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 AMERICAN HINDU JEWISH CONGRESS AS *AMICUS CURIAE* SUPPORTING PETITIONERS

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INTEREST OF AMICUS CURIAE[1]

The American Hindu Jewish Congress ("AHJC") is a national, non-partisan coalition representing the shared interests and concerns of Hindu Americans and Jewish Americans. Founded in 2025, AHJC united two vibrant, millennia-old faith communities to advocate for religious liberty, mutual respect, and interfaith solidarity. The AHJC membership encompasses community leaders, houses of worship, cultural associations, student fellowships, and civil-rights advocates across all fifty States.

As minority faith communities in America, Hindus and Jews are facing escalating antisemitism and Hinduphobia, including vandalism of temples and synagogues, harassment of students on college campuses, desecration of sacred spaces, and becoming targets of hate speech and hate crimes. Noting the increasing hostilities against Jewish and Hindu Americans, these communities should not also face unjust discrimination by their government, against which the Constitution has served as a bulwark from the "suppression of unpopular religious speech and exercise [that] has been among the favorite tools of petty tyrants." *Shurtleff v. City of Boston, Massachusetts*, 596 U.S. 243, 284–85 (2022) (Gorsuch, J., concurring). Such errors impermissibly chill

[1] Pursuant to Sup. Ct. R. 37.2, amicus certifies that all parties were timely notified of the amicus's intent to file and consent to such filing. Pursuant to Sup. Ct. R. 37.6, amicus certifies that no counsel for any party has authored this brief in whole or in part, no party or party's counsel has made a monetary contribution to fund its preparation or submission, and no person other than amicus or its counsel has made such a monetary contribution.

religious speech and exercise by minority faiths which cannot command legislative majorities, media attention, or institutional leverage.

SUMMARY OF ARGUMENT

This Court's decision in *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990) has disproportionately harmed minority religious groups, like the Amish here, whose beliefs are contrary to prevailing majoritarian policy positions. Contrary to the counter-majoritarian nature of the First Amendment's Free Exercise clause, *Smith* held that a neutral law of general applicability does not violate the Free Exercise clause, regardless of its impact on religious exercise. *Id.* at 878–79. Justice Scalia, writing for the Court, recognized that the rule announced in *Smith* would indeed "disadvantage those religious practices that are not widely engaged in." *Id.* at 890.

Unfortunately, Justice Scalia's prediction has come true time and again and the damage to the Free Exercise clause has been greater than imagined. Courts applying *Smith* to Free Exercise claims have repeatedly upheld laws that burden minority or unpopular religious expression, sometimes grievously, because those laws did not specifically target religious practice and were generally applicable to the population as a whole. As a consequence, minority religious groups who lack the ability to influence public policy through the democratic process have also been deprived of a core judicial remedy to protect their right to freely exercise their religion.

This state of affairs lends urgency to the second question presented in the Petition before this Court: "[w]hether *Smith* should be reconsidered." (Pet. at (i).) The decisions of the lower courts in this case, which force the Amish Petitioners to choose between practicing their faith according to their own consciences and incurring debilitating monetary penalties, are yet another example of the harsh reality *Smith* imposes on minority religious groups. The Court should take this opportunity to revisit *Smith* with an eye to alleviating its dire consequences for religious minorities like the Amish, Hindu, and Jewish communities. To that end, the Petition should be granted.

ARGUMENT

I. *Smith* Has Disproportionately Harmed Minority Religious Groups.

The *Smith* regime has harmed minority religious groups, including the Amish, from the time it was decided. Indeed, *Smith*'s impact was felt almost immediately by the Hmong plaintiffs in *Yang v. Sturner*. The Yangs sued Rhode Island's Chief Medical Examiner after he conducted an autopsy on their son, alleging that the autopsy violated their deeply held religious beliefs in violation of the First and Fourteenth Amendments to the U.S. Constitution. *Yang v. Sturner*, 750 F. Supp. 558, 560 (D.R.I. 1990). As Hmong, the Yangs believed that "autopsies are a mutilation of the body and that as a result 'the spirit of Neng [their son] would not be free, therefore his spirit will come back and take another person in his family.'" *Id.* at 558 On January 12, 1990, shortly

before the Court decided *Smith*, the district court granted partial summary judgment to the Yangs on the issue of liability. *Id.*

