No. 25-133

IN THE

Supreme Court of the United States

JOSEPH MILLER; EZRA WENGERD; JONAS SMUCKER; DYGERT ROAD SCHOOL; PLEASANT VIEW SCHOOL; SHADY LANE SCHOOL,

Petitioners,

v.

JAMES V. MCDONALD, in his official capacity as Commissioner of Health of the State of New York; BETTY A. ROSA, in her official capacity as Commissioner of Education of the State of New York,

Respondents.

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

BRIEF *AMICI CURIAE* OF NAVY SEALS GABRIEL LYNCH, CHAD GATES, PAUL DREW FORSBERG, AND SHAWN NIELSEN IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI CURIAE[1]

Amici are four Navy SEALs who successfully challenged a federal government mandate requiring them to receive COVID-19 vaccinations in conflict with their sincerely held religious beliefs, including their belief that their bodies are sacred and must not be defiled, and their belief that it is wrong to accept vaccines tested or developed with aborted fetal cell lines. *Amici* decided to challenge the mandate because the government "ha[d] not accommodated *any* religious objection to *any* vaccine in seven years"—not for *Amici* nor anyone else—even though it had "granted hundreds of medical exemptions from vaccination requirements." *U.S. Navy Seals 1-26 v. Biden*, 27 F.4th 336, 339 (5th Cir. 2022) (per curiam). The Fifth Circuit ultimately sustained *Amici*'s challenge, refusing to allow the government to enforce its mandate against them. *Id.*

The crisis of conscience *Amici* faced parallels the one now faced by Petitioners. In *Amici*'s case, the federal government put *Amici* to a terrible choice—either forfeit religious beliefs or face draconian penalties, including the end of their careers as Navy SEALs. In this case, New York has put Petitioners to a similar, terrible choice.

Invoking the Free Exercise Clause, *Amici* resisted that false choice. And, after years of litigation, *Amici*

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[1] At least 10 days before this brief's filing deadline, *Amici* notified the parties' counsel of record of their intent to file this brief. No counsel for a party authored any portion of this brief or made any monetary contribution intended to fund its preparation or submission.

reached a settlement with the government vindicating their right to freely exercise their religion.

Amici have an interest in ensuring that other persons of faith, including Petitioners, are similarly vindicated—for that is the result required by the Free Exercise Clause.

SUMMARY OF ARGUMENT

In 2019, New York enacted a law eliminating religious exemptions from school-vaccination requirements, even while maintaining secular exemptions. When three Amish schools—located on Amish land and serving only Amish children—refused to comply, New York enforced this law, backed by crippling fines. Not only do the fines threaten to close the schools, they jeopardize Amish parents' ability to raise their children in the Amish tradition.

By eliminating religious exemptions, New York has put Petitioners to an impossible choice: violate sincerely held religious beliefs or become subject to crushing penalties.

This dilemma is familiar to *Amici*, who faced a similar ordeal when the federal government offered medical exemptions but not religious exemptions from its COVID-19 vaccination mandate. With that mandate, the government sought to compel *Amici* to retreat either from their religious convictions or from their military vocations. *Amici* refused to retreat on either front. And the government eventually gave *Amici* the religious exemptions required by the Free Exercise Clause.

But it is not only Petitioners and *Amici* who are familiar with this dilemma—many others are too.

Indeed, just over a century ago, the Roman Catholic parents in *Pierce* faced a similar dilemma. So did the Seventh-day Adventist employee in *Sherbert*. So, too, did the Amish parents in *Yoder*. And so also with those in more recent cases, like *Fulton*, *Kennedy*, and *Mahmoud*. And, doubtless, the same goes for countless others unknown to any case reporter. That is because the dilemma is recurrent—arising whenever demands made by the state conflict with duties owed to God.

The First Amendment decidedly resolves this dilemma in favor of religious believers. In recognizing the right to freely exercise religion, the First Amendment affirms the principle that the claims of God are "precedent both in order of time and in degree of obligation, to the claims of Civil Society." James Madison, Memorial and Remonstrance Against Religious Assessments (June 20, 1785), *in* 2 THE WRITINGS OF JAMES MADISON 183, 184–85 (G. Hunt ed., 1901). That principle led the Court to rule for free religious exercise in cases like *Pierce*, *Sherbert*, *Yoder*, *Fulton*, *Kennedy*, and *Mahmoud*—and led the government, after years of litigation, to grant *Amici* religious exemptions in their case.

That same principle controls this case. And under that principle, the Second Circuit's decision must be reversed—including, if necessary, by overruling this Court's decision in *Smith*. Only that result will vindicate the Free Exercise Clause and—what ultimately matters—the object for which the clause exists: Petitioners' real-world freedom to exercise their religion.

