No. 25-963

In the Supreme Court of the United States

CYNTHIA BRACCIA, ET AL., *Petitioners,*

v.

NORTHWELL HEALTH SYSTEMS

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

REPLY BRIEF FOR PETITIONERS

GENE C. SCHAERR
Counsel of Record
ERIK S. JAFFE
HANNAH C. SMITH
JOSHUA J. PRINCE
MIRANDA CHERKAS SHERRILL
SCHAERR | JAFFE LLP
1717 K Street NW, Suite 900
Washington, DC 20006
(202) 787-1060
gschaerr@schaerr-jaffe.com

Counsel for Petitioners

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTRODUCTION 1

I. Respondent Confirms the Conflict and Confusion Among the Circuits Over the Proper Application of Preemption Principles to Federal Antidiscrimination Claims. 3

II. The Decision Below Was Wrong. 5

III. Respondent's Vehicle Argument Is Meritless. 11

CONCLUSION 12

TABLE OF AUTHORITIES

Cases **Page(s)**

Adeyeye v. *Heartland Sweeteners, LLC*,
721 F.3d 444 (7th Cir. 2013) 6

Barber ex rel. Barber v. *Colorado Dep't of Revenue*, 562 F.3d 1222 (10th Cir. 2009) 5

Bowlin v. *Board of Directors, Judah Christian Sch.*, 167 F.4th 469 (7th Cir. 2026) 5

California Fed. Savings & Loan Ass'n v. *Guerra*, 479 U.S. 272 (1987) 7

Campbell v. *Universal City Dev. Partners, Ltd.*,
72 F.4th 1245 (11th Cir. 2023) 4

D'Cunha v. *Northwell Health Sys.*,
No. 23-476-cv, 2023 WL 7986441
(2d Cir. Nov. 17, 2023) 9

Dupree v. *Younger*,
598 U.S. 729 (2023) 11

EEOC v. *Abercrombie & Fitch Stores, Inc.*,
575 U.S. 768 (2015) 6

Groff v. *DeJoy*,
600 U.S. 447 (2023) 5, 10

Gulino v. *New York State Educ. Dep't*,
460 F.3d 361 (2d Cir. 2006) 4

Hemphill v. *New York*,
595 U.S. 140 (2022) 11

Hencely v. *Fluor Corp.*,
146 S.Ct. 1086 (2026) 6, 8

Hillsborough County v. *Automated Med. Lab'ys, Inc.*, 471 U.S. 707 (1985) 7

Kansas v. *Garcia*,
589 U.S. 191 (2020) 6

Martin v. *United States*,
605 U.S. 395 (2025) 6, 8

National Fed'n of Blind v. *Lamone*,
813 F.3d 494 (4th Cir. 2016) 7

Palmer v. *General Mills Inc.*,
513 F.2d 1040 (6th Cir. 1975) 4

Protos v. *Volkswagen of Am., Inc.*,
797 F.2d 129 (3d Cir. 1986) 8

Puerto Rico Dep't of Consumer Affs. v. *Isla Petroleum Corp.*, 485 U.S. 495 (1988) 6

Sutton v. *Providence St. Joseph Med. Ctr.*,
192 F.3d 826 (9th Cir. 1999) 5

United States v. *Williams*,
504 U.S. 36 (1992) 12

Statutes

42 U.S.C. §12112 4

42 U.S.C. §2000e-7 7

INTRODUCTION

Respondent's opposition only confirms the need for this Court's review. Respondent has no answer to Petitioners' showing (at 8-11) that, by allowing state law to serve as an undue-hardship defense to a Title VII religious-accommodation claim, at least four circuits—including the Second—have effectively held that state law can abrogate employers' Title VII obligations. Nor does Respondent dispute that this amounts to "reverse preemption"—in which state law is deemed to displace federal law. Further, Respondent does not even attempt to harmonize the many cases Petitioners identified (at 11-17) holding that other federal antidiscrimination laws—including other parts of Title VII itself—routinely preempt state laws that frustrate federal objectives. Thus, in a concerning (and growing) number of circuits, Title VII's protection of religion stands alone as being subservient to state-law reverse preemption.

Respondent also does not dispute that the core legal theory driving the decision below was that New York's COVID-19 vaccine mandate (known as Section 2.61) forbidding employers from granting religious accommodations otherwise required by Title VII automatically created an "undue hardship" for employers seeking to accommodate religious employees objecting to COVID-19 vaccination. Respondent instead plays word games (at 5-7, 10-11) to salvage Section 2.61 by mischaracterizing it as only forbidding exemptions while allowing accommodations. This is wrong. No objecting healthcare workers could get an accommodation that allowed them both to avoid vaccination *and* remain

healthcare workers. Respondent itself thus concluded that it was impossible to provide religious accommodations while also complying with Section 2.61's prohibition on non-medical accommodations. And the Second Circuit sanctioned that conclusion solely because, had Respondent accommodated Petitioners, it "would have been violating [New York] law." App.7a. That holding squarely presents the questions presented.

