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

BRIEF OF AMERICAN HINDU JEWISH CONGRESS AND RELIGIOUS FREEDOM INSTITUTE AS *AMICI CURIAE* SUPPORTING PETITIONERS

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS i
TABLE OF AUTHORITIES ii
INTEREST OF AMICI CURIAE 1
SUMMARY OF ARGUMENT 2
ARGUMENT 4
I. *Smith* Has Disproportionately Harmed Minority Religious Groups. 4
II. *Smith* Undermines The Counter-Majoritarian Nature Of The First Amendment 9
III. This Court Rightly Emphasized The Importance Of Religious Exemptions To Minority Groups In *Mahmoud*, And The Second Circuit Has Again Refused To Follow It. 14
CONCLUSION 19

TABLE OF AUTHORITIES

Page(s)

Cases

Bates v. Pakseresht,
146 F.4th 772 (9th Cir. 2025) 11

Bosarge v. Edney,
669 F. Supp. 3d 598 (S.D. Miss. 2023) 17, 18

Byrd v. Haas,
17 F.4th 692 (6th Cir. 2021) 12

Church of Lukumi Babalu Aye, Inc. v. City of Hialeah,
508 U.S. 520 (1993) 13

Dobbs v. Jackson Women's Health Org.,
597 U.S. 215 (2022) 14

Employment Division, Department of Human Resources of Oregon v. Smith,
494 U.S. 872 (1990) 2-11, 13, 14

Fulton v. City of Philadelphia,
593 U.S. 522 (2021) 11-13

Gingerich v. Commonwealth,
382 S.W.3d 835 (Ky. 2012) 8

Gonzales v. O Centro Espírita Beneficente União do Vegetal,
546 U.S. 418 (2006) 13

Grimsby v. Pan,
No. 5:25-cv-01575, 2025 WL 2829502
(C.D. Cal. Aug. 29, 2025) 16

Knight v.
Metro. Gov't of Nashville & Davidson Cnty.,
67 F.4th 816 (6th Cir. 2023) 12

Legacy Church, Inc. v. Kunkel,
455 F. Supp. 3d 1100 (D.N.M. 2020) 6, 7

Mahmoud v. Taylor,
606 U.S. 522 (2025) 2-4, 14-18

Miller v. McDonald,
180 F.4th 420 (2d Cir. 2026) 3

Mirabelli v. Bonta,
607 U.S. 492 (2026) 15

Montgomery v. Cnty. of Clinton,
743 F. Supp. 1253 (W.D. Mich. 1990) 6

Olympus Spa v. Armstrong,
169 F.4th 817 (9th Cir. 2026) 7

Perry v. Marteney,
172 F.4th 315 (4th Cir. 2026) 16

Prida v. Option Care Enters., Inc.,
No. 23-3936, 2025 WL 460206
(6th Cir. Feb. 11, 2025) 18

Reynolds v. United States,
98 U.S. 145 (1878) 9

Satanic Temple, Inc. v. City of Boston,
111 F.4th 156 (1st Cir. 2024) 12

Sherbert v. Verner,
374 U.S. 398 (1963) 13

Shurtleff v. City of Boston,
596 U.S. 243 (2022) 1

Tandian v. State Univ. of N.Y.,
698 F. Supp. 3d 425 (N.D.N.Y. 2023) 18

United States v. Ballard,
322 U.S. 78 (1944) 10, 12

W. Va. State Bd. of Educ. v. Barnette,
319 U.S. 624 (1943) 11

Wisconsin v. Yoder,
406 U.S. 205 (1972) 4, 7, 9, 15, 16

Wollschlaeger v. Governor, Fla.,
848 F.3d 1293 (11th Cir. 2017) 12

Yang v. Sturner,
750 F. Supp. 558 (D.R.I. 1990) 4, 5, 6

Statutes and Other Authorities

U.S. Const. amend. I 2, 5, 6, 9, 10, 12

U.S. Const. amend. XIV 5

Sup. Ct. R. 37.2 1

Sup. Ct. R. 37.6 1

Amul R. Thapar, *Smith, Scalia, and Originalism*, 68 Cath. U. L. Rev. 687 (2019) 10

INTEREST OF AMICI CURIAE[1]

The American Hindu Jewish Congress ("AHJC") is a national, non-partisan coalition representing the shared interests and concerns of Hindu Americans and Jewish Americans. Founded in 2025, AHJC unites two vibrant, millennia-old faith communities to advocate for religious liberty, mutual respect, and interfaith solidarity. The AHJC membership encompasses community leaders, houses of worship, cultural associations, student fellowships, and civil-rights advocates across all fifty States.