However, following *Smith*, the district court was compelled to withdraw its previous opinion and dismiss the case with prejudice. *Id.* at 560. The court held that Rhode Island's statute governing autopsies was facially neutral and generally applicable and accordingly, under *Smith*, the statute's profound impairment of the Yang's religious freedom did not rise to a constitutional infringement. *Id.* While the district court was bound to follow *Smith*, it questioned "what is left of Free Exercise jurisprudence when one can attack only laws explicitly aimed at a religious group," noting, as Justice O'Connor did concurring in *Smith* that "'few States would be so naïve as to enact a law directly prohibiting or burdening a religious practice as such.'" *Id.* (quoting *Smith*, 494 U.S. at 1608 (O'Connor, J. concurring in the judgment)).

In another case also decided shortly after *Smith*, a district court granted summary judgment to the defendant medical examiners, rejecting the claim by a conservative Jewish mother that her son's autopsy due to his death following a police chase infringed her First Amendment right to freely exercise her religion. *Montgomery v. Cnty. of Clinton*, 743 F. Supp. 1253, 1257–58 (W.D. Mich. 1990). The plaintiff contended that her son's autopsy, which was required by a Michigan statute mandating autopsies in cases of violent death, contravened the tenets of her faith. *Id.* at 1258. As in *Yang*, the court held that the laws authorizing the autopsy were "generally applicable and religion-neutral" and were therefore

constitutional so long as they were reasonably related to a legitimate government objective. *Id.* at 1259. Applying this minimal standard of review, as dictated by *Smith*, the district court held that "[t]he incidental effect on [plaintiff's] practice of her religion, though regrettable, does not offend the First Amendment." *Id.* at 1260.

The COVID-19 pandemic further highlighted *Smith*'s impact on religious groups whose beliefs run contrary to the societal mainstream and conflict with government policy. In April 2020, the day before Easter, New Mexico issued a public health order limiting public gatherings to five or more individuals in a single room. *Legacy Church, Inc. v. Kunkel*, 455 F. Supp. 3d 1100, 1115 (D.N.M. 2020). The plaintiff, a church with three locations in New Mexico, intended to conduct live-streamed Easter services with a thirty-member worship team in person observing the same social distancing guidelines required of essential businesses in New Mexico at the time. *Id.* at 1117. Legacy Church had a "sincerely held religious belief that the service team used four [sic] its services is central to how it and its members worship God and how they connect their members to their religious belief." *Id.* (citation modified). Despite being troubled by the last-minute nature of the order (*id.* at 1148), the court rejected Legacy Church's First Amendment challenge to the order, holding that the order was neutral and generally applicable, and did not impermissibly infringe on Legacy Church's Free Exercise rights (*id.* at 1156).

A church in Virginia faced a similar order which limited public gatherings to ten individuals.

Lighthouse Fellowship Church v. Northam, 458 F. Supp. 3d 418, 426–27 (E.D. Va. 2020). The pastor of the plaintiff Lighthouse Fellowship Church was informed that he would face criminal citations pursuant to the order if he held a worship service on Easter Sunday. *Id.* at 427. Nonetheless, the court, applying *Smith*, held that Virginia's order did not infringe on the plaintiff's Free Exercise rights.

Smith's impact has extended into the most private and sensitive areas of life. Olympus Spa, a traditional Korean spa in Washington, restricted its services to "biological women" because it provided spa treatments in an open area with unclothed patrons. *Olympus Spa v. Armstrong*, 138 F.4th 1204, 1223 (9th Cir. 2025) (Lee, J., dissenting). Due to this restriction, Olympus Spa was prosecuted for sexual orientation discrimination in violation of the Washington Law Against Discrimination ("WLAD"). *Id.* at 1211. Olympus Spa challenged WLAD as violating its right to free exercise of religion, asserting that it would be required "to renounce its [Christian] faith by its deeds" if it permitted "the mixing of nude persons of the opposite sex who are not married to one another." *Id.* at 1218. Affirming the district court decision rejecting the Spa's challenge, the Ninth Circuit held that WLADs requirement that the spa admit and provide services biological males was neutral and generally applicable under *Smith*, and therefore only incidentally impacted its religious exercise. *Id.* at 1219. Accordingly, the Ninth Circuit held that the requirement that Olympus Spa admit biological males, in direct contradiction of its deeply-held religious beliefs.

