No. 25-703

In the Supreme Court of the United States

CALVARY CHAPEL SAN JOSE, ET AL.,
Petitioners,

v.

CALIFORNIA, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the Court of Appeal of California, Sixth Appellate District

BRIEF OF AMICI CURIAE ADVANCING AMERICAN FREEDOM; ALABAMA POLICY INSTITUTE; AMERICAN CONSTITUTIONAL RIGHTS UNION; AMERICAN ENCORE; AMERICAN VALUES; E. CALVIN BEISNER, PH.D., PRESIDENT, CORNWALL ALLIANCE FOR THE STEWARDSHIP OF CREATION; CENTER FOR URBAN RENEWAL AND EDUCATION (CURE); CHRISTIAN LAW ASSOCIATION; COALITION FOR JEWISH VALUES; EAGLE FORUM; FIRST LIBERTY INSTITUTE; CHARLIE GEROW; ET AL. IN SUPPORT OF PETITIONERS
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QUESTION PRESENTED

1. Do COVID restrictions that contain multiple exceptions, exceptions permitting comparable risks of viral transmission, trigger strict scrutiny under *Employment Division v. Smith*, 494 U.S. 872 (1990), because they are not "generally applicable"?

2. Should this Court hold that the church autonomy doctrine, which provides an exception to *Smith*, includes not just a "ministerial exception" but also a "liturgical exception"?

3. If *Smith* does not require strict scrutiny in this case and does not include a liturgical exception, but instead allows governments to micromanage religious services, should this Court overrule *Smith* as incompatible with a proper reading of the Free Exercise Clause?

TABLE OF CONTENTS

Page

TABLE OF CITED AUTHORITIES

Page(s)

Cases

Constitutional Provisions

Other Authorities

STATEMENT OF INTEREST OF AMICI CURIAE

Advancing American Freedom (AAF) is a nonprofit organization that promotes and defends policies that elevate traditional American values, including freedom from arbitrary power.[1] AAF "will continue to serve as a beacon for conservative ideas, a reminder to all branches of government of their responsibilities to the nation,"[2] and believes American prosperity depends on ordered liberty and self-government.[3] AAF filed this brief on behalf of its 26,055 members in the Ninth Circuit including 12,373 members in the state of California.

Amici Alabama Policy Institute; American Constitutional Rights Union; American Encore; American Values; E. Calvin Beisner, Ph.D., President, Cornwall Alliance for the Stewardship of Creation; Center for Urban Renewal and Education (CURE); Christian Law Association; Coalition for Jewish Values; Eagle Forum; First Liberty Institute; Charlie Gerow; Independent Institute; International Conference of Evangelical Chaplain Endorsers; JCCWatch.org; Jenny Beth Martin,

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[1] All parties received timely notice of the filing of this amicus brief. No counsel for a party authored this brief in whole or in part. No person other than Amicus Curiae and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

[2] Edwin J. Feulner, Jr., Conservatives Stalk the House: The Story of the Republican Study Committee, 212 (Green Hill Publishers, Inc. 1983).

[3] Independence Index: Measuring Life, Liberty and the Pursuit of Happiness, Advancing American Freedom available at https://advancingamericanfreedom.com/aaff-independence-index/.

Honorary Chairman, Tea Party Patriots Action; Tim Jones, Former Speaker, Missouri House, Chairman, Missouri Center-Right Coalition; Maryland Family Institute; Men and Women for a Representative Democracy in America, Inc.; National Apostolic Christian Leadership Conference; National Center for Public Policy Research; New York State Conservative Party; NSIC Institute; Orthodox Jewish Chamber Of Commerce; Paul Stam, Former Speaker Pro Tem, NC House of Representatives; Stand Up Michigan; Students for Life of America; The Justice Foundation; Unify.US; Upper Midwest Law Center; Wisconsin Family Action; Women for Democracy in America, Inc.; and Young America's Foundation believe that religious liberty is central to American freedom and that this Court's decision in *Employment Division v. Smith* is inadequate to secure that right.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The First Amendment prohibits Congress from adopting any law "prohibiting the free exercise" of religion. U.S. Const. amend I. That protection, which has been incorporated against the states through the Fourteenth Amendment, *Fulton v. City of Philadelphia, Pennsylvania*, 593 U.S. 522, 532 (2021), protects Americans' freedom to live out their religious convictions.

