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, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF HEALTH OF THE STATE OF NEW YORK; BETTY A. ROSA, IN HER OFFICIAL CAPACITY AS COMMISSIONER OF EDUCATION OF THE STATE OF NEW YORK,

Respondents.

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

AMICUS CURIAE BRIEF OF ADVOCATES FOR FAITH & FREEDOM IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

Pursuant to Supreme Court Rule 37, *Amicus curiae* Advocates for Faith & Freedom submits this brief in support of Petitioners. Advocates for Faith & Freedom is a religious, nonprofit legal organization dedicated to protecting the fundamental constitutional liberties that have long defined the United States as a beacon of freedom. *See* https://faith-freedom.com (last visited Oct. 28, 2026). These include the rights to the free exercise of religion, freedom of speech, and the fundamental right of parents to direct the upbringing, education, and care of their children. *Amicus* previously supported Petitioners' prior petition in Case No. 25-133. This brief addresses the Second Circuit's failure, on remand, to apply this Court's decision in *Mahmoud v. Taylor*, 606 U.S. 522 (2025).

INTRODUCTION

New York's decision to abolish the longstanding religious exemption from its school immunization law, while retaining secular medical exemptions, returns to this Court once more. After this Court granted

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[1] Counsel of record for all parties received notice at least 10 days prior to the due date of *amicus curiae*'s intention to file this brief in accordance with Supreme Court Rule 37(a)(2). *Amicus curiae* certifies that no counsel for a party authored this brief in whole or in part and no person or entity, other than *amicus*, their members, or their counsel, has made a monetary contribution to its preparation or submission.

certiorari, vacated the Second Circuit's judgment, and remanded for further consideration in light of *Mahmoud v. Taylor,* the lower court again ruled against the Amish Petitioners. 606 U.S. 522 (2025); *Miller v. McDonald*, 146 S. Ct. 879 (2025); *Miller v. McDonald*, 180 F.4th 420 (2d Cir. 2026). On remand, the Second Circuit reaffirmed its original decision, holding that *Mahmoud* "does not change the result" because the vaccine mandate does not impose a burden "of the same character" as the rights at issue in *Yoder* or *Mahmoud*. *Id*. at 433 (citing *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and *Mahmoud*, 606 U.S. 522)). That conclusion rests on an unduly narrow conception of the burden this Court identified in *Yoder* and *Mahmoud* and flouts this Court's clear direction.

For more than a half century, New York permitted religious exemptions from its school vaccination mandate. In 2019, New York eliminated those exemptions while retaining medical exemptions and leaving large categories of comparable secular activity unregulated. N.Y. Pub. Health Law § 2164. New York's regulations require children in schools to be vaccinated, but do not require the same of adults in schools. *Id*. New York regulates the school location but does not regulate similarly situated locations that could be affected by communicable disease in an analogous way. *Id*. Because the risks posed by each unregulated circumstance are the same, namely the risk of spreading disease, the government cannot discriminate based solely on the religious motivations of the individual seeking the exemption. Rather than fashioning regulations that are effective by their own

design, the State of New York has chosen to impose civil penalties upon those who act in accordance with their sincerely held religious beliefs. Violation of New York's law is punishable by a fine of up to $2,000 for each day and for each student who attends school not fully vaccinated. *See id*. §§ 12(1), 206(4)(c). The severity with which New York's vaccine law treats religious objectors is especially striking given the absence of any clear or pressing impetus—other than apparent religious bias—for extending the law to the Amish community or for abolishing the scarcely invoked religious exemption.

The Amish population, historically, has always had low vaccination rates (significantly lower than the rest of the population), but has not posed a danger to the health and safety of others due to their unique lifestyle, communities that live in isolation and that adhere to quarantining protocols. Anderson C, Potts L., Physical Health Conditions of the Amish and Intervening Social Mechanisms: An Exhaustive Narrative Review, https://pmc.ncbi.nlm.nih.gov/articles/PMC8857275/ (last visited Oct. 28, 2026). The Amish population has successfully contained outbreaks and has exhibited stronger immunity from disease and better health than the American population at large. *Id*; *see also* Kluger, Jeffrey, Amish People Stay Healthy in Old Age. Here's Their Secret., https://time.com/5159857/amish-people-stay-healthy-in-old-age-heres-their-secret/ (last visited Oct. 28, 2026).