ARGUMENT

I. The Free Exercise Clause Generally Forbids the Government from Forcing Persons to Choose Between Legal Compliance and Religious Exercise.

The Free Exercise Clause generally protects persons of faith from having to choose between the demands of the law and the dictates of their religion. This protection for religious practice is deeply rooted in the American legal tradition and reflected in the original meaning of the First Amendment. Indeed, the historical record from the time of the Founding—whether from constitutional provisions, legislative enactments, or judicial decisions—makes clear that the Free Exercise Clause generally prioritizes claims of religious conviction over claims of secular authority.

1. Often enough, at the time of the Founding, the right to free religious exercise was expressly recognized in state constitutions. *See, e.g.*, N.Y. CONST. of 1777, art. XXXVIII ("the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed, within this State, to all mankind"); GA. CONST. of 1777, art. LVI ("All persons whatever shall have the free exercise of their religion"); *see also* Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1455–56 (1989) (noting that "[w]ith the exception of Connecticut, every state … had a constitutional provision protecting religious freedom by 1789"). And, importantly, these constitutions routinely protected the "free exercise of religion" with a proviso that

religious exercise would be guaranteed except where it threatened the "peace and safety" of the state—language presupposing the legitimacy of exemptions from otherwise applicable laws for religious conduct not injurious to others. *See* McConnell, *Origins and Historical Understanding*, *supra*, at 1461–64; *see also* Michael W. McConnell, *Free Exercise Revisionism and the* Smith *Decision*, 57 U. Chi. L. Rev. 1109, 1118 (1990) (concluding that "peace and safety" clauses' "evident acknowledgment of free exercise exemptions is the strongest evidence that the framers expected the First Amendment to enjoy a similarly broad interpretation").

But the relevant examples are not limited to state constitutions. Even before the Bill of Rights, the federal Constitution itself recognized a religious exemption from a generally applicable rule. Rather than require oaths from all and sundry no matter their scruples, the Oath Clause allows *either* "Oath *or Affirmation*." U.S. CONST. art. VI (emphasis added); *see also id.* art. II § 1 (requiring that the President "take the following Oath *or Affirmation*: —'I do solemnly swear (or affirm) ....'" (emphasis added)); *see* McConnell, *Origins and Historical Understanding*, *supra*, at 1467 (noting that "Quakers and certain other Protestant sects" had a religious conviction against taking oaths).

2. At time of the Founding, the right to free religious exercise was also recognized through legislative enactments. And such legislation routinely acknowledged the need to accommodate claims of religious conscience with exemptions from otherwise applicable laws—including those governing oaths, military conscription, and religious assessments. *See*

McConnell, *Origins and Historical Understanding*, *supra*, at 1466–73. Indeed, in the pre-constitutional period, state legislatures regularly granted religious accommodations on matters ranging from courtroom attire and marriage requirements to issues of local governance. *See City of Boerne v. Flores*, 521 U.S. 507, 559 (1997) (O'Connor, J., dissenting) ("Both North Carolina and Maryland excused Quakers from the requirement of removing their hats in court; Rhode Island exempted Jews from the requirements of the state marriage laws; and Georgia allowed groups of European immigrants to organize whole towns according to their own faith." (citing McConnell, *Origins and Historical Understanding*, *supra*, at 1471)).

One especially noteworthy example of early legislation protecting free religious exercise comes from Virginia. Between 1779 and 1786, Virginia legislators led by Patrick Henry proposed an assessment bill that "would have required every taxpayer to support the Christian denomination of his choice" or instead contribute to public education. Michael W. McConnell, *Establishment and Disestablishment at the Founding, Part I: Establishment of Religion*, 44 Wm. & Mary L. Rev. 2105, 2155 (2003). James Madison responded to that proposal with his Memorial and Remonstrance Against Religious Assessments, insisting that "in matters of Religion, no man's right is abridged by the institution of Civil Society." Madison, Memorial and Remonstrance, *supra*, at 185. After Madison's Memorial and Remonstrance helped defeat Henry's assessment bill, Virginia instead enacted Thomas Jefferson's Bill for Establishing Religious Freedom.

See McConnell, *Establishment*, *supra*, at 2155–56. The statute protected persons from "suffer[ing] on account of [their] religious opinions or belief[s]." A Bill for Establishing Religious Freedom (June 18, 1779), *in* 2 THE PAPERS OF THOMAS JEFFERSON 545–53 (Julian P. Boyd ed., 1950).

