No. 26-438

IN THE

Supreme Court of the United States

JOSEPH MILLER, ET AL.,

Petitioners,

v.

JAMES V. McDONALD, COMMISSIONER, NEW YORK STATE DEPARTMENT OF HEALTH, ET AL.,

Respondents.

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

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BRIEF OF THE ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS CURIAE[1]

The Association of Christian Schools International (ACSI) is a nonprofit association that serves Christian schools around the world. Founded in 1978 and headquartered in Colorado Springs, Colorado, ACSI serves as many as 25,000 schools in 108 countries, which together educate more than 5.5 million students. Its U.S. members include approximately 2,200 Christian preschools and elementary and secondary schools—including 39 in New York, where N.Y. Pub. Health Law § 2164 dictates which children they may admit—and 60 post-secondary institutions. ACSI accredits Christian schools, certifies their teachers, and supports them with curriculum, professional development, and advocacy. ACSI filed an amicus brief supporting petitioners when this case was last before the Court. *See* Br. of ACSI as Amicus Curiae, *Miller v. McDonald*, No. 25-133 (U.S. Sept. 2, 2025).

ACSI's member schools exist to do what the Amish schools in this case do: educate children within a community of faith, in partnership with the parents who chose that education for their children. Those schools, and the families they serve, depend on the principle this Court recognized in *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), applied in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), and reaffirmed in *Mahmoud v. Taylor*, 606 U.S. 522 (2025), and

[1] Pursuant to Rule 37.6, amicus states that no counsel for a party authored this brief in whole or in part, and that no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus, its members, or its counsel made such a monetary contribution. Counsel of record for all parties received timely notice of amicus's intent to file this brief. *See* Sup. Ct. R. 37.2.

Mirabelli v. Bonta, 607 U.S. 492 (2026) (per curiam): parents, not the State, direct the religious upbringing of their children. The decision below would let a State bypass that principle whenever it can describe a burden on religious upbringing as a "health-and-safety condition" on school attendance. Pet. App. 22a. ACSI takes no position on the medical merits of any vaccine. ACSI's concern is the constitutional rule, which will not stay confined to vaccination or to the Amish.

SUMMARY OF ARGUMENT

This Court sent this case back for reconsideration in light of *Mahmoud*. On remand, the Second Circuit carved out an exception that swallows *Mahmoud*'s rule. New York's school-vaccination law, N.Y. Pub. Health Law § 2164, "imposes a health-and-safety condition on in-person school attendance," the court held, and so is "not the kind of state interference with a child's religious development that triggered strict scrutiny in *Yoder* or *Mahmoud*." *Miller v. McDonald*, 180 F.4th 420, 433 (2d Cir. 2026) (per curiam) (Pet. App. 22a–23a). The families here show what that rule costs. The Amish have made their homes in New York since the 1830s. Pet. 1. They farm, live apart from the modern world, and educate their children in schools they fund themselves, on their own land. Pet. 6–7. New York now offers them three options: violate their faith, abandon the schools in which they raise their children in it, or leave the State. *Yoder* held that the Free Exercise Clause protects the Amish from a law that would force them to "abandon belief" or "migrate to some other and more tolerant region." 406 U.S. at 218. And *Mahmoud* reaffirmed that *Yoder* "cannot be breezily dismissed." 606 U.S. at 558.

The Second Circuit's holding is wrong three times over. First, *Mahmoud* asks what a law does to a child's religious formation, not what subject the law regulates. Second, health and safety are interests a State may invoke to satisfy strict scrutiny, not reasons to skip it—as *Mirabelli* confirmed when it applied strict scrutiny to policies California defended in the name of "student safety and privacy." 607 U.S. at 496. Third, compelling parents to submit their children to a permanent bodily act their faith forbids is *Yoder*'s burden in its purest form.

The decision below matters well beyond the Amish. For many religious families, the religious school is how they exercise the right *Pierce* and *Yoder* protect. Section 2164, as applied here, bars Amish children from the schools their community runs unless their parents violate their faith—and conscripts those schools, under ruinous penalties, to turn away their own families' children. The Second Circuit's rule would extend that template to any school requirement a State can describe in the vocabulary of health and safety. Worse, the court counted the schools' close-knit community of co-religionists against them, treating the defining feature of religious education as a reason to deny it protection.

