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

BRIEF OF *AMICI CURIAE* THE NATIONAL CATHOLIC BIOETHICS CENTER, THE NATIONAL ASSOCIATION OF CATHOLIC NURSES, USA, AND THE CATHOLIC MEDICAL ASSOCIATION IN SUPPORT OF PETITIONERS

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November 2, 2026

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INTEREST OF *AMICI CURIAE*[1]

The National Catholic Bioethics Center is a nonprofit educational institute that applies the Catholic Church's teachings to America's most pressing ethical issues. The Center specifically serves healthcare professionals and those they serve, providing bioethics education, consultation, and publications that try to transmit the Church's enduring teachings. In its publications, the Center has "consistently pointed out the ethical problems" with vaccine mandates. NCBC, *Updated Statement on COVID-19 Vaccine Mandates* (Apr. 28, 2022), perma.cc/953D-VC5W. The Center has a strong interest in this case because it advocates for "robust" and "readily accessible" conscience protections in courts across the country—including this one. *Id.*; *see, e.g.*, *Miller v. McDonald*, No. 25-133 (2026); *Petersen v. Snohomish Reg'l Fire & Rescue*, No. 25-1210 (2026); *Roman Catholic Diocese of Albany v. Harris*, No. 24-319 (2025); *Burwell v. Hobby Lobby*, No. 13-354 (2014).

The National Association of Catholic Nurses, USA, is a nonprofit professional association that supports Catholic nurses nationwide. The Association helps its members deliver compassionate care that's grounded in Catholic social teaching, informed con-

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[1] Per Supreme Court Rule 37.6, counsel for *amici* certifies that this brief was not authored in any part by counsel for any party and that no person or entity other than *amici*, their members, or their counsel made a monetary contribution to fund its preparation or submission. *Amici* timely notified the parties of this filing.

sent, and an enduring respect for human life. The Association regularly appears as *amicus* to defend the conscience rights of all Americans. *E.g.*, *Miller v. McDonald*, No. 25-133 (2026); *Petersen v. Snohomish Reg'l Fire & Rescue*, No. 25-1210 (2026); *Zubik v. Burwell*, No. 14-1418 (2015); *Priests for Life v. Department Health & Hum. Services*, No. 14-1453 (2014). The Association has a strong interest in this case because many of its members face the threat of religious discrimination from public and private actors alike. *See* NACN-USA, *Statutory Conscience Rights in Health Care* 2 (Mar. 27, 2018), perma.cc/6X64-R2BE.

The Catholic Medical Association is the largest organization of Catholic healthcare professionals in America, with more than 2,500 doctors and nurses nationwide. *See* CMA, *About* (archived Oct. 2, 2026), perma.cc/NC7L-H7P8. The CMA's mission is to inform, organize, and inspire its members to embody the Catholic faith through the practice of medicine. *Id.*; CMA, *A New President for the Catholic Medical Association* (Jan. 9, 2018), perma.cc/4JN7-U9LF. Consistent with that mission, the CMA defends its members' conscience rights in court. *E.g.*, *Miller v. McDonald*, No. 25-133 (2026); *Masterpiece Cakeshop v. Colo. C.R. Comm'n,* No. 16-111 (2017). The CMA has a strong interest in this case because New York's law cuts to the core of its members' conscience rights.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

In 2019, New York effectively banished the Amish from the state. That year, the state broke with 45 of its peers, banning religious exemptions from school-vaccine mandates—no matter what. That change put the Amish to a choice, forcing them to violate their consciences or face the full weight of New York's vaccine regime.

Our Constitution does not tolerate such a Faustian bargain. America has always accommodated free exercise, even when it comes at great cost to the courts, the military, and the public. That was true before, during, and after the Founding. It remained true through Reconstruction. And it continued long after, as a supermajority of states passed religious exemptions to shield believers from vaccine mandates.