As minority faith communities in America, Hindus and Jews are facing escalating antisemitism and Hinduphobia, including vandalism of temples and synagogues, harassment of students on college campuses, desecration of sacred spaces, and becoming targets of hate speech and hate crimes. Given the increasing hostilities against Jewish and Hindu Americans, these communities should not also face unjust discrimination by their government, against which the Constitution has served as a bulwark from the "suppression of unpopular religious speech and exercise [that] has been among the favorite tools of petty tyrants." *Shurtleff v. City of Boston*, 596 U.S. 243, 284–85 (2022) (Gorsuch, J., concurring). AHJC previously filed a brief as amicus curiae supporting

[1] Pursuant to Sup. Ct. R. 37.2, amici certify that all parties were timely notified of the amicus's intent to file and consent to such filing. Pursuant to Sup. Ct. R. 37.6, amici certify that no counsel for any party has authored this brief in whole or in part, no party or party's counsel has made a monetary contribution to fund its preparation or submission, and no person other than amici or their counsel has made such a monetary contribution.

Petitioners in this case, No. 25-133. This Court granted the petition, vacated the Second Circuit's opinion, and remanded in light of *Mahmoud v. Taylor*, 606 U.S. 522 (2025). AHJC files again because, on remand, the Second Circuit reached the same result.

The Religious Freedom Institute ("RFI") is committed to achieving broad acceptance of religious liberty as a fundamental human right, a source of individual and social flourishing, the cornerstone of a successful society, and a driver of national and international security. Among its core activities, RFI equips students, parents, policymakers, professionals, faith-based organization members, scholars, and religious leaders through programs and resources that communicate the true meaning and value of religious freedom, and apply that understanding to contemporary challenges and opportunities. RFI envisions a world that respects religion as an indispensable societal good and which promises religious believers the freedom to live out their beliefs fully and openly. RFI joins this brief because the Second Circuit's decision denies the Amish Petitioners that freedom.

SUMMARY OF ARGUMENT

This Court's decision in *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), has disproportionately harmed minority religious groups, like the Amish here, whose beliefs are contrary to prevailing majoritarian policy positions. *Smith* held, contrary to the counter-majoritarian nature of the First Amendment's Free Exercise Clause, that a neutral law of general

applicability does not violate the Free Exercise Clause, regardless of its impact on religious exercise. *Id.* at 878–79. Justice Scalia, writing for the Court, recognized that the rule announced in *Smith* would indeed "place at a relative disadvantage those religious practices that are not widely engaged in[.]" *Id.* at 890.

Unfortunately, Justice Scalia's prediction has come true time and again and the damage to the Free Exercise Clause has been greater than imagined. Courts applying *Smith* to Free Exercise claims have repeatedly upheld laws that burden minority or unpopular religious expression, sometimes grievously, because those laws did not specifically target religious practice and were generally applicable to the population as a whole. As a consequence, minority religious groups who lack the ability to influence public policy through the democratic process have also been deprived of a core judicial remedy to protect their right to freely exercise their religion.

This case now shows that *Smith*'s harm persists even after this Court's intervention. When AHJC last addressed these critical issues, the Second Circuit had applied rational basis review under *Smith* to uphold $118,000 in penalties against three Old Order Amish schools. (Pet. at 13–14.) This Court vacated that judgment in light of *Mahmoud*. (Pet. at 2.) On remand, the Second Circuit held, in *Miller v. McDonald*, 180 F.4th 420 (2d Cir. 2026) (per curiam), that "*Mahmoud* does not change the result" because New York's law "imposes a health-and-safety condition on in-person school attendance" and "is not the kind of state interference with a child's religious

development that triggered strict scrutiny in *Yoder* or *Mahmoud*." (Pet. App. 4a, 22a–23a.) It so held even while acknowledging that the burden on Petitioners "may be serious" and may weigh on them "more heavily than the policy in *Mahmoud*." (*Id.* at 23a & n.17.)