The Court should grant review now. Another remand would be futile: the Second Circuit reached the same result with *Mirabelli* in hand, and other courts are entrenching the same misreading of *Mahmoud*. This case—an as-applied challenge dismissed on the pleadings, with petitioners' sincerity undisputed—is an ideal vehicle. At a minimum, because the decision below rests on a general-applicability analysis closely related to the question the Court will decide in *St. Mary Catholic Parish in*

Littleton v. Roy, No. 25-581 (U.S. cert. granted Apr. 20, 2026), the Court should hold the petition for that case.

ARGUMENT

I. The Second Circuit Turned a Health-and-Safety Justification Into an Exemption From *Mahmoud*.

On remand, the Second Circuit accepted *Mahmoud*'s premises and then reasoned its way around them. The court agreed that *Mahmoud* forbids confining *Yoder* to its facts. Pet. App. 21a & n.16. It acknowledged that the burden here "may be serious," and that it "may weigh on [petitioners] more heavily than the policy in *Mahmoud*." *Id.* at 23a & n.17. Yet it refused to apply strict scrutiny because § 2164 "imposes a health-and-safety condition on in-person school attendance." *Id.* at 22a. That reasoning cannot be squared with *Mahmoud*, with *Mirabelli*, or with *Yoder* itself.

A. *Mahmoud* asks what a law does to a child's religious formation, not what subject the law regulates.

Mahmoud's test is functional. A burden is "of the same character" as *Yoder*'s when it "substantially interfer[es] with the religious development" of the parents' children and poses "a very real threat of undermining" the beliefs and practices the parents wish to instill. 606 U.S. at 565 (quoting *Yoder*, 406 U.S. at 218). The inquiry "will depend on the specific religious beliefs and practices asserted," and on the nature and context of the requirement at issue. *Id.* at 550. Nothing in that standard turns on whether the

State acts through a curriculum, an attendance rule, or a health code. And § 2164 is an educational requirement in the most literal sense: it dictates which children may attend school at all.

Yoder, *Mahmoud*, and *Mirabelli* illustrate three ways a law can impose that burden. *Yoder* involved compulsion: Wisconsin's law "affirmatively compel[led]" Amish parents, "under threat of criminal sanction, to perform acts undeniably at odds with fundamental tenets of their religious beliefs." 406 U.S. at 218. *Mahmoud* involved pressure: storybooks that "exert upon children a psychological 'pressure to conform' to their specific viewpoints." 606 U.S. at 554 (quoting *Yoder*, 406 U.S. at 211). *Mirabelli* involved exclusion: policies that left parents "shut out of participation in decisions regarding their children's mental health." 607 U.S. at 497. Compulsion, pressure, exclusion—three mechanisms, one burden.

The Second Circuit treated the second mechanism as the definition of the category. Its list of what § 2164 does not do—it "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," Pet. App. 22a—describes the facts of *Mahmoud*. Measuring every later case against those facts is just another way of confining a precedent to its facts: the error *Mahmoud* corrected as to *Yoder*, 606 U.S. at 558, and *Mirabelli* corrected as to *Mahmoud*, 607 U.S. at 495–96; *id.* at 501 (Barrett, J., concurring). Worse, the list omits the mechanism at the heart of *Yoder*. Section 2164 does not pressure Amish children toward a different belief. It requires their parents to act against the beliefs they hold, as the price of their children's religious education.

B. Health and safety are interests that may satisfy strict scrutiny, not reasons to skip it.

A label does the real work in the decision below. Because § 2164 "imposes a health-and-safety condition," the Second Circuit held, it is not the kind of law *Yoder* and *Mahmoud* address. Pet. App. 22a–23a; *accord Perry v. Marteney*, 172 F.4th 315, 327 (4th Cir. 2026) ("a public health measure, not an instrument of ideological indoctrination"), *petition for cert. filed*, No. 26-319 (U.S. Sept. 4, 2026). But a label is not an analysis. Calling a law a health measure no more changes what it does to a family's faith than calling a tax a "fee" changes what it takes from a taxpayer's wallet. And in this Court's parental-rights cases, health and safety are justifications the State must establish under strict scrutiny—not an exemption from it.

