

No. 25-963

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IN THE  
**Supreme Court of the United States**

\_\_\_\_\_  
CYNTHIA BRACCIA, ET AL.,  
*Petitioners*

*v.*

NORTHWELL HEALTH SYSTEMS,  
*Respondent*

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

\_\_\_\_\_  
**BRIEF IN OPPOSITION**

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## QUESTIONS PRESENTED

Title VII of the Civil Rights Act of 1964 only requires an employer to accommodate the religious practices of its employees when doing so does not impose an “undue hardship on the employer’s business.” 42 U.S.C. 2000e(j). Petitioners challenge whether Respondent’s required compliance with a law adopted by the State of New York requiring licensed health-care provider organizations to ensure that certain health-care workers were fully vaccinated against COVID-19 with limited religious accommodations subject to severe penalties, including loss of licensure, for non-compliance constitutes an “undue hardship” under Title VII. The questions presented are:

1. Whether granting an employee’s request for a religious exemption from a state mandated health and safety requirement constitutes an “undue hardship” under Title VII, where the employer is required to comply with the state law which permits only limited religious accommodations, but prohibits complete religious exemptions, and imposes substantial penalties for noncompliance.

2. Whether Title VII preempts a state health and safety law that prohibited religious exemptions but allowed limited accommodations for certain employees which Respondent asks this Court not to consider because it was raised for the first time by Petitioners before this Court and not briefed or considered in any lower court.

**PARTIES TO THE PROCEEDING  
AND CORPORATE DISCLOSURE STATEMENT**

Petitioners Cynthia Braccia, Irina Abramov, Dawn Alois, Joy Altrui, Angela Bastone-Pergola, Diane Bono, Katherine Carney, Karen Ferrando, Carmela Fiorica, Eileen Hagan, Sarah Haseney, Maryann Hojnowski, Dennise Johnson, Karen La Rosa, Nadira Mahabir, Veronica Newton, Katlyn Pastor, Rebecca Ramirez, Julia Shaw, Rose Taylor, Mia Torres, Marisol Ventrice, and Michele Woodward-Lawton (collectively “Petitioners”) were appellants in the Second Circuit and plaintiffs in the district court.

Respondent Northwell Health, Inc. incorrectly sued as Northwell Health Systems, (“Respondent”) was the appellee in the Second Circuit and the defendant in the district court.

Respondent Northwell Health, Inc.’s parent company is Northwell, Inc., and no publicly held corporation owns 10% or more of its stock. Respondent does not have a stock ticker symbol.

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## INTRODUCTION

This case presents two questions concerning Title VII of the Civil Rights Act of 1964: (1) whether granting a healthcare worker a complete exemption from a mandatory health and safety law constitutes an undue hardship as a matter of law, where: (i) state law mandated the employer’s compliance; (ii) state law permitted certain accommodations, but not blanket religious exemptions; and (iii) non-compliance exposed the employer to severe penalties, including loss of licensure; and (2) whether Title VII preempts a state health and safety law that required employer compliance.

Respondent is a corporation operating licensed health-care facilities in New York state, and which provided health care to the public during the COVID-19 pandemic. In 2021, the New York Department of Health adopted a rule requiring licensed health-care provider organizations, such as Respondent, to ensure that certain health-care workers were fully vaccinated against COVID-19. *See* 10 N.Y. Comp. Codes R. & Regs. § 2.61 (Aug. 26, 2021) (the “Rule” or “Rule 2.61”).<sup>1</sup> The Rule applied to “personnel,” defined as individuals whose work could expose other staff, patients or residents to COVID-19 if they themselves were infected. The Rule allowed covered healthcare providers to accommodate religious objections by removing covered “personnel” from the scope of the Rule (*i.e.*, so they would not be in contact with other staff, patients, or residents), but it did not permit religious “exemptions” allowing unvaccinated

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<sup>1</sup> Repealed effective October 4, 2023. *See* 10 N.Y. Comp. Codes R. & Regs. § 2.61.

“personnel” to continue working in contact with others while unvaccinated. The Rule aimed to protect vulnerable patient populations from COVID-19 exposure and prevent staffing shortages by reducing infections among healthcare workers.

Each Petitioner fell within the Rule’s definition of “personnel” and requested to be exempted from the vaccination requirement while continuing to work in contact with patients and/or other staff. When Respondent refused to exempt Petitioners, they filed suit in federal district court alleging that Respondent violated Title VII by failing to accommodate them. The district court dismissed Petitioners’ complaint for failure to state a claim, and the Second Circuit affirmed.