Despite this Court's recognition that "the Old Order Amish religion pervades and determines the entire mode of life of its adherents" (*Wisconsin v. Yoder*, 406 U.S. 205, 210 (1972)), the Amish have not been spared from the impact of *Smith*. Use of slow-moving transportation, typically horse-drawn buggies, and rejection of bright colors are characteristic aspects of the Old Order Amish religion. *See Gingerich v. Commonwealth*, 382 S.W.3d 835, 837 (Ky. 2012). Nonetheless, members of the Old Order Swartzentruber Amish in Kentucky were prosecuted for not displaying a bright orange, triangular "slow-moving vehicle" emblem on their buggies, despite their willingness to use gray reflective tape as an alternative to make the buggies more visible on the road. *Id.* Despite the imposition on Amish beliefs and ongoing threat of criminal prosecution, the Supreme Court of Kentucky, applying *Smith* to Kentucky law, held that the slow-moving vehicle emblem requirement was subject only to rational basis review because it was a neutral law of general applicability. *Id.* at 844.

II. *Smith* Undermines The Counter-majoritarian Nature Of The First Amendment.

These cases are a manifestation of the obvious dangers of the *Smith* regime, which sacrifices sincere religious beliefs at the altar of majority rule and thus subverts the very purpose of the First Amendment. Indeed, these results are precisely what the *Smith* majority should have expected when it acknowledged that its holding—"leaving accommodation to the political process"—would

"disadvantage those religious practices that are not widely engaged in." *Smith*, 494 U.S. at 890. But this result, the *Smith* majority held, was an "unavoidable consequence," *id.*, necessary to address its concern that allowing individualized exceptions to neutral laws of general applicability "would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself." *Id.* at 879 (quoting *Reynolds v. United States*, 98 U.S. 145, 166–67 (1878)). Per the *Smith* majority, allowing individualized exemptions in this context "contradicts both constitutional tradition and common sense." *Id.* at 885.[2]

But *Smith*'s rule was a noteworthy departure from the Court's precedent. *See United States v. Ballard*, 322 U.S. 78, 87 (1944) ("The First Amendment does not select any one group or any one type of religion for preferred treatment. *It puts them all in that position.*" (emphasis added)). And the concurring justices in *Smith* and leading constitutional scholars[3] struck back forcefully against the majority's cutting off constitutional protections for those religious beliefs that fall out of the main. As

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[2] It is apparent that the *Smith* framework also derived at least in part from Justice Scalia's preference for bright-line rules and belief that the judiciary's role should be strictly circumscribed, positions that would seemingly be undermined if judges were required to "weigh the social importance of all laws against the centrality of al religious beliefs." *Smith*, 494 U.S. at 890; *cf.* Amul R. Thapar, *Smith, Scalia, and Originalism*, 68 Cath. Univ. L. Rev. 687, 691 (2019) (discussing Justice Scalia's preference for "bright-line rules" as opposed to "looser standards").

[3] *See, e.g.*, Michael W. McConnell, Free Exercise Revisionism, 57 Univ. Chi. L. Rev. 1109 (1990).

Justice O'Connor pointed out, the whole purpose of the Bill of Rights is to protect individual rights against the will of the majority. *See id.* at 902 (O'Connor, J., concurring in judgment). Indeed, the concurrence stated, "the First Amendment was enacted precisely to protect the rights of those whose religious practices are not shared by the majority and may be viewed with hostility." *Id.* This echoes the Supreme Court's analysis in *Barnette*:

> The very purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

West Virginia Bd. of Educ. v. Barnette, 319 U.S. 624, 638 (1943).

Importantly, Justice O'Connor and the *Barnette* Court's view of the Bill of Rights' role as a bullwork against the tyranny of the majority has not dissipated. Courts have time and again echoed this understanding—even long after *Smith*.[4] The *Smith*

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[4] *See, e.g.*, *Bates v. Pakseresht*, --- F.4th ---, 2025 WL 2079875, at *8 (9th Cir. July 24, 2025) (Bress, J.) ("the government may not insist upon our adherence to state-favored orthodoxies, whether of a religious or political variety"); *Satanic Temple, Inc. v. City of Boston*, 111 F.4th 156, 183 (1st Cir. 2024) (Barron, J., concurring) ("We have a Bill of Rights because—in a constitutional democracy—majority rule is sometimes the problem rather than

framework thus remains an outlier, minimizing precisely the rights the First Amendment was designed to prioritize.