Yoder is explicit. It recognized that parental free exercise "may be subject to limitation under *Prince* if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens." 406 U.S. at 233–34. "[I]f it appears" describes a showing. And *Yoder* specified the standard that governs it: when "the interests of parenthood are combined with a free exercise claim," "more than merely a 'reasonable relation to some purpose within the competency of the State' is required." *Id.* at 233 (quoting *Pierce*, 268 U.S. at 535). *Yoder*'s observation that the case was "not one in which any harm to the physical or mental health of the child or to the public safety, peace, order, or welfare has been demonstrated or may be properly inferred" confirms the point. *Id.* at 230. "Demonstrated" and "properly inferred" are the

language of proof, not of labels. And the Court made that observation while weighing whether Wisconsin's interests could justify the burden—the step at which "only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion." *Id.* at 215. Health and safety, in short, are what a State may prove to satisfy *Yoder*'s scrutiny. The Second Circuit made them a reason never to apply it.

Prince and *Smith* do not say otherwise. *Prince*'s remark that a parent "cannot claim freedom from compulsory vaccination for the child more than for himself on religious grounds," *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944), was dictum in a child-labor case decided a generation before *Sherbert v. Verner*, 374 U.S. 398 (1963), and *Yoder*. And *Yoder* read *Prince* to permit limits on parental free exercise only "if it appears" that parental decisions will jeopardize health or safety or carry "a potential for significant social burdens." 406 U.S. at 233–34. True, *Smith* listed "compulsory vaccination laws" among the laws a compelling-interest test would reach. *Emp. Div., Dep't of Hum. Res. v. Smith*, 494 U.S. 872, 889 (1990). But *Smith* set apart claims involving "the right of parents . . . to direct the education of their children," citing *Yoder*. *Id.* at 881. And *Mahmoud* confirmed that a *Yoder*-type burden triggers strict scrutiny "regardless of whether the law is neutral or generally applicable." 606 U.S. at 565. A passing list in *Smith* cannot defeat a claim that *Smith* itself set apart.[2]

[2] The Court's early vaccination cases do not help New York either. *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), and *Zucht v. King*, 260 U.S. 174 (1922), predate this Court's application of the Free Exercise Clause to the States, *see Cantwell v.*

Mirabelli removes any doubt. California argued that its policies "advance a compelling interest in student safety and privacy." 607 U.S. at 496. The policies concerned gender dysphoria, a condition that "has an important bearing on a child's mental health." *Id.* at 497. And the parents' rights at stake included "the right not to be shut out of participation in decisions regarding their children's mental health," *id.*—a right rooted in the understanding that parents "can and must make" judgments about their children's "need for medical care or treatment," *Parham v. J.R.*, 442 U.S. 584, 603 (1979). If a State could escape *Mahmoud* by invoking child health and safety, *Mirabelli* would have come out the other way. Instead, the Court concluded that the policies likely "impos[e] the kind of burden on religious exercise that *Yoder* found unacceptable," 607 U.S. at 496 (quoting *Mahmoud*, 606 U.S. at 550), and that the parents were likely to prevail under strict scrutiny. The Court even described children's safety as "the overriding equity"—and concluded that it favored the parents. *Id.* at 497.

The Second Circuit's effort to distinguish *Mirabelli* confuses the means with the injury. The court read *Mirabelli* as "a case about school officials concealing from parents a matter central to their child's identity and upbringing, and thus displacing the parents' role in it." Pet. App. 23a. But concealment was the means; displacing parents from a decision about their child's health was the injury. Section 2164 inflicts that injury more directly. It does not merely shut parents out of a decision about their children's health. It overrides the decision they made, and

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Connecticut, 310 U.S. 296, 303 (1940), and neither involved a free exercise claim.

enforces the override by excluding their children from school.

