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

BRIEF OF AMICUS CURIAE ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL IN SUPPORT OF PETITIONERS

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IDENTITY AND INTEREST OF THE AMICUS CURIAE[1]

The ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL (ACSI or the Association) is a non-profit association providing support services to 24,000 Christian schools in over 100 countries. The Association directly serves over 5,300 member schools worldwide, including 2,200 Christian preschools, elementary, and secondary schools and 90 post-secondary institutions in the United States; 160 Christian international schools; and over 3,000 Christian global schools. Member schools educate some 5.5 million children around the world.

ACSI accredits Protestant pre-K-12 schools, provides professional development and teacher certification, and offers member schools high-quality curricula, student testing, and a wide range of student activities. Association members advance the common good by providing quality education and spiritual formation to their students. ACSI relies on a vibrant Christian faith that embraces every aspect of life. This gives ACSI an interest in ensuring expansive religious freedom with strong protection from government attempts to restrict it.

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[1] Pursuant to Rule 37.6, no counsel for any party in this case wrote any part of this amicus brief, and no person except amicus contributed to the costs of its preparation. In addition, ACSI timely notified the parties of its intent to file this brief under Rule 37.2.

SUMMARY OF ARGUMENT

For more than fifty years, New York respected both medical and religious objections to school vaccination requirements. In 2019, however, the legislature repealed the religious exemption—dismissing faith-based objections as "utter garbage" and "fake," while preserving medical exemptions. That choice violates the Free Exercise Clause. The Constitution forbids the State from elevating secular judgment over religious conviction. If medical exemptions may override the State's asserted interest in uniform vaccination, then comparable religious exemptions cannot be denied.

The Second Circuit upheld the repeal only by misreading this Court's precedent. It brushed aside Petitioners' hybrid-rights claim, wrongly confining *Wisconsin v. Yoder* to its facts. But *Yoder* is not a relic. This Court recently reaffirmed in *Mahmoud v. Taylor* that parents have a constitutional right to direct the religious upbringing of their children, and that laws burdening that right demand strict scrutiny. The burden here—seeking to compel vaccination despite sincere religious objection—is of the same character as the burden in *Yoder*, and it requires the same searching review.

Even apart from *Yoder*, the Law cannot stand because it is neither neutral nor generally applicable. A law that permits secular exemptions but denies religious ones is subject to strict scrutiny under this Court's precedents, including *Lukumi*, *Fulton*, and *Tandon*. By favoring medical objections over religious ones, New York singled out religion for disadvantage.

The State's asserted public-health interests do not excuse this unequal treatment, particularly when the legislature's own statements reveal open hostility to religious convictions.

Finally, this case presents a clean vehicle for revisiting *Employment Division v. Smith*. *Smith* has been criticized since the day it was decided, and it is inconsistent with the Framers' understanding of the Free Exercise Clause. If *Smith* permits the State to crown secular judgment while banishing religious conviction, then *Smith* itself must fall. The Free Exercise Clause protects all Americans—parents and children alike—from being forced to "render to Caesar" what their convictions say they should not.[2]

ARGUMENT

Religious intolerance by the government is nothing new. Governments have long targeted religious exercise by prohibiting individual action or compelling certain conduct. The Book of Daniel demonstrates both. King Darius prohibited prayer to any God but himself but Daniel continued praying three times a day.[3] King Nebuchadnezzar compelled that *all* "must fall down and worship the image of gold" he had built or "immediately be thrown into a blazing furnace,"[4] but

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2 Gospel of Mark 12:17 (New King James Version).

3 *See* Daniel 6 (New King James Version).