This state of affairs lends urgency to the third question presented in the Petition: "[w]hether *Smith* should be reconsidered." (Pet. at i.) The decisions of the lower courts in this case, which force the Amish Petitioners to choose between practicing their faith according to their own consciences and incurring debilitating monetary penalties, are yet another example of the harsh reality *Smith* imposes on minority religious groups. And the Second Circuit's decision on remand shows that, so long as *Smith* remains the default rule, lower courts will narrowly confine this Court's protections for religious parents to the facts of the cases in which they arose. The Court should take this opportunity to revisit *Smith* with an eye to alleviating its dire consequences for religious minorities like the Amish, Hindu, and Jewish communities. To that end, the Petition should be granted.

ARGUMENT

I. *Smith* Has Disproportionately Harmed Minority Religious Groups.

The *Smith* regime has harmed minority religious groups, including the Amish, from the time it was decided. Indeed, *Smith*'s impact was felt almost immediately by the Hmong plaintiffs in *Yang v.*

Sturner. The Yangs sued Rhode Island's Chief Medical Examiner after he conducted an autopsy on their son, alleging that the autopsy violated their deeply held religious beliefs in violation of the First and Fourteenth Amendments to the U.S. Constitution. *Yang v. Sturner*, 750 F. Supp. 558, 558 (D.R.I. 1990). As Hmong, the Yangs believed that "autopsies are a mutilation of the body and that as a result 'the spirit of Neng [their son] would not be free, therefore his spirit will come back and take another person in his family.'" *Id.* On January 12, 1990, several months before the Court decided *Smith*, the district court granted partial summary judgment to the Yangs on the issue of liability. *Id.*

However, following *Smith*, the district court was compelled to withdraw its previous opinion and dismiss the case with prejudice. *Id.* at 560. The court held that Rhode Island's statute governing autopsies was facially neutral and generally applicable and accordingly, under *Smith*, the statute's profound impairment of the Yangs' religious freedom did not rise to a constitutional infringement. *Id.* While the district court was bound to follow *Smith*, it questioned "what is left of Free Exercise jurisprudence when one can attack only laws explicitly aimed at a religious group," noting, as Justice O'Connor did concurring in *Smith*, that "'few States would be so naive as to enact a law directly prohibiting or burdening a religious practice as such.'" *Id.* (quoting *Smith*, 494 U.S. at 894 (O'Connor, J., concurring in the judgment)).

In another case also decided shortly after *Smith*, a district court granted summary judgment to the defendant medical examiners, rejecting the claim

by a conservative Jewish mother that the autopsy of her son, who died following a police chase, infringed her First Amendment right to freely exercise her religion. *Montgomery v. Cnty. of Clinton*, 743 F. Supp. 1253, 1257–58 (W.D. Mich. 1990). The plaintiff contended that her son's autopsy, which was required by a Michigan statute mandating autopsies in cases of violent death, contravened the tenets of her faith. *Id.* at 1258. As in *Yang*, the court held that the laws authorizing the autopsy were "generally applicable and religion-neutral" and were therefore constitutional so long as they were reasonably related to a legitimate government objective. *Id.* at 1259. Applying this minimal standard of review, as dictated by *Smith*, the district court held that "[t]he incidental effect upon [plaintiff's] practice of her religion, though regrettable, does not offend the First Amendment." *Id.* at 1260.

The COVID-19 pandemic further highlighted *Smith*'s impact on religious groups whose beliefs run contrary to the societal mainstream and conflict with government policy. In April 2020, the day before Easter, New Mexico issued a public health order prohibiting gatherings of five or more individuals in a single room, without an exception for houses of worship. *Legacy Church, Inc. v. Kunkel*, 455 F. Supp. 3d 1100, 1115 (D.N.M. 2020). The plaintiff, a church with three locations in New Mexico, intended to conduct live-streamed services with approximately thirty staff members present in person observing the same social distancing guidelines required of essential businesses in New Mexico at the time. *Id.* at 1116–17. Legacy Church had a "sincerely held religious belief that the service team used four [sic] its services is

central to how it and its members worship God and how they connect their members to their religious belief." *Id.* at 1117 (citation modified). Despite being troubled by the last-minute timing of the order, *id.* at 1148, the court denied Legacy Church's request for a temporary restraining order, holding that the order was neutral and generally applicable and did not impermissibly infringe on Legacy Church's Free Exercise rights, *id.* at 1156–57.