The label is not academic. Under strict scrutiny, New York would have to show that a narrower approach could not protect public health. It already uses one: during an outbreak, the Commissioner may order schools to exclude students who are medically exempt or not yet fully immunized. N.Y. Comp. Codes R. & Regs. tit. 10, § 66-1.10(a); *see* Pet. App. 106a. Before 2019, New York applied the same approach to students with religious exemptions. *See* Pet. App. 11a n.11 (citing *Phillips v. City of New York*, 775 F.3d 538, 543 (2d Cir. 2015) (per curiam)). New York should have had to explain why that approach cannot work for three small Amish schools. The Second Circuit's label excused it from trying.

C. Compelling a permanent bodily act that the parents' faith forbids is *Yoder*'s burden in its purest form.

The Second Circuit's distinction between degree and kind gets *Yoder* backwards. Petitioners argued that compelled vaccination—an affirmative, irreversible act—burdens their faith more than the storybooks in *Mahmoud*. The court answered that "[a] greater burden in degree is not necessarily the same burden in kind," comparing "a heavy fine" to "a sentence of imprisonment." Pet. App. 23a & n.17. But the difference between this case and *Mahmoud* is not one of degree. *Mahmoud* involved exposure to instruction; this case involves compulsion to act. And compulsion to act against one's faith is not a different kind of burden from *Yoder*'s. It is *Yoder*'s kind. 406 U.S. at 218. *Mahmoud* extended *Yoder* from compulsion to subtler forms of pressure; nothing in *Mahmoud* suggests that compulsion itself falls

outside the rule. Even the dissenting Justices in *Mahmoud* agreed that the Free Exercise Clause "forbids affirmatively compelling individuals to perform acts undeniably at odds with fundamental tenets of their religious beliefs." 606 U.S. at 601 (Sotomayor, J., dissenting) (internal quotation marks and alterations omitted).

The court's analogy cuts the other way. Its point was that burdens of different kinds should not be ranked by magnitude. Fair enough. But compelled conduct is the very kind of burden *Yoder* addressed. Petitioners do not ask the Court to stretch *Mahmoud*'s exposure rationale by degree; they ask it to apply *Yoder*'s compulsion rationale to compulsion. A rule under which exposure to storybooks triggers strict scrutiny but compelling an irreversible act on a child's body does not has lost track of what the Free Exercise Clause protects: "the performance of (or abstention from) physical acts." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022) (quoting *Smith*, 494 U.S. at 877).

Nor may a court discount the burden because the parents' belief concerns health. The Amish object to vaccination because God "wants us to fully put our faith [and] trust in Him," which is "in conflict" with putting "our trust in vaccines," and because they are "commanded to not be conformed to this world"—a command that "will affect everything we do, yes even in the way we try to remain healt[h]y." Pet. 7–8 (quoting C.A. App. A-76). New York's Department of Health "does not doubt the genuineness" of those religious assertions. Pet. App. 93a. *Mahmoud* directs courts to "the specific religious beliefs and practices asserted," 606 U.S. at 550, and such beliefs "need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection,"

Thomas v. Review Bd. of Ind. Emp. Sec. Div., 450 U.S. 707, 714 (1981). The parents in *Mirabelli* held "sincere religious beliefs about sex and gender," 607 U.S. at 496—beliefs about the human body, no less than these. A rule that protects religious formation on matters of sexuality but not on matters of bodily health ranks religious beliefs by subject matter. The Free Exercise Clause permits no such ranking.

II. The Decision Below Strikes at Religious Schools and the Families Who Choose Them.

The decision below is not a narrow ruling about vaccines. It is a blueprint for regulating religious schools around *Mahmoud*. ACSI's members see that from the vantage point of the institutions that make religious upbringing possible.