Here, California's Santa Clara County seeks to collect a more than $1.2 million fine on Calvary Chapel and its pastor for conducting worship services that congregants could choose freely to attend during COVID lockdowns and for choosing not to be mask-mandate enforcers. This case, with its fundamental

question of the limits of government power over religious liberty, presents the Court with an opportunity to reconsider its decision in *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990).

Smith held that, if a policy's burden on religious exercise is not its "object," but, instead, the burden is "merely the incidental effect of a generally applicable and otherwise valid provision, the First Amendment is not offended." 494 U.S. at 878. That precedent leaves Americans' First Amendment-recognized right to Free Exercise uniquely exposed compared to other fundamental rights recognized by this Court.

Over the course of the last decade and beyond, religious Americans have faced a series of acute challenges to their religious liberty, especially in the aftermath of this Court's decision in *Obergefell v. Hodges*, 576 U.S. 644 (2015). Justice Alito's warning that Americans who sought to publicly express their religious views would "risk being labeled as bigots and treated as such by governments, employers, and schools," *id.* at 741 (Alito, J., dissenting), has unfortunately proved prescient.[4] Nor have Americans

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[4] In fact, religious Americans now might reasonably worry that the FBI is seeking to infiltrate their churches. As a leaked memorandum from the in February 2023 demonstrated, the FBI's Richmond, Virginia field office was contemplating infiltrating Catholic groups because the Bureau thought "racially or ethnically motivated violent extremists" were increasingly interested in "radical-traditionalist Catholic (RTC) ideology." *AAF Letter to Attorney General Garland on the FBI Memo on "Radical Traditionalist Catholic Ideology"* Advancing American Freedom (June 11, 2024)

been subject to abuse only for their beliefs with respect to marriage. In recent years, many religious (as well as many nonreligious) Americans have been targeted for their utterly unremarkable views about gender and sex.

In the midst of these developments, the COVID-19 pandemic presented government officials with another opportunity to suppress religious expression and activity. As this and other cases demonstrate, COVID lockdown restrictions were often much harsher when directed at religious activities than when they were directed at secular activities, including liquor stores, marijuana dispensaries, and casinos, *Roman Catholic Diocese of Brooklyn, New York v. Cuomo*, No. 20A87, slip op. at 2 (November 25, 2020) (Gorsuch, J., concurring), even when those secular activities were just as likely to spread COVID.

Lower courts need a clear standard by which to measure government action that impedes religious liberty and which allows religious Americans to vindicate their First Amendment-recognized right to freely live out their religious convictions. This Court's decision in *Smith* has proven inadequate to the task of protecting free exercise. The Court should grant certiorari in this case and overturn *Smith*.

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https://advancingamericanfreedom.com/aaf-letter-to-attorney-general-garland-on-the-fbi-memo-on-radical-traditionalist-catholic-ideology/. Stanley Meador, the director of the field office at the time, has now been appointed by Virginia Governor-Elect Abigail Spanberger as the state's Secretary of Public Safety and Homeland Security. J. Marc Wheat, *Virginia Catholics Beware*, Richmond Times-Dispatch (Dec. 16, 2025).

ARGUMENT

I. Religious Americans Have Suffered the Consequences of Facially Neutral Laws Because of Their Beliefs About Gender and Sexuality.

The slogan of the LGBT movement was, at least for many years, tolerance. Americans were understandably sympathetic to the idea that people ought to be able to live their lives in a way that they find fulfilling. After all, in its own way, that has been the desire of religious Americans since the Pilgrims set out to the new world in search of the freedom to worship according to their own conscience.

Yet, activists, in the name of tolerance, have sought to drive Americans with traditional values out of public life and to capture their children's minds for the activist agenda. Officials at every level of American government have participated in this effort and religious Americans continue to feel the effects today.

A. Many states and local governments have targeted religious Americans' ability to operate their businesses in a manner that is consistent with their convictions.

For years, state and local governments have used generally applicable laws to target religious Americans who seek to operate their business according to their convictions.