New York split from that tradition, claiming that "ignorant," "unAmerican" "anti-vaxxers" weren't worthy of religious exemptions even though others could get medical ones. The Second Circuit blessed New York's decision, resting its opinion on one case: *Employment Division v. Smith*. If *Smith* stands, it will keep condoning policies that cloak religious discrimination in the garb of neutrality. And its effects will be devastating. Duty-to-dispense laws will force Catholic pharmacists to supply abortifacients. Assisted-suicide mandates will force Catholic nurses to aid in death. And vaccine requirements—like the one at issue here—will force America's Amish (among others) to abandon their faith. Those laws will inevitably shutter Catholic pharmacies, harass Christian nurses, and

exile the Amish, thus inspiring the very "evil[s]" that "the Religion Clauses" tried to end. *Wisconsin v. Yoder*, 406 U.S. 205, 218 n.9 (1972).

The Court's free-exercise cases shouldn't condone the sins that the Free Exercise Clause was ratified to ban. The Court should thus grant the petition, resolve the 3-4 circuit split, and overrule *Smith*. Pet.22-24.

ARGUMENT

I. Our Nation has long protected free exercise and the conscience rights underlying it.

In America, "freedom of conscience" has always been a "fundamental righ[t]." *E.g.*, NCBC, *Conscientious Objection in Health Care* (Feb. 2013), perma.cc/E9AR-PNB5; NACN-USA, *President's Letter* 2 (Spring 2018), perma.cc/L4P5-S4JG; CMA, *Conscience* (Oct. 6, 2021), perma.cc/77UV-PFTM. From the Founding to Reconstruction, our Nation has protected conscience rights, reliably providing exemptions to the faithful. The states carried that tradition through Reconstruction, offering religious exemptions from vaccine mandates. Yet New York broke from that tradition, passing an "extreme" law—an "outlier" among the states—that coerces all religious dissenters to take vaccines. *See M.A. ex rel. H.R. v. Rockland Cnty. Dep't of Health*, 53 F.4th 29, 41 & n.3 (2d Cir. 2022) (Park, J., concurring). But if our Nation has always offered religious exemptions, then New York must too.

A. Our Nation has long accommodated free exercise, offering religious exemptions before, during, and after Ratification and Reconstruction.

Tradition often "'settle[s] the meaning'" of the Constitution's text. *E.g.*, *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 35-36 (2022) (collecting cases). It settles that meaning here. Before the Founding, the colonies universally recognized that freedom of conscience was unalienable, passing a range of accommodations that protected conscience and the free-exercise rights flowing from it. The states did the same. So did the Founders. And so did the First Congress, the Reconstruction Congress, and nearly every congress that followed them. When they did, all those institutions reaffirmed the same promise: that the Constitution requires religious accommodations because government cannot burden conscience.

1. Start with the colonies. The colonists "'universally'" recognized that conscience rights were "'unalienable.'" *Fulton v. City of Philadelphia,* 593 U.S. 522, 572-74 (2021) (Alito, J., concurring). Blackstone's Commentaries agreed, observing that the "liberty of conscience" is "absolute." 2 St. George Tucker, Blackstone's Commentaries, Editor's app. Note G (1803). The Founders quickly followed the Commentaries' lead. *E.g.*, James Madison, *Memorial and Remonstrance Against Religious Assessments* (June 20,

1785).[2] And the colonies codified that understanding in their founding charters, declaring that civil "authorit[ies]" can't "rule over men's consciences" precisely because conscience rights are absolute. The Charter or Fundamental Laws, of West New Jersey ch. XVI (1676).[3]

Around the same time, the colonies passed parallel free-exercise protections, securing the free-exercise rights that flowed naturally from the freedom of conscience. And those protections made sense. Indeed, as the colonists recognized, there was no "freedom of conscience without [the] freedom to act" on it. Curry, *The First Freedoms* 15 (1986). The "liberty of conscience," as early commentators urged, covered more than the "meer [l]iberty of the [m]ind"; it broadly extended to "the exercise … of [w]orship" itself. William Penn, *The Great Case of Liberty of Conscience* 11 (1670); *Fulton,* 593 U.S. at 572-73 n.37 (Alito, J., concurring). And the colonies agreed with those commentators, promising that Christians wouldn't be "troubled … in the free exercise" of their religion because regulating "con-