Petitioners now seek this Court’s review, but the questions they present are based on the erroneous assertion that New York’s Rule forbade healthcare employers from providing any religious accommodation to employees whatsoever. It did not. Rather, the Rule did not allow *complete exemptions* solely on religious grounds but provided for limited accommodation. As the Second Circuit correctly held, no Petitioner requested a reasonable accommodation compliant with state law.

This case would be an exceedingly poor vehicle for resolving the questions asserted in the Petition. To start, Petitioners focus primarily on their Title VII preemption argument, an issue that was neither pressed nor addressed below. Moreover, there is no conflict either with this Court’s precedent or amongst the circuit courts for this Court to address.

Accordingly, the Petition for a writ of certiorari should therefore be denied.

## STATEMENT OF THE CASE

### A. Legal Background

#### 1. Title VII Does Not Require Employers to Accommodate the Religious Beliefs or Practices of Their Employees if Doing so Would Impose an Undue Hardship on the Conduct of the Employer's Business

While Title VII of the Civil Rights Act of 1964 does not allow employers to “discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s ... religion,” 42 U.S.C. 2000e-2(a)(1), it recognizes that accommodation is not required if an “undue hardship on the conduct of the employer’s business” is created by the accommodation. 42 U.S.C. 2000e(j). Title VII thus does not require employers to accommodate the religious beliefs or practices of their employees when “doing so would impose an ‘undue hardship on the conduct of the employer’s business.’” *Groff v. DeJoy*, 600 U.S. 447, 453-54 (2023) (quoting 42 U.S.C. 2000e(j)). Indeed, Title VII itself defines “religion” as only those “aspects of religious observance and practice,” that an employer is able to “reasonably accommodate[.]” 42 U.S.C. 2000e(j).

Title VII contains an express preemption clause. It provides that “[n]othing in this subchapter shall be deemed to exempt or relieve any person from any

liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter.” 42 U.S.C. 2000e–7. As this Court has explained, that provision has a “narrow scope,” such that Title VII preempts a state law “only” if it “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *California Federal Savings & Loan Association v. Guerra*, 479 U.S. 272, 281-83 (1987) (internal quotation marks and citation omitted).

## **2. During the COVID-19 Pandemic, New York State Promulgated an Emergency Rule Regarding the Vaccination of Healthcare Personnel**

Like many States, New York requires hospitals and other health-care provider organizations to obtain and maintain a license for operation. Licensed hospitals and other providers are obligated to comply with applicable Department of Health regulations like Rule 2.61. *See* N.Y. Pub. Health Law § 2806(1) (2021). Failure to comply can result in significant penalties, including suspension or loss of an entity’s license to operate. *See id.* § 2806(1)(a).

On August 26, 2021, New York State’s Department of Health adopted an emergency rule, 10 N.Y. Comp. Codes R. & Regs. § 2.61 (Aug. 26, 2021) requiring specified types of licensed health-care facilities to ensure that certain personnel were vaccinated against COVID-19. Pet. App. 49a-52a. The State promulgated

Rule 2.61 in response to a significant rise in cases of the COVID-19 “Delta variant” and the Department of Health’s understanding at that time that “[u]nvaccinated personnel in [healthcare] settings have an unacceptably high risk of both acquiring COVID-19 and transmitting the virus to colleagues and/or vulnerable patients or residents, exacerbating staffing shortages, and causing unacceptably high risk of complications.” N.Y. Dep’t of Health & N.Y. Dep’t of Soc. Servs., Emergency Rulemaking – Prevention of COVID-19 Transmission by Covered Entities, 43 N.Y. Reg. 6, 2021 N.Y. Reg. Text 593545 (Westlaw, Sept. 15, 2021).

Rule 2.61 applied to “covered entities,” which included hospitals, home health programs, hospices, and adult care facilities. Pet. App. 49a, § 2.61(a)(1). The Rule defined “personnel” to include “all persons employed or affiliated with a covered entity ... who engage in activities such that if they were infected with COVID-19, they could potentially expose other covered personnel, patients or residents to the disease.” Pet. App. 49a-50a, § 2.61(a)(2).

Rule 2.61 mandated that all covered entities “continuously require personnel to be fully vaccinated against COVID-19, with the first dose for current personnel received by September 27, 2021 for general hospitals and nursing homes, and by October 7, 2021 for all other covered entities absent receipt of an exemption as allowed below.” Pet. App. 51a, § 2.61(c). The rule provided an exemption for those personnel where “a licensed physician or certified nurse practitioner certifies that immunization with COVID-19 vaccine is detrimental to the [individual’s] health.”

Pet. App. 51a-52a, § 2.61(d). Otherwise, employees who wished to avoid vaccination, such as those with a stated reasonable request for religious accommodation, would need to cease engaging in “activities such that if they were infected with COVID-19, they could potentially expose other covered personnel, patients or residents to the disease.” *See* Pet. App. 49a-50a, § 2.61(a)(2).