In 2012, Colorado's Civil Rights Commission opened an investigation into Jack Phillips, a Christian baker, after he declined to create a cake for a gay couple's wedding ceremony or reception. *Masterpiece Cakeshop, LTD v. Colorado Civil Rights Comm'n*, 584 U.S. 617, 628-29 (2018). At one meeting of the

Commission during which Mr. Phillip's case was considered, one commissioner said:

> Freedom of religion and religion has been used to justify all kinds of discrimination throughout history, whether it be slavery, whether it be the holocaust, whether it be—I mean, we—we can list hundreds of situations where freedom of religion has been used to justify discrimination. And to me it is one of the most despicable pieces of rhetoric that people can use to—to use their religion to hurt others.

Id. at 635.

This Court ruled in Mr. Phillips' favor in 2018, finding that the state's "treatment of his case ha[d] some elements of a clear and impermissible hostility toward the sincere religious beliefs that motivated his objection" to creating a wedding cake for a same-sex wedding. *Id.* at 634. The Court ruled that Colorado officials' "expressions of hostility to religion" were inconsistent with the "religious neutrality that must be strictly observed," and thus the state's treatment of Mr. Phillips was "inconsistent with what the Free Exercise Clause requires." *Id.* at 639. The Court did not reach the question of whether Mr. Phillips had a Free Exercise right to choose which weddings he was willing to create a cake for.

The Court's relatively narrow reasoning left Mr. Phillips exposed to further harassment. On the day in 2017 this Court granted certiorari in Mr. Phillips' case, Mr. Phillips became the subject of another lawsuit after he refused to bake a cake celebrating a

man's transgender transition.[5] The Colorado Civil Rights Commission ultimately dismissed its case as part of a settlement agreement[6] but the private lawsuit continued another seven years until it was dismissed by the Colorado Supreme Court on procedural grounds, twelve years after the Civil Rights Commission first opened its investigation into Mr. Phillips.[7]

While Mr. Phillip's case was making its way through the courts, this Court decided *Obergefell v. Hodges*, 576 U.S.3 644 (2015), purporting to find a right to state recognition of same-sex marriage in the Constitution. The Court promised religious Americans that "[t]he First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths." *Obergefell*, 576 U.S. at 679. Yet, for many Americans, that promise has come up short, as some Justices warned at the time it might. *See, e.g., id*. at 734 (Thomas, J., dissenting) (explaining that "[i]t appears all but inevitable that" religious and civil views on marriage "will come into conflict, particularly as

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[5] Kelsey Dallas, *5 years after a Supreme Court win, Christian baker Jack Phillips' fight is far from over*, Deseret News (Oct. 25, 2023 9:00 PM) https://www.deseret.com/faith/2023/10/25/23930090/christian-baker-jack-phillips-masterpiece-cakeshop-where-is-he-now/.

[6] *Id*.

[7] Jennifer McRae, *Colorado Supreme Court dismisses lawsuit against baker who refused to make gender transition cake*, CBS News (Oct. 8, 2024 3:49 PM) https://www.cbsnews.com/colorado/news/colorado-supreme-court-dismisses-lawsuit-against-baker-refused-make-gender-transition-cake/.

individuals and churches are confronted with demands to participate in and endorse civil marriages between same-sex couples.").

This Court again considered the rights of religious business owners in *303 Creative, LLC, v. Elenis*, 600 U.S. 570 (2023). In that case, Lorie Smith challenged Colorado's public accommodations law which she believed would require her to create wedding websites inconsistent with her religious values. *Id.* at 580. This Court ruled for Ms. Smith, finding that Colorado, in attempting "to force an individual to speak in ways that align with its views but defy her conscience about a matter of major significance," had exceeded the First Amendment's free speech boundaries. *Id.* at 602-03.

More recently, the California Civil Rights Department succeeded in punishing Catherine Miller for running her business, Tastries Bakery, in accord with her Christian beliefs about marriage. Petition for Certiorari, *Miller v. Civil Rights Department*, No. 25-233 (Dec. 8, 2025). That case arose after Ms. Miller declined to bake a cake for a same-sex couple's wedding celebration. *Id.* at 13-14. The Department brought suit against Ms. Miller in state court in October 2018, nearly seven years ago, "seeking fines and an order prohibiting [Ms. Miller's] conduct." *Id.* at 17. The trial court ruled for Ms. Miller. *Id.* However, the state appellate court reversed, finding that "no one would have understood" the cake to convey a message of support for same-sex marriage. *Id.* at 19. With this Court's denial of Ms. Miller's petition for certiorari, she was left the victim of an activist state government.