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[2] *See also* George Washington, *Letter to the Hebrew Congregation at Newport* (Aug. 21, 1790); George Washington, *Letter to the Society of Quakers* (Oct. 13, 1789); Thomas Jefferson, *Notes on the Commonwealth of Virginia* Query XVII (1784); John Jay, *Charge to the Grand Jury of Ulster County*, *reprinted in* 1 *The Correspondence and Public Papers of John Jay* (1763–1781) 122-25 (Johnston ed. 1890); *People v. Philips*, N.Y. Ct. Gen. Sess. (1813), *reported in The Catholic Question in America* 5 & 114 (N.Y., Edward Gillespy 1813).

[3] *See also* Pa. Const. of 1776, Decl. of Rights art. II; Del. Decl. of Rights §2 (1776); Va. Decl. of Rights §16 (1776).

science in matters of [r]eligion" had "dangerous [c]onsequence[s]." Maryland Toleration Act (Sept. 21, 1649).[4]

The states carried that promise forward, protecting conscience and free exercise before the Founding. *Fulton,* 593 U.S. at 572-74. Recognizing that all men have an "unalienable right to worship" according to "their own consciences," Pennsylvania and Delaware declared that "no authority" shall burden "the free exercise of religious worship." Pa. Const. of 1776, Decl. of Rights art. II; *accord* Del. Decl. of Rights §2 (1776). New Jersey and North Carolina made the same commitments.[5] So, too, for New Hampshire, New York, Virginia, and Vermont.[6] And same for nearly every other state. Indeed, by the Founding, almost every state constitution—12 of 13—"expressly protected" conscience and free exercise. *Fulton*, 593 U.S. at 574-75 & n.38 (Alito, J., concurring).

The states then paired those broad protections with equally broad exemptions, excusing worshipers from a wide range of laws—even those that "served critical state interests." *Id.* at 582-83; *Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687,

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[4] *See also* The Charter or Fundamental Laws, of West New Jersey ch. XVI (1676); *Fulton,* 593 U.S. at 572-73 & n.37 (Alito, J., concurring).

[5] N.J. Const. art. XVIII (1776); N.C. Const., Decl. of Rights §XIX, XXXIV (1776).

[6] *See* N.H. Const. pt. I, arts. IV-V (1784); N.Y. Const. §XXXVIII (1777); Va. Decl. of Rights §16 (June 12, 1776); Vt. Const. ch. 1, §3 (1777).

723-24 (1994) (Kennedy, J., concurring in the judgment). Take conscription laws, for example. Though militias were of "the utmost importance" before the Founding, states regularly exempted religious dissenters from military service whenever their "conscience[s]" barred them from bearing arms. *E.g.*, N.Y. Const. of 1777 §XL.[7] Same for oath requirements. Although oaths were "indispensable" to the states, McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1467 (1990), almost every state had "oath exemptions" that let religious objectors "enter a pledge rather than swea[r] an oath," *Fulton*, 593 U.S. at 582-83 (Alito, J., concurring).[8] And so, too, for taxes: Even though citizens were constitutionally obligated "to contribute" to the public fisc, *e.g.*, Mass. Const. of 1780 pt. I, art. X, several states exempted religious "dissenters" from exactions that their "consciences" didn't "permit" them to pay, Va. Gen. Assemb., *An Act for Exempting the Different Societies of Dissenters,* §II (1776).[9]

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[7] *See also* Pa. Const. of 1776, Decl. of Rights art. VIII (1776); Del. Decl. of Rights §10 (Sept. 11, 1776); N.H. Const. of 1784 pt. I, arts. XII-XIII; *Fulton*, 593 U.S. at 583 (Alito, J., concurring).

