No. 26-438

In the Supreme Court of the United States

JOSEPH MILLER; EZRA WENGERD; JONAS SMUCKER; DYGERT ROAD SCHOOL; PLEASANT VIEW SCHOOL; SHADY LANE SCHOOL,

Petitioners,

v.

JAMES V. MCDONALD, ET AL.,

Respondents.

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

BRIEF OF ALABAMA, 16 OTHER STATES, AND THE ARIZONA LEGISLATURE AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

STEVE MARSHALL
Attorney General
STATE OF ALABAMA
OFFICE OF THE ATT'Y GEN.
501 Washington Avenue
Montgomery, AL 36130
(334) 242-7300
Barrett.Bowdre@AlabamaAG.gov

A. BARRETT BOWDRE
Solicitor General
Counsel of Record
ROBERT M. OVERING
Principal Deputy Solicitor General
GEORGE L. MUIRHEAD
Ass't Solicitor General

Counsel for Amicus Curiae *State of Alabama*
[Additional Signatories Listed in Addendum]

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... ii

INTEREST OF *AMICI CURIAE* 1

SUMMARY OF ARGUMENT.....2

ARGUMENT 5

I. The Court should correct the misconception that *Yoder*, *Mahmoud*, and *Mirabelli* are limited to "educational burdens." 5

II. Governments cannot restrict acts motivated by religious reasons and allow the same acts motivated by secular reasons. 12

III. Public health can be protected without sacrificing individual religious rights.....19

CONCLUSION 23

TABLE OF AUTHORITIES

Cases

Bowen v. Roy,
476 U.S. 693 (1986).....13

Burwell v. Hobby Lobby Stores, Inc.,
573 U.S. 682 (2014).....22

Calvary Chapel Dayton Valley v. Sisolak,
140 S. Ct. 2603 (2020).....13, 14

Catholic Charities Bureau v. Wisc. Labor & Indus. Rev. Comm'n,
605 U.S. 238 (2025).....12

Cent. Rabbinical Cong. v. N.Y.C. Dep't of Health & Mental Hygiene,
763 F.3d 183 (2d Cir. 2014) 14

Church of Lukumi Babalu Aye v. City of Hialeah,
508 U.S. 520 (1993).....13, 14, 16, 20

City of Boerne v. Flores,
521 U.S. 507 (1997).....14

Dahl v. Bd. of Trustees of W. Mich. Univ.,
15 F.4th 728 (6th Cir. 2021) 16, 17, 20

Does 1-3 v. Mills,
142 S. Ct. 17 (2021).....2, 14, 16, 19

Does 1-11 v. Bd. of Regents of Univ. of Colo.,
100 F.4th 1251 (10th Cir. 2024) 14

Employment Division v. Smith,
494 U.S. 872 (1990)..... 1, 4, 12-14,
.....18, 19, 21

Espinoza v. Mont. Dept. of Revenue,
591 U.S. 464 (2020).....5, 7, 20

Everson v. Bd. of Ed. of Ewing Twp.,
330 U.S. 1 (1947) 5

Fraternal Order of Police Newark Lodge No. 12 v. Newark,
170 F.3d 359 (3d Cir. 1999) 14

Frazee v. Ill. Dep't of Emp. Sec.,
489 U.S. 829 (1989) 14

Fulton v. City of Philadelphia,
593 U.S. 522 (2021) 4, 13, 16

Goe v. Zucker,
43 F.4th 19 (2d Cir. 2022) 15

Harvest Rock Church, Inc. v. Newsom,
982 F.3d 1240 (9th Cir. 2020) 18

Hobbie v. Unemployment Appeals Comm'n of Fla.,
480 U.S. 136 (1987) 14

Kennedy v. Bremerton Sch. Dist.,
597 U.S. 507 (2022) 19

Kerri W.S. v. Zucker,
202 A.D.3d 143
(N.Y. App. Div. 2021) 15, 19

M.A. v. Rockland Cnty. Dep't of Health,
53 F.4th 29 (2d Cir. 2022) 16

Mahmoud v. McKnight,
102 F.4th 191 (4th Cir. 2024) 3

Mahmoud v. Taylor,
606 U.S. 522 (2025) 3-12

Mast v. Fillmore Cnty.,
141 S. Ct. 2430 (2021) 9, 19

Masterpiece Cakeshop v. Colo. Civil Rights Comm'n,
584 U.S. 617 (2018) 12, 19

McGowan v. Maryland,
366 U.S. 420 (1961).....5

Mirabelli v. Bonta,
607 U.S. 492 (2026).....3-7, 10, 11

Morse v. Frederick,
551 U.S. 393 (2007).....7

On Fire Christian Ctr., Inc. v. Fischer,
453 F. Supp. 3d 901 (W.D. Ky. 2020).....18

Our Lady of Guadalupe Sch. v. Morrissey-Berru,
591 U.S. 732 (2020).....8

Perry v. Marteney,
172 F.4th 315 (4th Cir. 2026).....4, 6, 12

Pierce v. Society of Sisters,
268 U.S. 510 (1925).....8

Roman Catholic Diocese of Brooklyn v. Cuomo,
592 U.S. 14 (2020).....16

Tandon v. Newsom,
593 U.S. 61 (2021).....4, 14, 16-18, 20

Thomas v. Review Bd. of Ind. Emp't Sec. Div.,
450 U.S. 707 (1981)..... 12-14

United States v. Ballard,
322 U.S. 78 (1944).....2, 5

W. Va. Bd. of Ed. v. Barnette,
319 U.S. 624 (1943).....3, 5, 9

We the Patriots USA, Inc. v. Hochul,
17 F.4th 266 (2d Cir. 2021).....22

Wisconsin v. Yoder,
406 U.S. 205 (1972).....3, 5-11, 21

Statutes

Ala. Code §16-30-1.....20

10 N.Y. Comp. Codes R. & Regs.
§66-1.1(l).....15
§66-1.3 15
§66-1.3(c) 15
N.Y. Educ. Law
§3205.....8

N.Y. Pub. Health Law
§613(1)(a).....16, 19
§2164(8) 14

28 Pa. Code §23.84 21

Other Authorities

Br. of Fla. as Amicus Curiae,
Miller v. McDonald,
No. 25-133 (filed Sept. 2, 2025) 19, 21