Still, New York intentionally and categorically decided (yet again) to refuse any sincerely held religious objections to its vaccine law. *Dr. A. v. Hochul*,

142 S. Ct. 552, 553 (2021) (Gorsuch, J., dissenting). New York legislators discounted sincere religious objections to vaccination as "fake" when passing New York Public Health Law section 2164. Transcript of Senate Proceedings at 5443 (June 13, 2019); https://perma.cc/J4FA-PDC7 (last visited Oct. 28, 2026). The sponsor of the law, Senator James Skoufis, has voiced from the floor that any religious objection to vaccination was "made up." *Id.* at 12. New York Senator David Carlucci claimed that people with religious objections to vaccines were "selfish and misguided." *Id.* at 13. New York Assemblyman Jeffrey Dinowitz, the primary sponsor of New York vaccine legislation and apparent theologian testified that no religion would allow for a person to avoid vaccination: "It is just utter garbage." *Id.* He then likened a person with a religious objection to a vaccine to those who tried Galileo as a heretic. *Id.*

Such religiously hostile opinions from those in power in the government are common in New York. New York's Governor has likewise proclaimed herself the arbiter of religious faith. The Governor publicly stated that no religious faith could hold an objection to vaccinations, telling audiences that "God wants" everyone to be vaccinated, that "everybody from the Pope on down is encouraging people to get vaccinated," and "[h]ow can you believe that God would give a vaccine that would cause you harm? That is not truth." *Dr. A.*, 142 S. Ct. at 553-54 (Gorsuch, J., dissenting). Then, the Governor changed the State's protocols for unemployment benefits to ensure that not only would religious objectors lose their jobs if they remained faithful to their beliefs, but they would also be ineligible to collect unemployment after they were

fired. *Id.* at 554.

New York's treatment of sincerely held religious beliefs is antithetical to the pluralism that lives at the heart of our nation's Free Exercise jurisprudence. The Second Circuit's contrary holding, issued even after the guidance of both *Mahmoud* and *Mirabelli*, warrants this Court's review.

Mahmoud confirms that when government action substantially interferes with the religious development of children or poses "a very real threat of undermining" the religious beliefs and practices that parents wish to instill in their children, strict scrutiny applies regardless of whether the law is neutral and generally applicable. *Mahmoud*, 606 U.S. at 565. New York's compulsion of permanent, irreversible health decisions (here, through vaccines)—decisions the Amish sincerely believe are forbidden by their faith and incompatible with the religious upbringing they seek to provide their children—imposes precisely such a burden. *See Mirabelli v. Bonta*, 607 U.S. 492 (2026) (confirming that parental free-exercise rights extend beyond the classroom to policies that affect and interfere with parents' religious direction of their children at home). The Second Circuit's contrary reading warrants review. Without it, New York will continue to drive the Amish from its borders by imposing crippling fines on their private schools and effectively prohibiting the practice of their faith. This Court should grant the petition.

SUMMARY OF THE ARGUMENT

This *amicus curiae* brief addresses two constitutional problems New York created by eliminating its exemption to protect sincerely held religious objections. Two independent lines of Free Exercise doctrine require strict scrutiny of New York's vaccine mandate as applied to the Amish Petitioners.

First, under *Yoder* and *Mahmoud*, a law that substantially interferes with parents' ability to direct the religious upbringing of their children triggers strict scrutiny. When eliminating its long-recognized religious exemption, New York made a determination about what *is* or is not a valid religious belief and opined that Petitioners' sincerely held religious beliefs regarding vaccinations did not meet its definition. In doing so, New York unilaterally—and incorrectly—determined that Petitioners' religious beliefs were subject to monetary fines and punishment under the law. In other words, New York determined "what shall be orthodox" in matters of religious faith. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). This is not the proper role of the State.

Second, New York's vaccine mandate fails both neutrality and general applicability. The retention of medical exemptions for identical transmission risks in the same classrooms, together with the non-

regulation of adults, teachers, and other comparable settings, demonstrates that the law is not generally applicable under *Tandon v. Newsom*, 593 U.S. 61 (2021) and *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021).

Either path independently requires strict scrutiny, which New York cannot satisfy.

ARGUMENT

I. THE FREE EXERCISE CLAUSE PROTECTS AGAINST STATE INTERFERENCE WITH PARENTS' RELIGIOUS UPBRINGING OF THEIR CHILDREN AND STATE-IMPOSED ORTHODOXY—ANTITHETICAL TO RELIGIOUS PLURALISM.

The United States was founded on the ideal that the government cannot control every aspect of a person's life—especially regarding matters of religious exercise. As this Court famously opined, "[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *Barnette*, 319 U.S. at 642. Thus, this Court has refused to allow the government to determine "what shall be orthodox" when adjudicating matters involving an individual's sincerely held religious beliefs.