4 Daniel 3:5–6 (New King James Version).

three faithful servants of God refused to bow.[5] Consider also the Apostles, who were ordered not to speak in the name of Jesus.[6] And long before, Pharaoh sought to break the Israelites' spirit of worship by doubling their burdens.[7]

These ancient examples have their modern equivalents. It now takes the form of the quiet coercion of modern law. While threats to free exercise endure, our Constitution speaks directly to them. That is because "[w]e are a religious people whose institutions presuppose a Supreme Being." *Zorach v. Clauson*, 343 U.S. 306, 313 (1952). The United States abhors the choice presented in the Book of Daniel, and the First Amendment memorializes this "Nation's essential commitment to religious freedom," *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 524 (1993), and "embraces two concepts—freedom to believe and freedom to act," *Cantwell v. State of Connecticut*, 310 U.S. 296, 303 (1940). It also forbids even "subtle departures from neutrality, and covert suppression of particular religious beliefs." *Church of Lukumi Babalu Aye, Inc.*, 508 U.S. at 534 (quoting *Gillette v. United States*, 401 U.S. 437, 452 (1972) (cleaned up); *Bowen*

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[5] Central to ACSI's mission and ministry is the education of young children. For many, this story is most memorable in its retelling in the classic VeggieTales episode, *Rack, Shack & Benny*, in which three friends refuse to bow before a giant chocolate bunny. *VeggieTales | So Many Chocolate Bunnies! | Standing Up To Peer Pressure*, YouTube (Feb. 29, 2024), https://www.youtube.com/watch?v=KDcf7vmE06U (last accessed Aug. 29, 2025).

[6] *See* Acts 4:17–18; Acts 5:27–28, 40. (New King James Version).

[7] *See* Exodus 5 (New King James Version).

v. Roy, 476 U.S. 693, 703 (1986)).[8] Thus, "the Government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens . . . [and] every one shall sit in safety under his own vine and fig tree and there shall be none to make him afraid." *See* George Washington's *1790 Letter to the Hebrew Congregation of Newport*.[9]

Yet consider what happened here. For more than *fifty* years, New York permitted both medical *and* religious exemptions to its school vaccine requirement. In 2019, that changed. The New York Legislature eliminated the religious exemption. N.Y. Public Health Law § 2164 (the "Law"). In doing so, members justified their decision by calling religious objections to school vaccine requirements "utter garbage"[10] and "fake."[11]

The Constitution does not permit the State to favor medical opinion over religious conviction. When the State grants exemptions for medical reasons, it cannot

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[8] The "Free Exercise Clause of the First Amendment, which has been applied to the States through the Fourteenth Amendment, provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993) (emphasis omitted).

[9] Synagogue Nat'l Hist. Site, https://perma.cc/53NC-RTJ6.

[10] Assemblyman Jeffrey Dinowitz, *Assembly Upda*te, at 3:11, Facebook (Mar. 19, 2019), https://tinyurl.com/yvkebum2 (last accessed Aug. 25, 2025).

[11] Transcript of N.Y. Senate Proceedings, at p. 5443, ln. 10–12 (June 13, 2019), https://perma.cc/J4FA-PDC7 (last accessed Aug. 25, 2025).

deny comparable exemptions for religious convictions without violating the Constitution. The Association provides support services to Christian schools across the United States and its member schools educate some 5.5 million children around the world . . . who hold fast to religious convictions that deserve equal respect by the government. Because the Association's members must navigate government regulations—like the one challenged here—the Association has an obvious interest. For the reasons below, the Association urges this Court to grant the petition to address the important questions raised.

I. *Yoder* is not Nearly as Narrow as the Second Circuit Held, and its Application Requires that the Law Satisfy Heightened Scrutiny

The "right to free exercise, like other First Amendment rights, is not shed . . . at the schoolhouse gate." *Mahmoud v. Taylor*, 606 U.S. ___, 45 S. Ct. 2332, 2350 (2025) (quoting *Tinker v. Des Moines Indep. Cmty. School Dist.*, 393 U.S. 503, 506–507 (1969). Neither are parental rights. The Court should take this opportunity to say so—again.