Respondent is a corporation that operates healthcare facilities in New York state that are covered entities under Rule 2.61. *See* Pet. App. 4a. Accordingly, Respondent was required to comply with Rule 2.61 or face significant penalties, including suspension or loss of its license to operate. *See* N.Y. Pub. Health Law § 2806(1)(a).

## **B. Factual and Procedural History**

### **1. Petitioners Requested a Prohibited “Exemption” from Rule 2.61**

Petitioners allege they were employed by Respondent in New York during the COVID-19 pandemic. Pet. App. 3a-4a. Each Petitioner sought to be relieved (i.e., exempted) of Rule 2.61’s vaccination requirement on religious grounds while still engaging in patient care and co-worker interaction. Pet. App. 4a-5a, 7a. Each request was denied as in violation of Rule 2.61. *Id.*

On May 17, 2023, Petitioners filed an Amended Consolidated Complaint in the federal district court for the Eastern District of New York, asserting, as relevant here, a claim that Respondent failed to

accommodate their religious beliefs in violation of Title VII of the Civil Rights Act of 1964. Pet App. 3a; Pet. App. 88a-89a, ¶ 95.<sup>2</sup>

Petitioners alleged that, in lieu of vaccination, Respondent could have accommodated their religious objections to the COVID-19 vaccination by allowing them to continue working in their roles as covered “personnel” while “masking and weekly testing” and “social distancing.” Pet. App. 7a; Pet. App. 28a-29a; Pet. App. 82a-83a, ¶¶ 56, 58.

Respondent subsequently moved to dismiss Petitioners’ Amended Consolidated Complaint. On September 24, 2024, the district court granted Respondent’s motion and dismissed all of Petitioners’ claims. Pet. App. 12a. The district court determined that Petitioners’ accommodation request would not have removed them from the scope of Rule 2.61’s vaccination requirement but instead amounted to a blanket religious “exemption” while permitting them to continue to work as covered “personnel” within the scope of Rule 2.61. *Id.* at 29a. That requested accommodation would, the district court concluded, impose an “undue hardship” on Respondent, as it would have forced Respondent to violate Rule 2.61 and exposed it to penalties, including potential loss of its license. *Id.* at 31a-32a. The district court entered judgment in Respondent’s favor. *Id.* at 42a-43a.

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<sup>2</sup> The Amended Complaint represented the consolidation of two actions pending in the Eastern District of New York that constituted 30 named plaintiffs. Pet. App. 13a. All 30 named plaintiffs were appellants before the Second Circuit, however, only 23 petition this Court for Certiorari of the Second Circuit’s decision. Pet. ii.

The Court of Appeals for the Second Circuit affirmed the district court’s judgment. Pet. App. 3a. The panel concluded that Rule 2.61 allowed an employer to grant a religious accommodation only by removing an employee from Rule 2.61’s definition of “personnel,” a fact which Petitioners failed to allege when they sought such an accommodation. *Id.* at 7a. Rather, the Petitioners allegedly sought accommodations in the form of “masking and weekly testing” and “social distancing,” which the panel found (1) did not satisfy Rule 2.61, and (2) would have subjected Respondent to financial penalties or the suspension or revocation of its operating license. *Id.* at 7a-8a. The panel found this constituted an undue hardship on Respondent under the standard articulated in *Groff v. DeJoy*, 600 U.S. 447 (2023), as Title VII does not obligate Respondent to grant the “accommodation” Petitioners sought. Pet. App. 8a. The panel held that Petitioners, therefore, failed to state a claim for failure-to-accommodate in violation of Title VII. *Id.*

### **REASONS TO DENY CERTIORARI**

Because Rule 2.61 did not prohibit religious accommodations, this case does not present, nor did the Second Circuit decide, either of the questions now raised by the Petition, both of which are predicated on the notion that Rule 2.61 “punish[ed]” federally required religious accommodations. *See* Pet. i. Nor, as Petitioners contend, is there any conflict among the circuit courts on the questions actually presented by the decision below. *Id.* 11-13. Rather, the Second Circuit’s decision below comports with this Court’s

precedent and all circuit courts that have considered the issue are in accord. Further, the second question presented here, regarding Title VII preemption, was not raised below and should not be considered by this Court in the first instance. Therefore, the Petition for Writ of Certiorari should be denied.

**A. This Case Does Not Present the Questions Identified in the Petition**

Petitioners frame the questions presented in this case as, first, “[w]hether an employer faces a per se Title VII undue hardship if granting an otherwise federally required religious accommodation would conflict with state law purporting to punish such an accommodation,” and second, “[w]hether, if so, Title VII preempts state laws that purported to prohibit employers from granting federally required religious accommodations.” Pet. i. Neither question is properly presented here.