A. For many religious families, the religious school is how they exercise the right *Pierce* and *Yoder* protect.

The holding of *Pierce* "stands as a charter of the rights of parents to direct the religious upbringing of their children." *Yoder*, 406 U.S. at 233. "Many parents exercise that right by sending their children to religious schools, a choice protected by the Constitution." *Espinoza v. Mont. Dep't of Revenue*, 591 U.S. 464, 486 (2020). Those schools exist for a religious purpose: religious education and formation are "the very reason for the existence of most private religious schools." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 738 (2020). And "for many people of faith across the country, there are few religious acts more important than the religious education of their children." *Mahmoud*, 606 U.S. at 547.

The Amish schools here fit that description exactly. They are funded by Amish families, located on Amish land, and attended only by Amish children. Pet. 6. The Amish believe that learning "in a group setting" is "a vital part of [Amish] children's spiritual development." Pet. App. 7a. Individual homeschooling is "not an option," the schools' representative explained, because "we believe in working together and having our children together in a happy social life in our schools." *Id.* at 59a; *see* Pet. 7 n.3.

Section 2164 puts these families to a choice among three sacrifices. They may vaccinate their children in violation of their faith. They may abandon the schools in which their children are formed in that faith. Or they may leave New York. That is the choice *Yoder* condemned: under Wisconsin's law, the Amish "must either abandon belief and be assimilated into society at large, or be forced to migrate to some other and more tolerant region." 406 U.S. at 218. "Forced migration of religious minorities was an evil that lay at the heart of the Religion Clauses." *Id.* at 218 n.9. A law that conditions religious education on abandoning religious practice strikes the parental right at its core: it operates on the very institution through which parents exercise that right.

New York's law puts a price on a promise as old as the Republic. In 1790, George Washington assured the Hebrew Congregation in Newport that "every one shall sit in safety under his own vine and figtree, and there shall be none to make him afraid." Letter from George Washington to the Hebrew Congregation in Newport, R.I. (Aug. 18, 1790), *in* Founders Online, Nat'l Archives, https://founders.archives.gov/documents/Washington/05-06-02-0135. For the Amish of New York, that promise now comes with a condition: abandon the faith it was meant to protect.

B. Section 2164 conscripts the religious school to police its own families' faith.

As applied to these schools, § 2164 does exactly what the Second Circuit said it does not do: it "enlist[s] school officials to displace parental religious formation." Pet. App. 22a. Section 2164 is aimed at schools and the people who run them: "[n]o principal, teacher, owner or person in charge of a school shall permit any child to be admitted to such school, or to attend such school, in excess of fourteen days" without proof of vaccination, and "school" includes "any public, private or parochial" school. N.Y. Pub. Health Law § 2164(1)(a), (7)(a). The Department of Health's "sole means of enforcement is imposition of a civil monetary penalty on schools that fail to comply." Pet. App. 93a. And enforcement here began with an order directing an Amish school to "immediately exclude" the children on a Department list and to submit "a current list of excluded students with a completed, signed and notarized affirmation." *Id.* at 100a.

The people charged with carrying out those orders are Amish teachers and school-board members who share the parents' faith. Pet. 7; Pet. App. 3a. The State thus requires a religious community's own school to turn away that community's children for adhering to the community's faith—and fines the school when it refuses. The fines are severe. Over its own administrative law judge's recommendation that no penalty be imposed, the Department fined "three small schools, with total enrollment far below 100 students," a total of $118,000. Pet. App. 92a, 94a–95a, 117a. It takes the position that each day each unvaccinated student attends school is a separate violation, punishable by up to $2,000. *Id.* at 6a–7a n.9. At that rate, a school with 25 unvaccinated students

faces up to $50,000 in penalties for every day it holds classes. And it rejected leniency because leniency "would encourage other schools to ignore the law's requirements and assert a religious exemption." *Id.* at 94a.

That is enlistment of the most direct kind. In *Mirabelli*, school officials displaced parents from a decision about their children's health. Here, the State does not merely displace the parents; it conscripts their co-religionists to enforce the displacement, on pain of financial ruin. If the Free Exercise Clause protects parents against a public school that sidelines them, it protects them against a law that turns their own religious school into the State's instrument.