[8] *See also* N.Y. Const. of 1777 art. VIII; Md. Decl. of Rights art. XXXVI (1776); Mass. Const. of 1780 pt. 2, ch. VI; N.H. Const. pt. 2, art. 84 (1784).

[9] *See also* Shepard, *The Episcopal Church and Early Ecclesiastical Laws of Connecticut* 123 (1908) (discussing a similar 1729 Connecticut law).

The Continental Congress followed the states, federalizing many of the same religious exemptions that the states and colonies had long recognized. *See Fulton*, 593 U.S. at 583-84 (Alito, J., concurring). During the summer of 1775—when the Nation's survival was "in danger" and the Continental Army was "in desperate need of soldiers"—the Continental Congress exempted religious dissenters from military service, stressing that it didn't want to cause "'violence to their consciences.'" *Id*. It reaffirmed that promise a year later, letting soldiers opt out of their oath if they were "conscientiously scrupulous about taking" one. J. Cont'l Cong., Articles of War §III, art. 1 (Sept. 20, 1776). It extended similar protections throughout the territories. *E.g.*, Northwest Ord. art. I (1787). And it extended them again, promising sojourners "the most perfect freedom of conscience [and] worship" when they traveled throughout the Nation. 30 *Journals of the Continental Congress, 1774-1789* 275 (1937). So before "the Bill of Rights was ratified" nearly everyone agreed "that government should, when possible, accommodate religious practice." *City of Boerne v. Flores*, 521 U.S. 507, 557-65 (1997) (O'Connor, J., dissenting).

2. That agreement remained through the Founding. "[D]rawing both from early state constitutions and early state practice," the phrase "'free exercise'" had "a definite meaning" at the Founding—and it "included a limited right of exemption." *Lewis-Williams v. San Francisco Bay Area Rapid Transit Dist.*, 2026 WL 2674526, at *14-15 (9th Cir. Sept. 11) (Nelson, J., concurring); *Fulton*, 593 U.S. at 582-83 (Alito, J., concurring). A month after Congress proposed the First

Amendment, George Washington stressed "that the Laws" should "always be as extensively accommodat[ing]" to "the [c]onsciencious scruples of all men." *George Washington to the Society of Quakers* (Oct. 13, 1789). The Founders "almost universally" agreed. McConnell, *Origins*, supra, at 1490. And so did a majority of the First Congress, who thought that "fail[ing] to exempt" religious dissenters from generally applicable laws—even essential ones, like conscription—would "violate" the "freedom of conscience." *Id*. at 1512.

Congress and the states then put that understanding into practice, exempting worshipers from a wide range of laws. "[F]rom its earliest days" Congress offered "tax exemption[s] to religious bodies," excluding "churches" and "religious societies" from government levies. *Walz v. Tax Comm'n of New York*, 397 U.S. 664, 677 (1970) (collecting examples); *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 858-59 (1995) (Thomas, J., concurring). The states followed a similar pattern, "exempting conscientious objectors" from military service during the Founding and through the Civil War. *United States v. Seeger*, 380 U.S. 163, 170 (1965). And in 1864—amid "the greatest civil war known in the history of the human race," *The Amy Warwick*, 67 U.S. 635, 669-70 (1862)—Congress passed still more accommodations, exempting "members of religious denominations" from military service whenever they were "conscientiously opposed to the bearing of arms," Act of Feb. 24, 1864, ch. 13, §17, 13 Stat. 6, 9. The reason? Their "oath to the law" required it. *E.g.*, *Letter from Abraham Lincoln to Mrs. Eliza P. Gurney* (Sept. 4, 1864).