The Second Circuit "breezily dismissed" the Applicants' hybrid rights claim. *Mahmoud*, 145 S. Ct. at 2357 ("*Yoder* is an important precedent of this Court, and it cannot be breezily dismissed as a special exception granted to one particular religious minority."). Apparently, such "claims are generally not viewed as viable" in the Second Circuit. *Miller v. McDonald*, 130 F.4th 258, 270 (2d Cir. 2025). That should come as news here. Just last term, this Court reaffirmed *Yoder*, which it has "never confined . . . to its facts." *Mahmoud*, 145 S. Ct. at 2357. In *Mahmoud*, the Court held that Montgomery County's refusal to allow parents to opt

their children out of "LGBTQ+-inclusive" instruction substantially burdened the parents' right to direct the religious upbringing of their children. The Board had initially accommodated the families with notice and opt-outs but rescinded that policy on the ground that it "could not accommodate the growing number of opt out requests without causing significant disruptions." *Id.* at 2346.

To ignore the parental rights claim, the Second Circuit "observed that the Supreme Court in *Yoder* 'took pains explicitly to limit its holding.'" *Miller*, 130 F.4th at 270. Of course, that is not true. And this Court should not, as Justice Alito warned, "agree with the decision of the lower courts to dismiss [the] holding in *Yoder* out of hand." *Mahmoud*, 145 S. Ct. at 2357.[12] Think about what is at stake. In *Yoder*, this Court held "that parents have a right to direct the religious upbringing of their children, and that this right can be infringed by laws that pose a very real threat of undermining the religious beliefs and practices that parents wish to instill in their children." *Id.* at 2349 (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 218, 233 (1972)). The Court reaffirmed that the Free Exercise Clause protects against "more subtle forms of interference," including instruction that conflicts with religious teachings. *Id.* at 2352 (citing *Yoder*, 406 U.S. at 211). The Court should once again intervene to "reject this chilling vision of the power of the state to strip away the critical right of parents to guide the religious development of their children," and uphold the view of religious liberty embodied in *Yoder* and

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[12] The Second Circuit largely adopted the "alarmingly narrow rule that the dissent propound[ed]" in *Mahmoud*, which the majority rejected. 145 S. Ct. at 2357.

Barnette, which "comports with the fundamental values of the American people." *Id.* at 2358.

Mahmoud involved a burden "of the exact same character as the burden in *Yoder*"—a substantial interference with the parents' religious development of their children. *Mahmoud*, 145 S. Ct. at 2361. The burden here is "of the exact same character." Yet the Second Circuit framed the burden in a strikingly narrow way. It dismissed the parents' concerns by concluding that forced vaccination would not "result in the destruction of the Old Order Amish church community" or forcibly remove children "from their community at the expense of the Amish faith or the Amish way of life." *Miller*, 130 F.4th at 271–72. Those statements misunderstand the very purposes for which religious beliefs are taught—that is, so children grow to conform their lives and conduct to the transcendent beliefs imparted. The forced conduct here strikes at the heart of belief—that Christians *live out* those beliefs as "doers of the word, and not hearers only."[13] Because the "burden imposed is of the same character as that imposed in *Yoder*, the Court need not ask whether the law at issue is neutral or generally applicable before proceeding to strict scrutiny." *Mahmoud*, 145 S. Ct. at 2361.

Because the Law burdens the parents' hybrid rights, it must withstand strict scrutiny. That means the State "must demonstrate that its policy 'advances 'interests of the highest order' and is narrowly tailored to achieve those interests." *Id.* (quoting *Fulton v. Philadelphia*, 593 U.S. 522, 541 (2021)). Yet New York did not try, and the Second Circuit completed only half

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[13] James 1:22 (New King James Version).

the assignment. It suggested the State may have compelling reasons for its mandate, but it did not explore *how* the Law was "narrowly tailored to achieve those interests." For that reason alone, the Court should send this case back for further review. Thus, the Court could stop here, and grant, vacate, and remand this case for further proceedings consistent with its "important precedent." *Mahmoud*, 145 S. Ct. at 2357.