These cases likely represent only a fraction of the harm caused by such policies as religious Americans choose not to engage in certain forms of business

rather than risk years of litigation. Such chilling of legitimate business pursuits itself constitutes a violation of the rights of religious Americans who choose to forgo legal activity for fear of government retribution.

B. Many states and local governments have targeted religious Americans' noneconomic activities because of their beliefs about gender and sexuality.

Perhaps an unsympathetic observer might be inclined to agree with the Colorado Civil Rights commissioner's sentiment that "[I]f a businessman wants to do business . . . and he's got an issue with the—the law's impacting his personal belief system, he needs to look at being able to compromise." *Masterpiece Cakeshop*, 584 U.S. at 634-35 (internal quotation marks omitted) (alteration in original). But states' efforts to curtail religious freedom have not been limited to Americans' business affairs.

States and localities have repeatedly enacted policies that limit the ability of religious inhabitants of those jurisdictions to live out their faith. As Justice Alito noted, "From 2006 to 2011, Catholic Charities in Boston, San Francisco, Washington, D.C., and Illinois ceased providing adoption or foster care services after the city or state government insisted that they serve same-sex couples." *Fulton*, 593 U.S. at 526-27, 552 (Alito, J., concurring in the judgment).

In *Fulton*, Catholic Social Services and three foster parents challenged the 2018 decision of Philadelphia's Department of Human Services to stop referring children to the Catholic adoption service because the organization intended to operate in accord with Catholic teaching on marriage. 593 U.S. at 526-27,

530-31. This Court found that Philadelphia's "refusal . . . to contract with [Catholic Social Services] for the provision of foster care services unless it agrees to certify same-sex couples as foster parents cannot survive strict scrutiny, and violates the First Amendment." *Id.* at 533. However, it reached that conclusion "based on what appears to be a superfluous (and likely to be short-lived) feature of the City's standard annual contract with foster care agencies.) *Id.* at 551 (Alito, J., concurring in the judgment). Because the Court's judgment rested solely on this flimsy lack of generality, it "might as well be written on the dissolving paper sold in magic shops." *Id.* Religious Americans thus continue to face such hurdles today.

In Massachusetts, a Catholic couple is suing because they say their foster license was denied because of their views on sexuality and marriage, despite repeated assessments that they were well equipped to become foster parents. *Burke v. Walsh*, No. 23-11798, slip op. at 2-9 (D. Mass. Jun. 5, 2024). Michael Burke is a Marine Corps veteran who was deployed to Iraq and his wife Catherine has worked as a substitute teacher and paraprofessional including working with special needs children. *Id.* at 2.

It is unsurprising, then, that a social worker tasked with interviewing the couple noted their "many strengths" including their understanding of trauma, their extensive research related to foster children and their challenges, and the fact that their decision to foster was the product of deep and serious thought. *Id.* at 6-7. Nonetheless, their license was denied, according to the narrative of a meeting of the state License Review Team, because of their

"statements/responses regarding placement of children who identified as LGBTQIA." *Id.* at 7 (internal quotation marks omitted).

Religious Americans have also faced the consequences of generally applicable policies for believing what virtually everyone believed until just a few years ago: that boys are boys and girls are girls. In *Mahmoud v. Taylor*, No. 24-297, slip op. at 8-9, 12 (June 27, 2025), Ukrainian Orthodox, Catholic, and Muslim parents challenged the Montgomery County Board of Education's policy prohibiting parental notice or opt outs of elementary school children from the reading of particular books included in the curriculum with the intent of exposing children to the school board's gender agenda.

For example, if after reading one of these books a student asked what "transgender" means, teachers were instructed to tell the child that "[w]hen we're born, people make a guess about our gender and label us 'boy' or 'girl' based on our body parts. Sometimes they're right and sometimes they're wrong." *Id.* at 26. (internal quotation marks omitted). The religiously diverse group of parents who brought the suit wanted the opportunity to remove their children from these classroom readings and discussions, but that request for accommodation was denied. *Id.* at 9.

The Court rightly found that "[t]he Board's introduction of the 'LGBTQ+-inclusive' storybooks, along with its decision to withhold opt outs, places an unconstitutional burden on the parents' rights to the free exercise of their religion." *Id.* at 40.