3. The Reconstruction Amendments reaffirmed the Free Exercise Clause's mandate, "codify[ing] a right of exemption" that was even "broader" than what the Founders "contemplated." *Lewis-Williams*, 2026 WL 2674526, at *16-18 & n.3 (Nelson, J., concurring). When the Reconstruction Congress proposed the Fourteenth Amendment, it "explicitly target[ed]" many of the Southern States' "generally applicable laws," recognizing that those laws must often "accommodate the religious exercise of individuals." Lash, *The Second Adoption of the Free Exercise Clause*, 88 Nw. U. L. Rev. 1106, 1110, 1145-56 (1994). The states followed suit, with at least 23 of them—a near supermajority at the time—offering religious exemptions "from military service." *Id.* at 1141-42 nn.158 & 162 (collecting laws). And some states went further still, making it "a misdemeanor" to "willfully preven[t]" someone from lawfully exercising "the[ir] religion." *E.g.*, N.Y. Penal Code §273 (1881).

That trend continued well into the 20th century. During prohibition, Congress let believers drink wine "for sacramental or religious purposes," 41 Stat. 310 (1919), even though the Constitution "prohibited" that very conduct, U.S. Const. amend. XVIII, §1. During both World Wars, Congress exempted anyone from military service "whose religious convictions [we]re against war." Selective Service Act of 1917, ch. 15, §4; 50 U.S.C. §456(j) (1948). And the states embedded the same exemptions in their laws, codifying countless accommodations to avoid "interfer[ing] in any way with the practice of religion." *Crane v. Johnson*, 242 U.S. 339, 342 (1917); *see also* Wash. Rev. Code §18.50.030

(1917). History and tradition thus show that our Nation has always tried to accommodate free exercise, offering religious exemptions before, during, and after the Founding and Reconstruction. *Supra* §I.A.1-3.

B. Since Reconstruction, almost every state has exempted religious dissenters from vaccine mandates—except New York.

As vaccine mandates grew, states again accommodated religion, exempting religious dissenters from school-vaccination requirements. An early California law let public-school children opt out of vaccine requirements whenever a parent "conscientiously opposed" them. *Williams v. Wheeler*, 23 Cal. App. 619, 620-21, 626 (Cal. Ct. App. 1913). So, too, for an Alaska law, which let parents "object to immunization on the ground of religious principles." Fowler, *State Diphtheria Immunization Requirements*, 57 Pub. Health Rep. 325, 325-27 & n.2 (Mar. 6, 1942). Missouri, Connecticut, and New Jersey did the same. *E.g.*, Mo. Ann. Stat. §163.017(3) (1963); Conn. Pub. Acts ch. 588, §1 (1959); N.J. Stat. Ann. §18:14-52 (Supp. 1963). And so did nearly every other state. *See* Jackson, *State Laws on Compulsory Immunization*, Pub. Health Rep. 787, 791 (Sept. 1969).

That tradition continued as more states adopted mandatory vaccination policies. By 1980, every state had "school immunization laws"—and almost all of them had religious exemptions. Opel & Omar, *Measles, Mandates, and Making Vaccination the Default Option* 169 JAMA Pediatrics 303 (Apr. 7, 2015); Silverman, *No More Kidding Around*, 12 Annals Health L. 277, 282 (2003). By the 1990s, nearly every state—

at least 47 out of 50—"grant[ed] religious exemptions." Aspinwall, *Religious Exemptions to Childhood Immunization Statutes*, 29 Loy. U. Chi. L.J. 109 & n.1 (1997) (collecting statutes). Same for the 2000s.[10] And the 2010s.[11] And the 2020s.[12] Indeed, since the states started mandating vaccines—and then mandated more during the COVID pandemic—almost all of them found a way to "satisfy [their] public health goals without coercing religious objectors to accept a vaccine." *Dr. A v. Hochul*, 142 S.Ct. 552, 557 (2021) (Gorsuch, J., dissenting).