Smith's impact has extended into the most private and sensitive areas of life. Olympus Spa, a traditional Korean spa in Washington owned by a Christian family, admits only women because its patrons are fully nude in shared areas. *Olympus Spa v. Armstrong*, 169 F.4th 817, 850 (9th Cir. 2026) (VanDyke, J., dissenting from denial of rehearing en banc). Under threat of prosecution, the spa was forced into a settlement abandoning that policy. *Id.* at 825–26; *see also id.* at 851 (VanDyke, J., dissenting). Olympus Spa argued that Washington's law required it "to renounce its [Christian] faith by its deeds." *Id.* at 831. Applying *Smith*, the Ninth Circuit held the law neutral and generally applicable, found the burden on religion merely "incidental[]," and upheld it under rational basis review. *Id.* at 832–33. The full court then declined to rehear the case en banc, over three dissents. *Id.* at 825.

Despite this Court's recognition that "the Old Order Amish religion pervades and determines the entire mode of life of its adherents," *Wisconsin v. Yoder*, 406 U.S. 205, 210 (1972), the Amish have not been spared from the impact of *Smith*. Use of slow-moving transportation, typically horse-drawn

buggies, and rejection of bright colors are characteristic aspects of the Old Order Amish religion. *See Gingerich v. Commonwealth*, 382 S.W.3d 835, 837 (Ky. 2012). Nonetheless, members of the Old Order Swartzentruber Amish in Kentucky were prosecuted for not displaying a bright orange, triangular "slow-moving vehicle" emblem on their buggies, despite their willingness to use gray reflective tape as an alternative to make the buggies more visible on the road. *Id.* Despite the imposition on Amish beliefs and ongoing threat of criminal prosecution, the Supreme Court of Kentucky, applying *Smith* to Kentucky law, held that the slow-moving vehicle emblem requirement was subject only to rational basis review because it was a neutral law of general applicability. *Id.* at 844.

This case is the latest, and among the starkest, examples. The Amish Petitioners hold a sincere religious objection to vaccination. As Petitioner Ezra Wengerd explained, obedience to their faith "will affect everything we do, yes even in the way we try to remain healt[h]y," and the Amish "will choose prison time or a martyr's death before going against their convictions." (Pet. at 8.) For more than 50 years, from 1966 until 2019, New York accommodated that objection through a religious exemption to its school vaccination requirement. (*Id.* at 10.) In 2019, New York repealed the religious exemption while leaving its medical exemption untouched. (*Id.* at 1–2.) The State then imposed the full $118,000 in penalties it sought against three private Amish schools, which are funded solely by the Amish, located on Amish land, and attended exclusively by Amish children. (*Id.* at 6, 13.) Each violation can trigger a civil penalty of up to

$2,000. (*Id.* at 10.) Under *Smith*, the Second Circuit subjected that burden only to rational basis review, (*id.* at 14), and on remand it adhered to that result, (Pet. App. 4a, 20a, 25a). The Amish are thus left to choose between their faith and their continued presence in New York. *See Yoder*, 406 U.S. at 218 n.9 ("Forced migration of religious minorities was an evil that lay at the heart of the Religion Clauses.").

II. *Smith* Undermines The Counter-Majoritarian Nature Of The First Amendment.

These cases are a manifestation of the obvious dangers of the *Smith* regime, which sacrifices sincere religious beliefs at the altar of majority rule and thus subverts the very purpose of the First Amendment's Free Exercise Clause. Indeed, these results are precisely what the *Smith* majority should have expected when it acknowledged that its holding—"leaving accommodation to the political process"—would "place at a relative disadvantage those religious practices that are not widely engaged in[.]" *Smith*, 494 U.S. at 890. But this result, the *Smith* majority held, was an "unavoidable consequence of democratic government," *id.*, necessary to address its concern that allowing individualized exceptions to neutral laws of general applicability "would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself." *Id.* at 879 (quoting *Reynolds v. United States*, 98 U.S. 145, 166–67 (1878)). Per the *Smith* majority, allowing individualized exemptions in this context "contradicts

both constitutional tradition and common sense." *Id.* at 885.[2]