Br. in Opp.,
Miller v. McDonald,
No. 25-133 (U.S. filed Nov. 3, 2025) 21

Christopher C. Lund, *RFRA, State RFRAs, and Religious Minorities*,
53 San Diego L. Rev. 163 (2016).....21

Douglas Laycock & Steven T. Collis, *Generally Applicable Law and the Free Exercise of Religion*,
95 Neb. L. Rev. 1 (2016).....13

N.Y. State Senate, Stenographic Record,
Reg. Sess., 5443 (June 13, 2019)
(statement of Sen. James Skoufis),
legislation.nysenate.gov/pdf/transcripts/2019-06-13T14:43.....12

N.Y.C. Dep't of Ed. & N.Y.C. Health, *Medical Request for Immunization Exemption*, www.schools.nyc.gov/docs/default-source/default-document-library/medical-request-for-immunization-exemption-english.pdf 15

Opp. to Stay Appl., *Mirabelli v. Bonta*, No. 25A810 (U.S. filed Jan. 21, 2026) 10

Pet., *F.F. v. New York*, No. 21-1003 (U.S. Jan. 10, 2022) 1

U.S. Ctrs. for Disease Control & Prevention, *Contraindications and Precautions* (July 25, 2024), perma.cc/H7MP-FZAB 15

INTEREST OF *AMICI CURIAE*[1]

Amici are the States of Alabama, Arkansas, Idaho, Iowa, Kansas, Kentucky, Louisiana, Missouri, Montana, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, and the Arizona Legislature.

Several States have recently repealed religious exemptions from school vaccine requirements. But they still allow exemptions for non-religious reasons. Their bans thus discriminate based on the religious or secular motive for the exemption. In New York and other places, this disparate treatment has come with open disdain for the religious beliefs underlying requests for accommodation.[2] If four federal courts of appeals believe this targeted action is "neutral and generally applicable," then it is not just New York's Amish community under threat. These lower courts have lost sight of the "very purpose" of the Free Exercise Clause: "to protect the rights of those whose religious practices are not shared by the majority and may be viewed with hostility." *Employment Division v. Smith*, 494 U.S. 872, 902 (1990) (O'Connor, J., concurring in the judgment).

To be sure, States can adopt stringent public-health regimes, but not by burdening *only* religiously

---

[1] The State of Alabama notified counsel of record for all parties of the intent to file this brief on October 25, 2026. Counsel consented, waiving any objection based on the timing of notice.

[2] For instance, the lead sponsor of New York's repeal had the "goal … to take religion out of the equation." Pet.12, *F.F. v. New York*, No. 21-1003 (U.S. Jan. 10, 2022) (citation omitted). He described religious objectors as "try[ing] to worm their way out," and another sponsor accused "most people" of lying about their beliefs because he views the very idea of a religious objection to vaccination as "utter garbage." *Id.* (citation omitted).

motivated conduct, and especially not by interfering with the religious education and upbringing of children. *Amici* States have a strong interest in protecting their citizens from the erosion of free-exercise rights, and even the more protective States must be vigilant against federal incursions.

Amici States also write to resist the false dilemma that States must choose either religious freedom or the physical health of their citizens. Collectively, *Amici* States have allowed religious exemptions from vaccine requirements for centuries. For States "to deny a religious exemption in these circumstances doesn't just fail the least restrictive means test, it borders on the irrational." *Does 1-3 v. Mills*, 142 S. Ct. 17, 22 (2021) (Gorsuch, J., dissenting).

SUMMARY OF ARGUMENT

Although shocking today, New York's hostility toward its Old Order Amish population may not have surprised the Founders, who were well aware of "the varied … 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." *United States v. Ballard*, 322 U.S. 78, 87 (1944). Accordingly, they "fashioned a charter of government which envisaged the widest possible toleration of conflicting views." *Id.* For hundreds of years, our national commitment to religious tolerance has protected religious minorities like the Amish, who are bound by their faith to live apart from the modern world. But today they find themselves mocked, vilified, and threatened simply because they put their "faith [and] trust in Him," not "in vaccines." A-76.[3] The price of

[3] Citations to "A-" are to the Second Circuit appendix.

schooling their children cannot be subjecting them to medical treatments that their religion commands them to reject. Such compulsion was repugnant to the Founders and it is forbidden by this Court's doctrine. The Court should grant certiorari and reverse.