Finally, Respondent (at 20-21) ignores the immense practical importance of the questions presented to people of faith. Under the decision below and similar holdings in other circuits, any state hostile to religious belief in general—or to a particular religious belief—can immunize private employers from their federal obligations to accommodate religious employees simply by passing a state law that punishes compliance with federal law. That outcome is untenable if Title VII is to remain a meaningful protection for people of faith in the workforce. Review should be granted for that reason and the others explained in the petition.

I. Respondent Confirms the Conflict and Confusion Among the Circuits Over the Proper Application of Preemption Principles to Federal Antidiscrimination Claims.

Respondent largely concedes (at 22-23) that some courts deciding Title VII religious-accommodation claims apply (or refuse to apply) preemption principles in a manner that is radically different from their application to other federal claims. For example, Respondent confirms (at 15) that at least "four circuit courts * * * 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." But Respondent makes no effort to reconcile the cases cited by Petitioners (at 11-17) in other circuits uniformly holding that conflicting state laws are preempted and cannot excuse federal obligations under other provisions of Title VII, the Age Discrimination in Employment Act, or the Americans with Disabilities Act (ADA). Instead, Respondent feebly argues (at 23) that religious accommodations "impose materially different obligations on employers." But that is irrelevant to the legal question presented.

While Petitioners acknowledged (at 11) that such cases address different statutes, the underlying preemption test is necessarily the same and cannot support giving religion uniquely *inferior* preemption treatment. As Petitioners explained (at 11-15), even if age-, race-, and sex-based discrimination protections do not include an exception for undue hardship on employers, this difference does not alter the core principle that "mandates of state law are no defense to" federal liability because federal law, including

"Title VII[,] preempts any state laws in conflict with it." *Gulino* v. *New York State Educ. Dep't*, 460 F.3d 361, 380 (2d Cir. 2006) (citation omitted); *accord Palmer* v. *General Mills Inc.*, 513 F.2d 1040, 1042 (6th Cir. 1975) ("[A]n employer's compliance" with state law "does not render the company's actions any less a violation of Title VII."). And, of course, noncompliance with a preempted state mandate should not actually create an undue hardship because employers can use federal preemption as an affirmative defense against a state enforcement action. Pet. 10, 16.

Furthermore, the ADA *does* include an undue-hardship defense. See 42 U.S.C. §§12112(a), (b)(5)(A). Yet circuits still recognize that state law cannot simply impose a state-law "hardship" on employers as a means of nullifying their federal obligations under the ADA. The Eleventh Circuit has rightly rejected state efforts to "unilaterally nullify the ADA by enacting a state law requiring discrimination." *Campbell* v. *Universal City Dev. Partners, Ltd.*, 72 F.4th 1245, 1258 (11th Cir. 2023). The same principles logically apply to Title VII religion accommodations. And for that reason, the decision below is fundamentally irreconcilable with *Campbell* and similar circuit decisions discussed in the petition. See Pet. 11-17.

II. The Decision Below Was Wrong.

On the merits, Respondent offers no plausible defense to the decision below.

1. Respondent does not, for example, argue that the four circuits on which it relies (at 15-21) reached the correct result as a matter of general preemption doctrine.[1] Nor could it. As Petitioners showed (at 18), "[u]nder the Supremacy Clause, and especially after *Groff*" v. *DeJoy*, 600 U.S. 447 (2023), "a state law * * * cannot be allowed to 'reverse-preempt' a federal law." As then-Judge Gorsuch recognized, "it works the other way around." *Barber ex rel. Barber* v. *Colorado Dep't of Revenue*, 562 F.3d 1222, 1234 (10th Cir. 2009) (Gorsuch, J., concurring).

Rather than defend the Second Circuit on the merits, Respondent takes its holding for granted. For example, it repeatedly acknowledges (e.g., at 7, 11) that the core of its defense is that exempting Petitioners from its vaccine requirement "would have forced Respondent to violate Rule 2.61." On this, the parties agree.

---

[1] Just days after the petition was filed, the Seventh Circuit joined these circuits in this wrong conclusion, but without any analysis of the preemption issue other than citing *Sutton* v. *Providence St. Joseph Medical Center*, 192 F.3d 826 (9th Cir. 1999), and other inapposite holdings related to undue hardship stemming from violating *federal* law. *Bowlin* v. *Board of Directors, Judah Christian Sch.*, 167 F.4th 469, 477 (7th Cir. 2026). That religious employees in another large circuit can now be subject to state-sanctioned religious discrimination contrary to Title VII simply increases the importance and urgency of the questions presented.