3. The right to free religious exercise was not left only to constitutional provisions and legislative enactments—it was also protected through judicial decisions in the early Republic. For example, courts would excuse priests from revealing confessions in violation of their religious exercise. *See People v. Phillips*, 1 W.L.J. 109, 112–13 (Gen. Sess., N.Y. 1813); *see Commonwealth v. Cronin*, 1 Q.L.J. 128, 134 (Va. Cir. Ct. 1856); *see also Fulton v. City of Philadelphia*, 593 U.S. 522, 588 (2021) (Alito, J., concurring in the judgment) (discussing decisions); Stephanie H. Barclay, *Replacing* Smith, 133 Yale L.J. Forum 436, 454 (2023) (same). As another example, courts would permit a witness to testify consistent with "his religious creed," recognizing that "every person who believes in the obligation of an oath" "may testify in a court of justice" "according to [the] creed" that "he holds to be obligatory." *Curtiss v. Strong*, 4 Day 51, 55 (Conn. 1809). As a final example, courts would dismiss jurors for religious objections to capital punishment—even if sparse records mean few reported decisions explicitly reflect such practices. *See* Stephanie H. Barclay, *The Historical Origins of Judicial Religious Exemptions*, 96 Notre Dame L. Rev. 55, 65 & n.46 (2020). And, specific examples aside, courts more generally would often take into account the "equity of the statute" to ensure that generally

applicable rules were applied to a given case so as not to impair constitutional rights. *Id.* at 79–80, 85.

Accordingly, no matter whether the evidence comes from constitutional provisions, legislative enactments, or judicial decisions, the import is the same: the understanding of those who debated and then ratified the First Amendment was that a right to free religious exercise requires more than equal treatment of religion—it secures substantive protection for religious belief and practice over and against the demands of the state, including many generally applicable ones. *See* McConnell, *Origins and Historical Understanding*, *supra*, at 1512.

And that should come as no surprise. While many today may scoff at the view that a person "must be considered as a subject of the Governor of the Universe" before that person "can be considered as a member of Civil Society," that was the view held by none other than the Father of our Constitution and the drafter of our Bill of Rights: James Madison. *Id.* at 1497 (quoting James Madison, Memorial and Remonstrance Against Religious Assessments (June 20, 1785), *in* 2 THE WRITINGS OF JAMES MADISON 183, 185 (G. Hunt ed., 1901)). And not only Madison, but many at the Founding. Many in that generation "found it conceivable that a God—that is, a universal and transcendent authority beyond human judgment—might exist," and that it therefore is "not arbitrary to hold that His will is superior to the judgments of individuals or of civil society." *Id.* at 1497–98. And they accordingly debated and ultimately ratified the First Amendment on that understanding.

To interpret the Free Exercise Clause shorn of this context—that is, to read the clause "through modern or postmodern eyes of religious skepticism and nonreligious secularism"—is to interpret the Free Exercise Clause "anachronistically." Michael Stokes Paulsen, *Freedom for Religion*, 133 Yale L.J. Forum 403, 407 (2023). Interpreted not anachronistically but accurately, the Free Exercise Clause reflects the Founding generation's "broad agreement both with religion's intrinsic importance and with the political proposition that government should not have the power to interfere with, limit, regulate, manage, or control something so supremely important." *Id.* Consistent with that broad agreement, the Free Exercise Clause generally "confers a sphere of constitutional immunity from government regulation or burdens on religious believers." *Id.* at 412. That is, the Free Exercise Clause immunizes practices borne of sincere religious conviction from an otherwise applicable law—in most cases forbidding the government from forcing a choice between legal compliance and religious exercise. And that is especially true in cases like this, where the law already exempts conduct other than religiously motivated conduct from the applicable requirement. *See id.* at 421–22.

II. Consistent with Its Past Decisions, and Consistent with the Result in *Amici*'s Case, the Court Should Hold that Petitioners Cannot Be Forced to Choose Between Legal Compliance and Religious Exercise.

New York's 2019 repeal of religious exemptions from its compulsory-vaccination law amounts to a bid to force Petitioners to choose between their

compliance with law and their consciences before God. Over the last century, this Court has affirmed and reaffirmed the principle that the Free Exercise Clause generally forbids the government from putting persons like Petitioners to that terrible choice. Indeed, that principle ultimately won the day in *Amici*'s case. And that same principle should lead the Court to rule for Petitioners in this case.