The Court's clarity in that case had an immediate impact. In *S.E. v. Grey*, two fifth graders and their parents challenged a school activity that required the

fifth graders to express ideas that were inconsistent with their and their parents' religious views. *S.E. v. Grey*, 782 F. Supp. 3d 939, 945-46 (S.D. Cal. 2025). In the activity, called the "buddy program," the fifth graders were paired with kindergarteners to act as mentors. *Id.* at 945. During one "buddy class," the fifth graders and kindergartners were made to watch a read-along video of a book called *My Shadow is Pink*. *Id.*

The book "is about a boy who liked to wear dresses and play with toys associated with girls," and so "his shadow was pink rather than blue." *Id.* The boy's "father eventually comes to accept his son's 'pink shadow' not as a phase but as reflecting the boy's 'inner-most self.'" *Id.* The fifth graders were then directed to trace their kindergarten buddies' shadows on the ground in a chalk color of the kindergarteners' choosing. *Id.* at 946 The fifth graders in the suit understood the message of the book and "did not wish to affirm the book's message to their buddies." *Id.* Consistent with the pattern, although the school's weekly newsletter to parents typically "listed the books the students were reading each week," *My Shadow is Pink* "was not listed in the weekly newsletter." *Id.* at 945.

On May 12, 2025, the U.S. District Court for the Southern District of California granted the parents' and fifth grader's motion for preliminary injunction against the school. *Id.* The school board appealed to the Ninth Circuit but later moved to dismiss its own appeal after the board updated its religious opt-out policy in light of this Court's ruling in *Mahmoud* on June 27. Motion to Voluntarily Dismiss Appeal, *Grey v. S.E.*, No. 25-3706 (9th Cir. November 19, 2025).

Just as activists in the name of tolerance have sought to use state power to punish religious Americans for their beliefs, so many governments saw the COVID-19 pandemic as a chance to impose restrictions on religious worship.

II. The COVID Emergency Provided a Pretext for State Restrictions on Religious Liberty.

In 2020, the Roman Catholic Diocese of Brooklyn and Agudath Israel of America challenged New York executive orders restricting attendance at houses of worship. Governor Andrew Cuomo claimed the power to limit attendance to 10 people in "red" zones and 25 in "orange" zones, with zones determined by the severity of the COVID outbreak. *Roman Catholic Diocese of Brooklyn*, No. 20A87, slip op. at 1 (per curiam). Central to the Court's determination that religious groups were likely to succeed on the merits of their claims was that the "applicants ha[d] made a strong showing that the challenged restrictions violate[d] 'the minimum requirement of neutrality.'" *Id.* at 2 (quoting *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 533 (1993)). Specifically:

> In a red zone, while a synagogue or church [could] not admit more than 10 persons, businesses categorized as "essential" [could] admit as many people as they wish[ed]. And the list of "essential" businesses include[d] things such as acupuncture facilities, camp grounds, garages, as well as . . . all plants manufacturing chemicals and microelectronics and all transportation facilities.

Id. at 3. Further, "[t]he disparate treatment [was] even more striking in an orange zone. While attendance at houses of worship is limited to 25 persons, even non-essential businesses may decide for themselves how many persons to admit." *Id.* As Justice Gorsuch explained, in Governor Cuomo's judgment, "laundry and liquor, travel and tools, are all 'essential' while traditional religious exercises are not." *Id.* at 2 (Gorsuch, J., concurring). Because the policy was not neutral, the Court found that it must survive strict scrutiny. *Id.* at 2 (per curiam).

Months later, the Court granted partial injunctive relief to South Bay Pentecostal Church after the church challenged California's COVID policies. At the time of the Court's decision in February 2021, most of the state was in what the state government had defined as "Tier 1." *South Bay United Pentecostal Church v. Newsom*, No. 20A136, slip op. at 1 (Feb. 5, 2021) (Statement of Gorsuch, J.). In Tier 1, California prohibited "any kind of indoor worship," but allowed "most retail operations to proceed indoors with 25% occupancy, and other businesses to operate with 50% occupancy or more." *Id.* As Justice Gorsuch concluded, "[w]hen a State so obviously targets religion for differential treatment, our job becomes that much clearer." *Id.*

In April 2021, the Court provided injunctive relief in *Tandon v. Newsom*, noting that, unlike its treatment of religious activities, "California's Blueprint System contain[ed] myriad exceptions and accommodations for comparable [secular] activities." *Tandon v. Newsom*, No. 20A151, slip op. at 4 (Apr. 9, 2021) (per curiam).