C. The "health-and-safety" label has no stopping point.

The Second Circuit's rule will not stay confined to vaccines. Schools are among the most heavily regulated institutions in American life, and much of that regulation can be cast in the vocabulary of health and safety: policies on student mental health and counseling; health and sex-education standards; rules for restrooms, locker rooms, and overnight trips; and requirements for nutrition, physical education, and student privacy. Under the decision below, any such requirement could override a family's religious formation of its children without strict scrutiny, so long as the State describes it as a "health-and-safety condition" on school attendance. Pet. App. 22a.

Mirabelli shows that this concern is not hypothetical. California described the policies there as serving "student safety and privacy," and those policies concerned children's "mental health." 607 U.S. at 496–97. A court applying the Second Circuit's test would have rejected the parents' claim at the

threshold. That this Court reached the opposite result confirms that the Second Circuit's test is not a reading of *Mahmoud* but a route around it.

Religious schools would bear the brunt. Their mission is to integrate faith into every dimension of a child's formation—including how children understand and care for their bodies. "[E]ducating young people in their faith, inculcating its teachings, and training them to live their faith are responsibilities that lie at the very core of the mission of a private religious school." *Our Lady of Guadalupe*, 591 U.S. at 753–54. A rule that lets the State dictate the terms of that formation whenever it invokes health or safety would leave religious schools, and the families who choose them, protected only at the State's sufferance.

D. Treating a religious school's community as a risk factor penalizes religious education for being religious.

The Second Circuit's general-applicability analysis compounds the problem. Petitioners argued that the "tiny" Amish population, living "in isolated, remote communities," poses little risk compared with medically exempt children statewide. Pet. App. 16a–17a. The court responded that because nearly all Amish schoolchildren are unvaccinated, "their schools are made up of a clustered population of almost 100% unvaccinated students—precisely the circumstances that most concerned the State." *Id.* at 17a. The court thus counted against the Amish the very feature that makes their schools religious: they gather children of one faith to be formed in that faith together.

Every religious school is built on a community of faith. Some, like the Amish schools here, enroll only children of believing families; others welcome students of any faith or none. But a parish school, a

Jewish day school, an evangelical Christian academy, and an Amish community school all exist to form children within that community. If that communal character is a reason to deny accommodation, then the more faithfully a community lives out its beliefs, the less protection it receives. That turns the Free Exercise Clause upside down. *Yoder* protected the Amish precisely because Wisconsin's law threatened the survival of their religious community. 406 U.S. at 218, 235.

The court's approach also departs from this Court's comparability test, which asks whether secular conduct "undermines the government's asserted interests in a similar way," *Fulton v. City of Philadelphia*, 593 U.S. 522, 534 (2021), and "is concerned with the risks various activities pose, not the reasons why people gather," *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (per curiam). An unvaccinated child presents the same risk of transmission whether the reason is medical or religious. The Second Circuit instead aggregated risk across a "clustered" religious population. Whether *Smith* tolerates that approach is closely related to the question the Court will decide in *St. Mary*. *See infra* Part III.B. Either way, the approach gets the First Amendment backwards: it makes the religious character of a community the measure of its danger.

III. The Court Should Grant Review Now or, at a Minimum, Hold the Petition for *St. Mary*.

A. Another remand would be futile, and the misreading of *Mahmoud* is spreading.

A second remand would accomplish nothing. This Court has already sent the case back once for reconsideration in light of *Mahmoud*. Pet. App. 26a. The Second Circuit reconsidered with *Mirabelli* before it—and reached the same result by the route *Mirabelli* forecloses. *Id.* at 4a, 23a–24a. Remanding again would only invite a third decision on the same reasoning, while three small schools remain exposed to penalties that accrue, in the State's view, by the student and by the day. *Id.* at 6a–7a n.9.

