No. 26-319

IN THE

Supreme Court of the United States

KRYSTLE PERRY, individually and on behalf of their minor child K.P., ET AL.,

Petitioners,

v.

STACY MARTENEY, in her official capacity as the Virtual Learning Coordinator of the Upshur County Virtual School, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

West Viriginia law generally requires public, private, and parochial schoolchildren to be vaccinated against certain infectious diseases that can cause serious illness or death. The law imposes the same requirement on students in county-operated virtual schools, who are required to attend in-person school for periodic academic testing and may choose to participate in sports and extracurricular activities alongside classmates in traditional schools. Children in a home school, microschool, or learning pod, who are not required to attend a state-run school for periodic testing, are generally not required to be vaccinated. But if those students choose to participate in sports or extracurricular activities alongside other students, then they must be vaccinated as well. The questions presented are:

1. Whether the Fourth Circuit correctly held that West Virginia's rational distinction between two secular categories—virtual schools versus home schools, microschools, and learning pods—is not subject to strict scrutiny under the First Amendment's Free Exercise Clause.

2. Whether the Fourth Circuit correctly held that West Virginia's vaccine requirement—which does not require schools to convey any message, teach any lesson, or promote any moral values—does not impose a substantial burden on parents' right to guide the religious development of their children.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES iv

INTRODUCTION 1

STATEMENT OF THE CASE 4

West Virginia Generally Requires Children Attending Public, Private, And Parochial Schools To Be Immunized For Certain Diseases 4

Petitioners Bring An As-Applied Challenge Based On Unique Allegations And Forgo Relief Under A State Statute 6

The District Court Enters A Preliminary Injunction 9

The Fourth Circuit Vacates The Preliminary Injunction 11

REASONS TO DENY CERTIORARI 15

I. Petitioners Mischaracterize The Fourth Circuit's Holding. 15

II. There Is No Circuit Split On The Questions Presented. 17

A. The circuits agree on the legal test for when a law is generally applicable, and none has held that a school vaccine law like West Virginia's fails that test. 17

B. The circuits are not divided in applying *Mahmoud* to a vaccine mandate. 28

III. The Decision Below Is Correct. 30

A. The Fourth Circuit correctly held that West Virginia's school vaccine requirement is neutral and generally applicable. 30

B. The Fourth Circuit correctly held that the vaccine requirement is unlike the policies addressed in *Mahmoud* and *Mirabelli*. 33

IV. This Case Does Not Present An Important Federal Question And Is A Poor Vehicle For Addressing School Vaccine Requirements. 36

CONCLUSION 38

TABLE OF AUTHORITIES

Page(s)

Cases

Bacon v. Woodward,
104 F.4th 744 (9th Cir. 2024) 24, 25

Bhd. of Locomotive Firemen v. Bangor & Aroostock R.R. Co.,
389 U.S. 327 (1967).....37

Black v. Cutter Labs.,
351 U.S. 292 (1956).....16

Doe v. San Diego Unified Sch. Dist.,
19 F.4th 1173 (9th Cir. 2021) 22, 24

Does 1-6 v. Mills,
16 F.4th 20 (1st Cir. 2021).....23

Fulton v. City of Philadelphia,
593 U.S. 522 (2021).....11, 12, 19, 20, 24, 27, 31-33

Guzman v. W. Va. Bd. of Educ.,
No. CC-41-2025-C-230, 2025 WL
3515696 (W. Va. Cir. Ct. Dec. 3, 2025) 9

Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.,
240 U.S. 251 (1916).....37

Jacobson v. Massachusetts,
197 U.S. 11 (1905).....1, 11, 18, 19, 30, 32

Mahmoud v. Taylor,
606 U.S. 522 (2025).....13, 29, 33, 34, 35

Miller v. McDonald,
180 F.4th 420 (2d Cir. 2026)..21, 22, 28, 29, 34, 35

Mirabelli v. Bonta,
607 U.S. 492 (2026).....13, 28, 29, 33, 34

Prince v. Massachusetts,
321 U.S. 158 (1944).....1, 11, 19

Smith v. City of Atlantic City,
138 F.4th 759 (3d Cir. 2025).....26, 27

Spivack v. City of Philadelphia,
109 F.4th 158 (3d Cir. 2024).....22, 23

Tandon v. Newsom,
593 U.S. 61 (2021).....12, 19, 20, 25, 31

Trump v. Cook,
609 U.S. 528 (2026).....16

Va. Mil. Inst. v. United States,
508 U.S. 946 (1993).....37

Waln v. Dysart Sch. Dist.,
54 F.4th 1152 (9th Cir. 2022) 25, 26

We the Patriots USA, Inc. v. Conn. Off. of Early Childhood Dev.,
76 F.4th 130 (2d Cir. 2023).....21

Workman v. Mingo Cnty. Bd. of Educ.,
419 F. App'x 348 (4th Cir. 2011) 20

Zucht v. King,
260 U.S. 174 (1922).....11, 18, 31

Statutes

42 U.S.C. § 1983.....7

W. Va. Code § 16-3-4(a).....34

W. Va. Code § 16-3-4(b).....4

W. Va. Code § 16-3-4(c).....4

W. Va. Code § 16-3-4(e).....8

W. Va. Code § 16-3-4(h).....12

W. Va. Code § 16-3-4(h)(1).....5

W. Va. Code § 16-3-4(h)(2).....5

W. Va. Code § 16-3-4(h)(3).....5

W. Va. Code § 16-3-5(a).....4, 33

W. Va. Code § 18-2E-9.....6

W. Va. Code § 18-5F-4.....6

W. Va. Code § 18-5F-5(a)(1).....4

W. Va. Code § 18-5F-5(a)(2).....5

W. Va. Code § 18-5F-5(e).....4, 5

W. Va. Code § 18-8-1(c).....5

W. Va. Code § 18-8-1(n) 5

W. Va. Code § 18-8-1(n)(1)(A) 5

W. Va. Code § 18-8-1(n)(1)(B) 5

W. Va. Code § 18-28-1 *et seq.* 5

W. Va. Code § 35-1A-1 37

W. Va. Code § 35-1A-1(a)(1).....9

W. Va. Code § 35-1A-1(a)(2).....9

Rules and Regulations

Sup. Ct. R. 10 28

W. Va. Code R. § 64-95-1.6 .....4, 5

W. Va. Code R. § 64-95-2.4 5

W. Va. Code R. § 64-95-2.10.....5

W. Va. Code R. § 127-2-3.11.....5

INTRODUCTION

West Virginia law requires public, private, and parochial schoolchildren to be vaccinated against certain infectious diseases that can lead to serious illness or death, subject only to a medical exemption where objective evidence shows that the vaccine could harm the child. More than a century ago, this Court held that Massachusetts' compulsory vaccination requirement, which also included a medical exemption, violated no provision of the Constitution. *Jacobson v. Massachusetts*, 197 U.S. 11 (1905). Decades later, this Court reaffirmed that same principle in a challenge based squarely on the freedom of religion and parental due process rights. *Prince v. Massachusetts*, 321 U.S. 158 (1944). Based on those binding authorities, the Fourth Circuit below joined three other circuits that have addressed materially similar vaccine mandates and concluded that they do not violate the First Amendment. No circuit has ruled to the contrary. The law in this area is settled and uniform.

