessary for good governance under the Rule of Law, especially during times of cultural discord.

Consistent judicial decisions, grounded in honest interpretation, give government officials and others notice of what is prohibited. When it comes to judicial review of government action and constitutional provisions, consistent decisions provide predictability for officials seeking to act in accordance with constitutional standards. Inconsistent judicial precedents lead to unpredictability in the law, providing no beneficial guidance for government officials or others trying to act within the law. *Mahmoud* reaffirmed the fundamental nature of religious liberty under the First Amendment (i.e., to direct and control the religious upbringing of one's children). *Amici* requests this Court finish the jurisprudential task by granting the Petition and overruling *Smith*.

CONCLUSION

For the foregoing reasons, *Amici Curiae* urge this Court to grant the Petition for a Writ of Certiorari.

Respectfully submitted,

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