II. The Law is Neither Neutral nor Generally Applicable and Must thus Satisfy Strict Scrutiny

If the Court declines to resolve this case by the straightforward course of granting certiorari, vacating the judgment, and remanding for proper consideration of Petitioners' hybrid-rights claim, it should proceed to address the merits of their Free Exercise challenge directly. The lower court's disregard for *Yoder* is symptomatic of a deeper problem: the decision below rests on the mistaken premise that *Employment Division v. Smith*, 494 U.S. 872 (1990), remains a workable and faithful guide to the Constitution's command. It does not. This case presents a timely and clean vehicle for reconsidering the application of *Smith* or, if necessary, overruling *Smith* and restoring the robust protection for religious liberty that the Framers understood and the Court recognized for nearly two centuries before that decision.

This Court recently reiterated that a law loses its claim to general applicability when it "prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Fulton v. City of Philadelphia*, 593 U.S. 522, 534 (2021). Yet New York's Law does exactly that. In it, New York decided that medical concerns

are more important than religious ones. Though the Second Circuit agreed, it is wrong. To justify its result, the lower court focused on whether the Law authorized some discretion—as if that determines the constitutionality of the mandate. That an exemption "is phrased in mandatory terms and applies to an objectively defined group of people" ignores the point. *Miller v. McDonald*, 720 F. Supp. 3d 198, 214 (W.D.N.Y. 2024). Asking the wrong question, the Court got the wrong answer. Instead, the question is whether there is *any* exception to the rule—not the means by which an exemption may be granted. It is not the fact that a doctor believes his patient may risk medical harm if forced to take a vaccine, it is that the State allows a medical exemption and not a religious one. Thus, New York's Law "loses its claim to general applicability," and the decision to allow medical exemptions while refusing religious exemptions is sufficiently suggestive of discriminatory intent to trigger heightened scrutiny under *Smith* and *Lukumi*.

In *Smith*, the Court upheld an Oregon law that prohibited the "knowing or intentional possession of a 'controlled substance' unless the substance has been prescribed by a medical practitioner." *Smith*, 494 U.S. at 874. The purpose was to curb the unregulated use of dangerous drugs. The statute's requirement did not undermine the State's interest there.

Not so here. New York has made a value judgment that secular (*i.e.*, medical) motivations for vaccine exemptions are important enough to overcome its general interest in uniformity. On the other hand, New York concluded that religious motivations are *not* important enough to overcome that interest. When government makes a value judgment in favor of

secular motivations, but denies the value of religious ones, the government's actions must satisfy heightened scrutiny. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 542–43 (1993) ("All laws are selective to some extent, but categories of selection are of paramount concern when a law has the incidental effect of burdening religious practice. The Free Exercise Clause protects religious observers against unequal treatment." (cleaned up)). That is because a "law is not generally applicable if it invites the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions." *Fulton*, 593 U.S. at 533 (citing *Smith*, 494 U.S. at 884). Allowing a student to remain unvaccinated undermines the State's asserted public health goals equally whether that student happens to remain unvaccinated for medical reasons—or religious ones.

When the State permits secular exemptions from a generally applicable rule, such as medical exceptions to a vaccination requirement, it cannot turn around and deny religious exemptions without violating the First Amendment. A rule that tolerates secular objections but punishes religious conviction is no longer neutral, and is thus unconstitutional. *See*, *e.g.*, *Roberts v. Neace*, 958 F.3d 409, 416 (6th Cir. 2020) (observing "the unexplained breadth of the ban on religious services, together with its haven for numerous secular exceptions, cannot co-exist with a society that places religious freedom in a place of honor in the Bill of Rights: the First Amendment").