**1. Rule 2.61 Only Barred Complete Religious Exemptions But Allowed Limited Accommodation for Certain Covered “Personnel”**

Both questions posited by Petitioners rest upon an assumption that Rule 2.61 forbade any religious accommodation whatsoever and was therefore contrary to Title VII. Yet, Petitioners alleged in their Complaint that, per the Second Circuit, Rule 2.61 “**does not bar an employer from providing an employee a reasonable accommodation.**” Pet. App. 82a-83a, ¶ 58 (emphasis in original).

In fact, in an earlier legal challenge to Rule 2.61, the Second Circuit held that although Rule 2.61 “bar[red] an employer from granting a religious *exemption* from the vaccination requirement, it [did] not prevent employees from seeking a religious *accommodation* allowing them to continue working consistent with the Rule, while avoiding the vaccination requirement.” *We The Patriots, USA, Inc. v. Hochul*, 17 F.4th 266, 292 (2d Cir. 2021), opinion clarified, 17 F.4th 368 (2d Cir. 2021), cert. denied 142 S.Ct. 2569 (2022) (emphasis in original). In its clarifying opinion, the Second Circuit explained that “on its face” Rule 2.61 did “not bar an employer from providing an employee with a reasonable accommodation *that removes the individual from the scope of the Rule.*” *Id.* at 370 (emphasis in original). The Second Circuit determined that such a rule does not directly conflict with Title VII, because it does not “foreclose all opportunity” for employees to obtain a reasonable religious accommodation that removes the employees from the scope of the rule, and Title VII does not require an employer to provide “the accommodation the employee prefers.” *Id.* (citation omitted).

Nonetheless, Petitioners now (inaccurately) argue that the Second Circuit held otherwise in its decision below. Pet. 1. A plain reading of the Second Circuit’s decision belies Petitioners’ contention. The Second Circuit held that Rule 2.61 did not permit religious “exemptions” but did permit an employer to “accommodate” a religious objection by “reassign[ing] the employee ‘in a manner that removes them from’ the ‘definition of ‘personnel’” in Rule 2.61. Pet. App. 7a, quoting *We The Patriots*, 17 F.4th at 370. However,

Petitioners do not allege that they requested an accommodation removing them from the scope of Rule 2.61. Pet. App. 7a. Instead, Petitioners wanted to continue working in their same roles, while masking, testing, and social distancing. *Id.* Therefore, the relevant question below was whether granting Petitioners' request for an *exemption*—rather than an accommodation—would have imposed an undue hardship on Respondent because it would have caused Respondent to violate Rule 2.61 and subjected it to “financial penalties or a suspension or revocation of [its] operating license[s].” *Id.* at 8a, citing N.Y. Pub. Health Law § 12 (2008). The Second Circuit correctly concluded that granting the exemption under the circumstances presented—as opposed to granting some other possible accommodation, which Petitioners did not request—would have given rise to an undue hardship. Pet. App. 7a-8a.

Despite no court (including the court below) having held that Rule 2.61 prohibited religious accommodations, the questions Petitioners present here assume that Rule 2.61 forbade a “federally required religious accommodation.” Pet. i. This case provides this Court with no occasion to address a law that forbade or punished religious accommodations because Rule 2.61 was not such a law, as even Petitioners conceded in their pleading below. *See* Pet. App. 82a-83a, ¶ 58. As a result, the only question properly presented here is whether granting an employee's request for a religious exemption from a state mandated health and safety requirement constitutes an “undue hardship” under Title VII, where the employer is required to comply with the state law which permits only limited religious

accommodations, but prohibits complete religious exemptions, and imposes substantial penalties for noncompliance.

This case provides the Court with no occasion to address the questions Petitioners identify because they are neither supported by the plain language of Rule 2.61 or Petitioners' operative pleading nor were they briefed or decided by the lower courts.

## **2. Petitioners' Second Question Was Not Properly Preserved Below**

Contrary to Petitioners' contention, the Second Circuit below did not address whether Title VII preempted Rule 2.61. The Second Circuit instead held that a state law that prohibits one particular accommodation can give rise to an undue hardship with respect to a request for that particular accommodation. *See* Pet. App. 7a-8a. Moreover, Petitioners never raised the preemption argument in their operative complaint, in arguing before the district court, or on appeal to the Court of Appeals for the Second Circuit.

Rather, the Petition only specifies where Petitioners raised their first question in the Second Circuit. *See* Pet. at 22. However, there is no discussion in the Petition where the Petitioners raised the issue of whether Rule 2.61 was preempted by Title VII. *Id.* Nor is there any record of this argument in either the district court or Second Circuit decision. *See* Pet. App. 1a-41a. Thus, Petitioners' second question presented is not properly preserved for this Court's review. *See U.S. v. Jones*, 565 U.S. 400, 413 (2012) (government's

argument forfeited where not raised below or addressed by the court of appeals) (citation omitted); *U.S. v. Williams*, 504 U.S. 36, 41 (1992) (Court does not consider issues not “pressed or passed upon below.”).