The Petition revolves around a stark mischaracterization of the Fourth Circuit's opinion. Petitioners claim that the decision below adopted a novel rule that rejected Petitioners' Free Exercise claim because they did not allege that their religion motivated them to enroll their daughter in a virtual school rather than choosing a home school, microschool, or learning pod. That was not the holding below. Instead, the Fourth Circuit held that West Virginia's distinction between virtual and home schools permissibly treats two secular choices

differently. Petitioners' religious motivations, or lack thereof, did not play any role in that correct holding.

Absent the non-existent holding on which Petitioners rely, there is no circuit split. Rather, all the cases Petitioners cite agree on and apply the same correct legal principles but reach varying conclusions about the validity of different policies based on widely divergent facts. Indeed, the cases cited in the Petition are "materially distinguishable" from school-entry vaccine cases, as one decision expressly acknowledges. *Infra* 25. That is not a circuit split. On their second question presented, Petitioners do not even allege that a split exists.

West Virginia's law does not treat religious activity unfavorably, and it does not tolerate secular conduct that poses the same risk as a religious exemption. Petitioners' argument leans heavily on the distinction between virtual schools versus home schools, microschools, and learning pods. But as the Fourth Circuit correctly held, that is a distinction between two secular categories; it says nothing about religious exercise. Moreover, West Virginia treats both secular categories in similar ways that align with and promote the State's compelling interest in protecting the health and well-being of schoolchildren. Specifically, virtual students must be vaccinated as a matter of course, because they are required to attend in-person school for academic testing alongside other students, and may choose to participate in sports and other extracurricular activities at a traditional in-person school. Similarly, students in a home school, microschool, or learning pod who choose to participate in sports or

extracurricular activities alongside other public-school students must be vaccinated as well. Conversely, neither category is comparable to a religious exemption. A religious exemption would undermine the State's compelling public-health interests by allowing a student with no medical exemption to remain unvaccinated while interacting with his or her peers in school.

Even if this Court were inclined to revisit its precedents, this is not the right case for it. Petitioners bring an exceedingly narrow as-applied challenge based on a unique fact-pattern that is unlikely to arise in other cases. Their entire case hinges on the fact that their child attends a virtual school, not an in-person school. And Petitioners' complaint asserts that the State's otherwise compelling interest in promoting the health and well-being of schoolchildren is insignificant in their unique circumstances because their child received first doses for four vaccinations before Petitioners began asserting their religious objections. The West Virginia law they challenge is also uncommon; 45 other States already provide religious exemptions for school vaccination requirements, so any judgment in Petitioners' favor would have no practical impact for 90% of the Nation. That could soon be the case in West Virginia too. The West Virginia Supreme Court is poised to decide whether a State analog to the federal Religious Freedom Restoration Act provides the very rule that Petitioners seek here in the context of the vaccine law.

This Court should deny review.

STATEMENT OF THE CASE

West Virginia Generally Requires Children Attending Public, Private, And Parochial Schools To Be Immunized For Certain Diseases

The West Virginia legislature has declared "that early immunization for preventable diseases represents one of the most cost-effective means of disease prevention," and "[i]mmunization of children at an early age serves as a preventive measure both in time and money and is essential to maintain our children's health and well-being." W. Va. Code § 16-3-5(a). Based on those policies, West Virginia, like every other State in the country, imposes mandatory vaccinations on children attending schools in the State: "[A] child entering school … in [West Virginia] must be immunized against" ten enumerated diseases, and "no child or person may be admitted or received in any of the schools of the state … until he or she has been immunized against" those diseases. W. Va. Code § 16-3-4(b)-(c).

That rule "applies to all children enrolled in a public, private, or parochial school in this state." W. Va. Code R. § 64-95-1.6. The West Virginia Department of Education has interpreted the command to apply to "[s]tudents enrolled in public schools as full-time virtual students." C.A. App.226, 232. Under West Virginia law, virtual-school students are enrolled in a public school in the county that operates the virtual school. W. Va. Code § 18-5F-5(a)(1), (e). Although virtual students do not attend in-person classes, they interact with in-person students because they "must go to school in person for

periodic testing" and may choose to "participate in school-provided extra-curricular activities." App.24a; *see* W. Va. Code § 18-5F-5(a)(2), (e). Children who are home schooled or attend a microschool or learning pod are not required to be vaccinated as a matter of course. Pet. 5; App.23a; *see* W. Va. Code § 18-8-1(c), (n) (defining home schools, learning pods, and microschools).[1] But students in a home school, microschool, or learning pod must be vaccinated if they participate in school athletics or other extracurricular activities alongside in-person public school students. W. Va. Code R. § 127-2-3.11.

West Virigina's statute provides a medical exemption. The exemption requires a licensed physician to certify that "the physical condition of the child is such that immunization is contraindicated or there exists a specific precaution to a particular vaccine," W. Va. Code § 16-3-4(h)(1), and a State Immunization Officer (who is also a licensed physician) to concur, *id.* § 16-3-4(h)(2)-(3); *see* W. Va. Code R. § 64-95-2.4, -2.10 (narrowly defining "contraindication" and "precaution").

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[1] The vaccination requirement applies to students "enrolled in a public, private, or parochial school," W. Va. Code R. § 64-95-1.6. Under West Virginia law, home schools, microschools, and learning pods are not private or parochial schools. *Compare* W. Va. Code § 18-8-1(n)(1)(A), (B) (microschools and learning pods are "alternative[s] to enrolling in a public school [or] private school"), *with id.* § 18-28-1 *et seq.* (separately defining, and imposing different requirements on, private and parochial schools).

West Virginia's vaccine statute does not have an exception for sincerely held religious beliefs. App.3a.

Petitioners Bring An As-Applied Challenge Based On Unique Allegations And Forgo Relief Under A State Statute

Petitioners and their minor daughter, K.P., reside in Fayette County, West Virginia. Pet. 6. In 2018, when K.P. was two years old and before Petitioners expressed any religious objections, K.P. received the first dose of vaccinations for measles, mumps, rubella, and chickenpox. App.122a, 136a. In May 2022, Petitioners enrolled K.P. in a virtual school through Upshur County Schools. App.125a.[2] In December 2023, a school official informed Petitioners of West Virginia's vaccination requirement and asked about K.P.'s status. App.126a. Petitioners told the school that they "cannot vaccinate K.P." App.127a. Accordingly, the school "dis-enrolled" K.P. and cancelled her "online virtual learning credentials." *Id.* Three months later, Petitioners asked if they could apply for a religious exemption, but a school official informed them that none was available. *Id.*; *see* App.143a.