The Second Circuit upheld an exemption regime that treats religious conviction as a *threat* and secular judgment as a *virtue*—simply because religious beliefs are enduring, consistent, and morally anchored. That

turns the Constitution on its head. The First Amendment was not designed to reward fleeting, fact-specific objections while punishing those whose enduring faith informs every decision. If the government may grant exemptions for temporary, subjective, and evolving medical concerns, but deny them for sincere, principled, and unwavering religious beliefs, it has enshrined secularism as the state religion—and made virtue into vice. That can't be. "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." *W. Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

New York's Law is not neutral. It favors medical claims while discounting religious conviction. To uphold the regime, the Second Circuit distinguished the religious and medical exemptions on the basis that the two exemptions "are meaningfully different in scope and duration." *Miller v. McDonald*, 130 F.4th at 267. As the lower court explained, the "medical exemption is granted only with 'sufficient' documentation of the child's contraindication to 'a specific immunization.' It has limits; it lasts only 'until such immunization is found no longer to be detrimental to the child's health,' and 'must be reissued annually.'" *Id.* at 268. Thus, the court concluded that the "religious exemption's sweep had a far greater ability to undermine the State's interest in preventing the spread of disease." *Id.* Conducting a risk analysis in the aggregate, the lower court concluded that Plaintiffs had "not plausibly alleged that the law favors comparable secular conduct." *Id.*

To reach that conclusion, the lower court praised the administrative hurdle of annual renewals as if bureaucratic procedure justifies unequal treatment. Worse still, the court suggested that religious liberty may be curtailed if too many people choose to exercise their beliefs—as though constitutional rights diminish with popularity. Of course, the Free Exercise Clause was not written to protect only a manageable few. *See Mahmoud v. Taylor*, 145 S. Ct. at 2346, 2363–64 (recognizing the unconstitutional burden imposed on parents' right to direct the religious upbringing of their children when the school board rescinded its opt-out policy because of "the growing number of opt out requests without causing significant disruptions"). Still, that concern *might* help the State justify its actions as responsive to a compelling interest. But the State does not begin to address how its Law was narrowly tailored to serve that interest—nor did the lower court require it to do so. Regardless, an alleged compelling interest has no relevance at the *first* step of determining whether the Law burdens religion.

The lower court also suggested the scope of the religious exemption was far broader than the scope of the medical exemption, and therefore concluded that it was appropriately rescinded. The court reached the wrong conclusion by narrowing its view of the exemption rather than recognizing a broader exemption meant it garnered greater protection. According to the lower court, the "religious exemption was generalized to all vaccines," whereas the medical exemption required individualized documentation of the child's contraindication to "a *specific* immunization." *Miller*, 130 F.4th at 267–68. Yet the State implemented the mandate to address a *specific* measles outbreak, *id.* at 263, 268,

and it is hard to square the lower court's conclusion that a law that requires *individualized* medical assessment is "*generally applicable*." Regardless, the scope of the religious objection should have no relevance when considering the State's specific concern and, instead, suggests that the State views religious adherents as unreasonable or a threat to public health.

We have seen this sort of line drawing before. "Over the last few years, the Federal Government and the States have enacted a host of emergency measures to address the COVID–19 pandemic. Many were not neutral toward religious exercise or generally applicable." *Dr. A. v. Hochul*, 142 S. Ct. 2569, 2571 (2022) (Thomas, J. dissenting from the denial of certiorari) (collecting cases). During the pandemic, several states issued executive orders favoring liquor stores and other secular services, while churches and synagogues were forced to shutter. *See*, *e.g.*, *Roberts v. Neace*, 958 F.3d 409, 414–15 (6th Cir. 2020) ("[R]estrictions inexplicably applied to one group and exempted from another do little to further these goals and do much to burden religious freedom. Assuming all of the same precautions are taken, why can someone safely walk down a grocery store aisle but not a pew? And why can someone safely interact with a brave deliverywoman but not with a stoic minister? The Commonwealth has no good answers. While the law may take periodic naps during a pandemic, we will not let it sleep through one."); *Calvary Chapel Dayton Valley v. Sisolak*, 140 S. Ct. 2603, 2609 (2020) (Gorsuch, J. dissenting from the denial of an application for injunctive relief) ("The world we inhabit today, with a pandemic upon us, poses unusual challenges. But there is no world in which the Constitution permits Nevada to favor