First, petitioners have more than plausibly alleged that New York's vaccine mandate is directly coercive and substantially interferes with parents' right to direct the religious upbringing of their children. *See Mirabelli v. Bonta*, 607 U.S. 492 (2026) (per curiam); *Mahmoud v. Taylor*, 606 U.S. 522 (2025); *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *W. Va. Bd. of Ed. v. Barnette*, 319 U.S. 624, 633 (1943). The Second Circuit has had two chances to get this right, and it's now offered two conflicting but equally wrong rationales for dismissal. Initially, the court held that *Yoder* was "limit[ed]" and "tailored" to its facts and that New York's law could "burden[] … religious beliefs and practices" so long as it did not pose an "existential threat" to "the Amish way of life." App.47a-48a & n.16 (citing with approval, *Mahmoud v. McKnight*, 102 F.4th 191 (4th Cir. 2024), *rev'd*, 606 U.S. 522). That was wrong; *Mahmoud* illustrated how *Yoder* applies beyond the context of the "existential threat" posed by compulsory school attendance.

On remand, the Second Circuit offered another unconvincing rationale: compulsory vaccination is not "the same" as other intrusions on religious exercise. App.23a. New York may have imposed a "serious" burden on the Amish, the court conceded—one even "greater … than the law in *Mahmoud*" because it compels an "affirmative and irreversible" act. *Id.* But that's not the "kind" of burden that matters to the Free Exercise Clause, according to the Second Circuit. *Id.* In its view, this Court's growing list of cases on the

religious rights of parents concern only "educational burdens." App.24a (citing *Perry v. Marteney*, 172 F.4th 315 (4th Cir. 2026)).

But *Mahmoud* was not just about "state-selected instruction," and *Mirabelli* was not just about "concealing" information about a "child's identity." App.22a-23a. Both cases affirmed the general right of parents to raise their children in accordance with their sincere religious beliefs. To insist that "[a]ll [New York's] law requires is that … children get themselves vaccinated" (App.24a) does not answer the question whether that act substantially interferes with religious development. Petitioners have plausibly alleged that it does, and a "course correction" is desperately needed. *Mirabelli*, 607 U.S. at 501 (Barrett, J., concurring).

Second, New York's vaccine program is not neutral and generally applicable. The law allows parents to opt out if a doctor says a vaccine could pose a health problem. Such "individualized exemptions" must "extend" to religious objectors unless the government can satisfy strict scrutiny. *Employment Division v. Smith*, 494 U.S. 872, 884 (1990). In deciding which objections are "worthy of solicitude," *Fulton v. City of Philadelphia*, 593 U.S. 522, 537 (2021), a State cannot "treat *any* comparable secular activity more favorably than religious exercise," *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (per curiam). Yet New York "prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Fulton*, 593 U.S. at 534. A student who is unvaccinated for religious reasons poses no greater risk to the state interest in "a high vaccination rate" (App.15a) than one who is unvaccinated for medical reasons.

ARGUMENT

I. The Court should correct the misconception that *Yoder*, *Mahmoud*, and *Mirabelli* are limited to "educational burdens."

"The centuries immediately before and contemporaneous with the colonization of America had been filled with turmoil, civil strife, and persecutions." *Everson v. Bd. of Ed. of Ewing Twp.*, 330 U.S. 1, 8 (1947). But despite their religious differences, "freedom-loving colonials … reached the conviction that individual religious liberty could be achieved best" if government had no power "to interfere with [religious] beliefs." *Id.* at 11. Thus, the "Framers intended" for religious exercise not only to be tolerated but "to flourish." *Mahmoud*, 606 U.S. at 592 (Thomas, J., concurring) (quoting *Espinoza v. Mont. Dept. of Revenue*, 591 U.S. 464, 497 (2020)); *see also McGowan v. Maryland*, 366 U.S. 420, 464 (1961) (opinion of Frankfurter, J.); *Ballard*, 322 U.S. at 87.

Free Exercise doctrine allows religion to flourish by protecting the right of parents to instill religious beliefs and values in their children. This right "to guide the religious future" of one's children is an "enduring American tradition" and embedded in the very "history and culture of Western civilization." *Yoder*, 406 U.S. at 232.

Yoder, *Mahmoud*, and *Mirabelli* illustrate a variety of ways the government can infringe on the religious rights of parents. Perhaps most "egregious" is when the government demands that children make "an affirmation[] in contravention of their beliefs and those of their parents." *Mahmoud*, 606 U.S. at 548 (quoting *Barnette*, 319 U.S. at 633). Generally, the government cannot compel children to "profess[]"

certain beliefs; nor can it compel them "to participate" in acts that "depart from the religious practices of their parents." *Id.* But even "more subtle forms of interference with the religious upbringing of children" can also violate parents' religious rights. *Id.* In *Yoder*, compulsory "high school attendance," irrespective of any specific curriculum choices, was a "serious barrier" to free exercise. *Id.* at 549. In *Mahmoud*, the burden was instruction "contrary to the religious principles that the parents … wish[ed] to instill." *Id.* at 552. In *Mirabelli*, it was not a curricular choice but the "facilitation of a child's gender transition" that posed a threat. 607 U.S. at 496.

The ultimate question is "whether a law 'substantially interfer[es] with the religious development' of a child." *Mahmoud*, 606 U.S. at 550 (quoting *Yoder*, 406 U.S. at 218). Because answering that question "will always be fact-intensive," *id.*, the Second Circuit erred in ruling as a matter of law that compulsory vaccination cannot possibly interfere with parents' religious rights because it is a "public health measure" rather than "an instrument of ideological indoctrination," App.24a (quoting *Perry*, 172 F.4th at 327).