But *Smith*'s rule was a noteworthy departure from the Court's precedent. *See United States v. Ballard*, 322 U.S. 78, 87 (1944) ("The First Amendment does not select any one group or any one type of reliigion [sic] for preferred treatment. It puts them all in that position."). And the concurring justices in *Smith* and leading constitutional scholars[3] struck back forcefully against the majority's cutting off constitutional protections for those religious beliefs that fall out of the main. As Justice O'Connor pointed out, the whole purpose of the Bill of Rights is to protect individual rights against the will of the majority. *See Smith*, 494 U.S. at 902 (O'Connor, J., concurring in the judgment). Indeed, the concurrence stated, "the First Amendment was enacted precisely to protect the rights of those whose religious practices are not shared by the majority and may be viewed with hostility." *Id.* And it observed that "[t]he history of our free exercise doctrine amply demonstrates the harsh impact majoritarian rule has had on unpopular or emerging religious groups such as the Jehovah's

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[2]It is apparent that the *Smith* framework also derived at least in part from Justice Scalia's preference for bright-line rules and belief that the judiciary's role should be strictly circumscribed, positions that would seemingly be undermined if judges were required to "weigh the social importance of all laws against the centrality of all religious beliefs." *Smith*, 494 U.S. at 890; *cf.* Amul R. Thapar, *Smith, Scalia, and Originalism*, 68 Cath. U. L. Rev. 687, 691 (2019) (discussing Justice Scalia's preference for "bright-line rules" as opposed to "looser standards").

[3]*See, e.g.*, Michael W. McConnell, *Free Exercise Revisionism and the Smith Decisio*n, 57 U. Chi. L. Rev. 1109 (1990).

Witnesses and the Amish." *Id.* This echoes the Court's analysis in *West Virginia State Board of Education v. Barnette*:

> The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 638 (1943); *see Smith*, 494 U.S. at 902–03 (O'Connor, J., concurring in the judgment) (quoting *Barnette*); *Fulton v. City of Philadelphia*, 593 U.S. 522, 603 (2021) (Alito, J., concurring in the judgment) (*Smith*'s treatment of the free-exercise right "is fundamentally at odds with how we usually think about liberties guaranteed by the Bill of Rights").

Importantly, Justice O'Connor's and the *Barnette* Court's view of the Bill of Rights' role as a bulwark against the tyranny of the majority has not dissipated. Courts have time and again echoed this understanding—even long after *Smith*.[4] The *Smith*

[4] *See, e.g.*, *Bates v. Pakseresht*, 146 F.4th 772, 784 (9th Cir. 2025) (Bress, J.) ("the government may not insist upon our adherence to state-favored orthodoxies, whether of a religious or political

framework thus remains an outlier, minimizing precisely the rights the First Amendment was designed to prioritize.

Absent a better path, adherents of minority religious beliefs or practices will continue to be punished for not joining a more mainstream religion. This simply cannot be the structure envisioned by the Founders. *See Fulton*, 593 U.S. at 582–85 (Alito, J., concurring in the judgment) (describing religious exemptions granted to religious minorities in the Founding Era, including exemptions from militia service for Quakers, Mennonites, and others); *Ballard*, 322 U.S. at 87 ("The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views.").

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variety"); *Satanic Temple, Inc. v. City of Boston*, 111 F.4th 156, 183 (1st Cir. 2024) (Barron, J., concurring) ("We have a Bill of Rights because—in a constitutional democracy—majority rule is sometimes the problem rather than the solution."); *Knight v. Metro. Gov't of Nashville & Davidson Cnty.*, 67 F.4th 816, 836 (6th Cir. 2023) (Murphy, J.) ("The Takings Clause (like the rest of the Bill of Rights) seeks to protect a minority from the popular will . . . ."); *Byrd v. Haas*, 17 F.4th 692, 700 (6th Cir. 2021) (Thapar, J.) ("Insulated from the rebukes of the electorate, it is our constitutional duty to protect the religious freedom of minority adherents as vigorously as anyone else's."); *Wollschlaeger v. Governor, Fla.*, 848 F.3d 1293, 1327 (11th Cir. 2017) (en banc) (Pryor, J., concurring) ("The First Amendment is a counter-majoritarian bulwark against tyranny.").