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[2] Petitioners incorrectly state that K.P. was enrolled in West Virginia's Virtual Academy, Pet. 7; App.142a, a state-run program established pursuant to W. Va. Code § 18-2E-9. As the district court found, K.P. was enrolled in Upshur County's virtual school, established pursuant to W. Va. Code § 18-5F-4. App.45a n.3; *see* App.120a ("K.P.'s online learning was administered through the Upshur County School District"); App.125a (K.P. enrolled "through the Upshur County School District").

Petitioners sued the school district, alleging that they have "religious objections to vaccination based on the belief that they must not alter K.P.'s God-given natural immune system." App.124a. Their complaint includes a single claim, brought under 42 U.S.C. § 1983, contending that West Virginia's school vaccination requirement violates the First Amendment's Free Exercise Clause. App162a-172a.

In making their claim, Petitioners repeatedly emphasized the narrowness of their argument. They twice depicted the West Virginia statute as a "radical outlier," App.114a, 146a, because the statutes in 45 other States and the District of Columbia include express religious exemptions, App.145a-146a.

Petitioners also underscored that they were asserting only "an 'as applied' challenge" about the "specific application" of the West Virginia school vaccine requirement "to K.P.'s situation." App.119a. They "do not assert or seek a ruling on whether the law violates the First Amendment in every conceivable application statewide." *Id.*; *see* App.115a (contending West Virginia statute "[a]s applied specifically to Plaintiffs' situation … violates the First Amendment").

Central to Petitioners' as-applied challenge are their unique allegations specific to K.P. First, Petitioners relied heavily on the fact that K.P. was "an online student," App.156a, for whom "there is no physical congregation for a course of instruction that is conducted solely online," App.116a. They insisted that "one online student" who is unvaccinated "poses … virtually no risk at all." App.154a. Petitioners

argued it is "confounding" that the State law "extends to virtual school," App.109a, because K.P. learns "remotely from home," App.111a, through "a virtual education," App.119a, and therefore "does not interact in person with classmates," App.141a. *But see supra* 4-5 (virtual students interact with in-person classmates for periodic academic testing and extracurricular activities).

Petitioners also acknowledge that K.P. has received a first dose of the vaccine for measles, mumps, rubella, and chickenpox. Pet. 6-7; App.122a, 136a; *see also* W. Va. Code § 16-3-4(e) ("No person shall be allowed to enter school without at least one dose of each required vaccine."). They assert that the difference in the protective benefits of one dose versus two is "negligible," App.136a, and therefore applying West Virginia's law to her would provide only "miniscule gains to [the State's] disease mitigation goals," App.161a.

Petitioners also "specifically chose not to challenge" the vaccination requirement under West Virginia's Equal Protection for Religion Act (EPRA), even though that statute "arguably contains protections that may overlap with" their First Amendment claim and the relief they seek. App.144a-145a; *see* App.71a (Petitioners "expressly disavowed an EPRA claim" that would have been "duplicative of [Petitioners'] claims before this Court."). Under EPRA, which was enacted before Petitioners filed their complaint, "no state action may … [s]ubstantially burden a person's exercise of religion unless applying the burden to that person's exercise of religion in a particular situation is essential to

further a compelling governmental interest; and is the least restrictive means of furthering that compelling government interest." W. Va. Code § 35-1A-1(a)(1). It also prohibits "[t]reat[ing] religious conduct more restrictively than any conduct of reasonably comparable risk." *Id.* § 35-1A-1(a)(2).

In separate litigation, a West Virginia court certified a class of individuals and families who challenged West Virginia's school vaccination requirement under EPRA and granted injunctive and declaratory relief. *Guzman v. W. Va. Bd. of Educ.*, No. CC-41-2025-C-230, 2025 WL 3515696 (W. Va. Cir. Ct. Dec. 3, 2025). The West Virginia Supreme Court of Appeals stayed that injunction and will review that decision; the case is fully briefed and awaiting oral argument. *See W. Va. Bd. of Educ., et al. v. Miranda G., et al.*, No. 25-836 (W. Va.).

The District Court Enters A Preliminary Injunction

The district court entered a preliminary injunction barring the school district from enforcing West Virginia's school vaccine requirement against Petitioners unless it provides a religious exemption. App.101a.

The district court determined that West Virginia's school vaccine requirement is not "generally applicable" because it includes "a discretionary exemption … that permits … medical exemptions but prohibits families with religious objections from seeking an exemption for religious reasons." App.86a. The court found the medical

exemption involves "significant individualized discretion" because the request form asks a physician to provide not just a medical diagnosis, but also any "further information you feel is relevant to this request." App.89a-90a & n.17. In addition, the State Immunization Officer must consider the physician's "medical opinions," which involve "case-by-case discretion" in "evaluating these requests." App.90a. Finally, the court found that determining whether a contraindication or specific precaution exists is "not objective" because "the practice of medicine … involves discretion and judgment" and "not the simple task of checking objective boxes." App.90a-91a.

Because the district court concluded that the statute "is not generally applicable," it applied strict scrutiny. App.91a. The court agreed that West Virginia's law serves "a compelling state interest in preventing the spread of infectious disease," but held it was not "narrowly tailored to achieve" that interest. App.94a. The court based that ruling on the following facts: (1) 45 other States include a religious exemption, App.94a; (2) the State Legislature rejected a proposal to exempt virtual students, App.96a-97a; and (3) vaccination is not required for home schools, microschools, or learning pods, App.95a.

Having concluded that Petitioners were likely to succeed on the merits, the district court also found that the remaining equitable factors favored issuing a preliminary injunction. App.97a-99a.

The Fourth Circuit Vacates The Preliminary Injunction

A divided Fourth Circuit reversed the preliminary injunction. Writing for the majority, Judge Wilkinson noted that vaccination requirements have a "history stretch[ing] back to our nation's founding," including George Washington's order requiring smallpox inoculations for the Continental Army. App.6a. And an "unbroken line of decisions" from this Court dating back more than a century "resolves the case." App.9a. *See Jacobson*, 197 U.S. at 38; *Zucht v. King*, 260 U.S. 174, 176-77 (1922); *Prince*, 321 U.S. at 166-67. Following that precedent, the Fourth Circuit held that West Virginia's school vaccine requirement is a legitimate exercise of the State's police power that does not violate the Free Exercise Clause. It rationally furthers a compelling interest in protecting the health and well-being of schoolchildren against the spread and severity of infectious diseases that can lead to debilitating illness and death. App.9a-11a.

The Fourth Circuit held that West Virginia's law is generally applicable, and thus not subject to strict scrutiny on that basis. A law is not generally applicable "if it 'invite[s]' the government to consider the particular reasons for a person's conduct by providing 'a mechanism for individualized exemptions.'" App.13a (quoting *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021)). But West Virginia's medical exemption "is not the kind of unfettered discretion that undermines the general applicability of a law." App.13a. Rather, the law "clearly articulates the circumstances" when State officials can grant an exemption: "when there is

'sufficient medical evidence' that a child's 'physical condition … is such that immunization is contraindicated or there exists a specific precaution to a particular vaccine.'" App.14a (quoting W. Va. Code § 16-3-4(h)). That is the "kind of limited yes-or-no inquiry" that is "qualitatively different from the kind of case-by-case system" that undermines a law's general applicability. *Id.*

Nor does the medical exemption "'prohibit[] religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way.'" App.16a (quoting *Fulton*, 593 U.S. at 534). Medical exemptions promote the health and well-being of schoolchildren by excusing those for whom the vaccine would cause physical harm; a religious exemption, by contrast, undermines the State's interest in the health and well-being of schoolchildren. App.17a-18a. Thus, medical and religious exemptions are not "'comparable,'" App.16a (quoting *Tandon v. Newsom*, 593 U.S. 61, 62 (2021)), and do not affect the State's interests "'in a similar way,'" *id.* (quoting *Fulton*, 593 U.S. at 534).