**B. The Decision Below Does Not Conflict With Any Decision Of This Court Or With Any Federal Circuit Court**

There is no conflict on the questions that Petitioners actually present to this Court.<sup>3</sup> To the contrary, the Second Circuit’s decision is consistent with the decisions of this Court. It is also consistent with other circuit courts analyzing interaction between similar state laws and Title VII. Because the Second Circuit did not address a state law that forbid all reasonable religious accommodations or that otherwise directly conflicted with Title VII, the decision below does not conflict with any of the cases Petitioners cite. Therefore, further review is unwarranted.

**1. The Decision Below Comports with this Court’s Precedent**

The Second Circuit’s decision comports with long-standing precedent by this Court that an employee is not entitled to the accommodation of their choice, but a “reasonable” accommodation. *See Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 68 (1986). Title VII

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<sup>3</sup> Moreover, the Second Circuit’s decision below is an unpublished Summary Order specifying that it has no precedential effect. Pet. App. 1a.

provides that an employer is not required to provide a religious accommodation that would constitute an “undue hardship on the conduct of the employer’s business.” 42 U.S.C. 2000e(j). That provision does “not impose a duty on the employer to accommodate at all costs.” *Ansonia*, 479 U.S. at 70.

An “undue hardship’ is shown when a burden is substantial in the overall context of an employer’s business.” *Groff*, 600 U.S. at 468 (internal citation omitted). As this Court has confirmed, “courts should resolve whether a hardship would be substantial in the context of an employer’s business in the common-sense manner that it would use in applying any such test.” *Id.* at 471. It would be difficult to imagine a more substantial hardship that a healthcare provider serving the public could face than the loss of its operating license during a pandemic. *See Lowe v. Mills*, 68 F.4th 706, 721 (1st Cir. 2023) (“The risk of license suspension facing the Providers would readily meet this standard too; indeed, it is difficult to imagine a penalty that would cause a healthcare provider more significant difficulty “[i]n the conduct of [its] business,’ 42 U.S.C. § 2000e(j), than license suspension.”), cert. denied, 144 S.Ct. 345 (2023). *Cf. Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 80 (1977) (duty to accommodate religious needs does not require employer to take steps inconsistent with collective bargaining contract).

Thus, the Second Circuit decision below, which found that Petitioners’ proposed accommodation would have created exactly that substantial hardship, comports with this Court’s decisions in *Groff* and

*Ansonia*. Thus, there is no need for this Court to grant review.

## **2. Petitioners Identify No Circuit Split on the Issues Actually Presented Here**

Petitioners fail to identify any actual conflict amongst the circuit courts on the issues present in this case. Because the Second Circuit did not address a state law that forbade all reasonable religious accommodations or that otherwise directly conflicted with Title VII, the decision below does not conflict with any of the cases Petitioners cite as ostensibly being in conflict with Title VII's requirement for a reasonable religious accommodation.

With respect to the first question presented, four circuit courts, including the Second Circuit along with the First, Third, and Ninth Circuits, have held that a requested religious accommodation can impose an undue hardship on an employer where granting the accommodation would require the employer to violate a valid state law.

In *Russo v. Patchogue-Medford School District*, 129 F.4th 182 (2d Cir. 2025), the Second Circuit addressed Title VII religious-accommodation claims brought by a school employee challenging the denial of her requested exemptions from a similar rule to that at issue here, requiring all school personnel to be vaccinated against COVID-19. *Id.* at 184. *See also* 10 N.Y. Comp. Codes R. & Regs. § 2.62 (2021) (“Rule 2.62”). With respect to one of the school employee's request to be “exempt” from the vaccination requirement, the Second Circuit found the request

would have required the school district to violate Rule 2.62, which in turn would have constituted an undue hardship. *Id.* at 186.

In *D’Cunha v. Northwell Health Systems*, No. 23-476-cv, 2023 WL 7986441 (2d Cir. 2023) (unpublished), the Second Circuit held that—similar to this case—an employee was not entitled to “an exemption from the COVID-19 vaccination requirement while continuing to provide direct patient care as a resident” as that particular “accommodation” would have required Northwell to violate Rule 2.61. *Id.* at \*2. The Second Circuit noted “Title VII does not require covered entities to provide the accommodation that Plaintiffs prefer[.]” *Id.* (citation omitted). The exemption *D’Cunha* preferred would have subjected Northwell to penalties that would have amounted to an “excessive” and “unjustifiable” burden. *Id.* at \*3, quoting *Groff*, 600 U.S. at 469.