This Court has consistently adopted a "narrow function" in free exercise cases when addressing a claimant's "particular belief or practice in question." *Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 713-14 (1981). Recognizing that an individual's religious exercise is a very personal matter, one that speaks to our nation's core principles, the Court found, "the determination of what is a 'religious' belief or practice is more often than not a difficult and delicate task" that does not turn on "judicial perception." *Id.* In this area, much discretion is given to the religious observer. "[R]eligious beliefs need not" even "be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Id.*

Mahmoud v. Taylor powerfully reaffirmed these principles, holding that parents have the Constitutional right to direct the religious upbringing of their children and protect them from ingesting educational materials that oppose their faith. 606 U.S. 522 (2025). The Court held that when a government policy poses "a very real threat of undermining" the religious beliefs and practices parents wish to instill, or "substantially interfer[es] with the religious development" of children, it burdens free exercise and is subject to strict scrutiny—regardless of whether the law is neutral and generally applicable under *Employment Division v. Smith*, 494 U.S. 872 (1990). 606 U.S. at 565. The Court rejected efforts to cabin *Yoder* to its specific facts, emphasizing that the Free Exercise Clause protects the transmission of religious faith across generations. *Id.*

at 541–42.

Mirabelli v. Bonta further confirmed that these protections extend beyond the curriculum to any school policies that interfere with parents' religious direction of their children's upbringing and medical decisions. 607 U.S. 492 (2026). This is where New York's vaccine law first fails.

The New York mandate is premised on the false presupposition that it can use the powers of the State to answer theological questions and ignore an individual's religious conscience. For the Petitioners, New York's elimination of the religious exemption in New York Public Health Law section 2164 does precisely what *Mahmoud* and *Yoder* prohibit. It conditions their children's education—and thus their ability to raise them in the Amish faith of separation from the modern world—on permanent, irreversible acts (vaccination) that conflict with their sincere religious convictions. *See* Pet. at 7 ("We are also commanded to not be conformed to this world. Romans 12:1-2. If we honestly obey this, then it will affect everything we do, yes even in the way we try to remain healthy.").

New York government officials—from the sponsors of N.Y. Pub. Health Law § 2164 in the Senate and in the Assembly to the current Governor of the State—believe that sincerely held religious beliefs opposing vaccines are "fake." *See, e.g.*, Transcript of Senate Proceedings at 5443 (June 13, 2019); https://perma.cc/J4FA-PDC7 (last visited Oct. 28,

2026).

On September 26, 2021, New York's Governor delivered a speech to the Christian Cultural Center and promptly published a transcript of the speech on the State of New York's official website. In the speech, the Governor declares that vaccines are "from God." Governor Hochul Attends Service at Christian Cultural Center, N.Y. State Governor (Oct. 28, 2026), https://www.governor.ny.gov/news/rush-transcript-governor-hochul-attends-service-christian-cultural-center (last visited October 28, 2026). The Governor stated that individuals who have decided not to undergo vaccination "aren't listening to God and what God wants." *Hochul*, 142 S. Ct. at 552 (Gorsuch, J., dissenting). In another speech, the Governor asserted that no one holds a valid religious objection to immunizations, contending that such religious beliefs are "not truth" and therefore illegitimate. *Id.* 553-54. The Governor and New York's legislators are certainly allowed to hold these opinions, voice them, and advocate for them. A line is crossed, however, when the power of the State is used to punish religious beliefs with which they disagree. And that state action, such as the law here, requires scrutiny.

Reading the Governor's statements in tandem with the New York legislators' statements calling religious beliefs "utter garbage" and "fake" provides insight into why New York eliminated its religious exemption but kept its secular medical exemptions—the State believes it can make these important religious determinations for the people it governs.

This is a profoundly disturbing use of the imprimatur and authority of the State. It lacks "sensitivity to and respect for this Nation's pluralism, and the values of neutrality and inclusion that the First Amendment demands." *Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 29, 73 (2019) (Kagan, J., concurring in part).

Contrary to the bold assertions of New York's Senators, Assemblymen, and Governor, "[t]he guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect." *Thomas*, 450 U.S. at 709. It is not the role of the State to determine what all people of faith must believe or what constitutes orthodox truth on matters of religious faith. The Second Circuit's distinction—that the law "does not regulate what children are taught" or "require them to affirm any belief,"—misses the point. *Miller*, 180 F.4th at 432–33. The character of the burden is the substantial interference with parents' ability to raise their children in their faith, not the precise mechanism of that interference. Compelling permanent vaccination against Amish faith is such a burden, threatening the community's ability to raise children according to their beliefs.

II. NEW YORK'S COMPULSORY VACCINE LAW IS NEITHER NEUTRAL NOR GENERALLY APPLICABLE.

Independent of the *Yoder-Mahmoud* path, the mandate fails the requirements of neutrality and general applicability. New York's intentional decision to exempt individuals from its vaccine mandate for a

secular purpose, but not a religious purpose creates an unconstitutional double standard and results in an inescapable conflict with this Court's holdings in *Tandon*, 593 U.S. 61 and *Fulton*, 593 U.S. 522.