The Fourth Circuit also explained that West Virginia's other distinctions—between virtual schools and homeschooling, and between schoolchildren and adult teachers—merely "treat[] some secular activity more favorably than other secular activity," the kind of permissible classification that "does not undermine the law's general applicability." App.16a.

The law also treats virtual and home schools in comparable ways that promote the State's public-health interest. Virtual students "*must* go to school in

person for periodic testing," App.24a (emphasis added), so they must be vaccinated. Students in a home school, microschool, or learning pod are not required to go in-person for periodic academic testing, but if they choose to join a sports team or extracurricular activity alongside their in-person public school peers, then they must be vaccinated. *Supra* 5.

The Fourth Circuit also held that West Virginia's statute "is not remotely of the same character" as the school policies this Court considered in *Mahmoud v. Taylor*, 606 U.S. 522 (2025), or *Mirabelli v. Bonta*, 607 U.S. 492 (2026) (per curiam). App.21a. *Mahmoud* addressed a school policy prohibiting parents from opting their children out of reading storybooks that "are unmistakably normative" and "clearly designed to present certain values and beliefs as things to be celebrated and certain contrary values and beliefs as things to be rejected." 606 U.S. at 550. *Mirabelli* concerned school policies that "prevent schools from telling [parents] about their children's efforts to engage in gender transitioning at school unless the children consent to parental notification." 607 U.S. at 493. Both policies substantially interfere with the right of parents to direct and guide their children's religious development and are thus impermissible, regardless of whether those policies are neutral and generally applicable. *Mahmoud*, 606 U.S. at 564-65; *Mirabelli*, 607 U.S. at 496-97.

West Virginia's vaccine mandate, by contrast, is "not an instrument of ideological indoctrination," does not "expose children to values or beliefs," does not "require that school instruction extoll the virtues of

vaccines," and does not "deal[] with whether schools could facilitate children's efforts to identify as the opposite gender without notifying their parents," App.21a & n.1.

Because West Virginia's law "is neutral, generally applicable, and distinguishable from … *Mahmoud*[,] … it is subject to rational basis scrutiny," which the statute easily satisfied. App.22a. The Fourth Circuit reversed the district court's preliminary injunction and remanded for further proceedings. App.25a. It subsequently granted Petitioners' motion to stay the mandate (and thus leave the preliminary injunction in place) until this Court disposes of the Petition. *See* C.A. Dkts. 69, 71.

Although Judge Niemeyer dissented, he did not endorse the district court's reasoning that West Virginia's statute is not generally applicable because it includes a medical exemption. Instead, the dissent reasoned that the distinction between virtual schools and home schools means West Virginia treats secular activity more favorably than religious exercise and its law is thus subject to strict scrutiny. App.36a-37a. Judge Niemeyer also explained that the vaccine requirement should be subject to strict scrutiny because it "substantially interferes with the right of parents to guide their child's religious development," App.39a, contrary to *Mahmoud* and *Mirabelli*. He concluded that the vaccine requirement is not narrowly tailored because it could have treated virtual and homeschooled students the same way. App.40a-41a.

REASONS TO DENY CERTIORARI

I. Petitioners Mischaracterize The Fourth Circuit's Holding.

Petitioners' first question presented, their asserted circuit split, and their entire merits analysis turn on a mischaracterization of the decision below. Petitioners portray the Fourth Circuit as rejecting their First Amendment claim only because K.P. did not express religious reasons for choosing a virtual school. *See* Pet. i, 2, 3, 11, 13-15, 20-22, 31-32. But the Fourth Circuit's reasoning did not hinge on K.P.'s motivations. Instead, the Fourth Circuit concluded that West Virginia's distinction between home schools and virtual schools "is merely an instance of West Virginia treating some secular activity more favorably than other secular activity," App.16a, and that a State can make rational distinctions between two secular categories without undermining general applicability, App.16a, 23a-24a. The Fourth Circuit also recognized that, unlike homeschooled children, virtual students "are part of the school system" and "must go to school in person for periodic testing." App.24a. Because virtual students have mandatory physical contact with other students in brick-and-mortar public school settings, they present a public-health risk if they are unvaccinated.

Petitioners seize on a half-sentence in the decision below noting that Petitioners "do not allege that K.P.'s desire to attend [virtual school] is religiously motivated." App.16a; *see* Pet. 2, 11, 15. But when read in context, the Fourth Circuit only meant that the distinction between home schools and virtual schools

is a distinction between two secular options *and that Petitioners do not claim otherwise*. The decision below does not hold or suggest that the constitutional outcome would be different if Petitioners *had* alleged a religious motivation for choosing virtual school, or that such an allegation would transform West Virginia's secular distinction into a classification that disfavors religion or that tolerates secular conduct posing comparable risk.

The judgment below did not turn on the Fourth Circuit's observation about Petitioners' motivations. The half-sentence on which Petitioners focus comes late in the opinion, only after the Fourth Circuit concluded that the school vaccine requirement is neutral and generally applicable, App.12a-15a, and in response to one of Petitioners' three alternative arguments, App.15a-16a. The Fourth Circuit rejected that alternative argument for reasons entirely unrelated to Petitioners' motivations. *See supra* 12-13.

Tellingly, not even the dissent below read the opinion as endorsing the theory that Petitioners attribute to the majority. At most, Petitioners' objection hinges on stray dicta, which is no basis for granting certiorari. "This Court … reviews judgments, not statements in opinions." *Black v. Cutter Labs.*, 351 U.S. 292, 297 (1956); *see Trump v. Cook*, 609 U.S. 528, 550 n.3 (2026).

II. There Is No Circuit Split On The Questions Presented.

The Fourth Circuit's decision does not create a circuit split. The only basis on which Petitioners even claim a circuit split on the first question presented is by mischaracterizing the holding below. But the opinion the Fourth Circuit actually wrote rests on this Court's longstanding precedents holding that State compulsory vaccine laws do not violate the Constitution. Three circuits align with the decision below in holding that vaccination requirements do not violate the Free Exercise Clause when they include an exemption for medical reasons but not for religious beliefs. No circuit has reached a different conclusion. And no circuit, other than the one below, has even addressed the distinction between virtual and home schools that is so central to Petitioners' claim. Petitioners point only to cases that employ identical legal principles but reach different conclusions about general applicability based on widely divergent facts. That is not a circuit split. And Petitioners do not even claim there is a circuit split over the application of *Mahmoud* to school vaccine requirements.