Neither *Russo* nor *D’Cunha* stand for the proposition that Petitioners suggest – that a state law can eliminate Title VII’s religious-accommodation requirement. Instead, as the Second Circuit noted in its decision below, the particular accommodation sought in these cases would result in an undue hardship as it would require the respective employer to violate state law. *See Russo*, 129 F.4th at 185; *D’Cunha*, 2023 WL 7986441, at \*3.

In *Lowe*, the First Circuit addressed religious accommodation claims asserted by healthcare workers under Title VII challenging the denial of their requested exemptions from a Maine law requiring

vaccination against COVID-19. 68 F. 4th at 709. Like Rule 2.61, the Maine law did not allow exemption for religious reasons but only provided for limited accommodations. *Id.* at 709. Healthcare employers who failed to comply with the law “would have risked onerous penalties, including license suspension.” *Id.* at 719. Like here, the employees in *Lowe* “would accept only one accommodation: a religious exemption allowing them to continue in their roles without receiving a vaccine while observing other precautions, such as masking and testing.” *Id.*

The First Circuit held that granting the plaintiffs’ “desired accommodation” would have imposed an undue hardship on their employers. *Id.* at 720. Indeed, in their complaint, the employees “acknowledge[d] the threat to the [employers’] licenses” if they “fail[ed] to mandate that all employees receive the COVID-19 vaccine.” *Id.* at 720. The First Circuit reasoned the plaintiffs’ sole requested accommodation would have imposed an undue hardship insofar as it was “difficult to imagine a penalty that would cause a healthcare provider more significant difficulty ‘[i]n the conduct of [its] business’ ... than license suspension.” *Id.* at 721 (quoting 42 U.S.C. 2000e(j)). And although the First Circuit decided *Lowe* before this Court issued its decision in *Groff*, 600 U.S. 447, clarifying the standard for assessing whether a requested religious accommodation imposed an “undue hardship,” the First Circuit explained that “the plaintiffs’ requested accommodation would have constituted an undue hardship under any plausible interpretation of the statutory text.” *Lowe*, 68 F.4th at 721.

The Third Circuit has likewise held that a valid state law may create an undue hardship for an employer. In *United States v. Board of Education*, 911 F.2d 882 (3d Cir. 1990), the court addressed a Title VII challenge to a Pennsylvania criminal statute prohibiting public school teachers from wearing religious garb while teaching. *See id.* at 885. The law imposed penalties, including fines and potential removal from office, on administrators who failed to enforce its requirements. *See id.* The United States, suing on behalf of an individual teacher, did not claim that she sought any “alternative means of accommodation” other than being permitted to wear clothing in accordance with her religious beliefs. *Id.* at 887.

The Third Circuit held that requiring the employing school board to exempt the teacher from the otherwise-valid state law against religious garb would have imposed an undue hardship on the school board. *Id.* at 891. In so doing, the Third Circuit invoked this Court’s decision in *Trans World Airlines v. Hardison*, 432 U.S. 63 (1977), which held that a requested accommodation that would require an employer to violate its collective bargaining agreement would constitute undue hardship. *See Board of Education*, 911 F.2d at 891. It “follow[ed] *a fortiori*,” the Third Circuit reasoned, that it would likewise “be an undue hardship to require a school board to violate an apparently valid criminal statute, thereby exposing its administrators to criminal prosecution and the possible consequences thereof.” *Id.*

In *Bhatia v. Chevron U.S.A., Inc.*, 734 F.2d 1382 (9th Cir. 1984) (per curiam), the Ninth Circuit similarly confirmed that a requested religious accommodation that would require an employer to violate a valid state law could impose an undue hardship on the employer. That case addressed a newly promulgated California safety standard requiring employees whose work might expose them to toxic gases to wear a mask with a gas-tight face seal, something that was not possible for individuals with beards. *See id.* at 1383. After the defendant employer imposed a policy requiring all of its machinists to shave their beards, an employee whose religious faith forbade cutting or shaving of any body hair refused each accommodation of placement in a different position that the employer offered and instead asked to be permitted to continue working in his same position in violation of the new law. The employee ultimately chose a different accommodation before pursuing claims against the employer under Title VII. *See id.*

The Ninth Circuit rejected the employee's Title VII claim. *Id.* at 1384. It held that the employer had "established that if it were to retain [the employee] as a machinist ... it would risk liability for violating California Occupational Safety and Health Administration standards." *Id.* After considering and rejecting other potential accommodations as unduly burdensome under the facts of the case, the Ninth Circuit affirmed dismissal of the plaintiff's Title VII claim. *Id.*

The Ninth Circuit's decision in *Sutton v. Providence St. Joseph Medical Center*, 192 F.3d 826

(9th Cir. 1999), involved a prospective employee who refused to provide his social security number to the employer based on a religious belief. *Id.* at 829. The prospective employee sued after the employer refused to hire him. *Id.* at 830. The Ninth Circuit found “that an employer is not liable under Title VII when accommodating an employee’s religious beliefs would require the employer to violate federal or state law.” *Id.* at 830-31.