Caesars Palace over Calvary Chapel."). In the end, however, this Court rejected such line drawing. If a state favored the secular in one respect, it had to justify why religion was excluded from that favored class. *Cf. Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 29 (2020) (Kavanaugh, J. concurring) ("[O]nce a State creates a favored class of businesses, as New York has done in this case, the State must justify why houses of worship are excluded from that favored class."); *S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1615 (2020) (Kavanaugh, J. dissenting) ("The State also has substantial room to draw lines, especially in an emergency. But as relevant here, the Constitution imposes one key restriction on that line-drawing: The State may not discriminate against religion."). To do otherwise is "odious to our Constitution." *S. Bay United Pentecostal Church*, 140 S. Ct. at 1614 (Kavanaugh, J. dissenting) (collecting cases). Because New York's law treats comparable secular activity—medical exemptions—more favorably than religious ones, the Law is "not neutral and generally applicable, and therefore trigger[s] strict scrutiny under the Free Exercise Clause." *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (citing *Roman Cath. Diocese of Brooklyn*, 592 U.S. at 18–20 (per curiam)).

Finally, the Constitution "commits government itself to religious tolerance, and upon even slight suspicion that proposals for state intervention stem from animosity to religion or distrust of its practices, all officials must pause to remember their own high duty to the Constitution and to the rights it secures." *Masterpiece Cakeshop v. Colorado Civil Rights Comm'n*, 584 U.S. 617, 638–39 (2018) (quoting *Church of Lukumi Babalu Aye, Inc.*, 508 U.S. at 547). Legislators may not

devise mechanisms, overt or disguised, designed to persecute or oppress a religion or its practices. And this Court has said that "government actions burdening religious practice should be 'set aside' if there is even 'slight suspicion' that those actions 'stem from animosity to religion or distrust of its practices.'" *Dr. A*, 142 S. Ct. at 555 (Gorsuch, J. dissenting from the denial of application for injunctive relief) (quoting *Masterpiece Cakeshop*, 584 U.S. at 638–39).

Pause here. There is at least a "slight suspicion" that New York's Law "stem[s] from animosity to religion." The State moved to eliminate a nearly fifty-year old exemption that honored religious convictions while its proponents rushed to call such religious objections to school vaccine requirements "utter garbage"[14] and "fake."[15] Either way, the "constitutional requirement is of government neutrality, through the application of generally applicable laws, not just of governmental avoidance of bigotry." *Colo. Christian Univ. v. Weaver*, 534 F.3d 1245, 1260 (10th Cir. 2008) (cleaned up). New York's Law fails on both fronts.

In the end, "*Smith* has been criticized since the day it was decided. No fewer than ten Justices—including six sitting Justices—have questioned its fidelity to the Constitution." *Fulton v. City of Philadelphia*, 593 U.S. at 626–27 (Gorsuch, J. concurring). And this Court has acknowledged that stare decisis is "'not an inexorable command.'" *Janus v. Am. Fed'n of*

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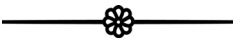
[14] Assemblyman Jeffrey Dinowitz, *Assembly Update*, at 3:11, Facebook (Mar. 19, 2019), https://tinyurl.com/yvkebum2 (last accessed Aug. 25, 2025).

[15] Transcript of Senate Proceedings at 5443 (June 13, 2019), https://perma.cc/J4FA-PDC7.

State, Cnty., & Mun. Emps., Council 31, 585 U.S. 878, 917 (2018) (quoting *Pearson v. Callahan*, 555 U.S. 223, 233 (2009)). Yet, for many, religious convictions are exactly that. If *Smith* allows the State to favor secular thought over religious conviction, then *Smith* itself must fall—because in the United States the government may not crown the secular as king and order the faithful to worship its idols.



CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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