New York recently broke from that tradition, categorically refusing to grant religious exemptions from school vaccine mandates—a policy that's "an extreme outlier" across the Nation. *M.A. on behalf of H.R.*, 53 F.4th at 41 & n.3 (Park, J., concurring). Though the state exempted religious dissenters for more than fifty years, New York abandoned those accommodations in 2019, opting to offer only medical exemptions. Pet. App. 2a-3a, 5a. When the state made that change, its leading legislative sponsors claimed that religious objectors were "'ignorant,'" "'unAmerican,'" "'anti-vaxxers,'" and more. *M.A. on behalf of H.R.*, 53 F.4th at 40 (Park, J., concurring); *Miller v. McDonald*, 2024 WL 7020490, at *23 nn.4-5 (July 31) (collecting examples). And the state rested its change on a *one percentage*

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[10] *See* Calandrillo, *Vanishing Vaccinations*, 37 U. Mich. J.L. Reform 353, 360 (2004).

[11] Colgrove, *A Tale of Two States*, 35 Health Affairs 348 (2016).

[12] *See M.A. on behalf of H.R.*, 53 F.4th at 41 n.3 (Park, J., concurring).

point increase in the rate of "religious exemptions." Pet. App. 5a-6a.

The Free Exercise Clause demands more. If our Nation has always granted religious exemptions—and "the overwhelming majority of States" still do—then New York must too. *Does 1-3 v. Mills*, 142 S.Ct. 17, 21-22 (2021) (Gorsuch, J., dissenting); *supra* §I.A-B.

II. Condoning *Smith* comes at great cost to believers nationwide.

The decision below abandoned our Nation's enduring commitment to religious accommodation, resting that departure on a single case: *Employment Division v. Smith*. In that case, this Court abandoned "nearly 30 years of precedent," holding that the Free Exercise Clause tolerates *any* law that "categorically prohibits or commands" *any* conduct—so long as that law doesn't specifically "target religious practice." *Fulton*, 593 U.S. at 545 (Alito, J., concurring). *Smith* has been costly. And recently, it has harmed healthcare workers in four main ways, forcing them to follow mandatory vaccination requirements, duty-to-dispense laws, assisted-suicide mandates, and compulsory transgender interventions. *E.g.*, CMA, *Ethical Guidelines for Addressing Common Dilemmas in the Practice of Medicine* (archived Sept. 29, 2026), perma.cc/AQ9V-QRB9.

1. Start with vaccine mandates. Several circuits have upheld those mandates even when they don't have religious exemptions, reasoning that they are "neutral and generally applicable" under *Smith*. *Does 1-3*, 142 S.Ct. at 20 (Gorsuch, J., dissenting); *Dr. A. v. Hochul*, 142 S.Ct. 2569, 2570 & nn.1-2 (2022)

(Thomas, J., dissental). Those decisions have come at a cost. To date, vaccine mandates have put more than 44 million jobs "at risk,"[13] leading more than 33,000 healthcare employees in New York to lose their jobs or suffer suspensions.[14] Those mandates have also stripped doctors of their "admitting privileges." *Dr. A.*, 142 S.Ct. at 2570 (Thomas, J., dissental). They've "coerced" healthcare staff into taking vaccines. *Id.*; *Does 1-3*, 142 S.Ct. at 18 (Gorsuch, J., dissenting). And they've driven others to leave the medical profession altogether, causing the very employment "shortages" that these mandates sought to stop. *Catholic Medical Association Opposes Vaccine Mandates Without Conscience and Religious Exemptions* 344 (July 28, 2021), perma.cc/7ND3-TXLC.

2. Duty-to-dispense laws have "cause[d]" the same problems. *Stormans, Inc. v. Wiesman*, 136 S.Ct. 2433, 2433 (2016) (Alito, J., dissental). Those laws punish pharmacists who won't supply drugs that conflict with their consciences. *Id.* at 2434; NCBC, *Pharmacy Board Reverses Itself on Right of Conscience Case* (July 23, 2010), perma.cc/G8VZ-8Z7S. Though some courts have said those laws are "neutral and generally applicable," *e.g.*, *Stormans, Inc. v. Wiesman*, 794 F.3d 1064, 1071 (9th Cir. 2015), their ultimate effects are far from it: They "'stamp out the right to refuse' to dispense emergency contraceptives for religious reasons." *Stormans, Inc.*, 136 S.Ct. at 2434; *Fulton*, 593

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[13] U.S. Sen. Comm. Small Bus., *The Economic Impact of Vaccine Mandates* (archived Sept. 29, 2026), perma.cc/9L7Y-S6CW.