Absent a better path, adherents of minority religious beliefs or practices will continue be punished for not joining a more mainstream religion. This simply cannot be the structure envisioned by the Founders. *See Fulton v. City of Philadelphia*, 593 U.S. 522, 587 (2021) (Alito, J., concurring) (highlighting the religious exemptions granted to religious minorities near the Founding Era); *Ballard*, 322 U.S. at 87 ("The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views.").

And as it has done time and again, the Supreme Court ought not hesitate to correct its own erroneous interpretation, especially since the real-world consequences for free exercise have been oppressive to

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the solution."); *Speech First, Inc. v. Sands*, 69 F.4th 184, 221 (4th Cir. 2023) (Wilkinson, J., dissenting) ("The First Amendment does not permit the fevers of majority passions to deny the minority its say."); *Knight v. Metropolitan Gov't of Nashville & Davidson Cnty.*, 67 F.4th 816, 836 (6th Cir. 2023) (Murphy, J.) ("The Takings Clause (like the rest of the Bill of Rights) seeks to protect a minority from the popular will . . . ."); *Byrd v. Haas*, 17 F.4th 692, 700 (6th Cir. 2021) (Thapar, J.) ("Insulated from the rebukes of the electorate, it is out constitutional duty to protect the religious freedom of minority adherents as vigorously as anyone else's."); *Wollschlaeger v. Florida*, 848 F.3d 1293, 1327 (11th Cir. 2017) (Pryor, J., concurring) ("The First Amendment is a counter-majoritarian bulwark against tyranny.").

those with minority faiths. *See Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 264–68 (2022) (collecting examples of Supreme Court decisions subsequently overruled).

III. This Court Rightly Emphasized The Importance Of Religious Exemptions To Minority Groups In *Mahmoud*.

As this Court's recent decision in *Mahmoud v. Taylor* illustrates, reasonable allowances for religious exemptions can relieve religious minorities of the disproportionate burdens of *Smith*. In *Mahmoud*, parents of Montgomery County, Maryland public school students challenged their schools' policy of including "'LGBTQ+ inclusive' storybooks" in their elementary school curriculum. *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2343 (2025). The parents asserted that requiring their children to be exposed to the storybooks violated their sincerely-held religious beliefs. *Id.* at 2345–46. While the schools at one time permitted parents to opt their children out of this part of the curriculum, the religious opt-out policy was rescinded, leaving the parents in the untenable position of choosing between their religious convictions and availing themselves of public education. *Id.* at 2347–48. The Court held that the parents were likely to succeed on their claim that rescinding religious opt-outs for the portions of the curriculum involving the LGBTQ+ inclusive storybooks violated the parents' Free Exercise rights. *Id.* at 2353.

The Petitioners in this case are in the same position as the parents in *Mahmoud*. Petitioners seek a religious exemption from school vaccination requirements that violate their sincerely held religious beliefs. (Pet. at 7–8.) Experience has shown that such religious exemptions from school vaccination requirements are eminently workable. As the Petition notes, such exceptions are widespread in the U.S. and are currently available in forty-six states. (*Id.* at 8–9.) Where, as in this case and in *Mahmoud*, religious exemptions from laws that burden religious exercise are readily workable, they are critical to protecting the Free Exercise rights of believers. Notably, the Amish are not the only minority religious group that objects to vaccine requirements. *See, e.g.*, *Prida v. Option Care Enterprises, Inc.*, No. 23-3936, 2025 WL 460206, at *5 (6th Cir. Feb. 11, 2025) (reversing district court's dismissal of Jehovah's Witness religious discrimination claim for refusal to take mandated COVID vaccine because she believed her body is the "temple of God"); *Tandian v. State Univ. of New York*, 698 F. Supp. 3d 425, 441-42 (N.D.N.Y. 2023) (finding Muslim registered nurse plausibly pleaded a "prima facie case for religious discrimination on the basis of a failure to accommodate pursuant to Title VII" when she refused to take COVID vaccine due to belief of "divine immunity and divine protection, along with her avoidance of certain substances from entering the body that are contrary to her faith"), *appeal dismissed* (May 9, 2024). As this Court recognized in *Mahmoud*, religious exemptions that permit believers to opt-out of programs and policies that burden their religious exercise, including vaccine mandates, can be critical for avoiding a constitutional injury.

CONCLUSION

The Court should grant the Petition.

Respectfully submitted,

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