A. The circuits agree on the legal test for when a law is generally applicable, and none has held that a school vaccine law like West Virginia's fails that test.

1. Every circuit follows what the Fourth Circuit correctly described as an "unbroken line" of this Court's precedent. This precedent holds that compulsory vaccination is a core permissible exercise of the State's police power—including when

implemented as a condition of school attendance—and that a parent's religious objection does not override that foundational authority.

Jacobson v. Massachusetts upheld a compulsory vaccination law, concluding that it did not "invade[] any right secured by the Federal Constitution," even when such statutes "mak[e] the vaccination of children a condition of their right to enter or remain in public school." 197 U.S. at 32, 38. This Court reasoned that "[t]he possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the [State] essential to the safety, health, peace, good order, and morals of the community." *Id.* at 26. Were it otherwise, a "[s]ociety based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy." *Id.* Thus, "in every well-ordered society charged with the duty of conserving the safety of its members," the "rights of the individual … may at times … be subjected to … restraint… even [against a person's] religious or political convictions." *Id.* at 29.

Almost two decades later, this Court considered an ordinance providing "that no child or other person shall attend a public school or other place of education without having first presented a certificate of vaccination." *Zucht*, 260 U.S. at 175. This Court held that a State's police power "to provide for compulsory vaccination" is "settled" law. *Id.* at 176.

Most on point, *Prince v. Massachusetts* rejected a claim based "squarely on freedom of religion under the First Amendment … buttresse[d] … with a claim of parental right as secured by the due process

clause." 321 U.S. at 164. While recognizing "[t]he rights of children to exercise their religion, and of parents to give them religious training," this Court held that "neither rights of religion nor rights of parenthood are beyond limitation." *Id.* at 165-66. A State's authority "to guard the general interest in youth's well being … is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience." *Id.* at 166. "Thus, he cannot claim freedom from compulsory vaccination for the child more than for himself on religious grounds." *Id.* (citing *Jacobson*, 197 U.S. 11).

2. The Fourth Circuit's decision upholding West Virginia's vaccine mandate is in accord with this Court's longstanding precedent. The Fourth Circuit also followed this Court's holdings in *Fulton* and *Tandon* that a law's general applicability is undermined if it permits subjective and discretionary exemptions or treats comparable secular activity more favorably than religious activity even though they both affect the State's interests in similar ways. *See Fulton*, 593 U.S. at 534; *Tandon*, 593 U.S. at 62. But, the Fourth Circuit held, West Virginia's vaccine requirement did not violate either principle. The medical exemption did not confer the "kind of unfettered discretion" that "invites the government to consider" "which reasons" for a claimed exemption are "worthy of solicitude." App.13a-14a (quoting *Fulton*, 593 U.S. at 533). Rather, it "clearly articulates the circumstances" in which an exemption may be granted based on objective medical evidence. App.14a. That "limited yes-or-no inquiry" is "qualitatively different from" exemptions based upon

a "good cause" finding or grounded in the "sole discretion" of a State official. *Id.*

Nor does the vaccine mandate "treat 'comparable secular activity more favorably than religious exercise," or "prohibit[] religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." App.16a (quoting *Tandon*, 593 U.S. at 62, and *Fulton*, 593 U.S. at 534). A medical exemption *promotes* the State's interest in health and safety by excusing a student when the vaccine itself would cause physical harm; a religious exemption *undermines* the State's public-health interest by allowing unvaccinated students to attend school alongside other in-person students. Accordingly, the two exemptions would have different effects on the State's interests. App.17a-18a. And the distinction between virtual and home schools does not treat religious activity differently at all; it is a distinction between two *secular* categories. App.16a. Regardless, those two categories are treated similarly in ways that promote the State's public-health interests; students in either category must be vaccinated when they interact with in-person public school students. *See supra* 4-5. A religious exemption, by contrast, would have the opposite effect. App.17a-18a.

Fifteen years ago, the Fourth Circuit reached the same conclusion and upheld the very West Virginia statute at issue here against a Free Exercise challenge. *Workman v. Mingo Cnty. Bd. of Educ.*, 419 F. App'x 348, 353-54 (4th Cir. 2011), *cert. denied*, 132 S. Ct. 590 (2011) ("[F]ollowing the reasoning of *Jacobson* and *Prince*, we conclude that the West

Virginia statute requiring vaccinations as a condition of admission to school does not unconstitutionally infringe [plaintiff's] right to free exercise.").

As the Fourth Circuit noted, App.15a, 18a, but Petitioners ignore entirely, the decision below is in accord with every other circuit to address the question. Applying the same legal principles that the Fourth Circuit invoked, those circuits hold that a vaccination mandate does not lose its general applicability, or violate the Free Exercise Clause, merely because it permits medical exemptions but not religious ones. And none has suggested that a State must exempt virtual students, who must come to school for mandatory testing and may join in-person extracurricular activities, simply because it does not require vaccination of homeschooled children who need not come to school at all.

The Second Circuit has twice upheld State laws repealing religious exemptions from school-entry vaccination requirements. In one case, it considered Connecticut's school vaccination requirement that included a "medical exemption" but "no other possible bases for exemption." *We the Patriots USA, Inc. v. Conn. Off. of Early Childhood Dev.*, 76 F.4th 130, 155 (2d Cir. 2023), *cert. denied*, 144 S. Ct. 2682 (2024). Applying this Court's decisions in *Fulton* and *Tandon*, the Second Circuit held that the medical exemption did not undermine the law's general applicability. *Id.* at 145-46, 150-54. Then, following this Court's GVR after *Mahmoud*, the Second Circuit upheld New York's vaccination requirement that applied to "all schoolchildren who do not qualify for the law's medical exemption." *Miller v. McDonald*, 180 F.4th

420, 428 (2d Cir. 2026) (*Miller II*) (per curiam), *cert. filed*, No. 26-438 (U.S. Sept. 28, 2026). The Second Circuit again applied *Tandon* and *Fulton* and concluded that the medical exemption did not undermine the general applicability of the vaccine requirement. *Id.* at 429-31.

The Ninth Circuit reached the same conclusion about a school district's COVID-19 vaccination mandate that "allows for medical exemptions" but "does not allow for an exemption … on the basis of religious belief." *Doe v. San Diego Unified Sch. Dist.*, 19 F.4th 1173, 1176 (9th Cir. 2021), *application for injunction denied*, 595 U.S. 1212 (2022). Applying *Tandon* and *Fulton*, the Ninth Circuit agreed that the vaccination mandate is generally applicable. *Id.* at 1178-80. In doing so, the Ninth Circuit rejected the plaintiffs' argument that "the inclusion of a religious accommodation procedure in [the school's] *employee* vaccination mandate [was] evidence that the *student* vaccination mandate is not generally applicable," holding that the employee procedure "does not apply to students" and is "not a religious *exemption*" but a "legally required interactive process." *Id.* at 1180. The Ninth Circuit's holding in *Doe* is in accord with the decision below.