But therein lies the problem. This Court's preemption precedents are clear that, "when a regulated party cannot comply with both federal and state directives, the Supremacy Clause tells us the state law must yield." *Hencely* v. *Fluor Corp.*, 146 S.Ct. 1086, 1093 (2026) (quoting *Martin* v. *United States*, 605 U.S. 395, 409 (2025)). Federal preemption, to be sure, does not arise "*in vacuo*," but must instead "stem from either the Constitution itself or a valid statute enacted by Congress." *Ibid.* (quoting *Puerto Rico Dep't of Consumer Affs.* v. *Isla Petroleum Corp.*, 485 U.S. 495, 503 (1988); *Kansas* v. *Garcia*, 589 U.S. 191, 202 (2020)). But here, a federal statute, Title VII, unambiguously grants employees a *federal* right to religious accommodations short of undue hardship. As Justice Scalia put it for the Court in *EEOC* v. *Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 775 (2015), "Title VII requires otherwise-neutral policies to give way to the need for an accommodation." And thus, as the Seventh Circuit stated in *Adeyeye* v. *Heartland Sweeteners, LLC*, 721 F.3d 444, 456 (7th Cir. 2013), "Title VII aim[s] to ensure that employees would *not* have to sacrifice their jobs to observe their religious practices." Yet that is precisely what the Second Circuit and its fellow travelers would require in this and similar cases.

Since Respondent could not comply with both Title VII and Section 2.61, Section 2.61 should have yielded. As the Fourth Circuit explained in the disability context, "the mere fact of a state statutory requirement" cannot "insulate[]" a company from the need to provide "otherwise reasonable modifications to

prevent" discrimination. *National Fed'n of Blind* v. *Lamone*, 813 F.3d 494, 508-509 (4th Cir. 2016).

2. Contrary to Respondent's suggestions (at 4, 25), this Court's decisions in *California Federal Savings & Loan Association* v. *Guerra*, 479 U.S. 272 (1987), and *Hillsborough County* v. *Automated Medical Laboratories, Inc.*, 471 U.S. 707 (1985), do not undermine this conclusion. In *Hillsborough County*, this Court rejected preemption claims when (1) faced with a "clear indication" that the federal government's "intention [was] *not to pre-empt*" and (2) the claimed "conflict with the federal scheme" was speculative at best. 471 U.S. at 716, 720. It is unclear—because Respondent does not say—how a case concluding that there was no preemption when the federal government *said* there was no preemption has any bearing on Title VII or the facts here. Unlike the regulation in *Hillsborough County*, as Petitioners showed (at 5), Title VII expressly displaces contrary state law. See 42 U.S.C. §2000e-7.

Similar problems plague Respondent's reliance on *Guerra*. As Justice Scalia explained, that case involved a state law that *required* accommodations for pregnant women and that "d[id] not purport to require or permit any act that would be an unlawful employment practice." *Guerra*, 479 U.S. at 296 (Scalia, J., concurring) (emphasis added). But Justice Scalia recognized—as Title VII's text clearly indicates—that Title VII can and does preempt state laws where there is such a conflict. *Ibid.*

And here, there is a conflict. Section 2.61, a "state directive[][,]" purported to prohibit Respondent from

complying with the "federal * * * directive[]," *Martin*, 605 U.S. at 409, to accommodate Petitioners' religious beliefs by threatening to punish such accommodations. The "state directive" thus purported to prevent Respondent from fulfilling its Title VII duty to even consider a religious accommodation. Given that conflict, Section 2.61 should have yielded. See *Hencely*, 146 S.Ct. at 1093.

Yet, because the Second Circuit found that Section 2.61 imposed a burden that effectively nullified Respondent's accommodation duty under Title VII, App.7a, Petitioners were left with the state-imposed "burden of choosing between their jobs and their religious convictions." *Protos* v. *Volkswagen of Am., Inc.*, 797 F.2d 129, 136 (3d Cir. 1986) (citations omitted). That conclusion is wrong and cries for this Court's review.

3. Rather than mount any serious defense of the decision below, Respondent attempts (at 11) to blame Petitioners for the denial of their requested accommodations because they only requested blanket "exemptions" that could not be accommodated under state law. Respondent thus seems to suggest that if Petitioners had just been more tepid, or perhaps more secular, in their request, they could have been granted limited accommodations under the law. But that is still not how federal preemption works: Even if, as Respondent claims (at 11), "Petitioners do not allege that they requested an accommodation removing them from the scope of Rule 2.61"—this just begs the question of whether Section 2.61 was *itself* preempted by federal law.