Nor has *Smith*'s central premise held up. The *Smith* majority feared that requiring exemptions would be "courting anarchy." 494 U.S. at 888. But "experience has shown that this fear was not well founded." *Fulton*, 593 U.S. at 612 (Alito, J., concurring in the judgment). Congress twice sought to "restore the constitutional rule in place before *Smith*," *id.* at 554, through the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.*, and, after this Court held that Congress could not impose that statute on the States, through the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.*, *id.* at 562–63. Both statutes "impose essentially the same requirements as *Sherbert*," and courts have proven "up to the task" of applying them. *Id.* at 612 (quoting *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 436 (2006)); *see Sherbert v. Verner*, 374 U.S. 398, 403, 406 (1963). That standard does not accept "broadly formulated interests"; it requires courts to "scrutinize[ ] the asserted harm of granting specific exemptions to particular religious claimants." *Fulton*, 593 U.S. at 541 (quoting *O Centro*, 546 U.S. at 431). That is exactly the inquiry that protects a small Amish community, or a Hindu or Jewish family, whose faith commands no legislative majority.

Members of this Court recognized as much almost from the start. Just three years after *Smith*, in a case involving the Santeria faith, Justice Souter wrote separately to express his "doubts about whether the *Smith* rule merits adherence" and his view that "the Court should re-examine the rule *Smith* declared." *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 559 (1993) (Souter, J.,

concurring in part and concurring in the judgment). He concluded that, "whatever *Smith*'s virtues, they do not include a comfortable fit with settled law." *Id.* at 571. Justice Blackmun likewise wrote, "I continue to believe that *Smith* was wrongly decided, because it ignored the value of religious freedom as an affirmative individual liberty and treated the Free Exercise Clause as no more than an antidiscrimination principle." *Id.* at 578 (Blackmun, J., concurring in the judgment).

And as it has done time and again, this Court ought not hesitate to correct its own erroneous interpretation, especially since the real-world consequences for free exercise have been oppressive to those with minority faiths. *See Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 264–66 & n.48 (2022) (collecting examples of Supreme Court decisions subsequently overruled).

III. This Court Rightly Emphasized The Importance Of Religious Exemptions To Minority Groups In *Mahmoud*, And The Second Circuit Has Again Refused To Follow It.

As this Court's decision in *Mahmoud v. Taylor* illustrates, reasonable allowances for religious exemptions can relieve religious minorities of the disproportionate burdens of *Smith*. In *Mahmoud*, parents of Montgomery County, Maryland public school students challenged their school board's introduction of "LGBTQ+-inclusive" storybooks into the elementary school curriculum. 606 U.S. at 528–29. The parents asserted that requiring their children to

be exposed to the storybooks violated their sincerely held religious beliefs. *Id.* at 540–43. While the schools at one time permitted parents to opt their children out of this part of the curriculum, the opt-out policy was rescinded, leaving the parents in the untenable position of choosing between their religious convictions and availing themselves of public education. *Id.* at 538. The Court held that the board's policy "substantially interferes with the religious development" of the parents' children, *id.* at 550, and that the parents were entitled to a preliminary injunction, *id.* at 530.

In so holding, the Court rejected the lower courts' effort to confine *Yoder*: "We have never confined *Yoder* to its facts." *Id.* at 558. And it held that "when a law imposes a burden of the same character as that in *Yoder*, strict scrutiny is appropriate regardless of whether the law is neutral or generally applicable." *Id.* at 565. Such a burden exists where government action "substantially interfer[es] with the religious development" of a child and poses "a very real threat of undermining" the religious beliefs and practices that the parents wish to instill. *Id.* (quoting *Yoder*, 406 U.S. at 218). Indeed, *Mahmoud* is not "a narrow decision focused on uniquely coercive 'curricular requirements.'" *Mirabelli v. Bonta*, 607 U.S. 492, 495 (2026) (per curiam) (citation omitted) (rejecting the Ninth Circuit's contrary view). In *Mirabelli*, the Court held that California's policies likely trigger strict scrutiny because they "substantially interfere with the 'right of parents to guide the religious development of their children.'" *Id.* at 496 (quoting *Mahmoud*, 606 U.S. at 559).