Finally, the Ninth Circuit’s holding in *Bolden-Hardge v. Office of California State Controller*, 63 F.4th 1215 (2023) does not create a conflict among the Circuit Courts as it is readily distinguishable from the foregoing decisions involving *private* employers. The decision involved a request for an accommodation by a state government employee from swearing a loyalty oath to the United States Constitution and California Constitution as contrary to her religious beliefs. *Id.* at 1219. The State Controller’s Office rejected her proposed accommodation and refused to employ her, although two other State agencies granted it and employed her. *Id.*

In declining to grant the defendant’s motion to dismiss, the Ninth Circuit relied on three distinguishing factors – not the *Janus*-like approach claimed by Petitioners. Pet. 10-11. *First*, the Ninth Circuit pointed out that cases involving *private employers* (such as Respondent) face an undue hardship where a requested accommodation would pose potential liability for the employer, as the private employer “had no ability to create or enforce that law.” *Bolden-Hardge*, 63 F.4th at 1225. *Second*, the Ninth Circuit noted the lack of an enforcement mechanism

for violating the oath requirement, as the State had taken no action against the other agencies that accommodated the employee. *Id.* *Third*, the undue hardship defense on the part of the defendant was not foreclosed, it was (unlike here) simply “not obvious from the face of [the] Complaint.” *Id.* at 1226-1227. In contrast to the case at issue, based on the face of the complaint in *Bolden*, the government did not face any “undue hardship” since there were no ramifications or other punishment for noncompliance.

In sum, these decisions do not stand for the proposition for which Petitioners present them, *i.e.*, that “every circuit court to consider the question presented has concluded that employers need not provide religious accommodations if an accommodation would violate state law.” Pet. 11. Instead, they stand for the more limited and settled proposition that an employer is not required to provide an employee’s preferred religious accommodation where that specific accommodation would compel the employer to violate state law – and then only where non-compliance with state law would impose an undue hardship.

Petitioners also contend that the decision below conflicts with other decisions from this Court and other circuit courts in two additional ways: first, by holding that “an employer faces a per se Title VII undue hardship if granting an otherwise federally required religious accommodation would conflict with state law”; and second, by holding that “a state law that requires employers to deny without any consideration all requests by employees for religious accommodation ... is preempted by Title VII and the

Supremacy Clause.” Pet. i, ii. Because the Second Circuit did not so hold, *see* pp. 8-11, *supra*, the conflicts identified by the Petition are illusory.

With respect to the first question presented, Petitioners cite cases (Pet. 11-13) in which circuit courts have refused to excuse race-based or sex-based discrimination on the grounds that state law required the alleged discrimination. For example, the Second Circuit has held that, where rank-ordering job candidates based on exam scores creates a disparate impact on members of a racial minority, any state law that “purports to require or permit” rank-ordering is preempted and thus cannot excuse continued use of such practices. *Guardians Ass’n of the New York City Police Dep’t, Inc., v. Civil Service Comm’n*, 630 F.2d 79, 104-05 (2d Cir. 1980), cert. denied, 452 U.S. 940 (1981). Other circuit courts addressing analogous schemes have reached the same conclusion. *See, e.g., Gulino v. N.Y.S. Educ. Dep’t*, 460 F.3d 361, 363 (2d Cir. 2006), cert. denied 554 U.S. 917 (2008) (state teacher certification test); *Palmer v. General Mills Inc.*, 513 F.2d 1040, 1042 (6th Circuit 1975) (sex-based weight lifting and overtime laws); *Williams v. General Foods Corp.*, 492 F.2d 399, 402-03 (7th Cir. 1974) (sex-based overtime policies); *Johnson v. Goodyear Tire & Rubber Co., Synthetic Rubber Plant*, 491 F.2d 1364, 1368 (5th Cir. 1974) (high school diploma requirement); *Kober v. Westinghouse Elec. Corp.*, 480 F.2d 240, 242 (3d Cir. 1973) (sex-based limit on work hours); *Ash v. Hobart Mfg. Co.*, 483 F.2d 289, 291-92 (6th Cir. 1973) (sex-based weight lifting law); *Schaeffer v. San Diego Yellow Cabs, Inc.*, 462 F.2d 1002, 1004, 1006 (9th Cir. 1972) (sex-based limit on work hours); *Rosenfeld v. Southern Pacific Co.*, 444

F.2d 1219, 1225-26 (9th Cir. 1971) (the exclusion of female employees from certain workplace tasks).