Petitioners have plausibly stated a claim that New York's mandate "substantially inferere[s]" with their ability "to raise their children in accordance with [their sincere religious] beliefs." *Mirabelli*, 607 U.S. at 496. Among those beliefs is that Petitioners must put their "full trust" in God, which "conflict[s]" with "trust in vaccines." A-76 (citing Proverbs 3:5-6). Petitioners also believe that they "are commanded to not be conformed to this world … even in the way [they] try to remain healthy." *Id.* (citing Mark 8:35; Romans 12:1-2). In their view, a vaccine mandate compels a

choice between "obey[ing] God" or "man." *Id.* But they cannot opt out of the dilemma because primary education is a "vital part" of Amish spiritual development. App.7a.[4] As the Second Circuit put it, petitioners face "two impossible options: inject their children with vaccines, forcing conduct against their religious beliefs, or forego educating their children in a group setting, requiring them to sacrifice a central religious practice." App.48a. There is no material difference between their free exercise claim and those the Court has endorsed in *Yoder*, *Mahmoud*, and *Mirabelli*.

Nothing in the caselaw supports a threshold inquiry into whether the law creates "educational burdens" or some other "kind" of burden. *Contra* App.24a. Yet the Second Circuit drastically narrowed *Yoder* and *Mahmoud* to reach only "schooling that pressure[s] [children] toward views at odds with their parents' faith." App.22a. On this ground, the court declined to consider whether New York's law "actually imposes a greater burden than the law in *Mahmoud*." App.23a. The State's intrusion could be infinitely "more … serious" for the Amish, the court reasoned, but it would not merit strict scrutiny unless it is exactly the same "kind of state interference … [as] in *Yoder* or *Mahmoud*." *Id.* The cases do not support that restriction, and this persistent misreading warrants certiorari.

---

[4] These schools are already private, so even if the Constitution could tolerate a Hobson's choice between public and private schooling, *but see Mahmoud*, 606 U.S. at 560-63; *Espinoza*, 591 U.S. at 475-76; *Morse v. Frederick*, 551 U.S. 393, 424 (2007) (Alito, J., concurring), petitioners are out of options that comply with their faith, *see* Pet.7 n.3 (explaining why homeschooling is "not an option for the Amish").

Start with *Yoder*. Cast at a high level, *Yoder* did involve the tension between "[f]ormal high school education" and "Amish beliefs." 406 U.S. at 211. But in describing that conflict, the Court focused not only on the curriculum "but also" on the fact that compulsory education "takes [Amish children] away from their community." *Id.* To characterize this burden as purely "educational" (App.24a) diminishes what the Court took to be an incursion on "the religious future of the child" and a threat to "destroy" the Amish "mode of life." 406 U.S. at 219, 232.

Petitioners raise the same fundamental conflict here. *See* DE1 ¶ 87 (alleging they "will choose prison time or a martyr's death before going against their convictions"); Pet.2, 13, 20 (suggesting they may "leave New York" if not protected). New York has issued exorbitant fines that threaten the existence of Amish primary schools. App.6a-7a, 94a-95a.[5] Given that schooling is not only required by law, *see* N.Y. Educ. Law §3205, but a "vital part" of Amish spiritual development, App.7a, the pressure New York exerts is more than "subtle," *Mahmoud*, 606 U.S. at 548, and closer to the "serious barrier" the Court identified in *Yoder*, *id.* at 549; *see also Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 753-56 (2020) (discussing "the close connection that religious institutions draw between their central purpose and educating the young in the faith"); *Pierce v. Society of Sisters*, 268 U.S. 510, 534 (1925). The government

[5] New York assessed five-figure penalties on the "modest assumption that each of th[e] students was out of compliance for only one day." App.6a-7a n.9. Multiply the fines by the number of school days in a year, and the law seems to authorize annual penalties in *the millions* for each of these schools "with total enrollment far below 100 students." App.117a.

cannot force parents to "violate their religious beliefs" "directly or indirectly" by threatening to shut down their schools. *See Mahmoud*, 606 U.S. at 559; *id.* at 601 (Sotomayor, J., dissenting) (discussing *Yoder*, 406 U.S. at 218).

Barnette likewise applied a rule reaching beyond curriculum when it held that children could not be forced to salute the American flag if it would "depart from the religious practices of their parents." *Mahmoud*, 606 U.S. at 548. The Court cited no evidence that saluting the flag would cause children to lose their "convictions … and become unwilling converts." *Barnette*, 319 U.S. at 633. It was enough that plaintiffs were Jehovah's Witnesses who would not "bow down" before what they considered a graven image. *Id.* at 639 (citing Exodus 20:3-5). If only laws that pressure children "to affirm" a belief could give rise to a free-exercise claim, App.22a, the Court could have sustained Barnette's challenge to the pledge and left the flag-salute policy intact. It did not, and *Mahmoud* reaffirmed the general rule that compulsion "to commit some specific practice forbidden by [the child's] religion" is subject to strict scrutiny, 606 U.S. at 549.

Here, the government demands that children perform a specific act their religion forbids. A-76-77. It may be that New York has no aim to "indoctrinat[e]" children to believe in "the virtues of vaccines," App.24a, but that makes no difference to the Amish, who forbid the practice regardless. They choose to raise their children "in the Amish way" "separately from the modern world," App.57a-58a, which means eschewing many modern technologies, *see Mast v. Fillmore Cnty.*, 141 S. Ct. 2430, 2430-31 (2021) (Gorsuch, J., concurring). Just because this form of

coercion does not involve "school instruction" does not mean it respects parents' "authority over a child's religious upbringing." *Contra* App.23a-24a; *see Mahmoud*, 606 U.S. at 547 (The right is "not merely a right to teach religion in the confines of one's own home. Rather, it extends to the choices that parents wish to make for their children outside the home" too.). And it would be backward if "subtle" pressure against a parent's religious beliefs could implicate the Free Exercise Clause, *Mahmoud*, 606 U.S. at 552, but overt and coercive medical treatments could not.