The Petitioners in this case are in the same position as the parents in *Mahmoud*. Petitioners seek a religious exemption from school vaccination requirements that violate their sincerely held religious beliefs. (Pet. at 7–8.) Yet on remand the Second Circuit declined to extend *Mahmoud* to the Petitioners' claims. It reasoned that New York's law "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.) And although it recognized that the burden on Petitioners may weigh on them "more heavily than the policy in *Mahmoud*," it held that "[a] greater burden in degree is not necessarily the same burden in kind." (*Id.* at 23a & n.17.) The Fourth Circuit has taken the same approach, holding that a compulsory vaccination law is "not remotely 'of the same character'" as the burdens in *Yoder* and *Mahmoud* because it "is a public health measure, not an instrument of ideological indoctrination." *Perry v. Marteney*, 172 F.4th 315, 327 (4th Cir. 2026). The Second Circuit found that reasoning "persuasive here." (Pet. App. 25a.) *See also Grimsby v. Pan*, No. 5:25-cv-01575, 2025 WL 2829502, at *6 (C.D. Cal. Aug. 29, 2025) (cited at Pet. App. 25a n.18).

That "same kind" test falls hardest on religious minorities. It protects only those religious practices that resemble the ones this Court has already considered, and the practices of minority faiths are the least likely to match the facts of existing precedent. Many religious beliefs, including those of the Amish and of many Hindus and Jews, concern health and the

body. As Petitioners explain, "religious beliefs can and frequently do relate to health." (Pet. at 21.) And New York's law does enlist school officials—here, Amish school officials who themselves share Petitioners' religious objection—to require children "to undergo permanent medical acts that are contrary to their parents' religious beliefs and the beliefs their parents want to instill in them." (*Id.* at 20.) The Second Circuit's decision thus repeats the error this Court corrected in *Mahmoud*: it confines this Court's precedents to their facts.

Experience has shown that religious exemptions from school vaccination requirements are eminently workable. As the Petition notes, such exemptions are widespread in the United States and are currently available in forty-five States and the District of Columbia. (Pet. at 2, 8–9.) New York itself provided one for more than 50 years. (*Id.* at 10.) Where, as in this case and in *Mahmoud*, religious exemptions from laws that burden religious exercise are readily workable, they are critical to protecting the Free Exercise rights of believers. *See Mahmoud*, 606 U.S. at 568–69.

Indeed, when Mississippi—one of the few States without a religious exemption—was challenged, its own Attorney General conceded that, given "the prevalence of state laws providing for religious (or philosophical) exemptions from compulsory school vaccination laws in states across the country," it "is not tenable to maintain that having no religious exemption option is 'the least restrictive means' of furthering a compelling governmental interest." *Bosarge v. Edney*, 669 F. Supp. 3d 598, 614

(S.D. Miss. 2023). Because the State allowed medical but not religious exemptions, the court held that its law was not neutral or generally applicable, found that it likely could not survive strict scrutiny, and ordered the State to create a process for requesting religious exemptions. *Id.* at 606, 617.

Notably, the Amish are not the only minority religious group that objects to vaccine requirements. *See, e.g.*, *Prida v. Option Care Enters., Inc.*, No. 23-3936, 2025 WL 460206, at *5 (6th Cir. Feb. 11, 2025) (reversing dismissal of Title VII religious discrimination claims by Jehovah's Witness for refusal to take mandated COVID vaccine and refusing the weekly COVID testing her employer required of unvaccinated employees because the plaintiff believed her body is the "temple of God"); *Tandian v. State Univ. of N.Y.*, 698 F. Supp. 3d 425, 431, 442 (N.D.N.Y. 2023) (finding Muslim registered nurse, who refused COVID vaccine due to belief of "divine immunity and divine protection, along with her avoidance of certain substances from entering the body that are contrary to her faith," plausibly stated a "prima facie case for religious discrimination on the basis of a failure to accommodate pursuant to Title VII," although dismissing the claim on undue-hardship grounds), appeal dismissed (May 9, 2024). As this Court recognized in *Mahmoud*, religious exemptions that permit believers to opt out of programs and policies that burden their religious exercise—including the vaccine mandates at issue here—can be critical for avoiding a constitutional injury.

CONCLUSION

The Court should grant the Petition.

Respectfully submitted,

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