Similarly, the Third Circuit also concluded, in the employment context, that a vaccine requirement is generally applicable even if it has a medical exemption but lacks a religious one. *Spivack v. City of Philadelphia*, 109 F.4th 158, 174-75 (3d Cir. 2024). Applying the same legal principles discussed above, the Third Circuit reasoned that the medical exemption was based on objective medical evidence,

not an officer's subjective discretion, and that medical exemptions promote the government's interests in health and safety while a religious exemption would undermine it. *Id.* at 171-76 (citing *Fulton* and *Tandon*); *see also Does 1-6 v. Mills*, 16 F.4th 20, 31-32 (1st Cir. 2021), *application for injunction denied*, 595 U.S. 1029 (2021), *cert. denied*, 142 S. Ct. 1112 (2022) (applying *Fulton* and *Tandon* and holding that a vaccine mandate for healthcare workers with a medical exemption but no religious exemption is generally applicable). The Third Circuit, too, is in accord with the decision below.

3. Contrary to Petitioners' contention, the decision below does not split with the Third and Ninth Circuits. Pet. 14-18. Most obviously, in *Spivack* and *Doe*, those circuits applied the same legal principles invoked by the Fourth Circuit and reached the same conclusion as the decision below. All of those circuits hold that similar vaccine mandates are generally applicable even when they include a medical exemption but not a religious accommodation. Indeed, in *Doe*, the Ninth Circuit also rejected the plaintiffs' challenge to the law's different treatment of students and teachers. Again, Petitioners do not even acknowledge these cases.

Nor is there any split based on the Third and Ninth Circuit cases Petitioners do cite. Those cases also apply the same legal principles; they merely reach different conclusions based on different facts. That is not a circuit split.

For example, Petitioners point to the Ninth Circuit's consideration of a COVID vaccination

requirement in *Bacon v. Woodward*, 104 F.4th 744 (9th Cir. 2024). There, a governor's proclamation required vaccinations for firefighters but allowed local jurisdictions to grant religious exemptions. *Id.* at 747. While many fire departments regularly granted such exemptions, the City of Spokane routinely denied them and then fired employees who remained unvaccinated. *Id.* at 748. At the same time, however, Spokane addressed its firefighter shortage by allowing employees from neighboring jurisdictions to fill in on an emergency basis even if they were unvaccinated because of a religious exemption granted by the neighboring jurisdiction. *Id.* The Ninth Circuit invoked the same principle as the Fourth Circuit below—that a policy is not generally applicable if it "prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Id.* at 751 (quoting *Fulton*, 593 U.S. at 534). The Ninth Circuit held that Spokane's loophole violated that principle because it "in no way … promotes" the city's public health interest and undermined that interest to the same degree a religious exemption would, thus "destroy[ing] any claim of general applicability." *Id.* at 752.

Nothing in *Bacon*, however, is at odds with the Fourth Circuit's decision below. To the contrary, *Bacon* acknowledged that when the Ninth Circuit had applied the same legal principles to a vaccine mandate that included a medical exemption but not a religious one, it concluded that the policy is generally applicable. 104 F.4th at 752; *see Doe*, 19 F.4th at 1177-78; *supra* 22. While the school vaccination requirement addressed in *Doe* seemed "superficially"

similar to the firefighter vaccine requirement, *Bacon* explained that the two are "materially distinguishable." 104 F.4th at 752. What set Spokane's firefighter policy apart, and rendered it constitutionally infirm, was the city's loophole allowing unvaccinated firefighters from neighboring jurisdictions to fill in on an emergency basis even though that exemption "undermined [the city's] interest" in public health. *Id.*

West Virginia's school-entry vaccine law bears no resemblance to the employer mandate in *Bacon*. Unlike Spokane's mandate, West Virginia's law "recognizes only one kind of exemption—medical exemptions," App.14a—which do not undermine general applicability under unanimous circuit court authority. While Spokane tolerated religious exemptions from firefighters in neighboring departments, West Virginia's law applies even-handedly within the State's public, private, and parochial schools and does not allow children outside of those schools to participate in extra-curriculars unless they provide proof of immunization. *See supra* 4-5.

Petitioners fare no better with *Waln v. Dysart School District*, 54 F.4th 1152 (9th Cir. 2022). There, the Ninth Circuit addressed a First Amendment challenge to the school district's graduation dress code prohibiting students from decorating their caps. *Id.* at 1157-58. The Ninth Circuit invoked the same legal principles discussed above, *id.* at 1159 (citing *Tandon*, 593 U.S. at 62), and concluded that the school district's policy was not generally applicable. But the decision turned on its specific facts: The

school refused the plaintiff's request for a religious exemption to adorn her cap with a sacred eagle feather but allowed another student to wear a "breast cancer awareness" sticker. *Id.* at 1158. That policy was not generally applicable because it granted exemptions for unexplained and subjective reasons, and both claimed exemptions would have contravened the State's interest (in uniform graduation attire) in similar ways. *Id.* at 1159. Simply put, *Waln* applied the same legal principles as the Fourth Circuit, but reached a different conclusion on different facts. That does not amount to a circuit split.

West Virginia's law is materially different from *Waln*'s mandate, too. The district in *Waln* selectively enforced its rule and tolerated secular messages on graduation caps in ceremonies that took place in the same building and on the same day as the religious exercise at issue. But West Virginia does not selectively enforce its law through subjective discretionary exemptions; its law applies to all students in its public, private, and parochial schools who are not medically exempt.

The Third Circuit's decision in *Smith v. City of Atlantic City*, 138 F.4th 759 (3d Cir. 2025), is also in accord with the decision below. In *Smith*, a city's policy prohibited firefighters from sporting facial hair because it would interfere with tightly sealed protective facemasks, and it denied a requested religious exception to the policy. *Id.* at 768-69. Applying the same legal principles discussed above, the Third Circuit held that the city's policy was not generally applicable for two reasons. *Id.* at 770-71. First, fire captains were authorized to grant

exceptions if they accepted "full responsibility" for the deviation, and that "built-in discretion" "'invite[s] the government to decide which reasons for not complying with the policy are worthy of solicitude,'" thus "destroy[ing] general applicability." *Id.* at 771 (quoting *Fulton*, 593 U.S. at 537). Second, the city's policy excepted administrative staff even if they were also firefighters, *id.* at 768, 771, a loophole that "undermine[s]" the city's safety interests to the same degree a religious exemption would, *id.* at 771.

Smith is consistent with the decision below. The policy in *Smith* failed general applicability for two reasons. Neither applies here. First, fire captains had open-ended discretion to grant exceptions. *Id.* Here, the law's only exemption is an objective medical one, and Petitioners do not challenge the portion of the Fourth Circuit's decision upholding it. *Supra* 11-12. Second, the city exempted administrative staff whom it classified as firefighters subject to the same policy. *Id.* at 768, 771. It treated members of the regulated group differently despite identical risk. Homeschooling here is nothing like that. *Contra* Pet. 17-18. Children in a home school, microschool, or learning pod are treated comparably: If they enter the school setting for sports or extracurricular activities, they must be vaccinated. *Supra* 4-5. Virtual students, who must attend in person for periodic testing, must also be vaccinated before they enter the in-person school setting. App.24a. Thus, the decision below does not conflict with *Smith* nor any other case the Petition cites.