If there were any doubt that the right extends beyond "educational burdens" (App.24a), *Mirabelli* dispelled it. There, the burden was the "unconsented facilitation of a child's gender transition." 607 U.S. at 496. The law did not "regulate what children are taught" but addressed what California and the Ninth Circuit believed to be a "health-and-safety" issue—the same categorical distinction the Second Circuit adopted below. App.22a; *see* Opp. 33, *Mirabelli v. Bonta*, No. 25A810 (U.S. filed Jan. 21, 2026) (distinguishing *Mahmoud* as involving "coercive … classroom instruction"); *id.* at 38-39 (arguing that concealment may protect "a child's health or well-being"). But the Court rebuked this attempt to "brush[] aside *Mahmoud*" as "a narrow decision focused on uniquely coercive 'curricular requirements.'" 607 U.S. at 495.

As it had done with *Yoder*, the Second Circuit on remand tried to confine *Mirabelli* to its facts: "It remains 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." App.23a. But that's not what this Court said. *Mirabelli* rested on (1) "sincere religious beliefs" held

by parents who (2) "fel[t] a religious obligation to raise their children in accordance with those beliefs" and (3) "policies [that] violate those beliefs." 607 U.S. at 496. The Court's free-exercise ruling did not turn on the matter's "central[ity]" to a "child's identity" at all. App.23a.

While the Second Circuit held that it was "wrong" to consider whether New York's law "imposes a greater burden than the law in *Mahmoud*," App.23a, *Mirabelli* held the opposite, reasoning that "the intrusion on parents' free exercise rights here … is *greater* than the introduction of LGBTQ storybooks we considered sufficient to trigger strict scrutiny in *Mahmoud*," 607 U.S. at 496 (emphasis added).[6] The same logic applies here. As the Second Circuit recognized, the law demands "an affirmative and irreversible act" that cannot be mitigated by religious teaching at home. App.23a. Just as California could not "cut out" parents from a school's attempted "gender transition" of their child, *Mirabelli*, 607 U.S. at 496, neither can New York cut out the Amish parents by making the vaccination decision for them.

Rather than follow *Mirabelli*'s lead, the Second Circuit drew an artificial line between health-related burdens and educational burdens. At the same time, it demeaned the Amish objection, reasoning that "[a]ll the law requires is that, in the interest of protecting others, children get themselves vaccinated." App.24a

[6] On this score, the Second Circuit directly contradicted its own prior reasoning. In the vacated opinion, the court contrasted the vaccine mandate's "burdens [on] religious beliefs and practices" with the "existential threat the Amish faced in *Yoder*." App.48a. Yet it has now held that "whether a burden … is more or less serious" is legally irrelevant. App.23a. Its new reasoning does not follow from *Mahmoud*—as *Mirabelli* confirmed.

(quoting *Perry*, 172 F.4th at 327). To petitioners, "all the law requires" is that they give up their way of life, their faith, and their "hope [for] salvation." A-76. The act of vaccination is "the exact opposite" of the values they wish to instill. *Mahmoud*, 606 U.S. at 552. These are "fundamentally theological choices," *Catholic Charities Bureau v. Wisc. Labor & Indus. Rev. Comm'n*, 605 U.S. 238, 252 (2025), and the court of appeals had "no license" to diminish them. *Masterpiece Cakeshop v. Colo. Civil Rights Comm'n*, 584 U.S. 617, 651 (2018) (Gorsuch, J., concurring); *accord Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 714, 716 (1981).

II. Governments cannot restrict acts motivated by religious reasons and allow the same acts motivated by secular reasons.

Certiorari is warranted to correct another error proliferating in the lower courts. Since *Smith*, burdens on the freedom of religion can escape strict scrutiny only if they are neutral, generally applicable, and incidentally burdensome. *Smith*, 494 U.S. at 879. New York's school vaccination regime flunks the test. The State allows thousands of children to go to school without all the mandated vaccines. But their reasons are favored by the State while religious reasons, which New York accommodated for over fifty years, are now demeaned as "fake" and "made up."[7] On its face and in effect, New York's law selectively banned conduct based on its religious character and motive. Its enactment must be subject to strict scrutiny.

---

[7] N.Y. State Senate, Stenographic Record, Reg. Sess., at 5443 (June 13, 2019) (statement of Sen. James Skoufis), legislation.nysenate.gov/pdf/transcripts/2019-06-13T14:43; *see also supra* n.2.

A. When a State creates a "system of individual exemptions, it may not refuse to extend that system" to religious objectors without satisfying strict scrutiny. *Smith*, 494 U.S. at 884. This rule predated *Smith*, was reaffirmed in *Smith*, and remains good law. *See Fulton*, 593 U.S. at 533-34, 536. Indeed, the "essential point" of *Smith* was that the challenged drug laws had "no medical exception for peyote." Douglas Laycock & Steven T. Collis, *Generally Applicable Law and the Free Exercise of Religion*, 95 Neb. L. Rev. 1, 22 (2016); *see also Calvary Chapel Dayton Valley v. Sisolak*, 140 S. Ct. 2603, 2613 (2020) (Kavanaugh, J., dissenting). There was no secular analogue—nothing like an individual exemption to the drug laws—so Smith's claim failed.