These cases fail to address Title VII's provisions regarding religious discrimination – which requires only reasonable accommodation and do not mandate employers grant employees' preferred accommodation. *See Ansonia*, 479 U.S. at 67-69. The distinction is important particularly given Title VII's provisions concerning racial and sexual discrimination impose materially different obligations on employers. *See* 42 U.S.C. 2000e-2(a), (e), (k).

None of the cited cases involve a request for a religious accommodation – much less the interplay between the undue hardship faced by an employer and the employee's preferred religious accommodation that would violate state law. Accordingly, those courts' recognition that a state law directly conflicting with Title VII cannot excuse liability does not raise a circuit court conflict within the meaning of this Court's certiorari criteria. *See* Sup. Ct. R. 10. Any purported conflict is illusory; it arises only from comparing fundamentally different legal contexts.

Petitioners separately contend (Pet. 14-17) that the decision below conflicts with decisions from other circuit courts involving federal antidiscrimination laws other than Title VII. But again, in each of those cases, the circuit court concluded that the state law in question must conflict directly with the relevant federal statute to be preempted and addressed a federal statute with substantive requirements different from Title VII's religious-accommodation

provisions. See *Campbell v. Universal City Dev. Partners*, 72 F.4th 1245 (11th Cir. 2023) (Americans with Disabilities Act (“ADA”)); *Gibbs v. City of Pittsburgh*, 989 F.3d 226 (3d Cir. 2021) (ADA and Rehabilitation Act); *Hindel v. Husted*, 875 F.3d 344 (6th Cir. 2017) (discussing ADA and voter accommodations); *Nat’l Fed’n of the Blind v. Lamone*, 813 F.3d 494 (4th Cir. 2016) (ADA); *Mary Jo C. v. N.Y. State and Local Ret. Sys.*, 707 F.3d 144 (2d Cir. 2013) (same); *Barber v. Colorado Dep’t of Revenue*, 562 F.3d 1222 (10th Cir. 2009) (holding Supremacy Clause did not govern outcome of Rehabilitation Act claim); *Crowder v. Kitagawa*, 81 F.3d 1480 (9th Cir. 1996) (ADA); *Quinones v. City of Evanston*, 58 F.3d 275 (7th Cir. 1995) (Age Discrimination in Employment Act); *E.E.O.C. v. Massachusetts*, 987 F.2d 64 (1st Cir. 1993) (same); *E.E.O.C. v. Allegheny Cty.*, 705 F.2d 679 (3d Cir. 1983) (same).

In sum, because none of these cases address the question of whether the need to violate state law in order to grant a particular religious accommodation created an “undue hardship” for purposes of Title VII, those cases do not create a conflict within the meaning of this Court’s certiorari criteria. See Sup. Ct. R. 10.

As to the second question presented: Petitioners argue (Pet. 18-20) that the decision below conflicts with decision from this Court and other circuit courts holding that Title VII preempts directly conflicting state laws. As previously discussed, this issue was raised for the first time by Petitioners before this Court and therefore, should not be considered by this Court. See pp. 10-11, *supra*. To the extent the Court does consider this argument, the Second Circuit did

not address that issue here, and the decision below does not conflict with Petitioners' cited decisions.

In *Guerra*, this Court explained that “state laws will be pre-empted only if they actually conflict with” Title VII. 479 U.S. at 281. Where compliance with both a state law and federal law is not a “physical impossibility” and the state law is not an obstacle to the accomplishment of the federal law, the state law is not preempted. *Id.*; accord *Hillsborough Cnty., Fla. v. Automated Med. Lab’ys, Inc.*, 471 U.S. 707, 713 (1985) (same).

Moreover, the Second Circuit addressed this very issue in a decision *prior* to issuing the decision below and held “[b]ecause Section 2.61’s text does not foreclose all opportunity for [employees] to secure a reasonable accommodation under Title VII, the Rule does not conflict with federal law.” *We The Patriots*, 17 F.4th at 292. The Second Circuit also relied on this Court’s precedent in *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905) for the proposition that “vaccine requirements imposed in the public interest, in the face of a public health emergency” are permissible, and that Rule 2.61 “was a reasonable exercise of the State’s power to enact rules to protect the public health.” *We The Patriots*, 17 F.4th at 290, 293. Accord *Lowe*, 68 F.4th at 724 (finding “no ‘actual[] conflict’” between the Title VII and state law that permitted other accommodations aside from the one that would have constituted an undue hardship) (quoting *Guerra*, 479 U.S. at 281).

**CONCLUSION**

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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