B. The circuits are not divided in applying *Mahmoud* to a vaccine mandate.

Petitioners do not argue that the circuits are divided as to the legal principle established in *Mahmoud* or how it applies to a school vaccine mandate. Instead, Petitioners argue that the decision below and the Second Circuit's opinion in *Miller II* "*erred*" in applying that precedent. Pet. 31 (emphasis added). Even if that were accurate, which it is not (*infra* 33-36), mere error correction does not warrant certiorari. *See* Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of … the misapplication of a properly stated rule of law.").

Petitioners observe that in *Mirabelli* this Court reversed a Ninth Circuit decision that read *Mahmoud* too narrowly and corrected a Sixth Circuit decision that made the same error. *Mirabelli*, 607 U.S. at 495-97. They contend that the opinion below and *Miller II* reflect a "trend" of misreading *Mahmoud* and disregarding *Mirabelli*'s course-correction. Pet. 26.

That assertion is incorrect for three reasons. First, it overlooks the fact that the decision below and *Miller II* both took due account of this Court's instructions in *Mahmoud* and *Mirabelli* and correctly stated their governing principles. App.20a-21a & n.1; *Miller II*, 180 F.4th at 424, 432-43.

Second, Petitioners' argument disregards the fact that *Mahmoud*'s inquiry "will always be fact-intensive" and "depend on … the specific nature of the educational requirement or curricular feature at

issue." 606 U.S. at 550. The decision below and *Miller II* addressed school vaccine requirements and found that they are materially different from the policies considered in *Mahmoud* and *Mirabelli*. Specifically, vaccine mandates are "not … instrument[s] of ideological indoctrination," "do[] not expose children to values or beliefs that might be hostile to their parents' religious beliefs," "do[] not require that school instruction extoll the virtues of vaccines," and do not "deal[] with whether schools could facilitate children's efforts to identify as the opposite gender without notifying their parents." App.21a & n.1; *see Miller II*, 180 F.4th at 432-33 (vaccination requirement "does not regulate what children are taught, does not require them to affirm any belief, does not expose them to state-selected instruction contrary to their parents' faith, and does not enlist school officials to displace parental religious formation"). Those vaccine policies are thus vastly different from the "gender transitioning" policy addressed in *Mirabelli*, 607 U.S. at 493, or the "unmistakably normative" and mandatory "'LGBTQ+inclusive' storybooks" at issue in *Mahmoud*, 606 U.S. at 550.

Third, this Court's intervention is not warranted based on two decisions issued just months after *Mirabelli*. That certainly does not amount to the "trend" Petitioners allege. At a minimum, before intervening, this Court should allow other circuits to consider and weigh in on how far *Mahmoud* and *Mirabelli* extend and whether they apply in the school vaccination context.

III. The Decision Below Is Correct.

Review is also unwarranted because the decision below is correct. Petitioners' contrary argument is predicated on their mischaracterization of the Fourth Circuit's holding. *Supra* 15-16; Pet. 32. The Fourth Circuit's actual holding correctly concluded that West Virginia's vaccine mandate is neutral and generally applicable under *Fulton* and *Tandon*, App.16a-19a, and does not impose a burden "of the same character" as those at issue in *Mahmoud* or *Mirabelli*, App.20a-22a.

A. The Fourth Circuit correctly held that West Virginia's school vaccine requirement is neutral and generally applicable.

The Fourth Circuit correctly held that West Virginia's school vaccine requirement is "generally applicable," App.9a, despite having a medical exemption but not a religious one. A medical exemption is a "limited yes-or-no inquiry" based on objective "medical evidence" cabined by defined criteria, not a subjective discretionary assessment of whether a requested exemption is "worthy of solicitude." App.14a; *see Jacobson*, 197 U.S. at 12 (upholding vaccination requirement including exception for "children who present a certificate, signed by a registered physician, that they are unfit subjects for vaccination").

Petitioners do not challenge that holding.[3] Instead, they argue that the statute is not generally applicable because it requires vaccines for virtual school students but not those educated at home, in microschools, or in learning pods. Pet. 19-22. But the Fourth Circuit was right to reject that argument. The distinction between virtual and home schools does not treat "secular activity more favorably than religious exercise." *Tandon*, 593 U.S. at 62. It "merely … treat[s] some secular activity more favorably than other secular activity." App.16a; *see Zucht*, 260 U.S. at 177 (school vaccine mandate "is not violative of the equal protection clause merely because it is not all-embracing").

Nor does West Virginia law prohibit a religious exemption while "permitting secular conduct that undermines the government's asserted interests in a similar way." *Fulton*, 593 U.S. at 534. Virtual students like K.P. must be vaccinated because they "can participate in school-provided extra-curricular activities" and "must go to school in person for periodic testing." App.24a. Homeschooled children and students in microschools and learning pods are not required to come periodically to in-person schools

[3] Because Petitioners do not challenge the Fourth Circuit's conclusion that the medical exemption does not confer the kind of discretion that undermines general applicability, there is no basis for the suggestion from Amicus Claremont Institute (at pp. 4, 24) that this Petition should be held for the first question presented in *St. Mary Catholic Parish v. Roy*, No. 25-581 (argued Nov. 3, 2026), which will address the effect of exceptions that purportedly undermine general applicability. Petitioners do not ask this Court to hold their Petition.

for academic testing and therefore they do not "undermine[] the government's asserted interests in a similar way." *Fulton*, 593 U.S. at 534. On the other hand, when home school, microschool, or learning pod students *choose* to participate in sports or extracurricular activities that would bring them into contact with in-person public school students, then West Virginia law *does* require them to be vaccinated. *Supra* 5. The two groups are thus treated in substantially similar ways that align with and promote the State's public-health interests—both groups must be vaccinated before mixing with their in-person public school peers. A blanket religious exemption, by contrast, undermines the State's interest in the health and well-being of schoolchildren by allowing unvaccinated students without a medical exemption to commingle with the general population of other in-person students.

For similar reasons, the Fourth Circuit was correct to reject Petitioners argument that the vaccine mandate fails because it applies to students but not adults. *See* Pet. 21-22. This Court long ago rejected a similar argument that a distinction between children and adults dooms a vaccine requirement. *See Jacobson*, 197 U.S. at 30 (vaccine "exception in favor of children" that "makes no exception in case of adults in like condition … cannot be deemed a denial of the equal protection of the laws to adults"). Again, a distinction that treats one secular group (children) differently than another secular group (adults) does not disfavor religious activity.

Moreover, that the law does not apply to adults does not undermine West Virginia's public-health

interest "in a similar way" that a religious exemption for students would. *Fulton*, 593 U.S. at 534. The statute's express purpose is to protect school-age children against childhood diseases because "early immunization for preventable diseases represents one of the most cost-effective means of disease prevention," and "[i]mmunization of children at an early age … is essential to maintain our children's health and well-being." W. Va. Code § 16-3-5(a); *see* App.9a. Unvaccinated adults do not implicate or undermine West Virginia's distinct interest in promoting the health and well-being of schoolchildren in the same way religious exemptions for students would.