A well-trodden path to strict scrutiny is if the challenged law permits exemptions based on "the particular reasons for a person's conduct." *Fulton*, 593 U.S. at 533 (quoting *Smith*, 494 U.S. at 884). In *Thomas*, for instance, the State's unemployment scheme denied that religious reasons could be "good cause" for leaving a job. 450 U.S. at 717; *accord Bowen v. Roy*, 476 U.S. 693, 708 (1986) (plurality). In *Lukumi*, the government distinguished between "necessary" animal slaughter (*e.g.*, for food) and "unnecessary" animal slaughter (*e.g.*, for ritual). *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 537 (1993). Once the law called for "an evaluation of the particular justification for the killing," it allowed "individualized exemptions" that must extend to religious conduct. *Id.* at 537-38.

Put simply, where there are religious "reasons for not complying with [a] policy," the government cannot decide "which reasons are worthy of solicitude" without satisfying strict scrutiny. *Fulton*, 593 U.S. at

537. In effect, "exemptions … for secular reasons" should beget "similar treatment" for religious reasons. *See Calvary Chapel*, 140 S. Ct. at 2612 (Kavanaugh, J., dissenting) (quoting *Fraternal Order of Police Newark Lodge No. 12 v. Newark*, 170 F.3d 359, 360 (3d Cir. 1999)).

New York's catch-all "health" exemption is precisely the kind of individualized exemption that warrants heightened scrutiny. On a case-by-case basis, physicians can exempt children by certifying that a vaccine "may be detrimental to a child's health." N.Y. Pub. Health Law §2164(8). The mere existence of these exemptions "devalues religious reasons" by "judging them to be of lesser import." *Lukumi*, 508 U.S. at 537; *see also Does 1-3*, 142 S. Ct. at 19 (Gorsuch, J., dissenting); *Does 1-11 v. Bd. of Regents of Univ. of Colo.*, 100 F.4th 1251, 1277 (10th Cir. 2024); *Fraternal Order of Police*, 170 F.3d at 366 (faulting law for making a "value judgment" in favor of "secular (i.e., medical) motivations").

In just a few sentences, the court below disagreed, reasoning that New York's medical exemptions are "not discretionary" but "mandatory" and "objectively defined." App.19a. This is just the move the State tried and this Court rejected in *Thomas*, 450 U.S. at 717; *see also Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 142 n.7 (1987); *City of Boerne v. Flores*, 521 U.S. 507, 514 (1997); *Frazee v. Ill. Dep't of Emp. Sec.*, 489 U.S. 829, 830 (1989). Under *Smith*, an exemption does not evade strict scrutiny just because it is mandatory or "categorical." *See Fraternal Order of Police*, 170 F.3d at 365; *Cent. Rabbinical Cong. v. N.Y.C. Dep't of Health & Mental Hygiene*, 763 F.3d 183, 197 (2d Cir. 2014); *Tandon*, 593 U.S. at 64 (applying strict scrutiny to a law with

"myriad exceptions and accommodations" without reference to discretion).

The lower court's premise was wrong too. The law is *not* objective and mandatory. In fact, it is utterly "silent" about what medical conditions qualify. *Kerri W.S. v. Zucker*, 202 A.D.3d 143, 146 (N.Y. App. Div. 2021). Even with the aid of agency regulations (which may change at any time), the child's physician still has considerable discretion,[8] and a school official can then demand additional support for an exemption, *see* 10 N.Y. Comp. Codes R. & Regs. §66-1.3; *Goe*, 43 F.4th at 33-34. "Practically speaking," the law does not seem to be enforced in a predictable and uniform way: some New York schools reported that "up to 50% of students had medical exemptions" while others "in the same community" have "zero students" exempted. App.20a. That fact makes it more than plausible that New York's vaccination regime is not neutral and generally

---

[8] The agency's instruction to apply some "nationally recognized evidence-based standard of care" is hardly informative. 10 N.Y. Comp. Codes R. & Regs. §66-1.1(l). Even if physicians apply the same standards, their opinions may differ, and they may "misperceive[]" some conditions "as contraindications." U.S. Ctrs. for Disease Control & Prevention, *Contraindications and Precautions* (July 25, 2024), perma.cc/H7MP-FZAB. The agency also offers conflicting guidance—in one place, New York tells physicians they must "identify a medical contraindication," 10 N.Y. Comp. Codes R. & Regs. §66-1.3(c), and in another, a "contraindication *or precaution*," *id.* §66-1.1(l) (emphasis added), which is completely different, *see, e.g.*, *Goe v. Zucker*, 43 F.4th 19, 26 (2d Cir. 2022). The law is so indeterminate that New York City had to list ten non-qualifying conditions in its instructions *for physicians*. N.Y.C. Dep't of Ed. & N.Y.C. Health, *Medical Request for Immunization Exemption*, www.schools.nyc.gov/docs/default-source/default-document-library/medical-request-for-immunization-exemption-english.pdf.

applicable. *Cf. Lukumi*, 508 U.S. at 535 (considering "the effect of a law in its real operation"); *Dahl v. Bd. of Trustees of W. Mich. Univ.*, 15 F.4th 728, 733 (6th Cir. 2021).

B. In *Tandon v. Newsom*, the Court reiterated that a law is not neutrally and generally applicable if it "treat[s] *any* comparable secular activity more favorably than religious exercise." 593 U.S. at 62 (citing *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 17-19 (2020) ("*Brooklyn Diocese*")). Whether two acts are "comparable" is "judged against the asserted government interest." *Id.*; *see Brooklyn Diocese,* 592 U.S. at 21-23 (Gorsuch, J., concurring). A law is suspect if it "prohibits religious conduct" but "permit[s] secular conduct that undermines the government's asserted interests in a similar way." *Fulton*, 593 U.S. at 534. If it does, then the law's "underinclusiveness" merits strict scrutiny. *Id.* New York's school vaccine program is underinclusive for at least two reasons.