Respondent's argument on this point is absurd for another reason. Section 2.61 required "covered entities" like Respondent to ensure that covered "personnel"—a term that included "all persons *employed or affiliated with* a covered entity"—be "fully vaccinated." App.49a-51a (emphasis added). So the implication of Respondent's argument is that Petitioners' claim must fail, not so much because they did not ask to be excused from their *healthcare* responsibilities, but because they did not ask to be removed from their status as Respondent's *employees*. That is not an accommodation—it is termination.

At the end of the day, Respondent might be able to prove that, as the Second Circuit claimed, "Title VII does not require covered entities to provide the accommodation that Plaintiffs prefer." BIO 16 (quoting *D'Cunha* v. *Northwell Health Sys.*, No. 23-476-cv, 2023 WL 7986441 (2d Cir. Nov. 17, 2023)). But we will never know the answer to that question if the accommodation analysis is cut off by Section 2.61 before it even starts. Section 2.61 prohibited *all* religious accommodations that would have left Petitioners with a job, not just the ones that Petitioners preferred. So even if, as Respondent claims (at 16), "the particular" religious accommodation that Petitioners requested would result in undue hardship, *any* religious accommodation that allowed unvaccinated religious healthcare workers to remain employees was disallowed by state law and—under the decision below—results in undue hardship to employers as a matter of law.

Because there were no accommodations Petitioners could have requested consistent with

Section 2.61, state law effectively regulated away Respondent's duty to consider any undue hardship that would come from accommodating Petitioners' sincerely held religious beliefs. In other words, Respondent never went through the process of determining whether it would face an actual undue burden if it provided even limited accommodations, because Section 2.61 made the decision for them.

But Title VII does not allow state law to make those decisions or artificially create "hardship" by punishing accommodations. It requires employers to go through the process of determining what would be an undue hardship on them—in the specific circumstances in which the accommodation request arises. As this Court explained in *Groff*, Title VII requires *the employer* to "show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business." 600 U.S. at 470 (citation omitted). But the decision below removes that burden and thereby allows states to legislate or regulate away the need for any religious accommodations.

If that is allowed, then there is little left of Title VII in jurisdictions hostile to religious employees—either generally or as to particular accommodation needs.

III. Respondent's Vehicle Argument Is Meritless.

Respondent also ignores Petitioners' showing (at 21-22) that this is an ideal vehicle because it was decided at the motion-to-dismiss stage, meaning that there are no factual disputes this Court would need to address in deciding the merits. Instead, Respondent (at 12-13) cries forfeiture, claiming that Petitioners never raised their preemption argument below.

But, as Respondent acknowledges (at 25), the Second Circuit would have rejected an independently raised Supremacy Clause claim because circuit precedent already foreclosed it. Just two terms ago, this Court held that "[t]here is no reason to force litigants and district courts to undertake" the "empty exercise" of relitigating purely legal issues that a binding court has decided. *Dupree* v. *Younger*, 598 U.S. 729, 737 (2023).

In any event, parties forfeit "claim[s]," not "argument[s]." *Hemphill* v. *New York*, 595 U.S. 140, 149 (2022). To preserve their *claims*, Petitioners needed only to argue at "every level," *id.* at 148-149, that they had a claim under Title VII notwithstanding Section 2.61. Petitioners did so, explaining in their complaint that, although Title VII requires considering requests for religious accommodations, Respondent refused to undertake that analysis because of Section 2.61. See App.80a-86a. And since Petitioners' Title VII claim was "passed on" by the Court of Appeals, this Court does not require "as an absolute condition * * * that a party demand overruling of a squarely applicable, recent circuit

precedent" for this Court to grant review. *United States* v. *Williams*, 504 U.S. 36, 42-44 (1992) (citation omitted).

In short, this case is an excellent vehicle. This Court can easily resolve the questions presented because the Second Circuit necessarily found no federal preemption when it held that, because of Section 2.61, Respondent did not need to accommodate Petitioners as Title VII required. Pet. 21-22.

CONCLUSION

This Court should grant the petition as well as the parallel petition in *Doe* v. *Hochul*, No. 24-1015—on which this Court has already invited the views of the U.S. Solicitor General. Such action is necessary to ensure that federal law properly supersedes state attempts to make religious employees choose between their faith and putting food on the table.

Respectfully submitted,

GENE C. SCHAERR
Counsel of Record
ERIK S. JAFFE
HANNAH C. SMITH
JOSHUA J. PRINCE
MIRANDA CHERKAS SHERRILL
SCHAERR | JAFFE LLP
1717 K Street NW, Suite 900
Washington, DC 20006
(202) 787-1060
gschaerr@schaerr-jaffe.com

Counsel for Petitioners

May 5, 2026