B. The Fourth Circuit correctly held that the vaccine requirement is unlike the policies addressed in *Mahmoud* and *Mirabelli*.

Contrary to Petitioners' claim, Pet. 23-24, 27, the Fourth Circuit correctly held that West Virginia's mandate does not violate the principles articulated in *Mahmoud* and *Mirabelli*. As noted above, *Mahmoud* involved a school board's policy of introducing to young schoolchildren, without allowing parental opt-outs, "'LGBTQ+-inclusive' storybooks" that were "unmistakably normative" and "clearly designed to present certain values and beliefs as things to be celebrated and certain contrary values and beliefs as things to be rejected." 606 U.S. at 550. *Mirabelli* involved a policy preventing schools from telling parents about their children's efforts to gender-transition. 607 U.S. at 493-95.

The Fourth Circuit correctly held that West Virginia's vaccine mandate shares none of these features and did not otherwise substantially interfere with parents' ability to guide their children's religious development. Contrary to Petitioners' suggestion, the Fourth Circuit's decision did not rest entirely on the fact that the vaccine is a public health measure, Pet. 29, nor did it confine *Mahmoud* to curricular requirements, Pet. 12. Rather, the Fourth Circuit held that the vaccine requirement does not regulate what children are taught. It does not "expose children to values or beliefs that might be hostile to their parents' religious beliefs" or "require that school instruction extoll the virtues of vaccines." App.21a. It requires only that, "in the interest of protecting others, children get themselves vaccinated before attending school." *Id.* The vaccine requirement is also premised on "[t]he need for some to protect the health and well-being of all," an element that "was not present" in *Mahmoud*. *Id.* Furthermore, unlike the policy in *Mahmoud*, where the school district withheld parental notice, 606 U.S. at 538, 550, or the policy in *Mirabelli*, which "directed teachers not to tell parents," 607 U.S. at 494, West Virginia must, and does, notify parents of the law's mandate, *see* App.126a; W. Va. Code § 16-3-4(a). Given how differently the law operates, the Fourth Circuit was correct to conclude that the vaccine requirement is neither "an instrument of ideological indoctrination" as in *Mahmoud*, nor a "facilitat[ion of] children's efforts to identify as the opposite gender" as in *Mirabelli*. App.21a & n.1; *accord Miller II*, 180 F.4th at 432-33.

Petitioners contend that the burden of a mandatory vaccine is "just as great—if not greater" than in *Mahmoud* because "[t]here is no way to undo … a vaccine" while compulsory instruction merely exposes children to "values or beliefs." Pet. 29. Petitioners' argument misapprehends the powerful impact—and sometimes permanent effects—of promoting values, beliefs, and ideas. That is why the proverbial pen is mightier than the sword. And the impact runs even more deeply when ideas are inculcated through governmental indoctrination.

However, one might compare the jab of a needle to the reading of a storybook, the Free Exercise Clause does not turn on a litigant's personal assessment of how acutely he or she feels the impact of what the law requires. Rather, the question is whether a vaccination requirement is, from an objective point of view, "of the same character" as in *Mahmoud* because it "substantially interfere[s] with the religious development" of a child. 606 U.S. at 564-65. And on that score, the Fourth and Second Circuits correctly explained that vaccination requirements simply differ "in kind" from the inculcation of subjective values in *Mahmoud* or the policies in *Mirabelli* that promoted the transformation of gender identity. *Miller II*, 180 F.4th at 433; *see* App.21a.

The same answer disposes of Petitioners' reliance on *Mahmoud* for the proposition that the government cannot "condition[] public-school attendance on the [Petitioners'] willingness to violate their religious beliefs." Pet. 13, 23 (citing *Mahmoud*, 606 U.S. at 561). That is true for burdens that are "of the same character" as those in *Mahmoud*, but not for every

school condition of any nature even if it arguably affects religious beliefs. Schools can impose neutral rules, provide evenhanded services, and impose lesser conditions without running afoul of the First Amendment. Otherwise, the Constitution would micromanage the minutia of every aspect of school administration, from lunch menus (Does the cafeteria provide a halal option or serve fish on Fridays?) to school calendars (If the school is closed for secular celebrations, must it also close for every religious holiday?). That reading would expand *Mahmoud* beyond recognition and unwisely interject the First Amendment into nearly every aspect of school regulation.

IV. This Case Does Not Present An Important Federal Question And Is A Poor Vehicle For Addressing School Vaccine Requirements.

Petitioners' as-applied challenge is exceptionally narrow and does not present an important federal question requiring this Court's review. To begin with, Petitioners depict West Virginia as a "radical outlier," App.114a, 146a—one of only five States lacking a religious exemption in its vaccination statute. Forty-five other States and the District of Columbia have vaccine laws with express religious exemptions. But that fact only underscores that Petitioners' concerns are more properly addressed by the elected branches of government, as has occurred in most States. And given that most legislatures have addressed these concerns in precisely the way that Petitioners desire, this Court's intervention to craft a largely duplicative Nationwide constitutional rule is unwarranted.

Certiorari is all the more unwarranted in light of West Virginia's Equal Protection for Religion Act, W. Va. Code § 35-1A-1, and the State Supreme Court's imminent consideration of that statute's potential application to the school vaccine requirement. *Supra* 8-9. To be sure, the outcome of that case is uncertain. But having purposefully disclaimed any relief under that statute, Petitioners cannot persuasively contend that this Court must now intervene on their behalf.

Make no mistake, Petitioners are seeking a judgment that applies to themselves alone. They assert an as-applied challenge based on unique facts unlikely to apply to anyone else. Specifically, their complaint turns principally on the fact that K.P. is enrolled at a virtual school and on the fact that she received the first dose for four of the required ten vaccinations. *Supra* 7-8. As a result, even if Petitioners were to prevail, any victory may be a ticket for them and them alone. *See* Pet. 22 ("This Court can rule for K.P. without deciding whether Respondents can require vaccination for children attending a public or private school *in person*."). A judgment in their favor would not apply to any other student who does not stand in K.P.'s exact shoes.

In addition, the interlocutory posture of this case "alone furnishe[s] sufficient ground for the denial" of the Petition. *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916); *see Bhd. of Locomotive Firemen v. Bangor & Aroostock R.R. Co.*, 389 U.S. 327, 328 (1967) ("[B]ecause the Court of Appeals remanded the case, it is not yet ripe for review by this Court."); *Va. Mil. Inst. v. United States*, 508 U.S. 946, 946 (1993) (Scalia, J., respecting the

denial of the petition for a writ of certiorari). The Fourth Circuit held only that the district court erred in concluding that Petitioners were "likely to succeed." App.5a. It reversed the preliminary injunction, but remanded for further proceedings, including a final judgment on the merits. App.25a. This Court's review is not warranted in that procedural posture.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

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