1. The law plainly discriminates by permitting the same act to be taken for secular reasons but not religious ones. In the context of public health, if the government requires "dangerous" acts "to proceed with precautions," it must allow religious exercise to proceed with the same precautions unless shown to be more "dangerous." *Tandon*, 593 U.S. at 63. Here, vaccine avoidance presents the same dangers regardless of the parent's or child's reasons. *Cf. Does* 1-3, 142 S. Ct. at 20 (Gorsuch, J., dissenting); *M.A. v. Rockland Cnty. Dep't of Health*, 53 F.4th 29, 41 (2d Cir. 2022) (Park, J., concurring). Because New York's stated interest is just the "immunity of the children of the state against communicable diseases," N.Y. Pub. Health Law §613(1)(a); App.15a, it cannot

discriminate among identical risks to its interest without satisfying strict scrutiny.

The court below sidestepped a straightforward application of *Tandon* by "analyzing risk in the aggregate." App.16a. On this view, because an Amish school is a "clustered population of almost 100% unvaccinated students," there is no "comparable secular conduct." App.17a-18a. But that reasoning would make the Free Exercise Clause turn on how many people practice a given religion in close proximity. There's no support for that move in this Court's cases. It did not matter whether "hundreds of people" actually went shopping in "a large store" while New York was restricting church attendance; it was enough that the law would permit a greater risk than the burdened religious exercise. *Brooklyn Diocese*, 592 U.S. at 17-18; *accord Tandon*, 593 U.S. at 63.

Here, the State will allow a school to operate with 100% of the students unvaccinated for medical reasons (apparently almost 50% in practice) but not a single student can be unvaccinated for religious reasons. The law does not treat like things alike, so it is not neutral and generally applicable.

2. New York's mandate applies only to children—exempting all adults, including those who work with children and those who work in schools—and it applies only in the school setting. That degree of selectivity makes the law underinclusive. "One need not be a public health expert to recognize that the likelihood" of contracting a virus from an adult or anywhere other than school "may well meet or exceed" the risks of contracting a virus from a student with a religious exemption. *Dahl*, 15 F.4th at 735.

New York may well be able to show that restricting the mandate to schoolchildren is well founded. Perhaps the State has a reason for treating the risks presented by religious objections differently than other risks. But it was not required to show any kind of fit between means and ends because the courts reviewed only for a rational basis. That error should be reversed.

* * *

If *Smith* saves New York's termination of religious exemptions, then *Smith* must be reconsidered. Drastic and novel burdens on a religious practice do not become more tolerable just because they burden non-believers too. Just a few years ago, *Smith*'s illogic led many courts to bless governmental restrictions and even *prohibitions* on worship services and church attendance, which might have continued indefinitely had this Court not intervened. *See Tandon*, 593 U.S. at 64 ("This is the fifth time…"). Whether those governments also burdened "hair salons" or "movie theaters," *Tandon*, 593 U.S. at 63, was no solace to Christians in Louisville when the "mayor criminalized the communal celebration of Easter." *On Fire Christian Ctr., Inc. v. Fischer*, 453 F. Supp. 3d 901, 905 (W.D. Ky. 2020). Or when California banned "worship on Christmas Day." *Harvest Rock Church, Inc. v. Newsom*, 982 F.3d 1240 (9th Cir. 2020) (O'Scannlain, J., dissenting in part).

Petitioners are committed to living apart from the world, App.7a, and it does not answer their plea to insist that the law is generally applied—*i.e.*, that it burdens *other* parents who have no religious qualms about the vaccine schedule. Indeed, it is in "protecting unpopular religious beliefs that we prove this

country's commitment to serving as a refuge for religious freedom." *Masterpiece Cakeshop*, 584 U.S. at 649 (Gorsuch, J., concurring). Where the polity does not understand or credit the beliefs of a minority, the uncompromising breadth of the majority's enactment should earn more scrutiny, not less. *Employment Division v. Smith* teaches just the opposite and should be reconsidered.

III. Public health can be protected without sacrificing individual religious rights.

A. New York's law should survive only if "justified by a compelling state interest" and "narrowly tailored in pursuit of that interest." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525 (2022); *see Brooklyn Diocese*, 592 U.S. at 18. Here, New York's interests in "public health and safety" are the kind of "rarified values [that] inevitably make[] the individual interest appear less significant." *Does 1-3*, 142 S. Ct. at 20 (Gorsuch, J., dissenting). But this "general interest" in public health must be "compelling" as "to the *specific* application of [the challenged] rules to *this* community." *Mast*, 141 S. Ct. at 2432 (Gorsuch, J., concurring). New York has established neither a sufficiently compelling interest nor narrow tailoring. *See generally* Br. of Fla. as *Amicus Curiae*, *Miller v. McDonald*, No. 25-133 (filed Sept. 2, 2025).

Despite its professed interest in achieving "the highest reasonable level" of vaccination, *Kerri W.S.*, 202 A.D.3d at 146 (quoting N.Y. Pub. Health Law §613(1)(a)), New York still provides exemptions for which thousands of schoolchildren qualify each year. Evidently, public health would not be jeopardized by exempting schools with "far below 100 students" in total. App.117a. Although the court below emphasized

(in bold text) that "Amish isolation does not protect their communities from disease," App.16a, it offered no citation or explanation for its opinion.