The Second Circuit is not alone. After *Mirabelli*, a divided Fourth Circuit held that the burden a school-vaccination law imposes is "not remotely 'of the same character'" as those in *Yoder* and *Mahmoud* because the law is "a public health measure." *Perry*, 172 F.4th at 327 (quoting *Mahmoud*, 606 U.S. at 565). A petition for certiorari in that case is pending. Pet. for Cert., *Perry v. Marteney*, No. 26-319 (U.S. Sept. 4, 2026). The Seventh Circuit and at least one district court have treated vaccination-related requirements the same way. *Kondilis v. City of Chicago*, 160 F.4th 866, 871 n.4 (7th Cir. 2025), *cert. denied*, 146 S. Ct. 1838 (2026); *Grimsby v. Pan*, No. 5:25-cv-01575, 2025 WL 2829502, at *6 (C.D. Cal. Aug. 29, 2025), *appeal docketed*, No. 25-6100 (9th Cir. Sept. 29, 2025). Before *Mirabelli*, the Sixth Circuit read *Mahmoud*'s reasoning to "principally relate[] to curricular requirements." *Doe No. 1 v. Bethel Local Sch. Dist. Bd. of Educ.*, No. 23-3740, 2025 WL 2453836, at *7 n.3 (6th Cir. Aug.

26, 2025). As Justice Barrett observed, the Ninth Circuit, "following the Sixth Circuit," had "significantly misunderstood" *Mahmoud*. 607 U.S. at 501 (Barrett, J., concurring); *see id.* at 495 (per curiam) (Ninth Circuit "brushed aside" *Mahmoud*). The decision below shows that the misunderstanding has outlived *Mirabelli*. Only plenary review will correct it.

The question also keeps returning to this Court. In September, Justices Alito and Gorsuch would have granted interim relief to a New York parent raising a free exercise challenge to § 2164. *Doe v. McDonald*, No. 26A239, 2026 WL 2639174 (U.S. Sept. 8, 2026) (mem.). Religious families in New York and elsewhere will continue to bring these claims until the Court resolves them.

This case is an ideal vehicle. It is an as-applied challenge dismissed on the pleadings, so it comes to the Court on a final judgment rather than an interlocutory order. Pet. App. 8a & n.10. The State does not doubt the sincerity of petitioners' beliefs. *Id.* at 93a. The *Mahmoud* question was squarely presented and decided on remand, after supplemental briefing and submissions addressing *Mahmoud*, *Mirabelli*, and *Perry*. *Id.* at 4a. And the facts present the question in its starkest form: religious schools, on religious land, serving a single religious community, facing penalties that petitioners allege will shutter them. *Id.* at 7a.

B. At a minimum, the Court should hold the petition for *St. Mary*.

If the Court does not grant plenary review now, it should hold this petition for *St. Mary Catholic Parish in Littleton v. Roy*, No. 25-581, which is set for argument on November 3. The Court granted review

there limited to two questions. *St. Mary*, No. 25-581 (U.S. Apr. 20, 2026) (order granting certiorari). The first is "[w]hether proving a lack of general applicability under *Employment Division v. Smith* requires showing unfettered discretion or categorical exemptions for identical secular conduct." Pet. for Cert. at i, *St. Mary*, No. 25-581 (U.S. Nov. 13, 2025).

The decision below rests on reasoning that question puts directly at issue. The Second Circuit held that § 2164's categorical medical exemption does not defeat general applicability because it is narrower "in scope and duration" and serves the State's interest, Pet. App. 16a, and that it creates no mechanism for individualized exemptions because it is "mandatory" and applies to an "objectively defined" group, *id.* at 19a. New York itself has told this Court that in *St. Mary* the Court "may soon elaborate on *Smith*'s test." Br. for Resp. McDonald in Opp. to Appl. at 15, *Doe v. McDonald*, No. 26A239 (U.S. Aug. 31, 2026). Whatever the Court holds there will bear directly on the analysis here.

And if, after *St. Mary*, *Smith* still permits a State to put a peaceable religious community to the choice New York has imposed here, that would confirm the need to reconsider *Smith*—the third question presented here. *See Fulton*, 593 U.S. at 543 (Barrett, J., concurring); *id.* at 553 (Alito, J., concurring in the judgment).

CONCLUSION

The petition for a writ of certiorari should be granted. At a minimum, the petition should be held pending the Court's decision in *St. Mary Catholic Parish in Littleton v. Roy*, No. 25-581.

Respectfully submitted,

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