1. Begin with this Court's decisions, and in particular with *Pierce v. Society of Sisters*, 268 U.S. 510 (1925)—decided just over one hundred years ago. In the late nineteenth century, escalating anti-Roman Catholic bias and animus toward parochial schools had led to the proliferation of compulsory-education laws. *See Mahmoud v. Taylor*, 145 S. Ct. 2332, 2378 & n.5 (2025) (Thomas, J., concurring); *see also* Richard W. Garnett, *Taking* Pierce *Seriously: The Family, Religious Education, and Harm to Children*, 76 Notre Dame L. Rev. 109, 124 (2000). When States attempted to enforce those laws against Roman Catholic parents, the Court held that the laws were unenforceable—they could not be applied to force Roman Catholic parents to educate their children in contravention of their sincerely held religious beliefs. *See Pierce*, 268 U.S. at 535; *Mahmoud*, 145 S. Ct. at 2377–78 & n.4 (Thomas, J., concurring) (noting that *Pierce* preceded incorporation but "stands as a charter of the rights of parents to direct the religious upbringing of their children") (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 233 (1972)).

Similar compulsory-education laws led to similar cases in the ensuing decades. In response to one such law, in one Pennsylvania county alone, over 125 Amish parents chose jailtime over sending their

children to public high school in violation of their religious beliefs. Erika Reilly, *Steps that Led to U.S. Supreme Court Ruling that Compulsory Education Law Violated First Amendment Rights of Amish*, Lancaster Online (Oct. 23, 2019), https://tinyurl.com/zmrbha3b. Their refusal to bend to government pressure culminated in this Court's decision in *Yoder*, and the recognition that compulsory-education laws violated Amish free exercise rights. 406 U.S. at 218.

Other cases involved not education but employment. For example, when a Seventh-day Adventist was fired for refusing to labor on the Sabbath, and then denied unemployment benefits, the Court held that she could not be required to choose "between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand." *Sherbert v. Verner*, 374 U.S. 398, 404 (1963); *see also* Ronald Lawson, *Seventh-day Adventists and the U.S. Courts: Road Signs Along the Route of a Denominationalizing Sect*, 40 J. Church & St. 553, 557 (1998).

More recently, in *Fulton v. City of Philadelphia*, 593 U.S. 522, 532 (2021), the Court held that a city's refusal to grant a foster care contract to a Roman Catholic charity violated the Free Exercise Clause, because the refusal "burdened [the charity's] religious exercise by putting it to the choice of curtailing its mission or approving relationships inconsistent with its beliefs." The Court thus unanimously rejected the city's attempt to force the charity to choose between legal compliance and religious convictions.

The Court reached a similar outcome in *Kennedy v. Bremerton School District*, 597 U.S. 507, 544–45 (2022), holding that a government employer could not force its employee—a high school football coach—to choose between losing his job or forfeiting his practice of public prayer following each football game.

Indeed, earlier this year, the Court ruled again for religious liberty, enjoining a public school district from forcing parents to choose between either forgoing the benefits of taxpayer-funded education or subjecting their children to educational content contrary to their sincerely held religious beliefs. *Mahmoud*, 145 S. Ct. at 2353. With that decision, the Court reaffirmed the principle that the Free Exercise Clause generally forbids the government from forcing a choice between legal compliance and religious exercise.

2. That same principle controlled *Amici*'s case. When the federal government imposed its COVID-19 vaccination mandate, it chose to subject *Amici* to severe consequences for refusing compliance: court martial, loss of deployment status, removal from leadership, denial of promotions, exclusion from training, and the threat of discharge—effectively ending their military careers and erasing years of elite service and sacrifice. Complaint at ¶ 110, *U.S. Navy Seals 1-26 v. Biden*, No. 4:21-cv-01236-O (N.D. Tex. Nov. 9, 2021). Even while the government offered a bevy of medical exemptions from the mandate, it denied any religious exemption, forcing *Amici* to choose between service to their country and service to their God. *Id*. at ¶ 148; *U.S. Navy Seals 1-26*, 27 F.4th at 339. Ultimately, after *Amici* resisted, including with litigation—refusing to make that terrible choice—the government granted *Amici* religious

exemptions, thereby recognizing what the Free Exercise Clause required.

3. The outcome here should be no different—for the same principle controls this case. New York's repeal of religious exemptions from its compulsory-vaccination law singles out and forces Amish parents to choose between sacrificing religious beliefs or suffering crippling fines. To be sure, many of these Amish parents have left no doubt which choice they ultimately will make: they "will choose prison time or a martyr's death before going against their convictions." Pet. 8. But they should not be put to that choice at all. Not in this Republic. The very purpose of the Free Exercise Clause is to forestall just that outcome—to forbid the government from putting Petitioners and other persons of faith to any such terrible choice. The Court should grant the petition to reaffirm as much here.

CONCLUSION

The Court should grant the petition and reverse the Second Circuit's decision.

September 3, 2025 Respectfully submitted,

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