Neutrality is absent where the government targets religious practice or expresses hostility toward it. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993); *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 584 U.S. 617 (2018). Here, the legislative record on the State's vaccine legislation over the past few years is not silent. New York's record exposes its intolerance toward Petitioners' religious objections, characterizing religious objections to vaccination as "fake," "made up," "selfish and misguided," and "utter garbage," and characterized those who hold them as "heretic[s]." *See, e.g.*, Transcript of Senate Proceedings at 5443 (June 13, 2019); https://perma.cc/J4FA-PDC7 (last visited Oct. 28, 2026). Governor Hochul has stated that "God wants" vaccination and that contrary religious beliefs are "not truth." *Dr. A. v. Hochul*, 142 S. Ct. at 553–54 (Gorsuch, J., dissenting). These statements reveal that New York has taken sides on a matter of religious conscience—the very role *Barnette* forbids. 319 U.S. at 642; *see also Thomas*, 450 U.S. at 713–14.

The law is also not generally applicable. In *Tandon*, this Court warned against applying less favorable conditions to religious exercise on private property than secular activities such as "hair salons, retail stores, personal care services, movie theaters,

private suites at sporting events and concerts, and indoor restaurants." 593 U.S. at 63. And when health restrictions contain "myriad exceptions and accommodations for comparable activities," strict scrutiny must be applied. *Id.* This Court further warned that this "standard is not watered down; it really means what it says." *Id.* at 64 (internal quotations and citations omitted).

New York's vaccine law is analogous to the restrictions in *Tandon*, as the stated purpose of both laws was to curtail the spread of infectious disease. Therefore, the burden on religious exercise must still be weighed against the risk that offering a religious accommodation would pose to the government's stated interest. When addressing its secular comparators, New York's vaccine law presents an even closer question of risk than that in *Tandon*. Here, the law offers an exemption not merely for a comparable secular risk, but for an identical one: unvaccinated students who share the same classrooms. Additionally, New York imposes no comparable vaccination requirement on adults or teachers in those schools, nor does it regulate numerous other congregate settings.

The existence of the medical exemption alone is "enough to trigger" strict scrutiny. *Does 1-3 v. Mills*, 142 S. Ct. 17, 19 (2021) (Gorsuch, J., dissenting). In Justice Gorsuch's dissent, he observes that the government, by permitting a medical exemption from a state-wide compulsory health regulation, has established a scheme of individualized exemptions.

Id. As here, Maine's law did not limit who could obtain a medical exemption or what might qualify as a medical basis worthy of exemption. *Id.* The law only required that the exemption be "phrased in medical and not religious terms." *Id.* Justice Gorsuch's dissent concludes that the mere existence of an exemption for medical purposes, but not for the protection of religious exercise, presented the "kind of double standard . . . enough to trigger . . . a more searching (strict scrutiny) review." *Id.* (parentheses in original).

The controlling inquiry is whether New York decided to include a "mechanism for individualized exemptions" at all. *Dahl v. Bd. of Trustees of W. Mich. Univ.*, 15 F.4th 728, 733 (6th Cir. 2021) (quoting *Fulton*, 593 U.S. at 534). If so, "it must grant exemptions for cases of 'religious hardship.'" *Id.* Here, the critical point is that once the government creates a mechanism for individualized exemptions, the law is no longer generally applicable.

Moreover, New York's vaccine law fails under *Tandon* and *Fulton* because "[a] law also lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a *similar* way." 593 U.S. at 534 (emphasis added). New York's vaccine law plainly prohibits an exemption for Petitioners' religious exercise while permitting a secular exemption "that undermines the government's asserted interests in a similar way." *Id.* Again, the inquiry is not based in why the exemption exists, but the risk that the exemptions pose to the government's

state interest. Given that New York exempts identical secular comparators that pose the same risk, the State cannot avoid the application of strict scrutiny. Whether a person in the classroom is not vaccinated because of their religious beliefs or because of their medical status, they pose the same risk to others of spreading a particular disease. The Second Circuit's holding cannot be reconciled with *Tandon* and *Fulton*.

Because New York's vaccine mandate fails both neutrality and general applicability, strict scrutiny applies. New York has not shown that its interest in disease prevention requires the categorical exclusion of religious exemptions while permitting medical ones and leaving other comparable activity unregulated. The Amish community's longstanding isolation and successful containment practices further undermine any claim of narrow tailoring as applied to Petitioners.

CONCLUSION

The Second Circuit's holding on remand fails to properly apply this Court's holding in *Mahmoud* and creates inconsistency with *Tandon* and *Fulton*. New York's vaccine law violates the Free Exercise Clause and openly treats religious exercise worse than secular conduct by allowing exemptions for purely secular purposes and by leaving large swaths of populations and locations unregulated. Although this issue could have been resolved the first time this Court vacated the Second Circuit's holding, the lower court's disregard of this Court's remand instructions has now only compounded the error. Without this Court's review, New York will continue to treat the

Amish faith as incompatible with residence and education within its borders. This Court should grant the petition.

Respectfully submitted,

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