New York "must do more than assert" that every additional exemption is "always" a risk. *Cf. Tandon*, 593 U.S. at 63. It must defend its tailoring, *id.*, including the fact that its mandate applies *only* to children and *only* to those who attend school. There are many adults in the State, many who did not receive every vaccine on the list, and many who work with children or in schools. New York has thus left "appreciable damage to [its] supposedly vital interest unprohibited." *Espinoza*, 591 U.S. at 486; *accord Dahl*, 15 F.4th at 735.

Because New York's "objectives are not pursued with respect to analogous nonreligious conduct" to the same degree as they are with religious conduct, the school vaccine mandate is "fatally underinclusive" and therefore unconstitutional. *Espinoza*, 591 U.S. at 486 (quoting *Lukumi*, 508 U.S. at 546). The Court granted emergency relief in *Tandon* based on a very similar mismatch between the purported state interests and the overly restrictive means used to promote them. This is not the "rare case[]" in which religious discrimination could survive strict scrutiny. *Lukumi*, 508 U.S. at 546.

B. While recognizing the utility of a school vaccine program, forty-five States and the District of Columbia respect the religious freedom of parents and their children to opt out. *See* Pet.8-9. In Alabama, for example, a parent can simply write to object that a required immunization "conflicts with his religious tenets and practices." Ala. Code §16-30-1. Some States go further and grant exemptions "on the basis of a

strong moral or ethical conviction." 28 Pa. Code §23.84. Given this experience, the Court should take with a grain of salt any grim predictions about "dangerously low" vaccination rates in other States.[9] The vast majority of States have not found it necessary to discriminate against religion in order to protect schoolchildren.

To the contrary, *Amici* States have endeavored to protect minority religious rights to the fullest. Many have enacted state analogues to the Religious Freedom Restoration Act, offering even stronger protections than the First Amendment. *See, e.g.*, Christopher C. Lund, *RFRA, State RFRAs, and Religious Minorities*, 53 San Diego L. Rev. 163, 175-77 (2016). State RFRAs have been extremely "valuable for religious minorities, who often have no other recourse when the law conflicts with their most basic religious obligations." *Id.* at 165. States have not suffered dire public health emergencies as a result. And even if there were considerable public health benefits to repealing religious exemptions, religious rights must be "zealously protected … even at the expense of other interests of admittedly high social importance." *Yoder*, 406 U.S. at 214.

Nor has the experience of *Amici* States borne out the fear that exemptions "permit every citizen to become a law unto himself." *Smith*, 494 U.S. at 879. States have not been flooded with frivolous or

---

[9] *Compare* Br. in Opp. 29-30 & n.22, *Miller v. McDonald*, No. 25-133 (U.S. filed Nov. 3, 2025), *with* Br. of Fla. 9-13 (explaining how the 95% "herd immunity" threshold is not universal, New York had achieved herd immunity for transmissible diseases notwithstanding religious exemptions, and there is no causal relationship between the minor differences in state vaccination rates and measles incidence).

insincere religious objections. *Contra* App.6a (citing worries of the New York legislature). To the extent that there exists a "propensity" for insincere requests for religious accommodation, courts are "up to the job" of policing abuses. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 718 (2014).

New York is not the only State to rescind a religious accommodation, nor are its legislators the only government officials to exhibit open hostility to religion. *Amici* States are concerned that if governments succeed in cases like this one, they will be emboldened to remove other important religious accommodations. Already, New York's Public Health and Health Planning Council declined to provide religious exemptions from another mandate on the ground that the one at issue here has been "highly effective" without them. *We the Patriots USA, Inc. v. Hochul*, 17 F.4th 266, 282 (2d Cir. 2021). If the courts deem it neutral every time a State rescinds longstanding religious exemptions, the result will be an enormous erosion of fundamental freedoms—and countless more tragic cases like this one.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

STEVE MARSHALL
Attorney General
A. BARRETT BOWDRE
Solicitor General
Counsel of Record
ROBERT M. OVERING
Principal Deputy
Solicitor General
GEORGE L. MUIRHEAD
Ass't Solicitor General

STATE OF ALABAMA
OFFICE OF THE ATT'Y GEN.
501 Washington Ave.
Montgomery, AL 36130
(334) 242-7300
Barrett.Bowdre@
AlabamaAG.gov

Counsel for Amicus Curiae
State of Alabama

[Additional Signatories Listed Below]

ADDITIONAL SIGNATORIES

TIM GRIFFIN
Attorney General
State of Arkansas

RAÚL R. LABRADOR
Attorney General
State of Idaho

BRENNA BIRD
Attorney General
State of Iowa

KRIS W. KOBACH
Attorney General
State of Kansas

RUSSELL M. COLEMAN
Attorney General
Commonwealth of
Kentucky

LIZ MURRILL
Attorney General
State of Louisiana

CATHERINE L. HANAWAY
Attorney General
State of Missouri

AUSTIN KNUDSEN
Attorney General
State of Montana

MICHAEL T. HILGERS
Attorney General
State of Nebraska

DREW WRIGLEY
Attorney General
State of North Dakota

ALAN WILSON
Attorney General
State of South Carolina

MARTY JACKLEY
Attorney General
State of South Dakota

JONATHAN SKRMETTI
Attorney General
State of Tennessee

KEN PAXTON
Attorney General
State of Texas

DEREK BROWN
Attorney General
State of Utah

JOHN B. MCCUSKEY
Attorney General
State of West Virginia

STEVE MONTENEGRO
Speaker of the Arizona
House of Representatives

WARREN PETERSEN
President of the
Arizona Legislature