These cases presented clear distinctions between states' treatment of secular and religious activity, entitling the religious applicants to injunctive relief. However, Americans' First Amendment-recognized right to religious liberty should not depend on the degree to which state officials are willing and able to restrict some religiously significant activity generally and the degree to which they are able to refrain from making comments that reveal animosity toward religion or religious people.

III. *Employment Division v. Smith* is Insufficient to Counter the Festering Problem of Government Animosity Toward Religious Americans.

After the terrorist group Hamas slaughtered more than 1,200 people and took over 200 hostages in southern Israel on October 7, 2023 in "the largest murder of Jews since the Holocaust,"[8] "Jewish students were excluded from portions of the [University of California Los Angeles] campus because they refused to denounce their faith." *Frankel v. Regents of the University of California*, No. 24-04702, slip op. at 1 (C.D. Cal. Aug. 13, 2024). The university "claim[ed] that it ha[d] no responsibility to protect the religious freedom of its Jewish students because the exclusion was engineered by third-party protestors." *Id.* As the court in that case rightly found, "under constitutional principles, UCLA may not allow services to some students when UCLA knows that

[8] *The October 7 Massacre: Explained*, Israeli Defense Force (Oct. 6, 2024) https://www.idf.il/en/mini-sites/remembering-the-october-7-massacre/the-october-7-massacre-explained/.

other students are excluded on religious grounds, regardless of who engineered the exclusion." *Id.*

Not every state failing with regard to religious liberty is so dramatic. But as animosity toward religious Americans and their beliefs festers, this sort of behavior will become ever easier for government officials. Courts, like the Central District of California in *Frankel*, have often exercised their backstop role admirably, but they need the assistance of clarity from this Court.

Smith's limitations of Free Exercise Clause protection against government action that is not neutral with regard to religion or generally applicable is inconsistent with the original meaning of the First Amendment, *Fulton*, 593 U.S. at 553 (Alito, J., concurring in the judgment), and with this Court's precedent at the time. As Justice O'Connor wrote, *Smith's* was a "strained reading of the First Amendment" that "disregard[ed the Court's] consistent application of free exercise doctrine to cases involving generally applicable regulations that burden religious conduct." *Smith*, 494 U.S. at 871 (O'Connor, J., concurring in the judgment).

In *Smith*, the Court said that "[t]he only decisions in which we have held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated actions have involved not the Free Exercise Clause alone, but the Free Exercise Clause in conjunction with other constitutional protections." 494 U.S. at 881. Thus, this Court's recent decisions in *303 Creative* and *Mahmoud* fail to challenge *Smith's* limitation on religious Americans' ability to vindicate their free exercise rights.

In *303 Creative*, the Court found that Colorado's policy, which would have forced Lorie Smith to express ideas with which she disagreed, was inconsistent with the First Amendment's protection of free speech. *303 Creative, LLC*, 600 U.S. at 602-03. In *Mahmoud*, the Court relied on its venerable parental rights jurisprudence to find that the school board's no-opt-out policy likely burdened the religious exercise of the parents in that case. *Mahmoud*, No. 24-297, slip op. at 17. This joint-rights theory of Free Exercise is not required of any other constitutional right.

Smith fails to provide the clarity needed in such a sensitive area of law and many Justices have called for its reexamination. *Fulton*, 593 U.S. at 554 (Alito, J., concurring in the judgment). The freedom of religious Americans to live according to their conscience should no longer be treated as a "second-class right," *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010), subject to government infringement so long as the infringement is not the object of the policy.

Cases like *Mahmoud* and *S.E. v. Grey* show that when the Court is clear, it can have a real impact for religious Americans. Cases like *Miller*, on the other hand, show that many government officials are intent to continue their campaign to push religious Americans and their views out of public life. This Court's decision in *Smith* provides too much room for officials to do so. It is time for the Court to replace the *Smith* standard with one that better protects religious liberty.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for certiorari and rule for Petitioners.

Respectfully submitted,

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