[14] Lohud, *NY COVID-19 Vaccine Mandate Reduced Health Care Workforce by 3%* (Oct. 14, 2021), perma.cc/TX9Q-EGDW.

U.S. at 608 (Alito, J., concurring). And those laws have worked as intended, harassing pharmacists, shuttering pharmacies, and firing nurses who "refus[ed] to administer abortifacient drugs." NACN-USA, *U.S. Bishops Stand Up for Nurses' Rights of Conscience* (Mar. 22, 2018), perma.cc/9VY7-SM9K; *Stormans, Inc.*, 136 S.Ct. at 2433, 2439.

3. Mandatory transgender interventions raise the same "free exercise concerns." *Kincaid v. Williams*, 143 S.Ct. 2414, 2418 (2023) (Alito, J., dissental). According to the Fourth Circuit, the Americans with Disabilities Act might require hospitals to perform "sex reassignment therapy" even if they object "on religious or moral grounds." *See id.* at 2415. Under the Second Circuit's reasoning, that mandate is "neutral and generally applicable." *See* Pet. App. 15a-16a, 20a. But its effects on religious hospitals will be devastating. Under that mandate, any of the Fourth Circuit's 33 million residents could sue any of the Nation's 2,000-plus Catholic care centers if any of their 600,000-plus employees "decline[d] to refer to [them] using the pronoun" of their choice. *Kincaid*, 143 S.Ct. at 2419.[15] Or those same residents could sue those same hospitals if they don't conduct "sex reassignment … surgery," *id.* at 2415—just like many litigants have done in the past. *E.g.*, *Hammons v. Univ. of Md. Med. Sys. Corp.*, 649 F. Supp. 3d 104, 108 (D. Md. 2023); *Minton v. Dignity Health*, 39 Cal. App. 5th 1155, 1158 (2019). And in either case, the effect will

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[15] Catholic Health Association, *2026 U.S. Catholic Healthcare* (archived Sept. 29, 2026), perma.cc/GKX4-882N.

be the same: Catholic employees will be forced out of the medical profession.

4. Assisted-suicide mandates pose similar problems. Though doctors "disagree about the ethics of assisted suicide," *NIFLA v. Becerra*, 585 U.S. 755, 772 (2018), several states force physicians to discuss its "'benefits'" or refer their patients to doctors who will, CMA, *CMA's Ongoing Efforts to End Assisted Suicide* (Sept. 16, 2026), perma.cc/ZX9L-R253. Those laws, one court claimed, are "neutral and generally applicable." *Christian Med. & Dental Ass'n v. Bonta*, 625 F. Supp. 3d 1018, 1034 (C.D. Cal. 2022). Yet their effects are anything but. Indeed, because of those laws, some Christian doctors have threatened to "stop practicing medicine." *Id*. at 1025. Christian nurses have compromised their "'conscience rights.'" *E.g.*, CMA, *Catholic Medical Association Opposes Recommendations of American Nurses Association to Support Physician-Assisted Suicide* (Apr. 3, 2019), perma.cc/9A6D-7A3X. And Christian healthcare professionals "will be forced to leave" their home states just to protect their consciences. *Vt. All. for Ethical Healthcare, Inc. v. Hoser*, 274 F. Supp. 3d 227, 232 (D. Vt. 2017). The result: One of this Court's most infamous Free Exercise Clause cases—*Employment Division v. Smith*—will inspire the very "evil[s]" that the Free Exercise Clause tried to eliminate. *Yoder*, 406 U.S. at 218 n.9.

CONCLUSION

For these reasons, the Court should grant the petition.

Respectfully submitted,

November 2, 2026

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