No. 25-233

In The
Supreme Court of the United States

CATHARINE MILLER, ET AL.,
Petitioners,

v.

CIVIL RIGHTS DEPARTMENT,
Respondent.

On Petition for Writ of Certiorari to the Court of Appeal of California, Fifth Appellate District

BRIEF OF AMICUS CURIAE FOOTHILLS CHRISTIAN CHURCH IN SUPPORT OF PETITIONERS

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September 29, 2025

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QUESTIONS PRESENTED

Petitioner Cathy Miller runs a small bakery in Bakersfield, California, where she designs and creates custom wedding cakes. After she declined to design and create a wedding cake for a same-sex wedding ceremony, the State of California began an 8-year civil prosecution against Miller and her bakery, alleging violations of California's public accommodation laws.

Prosecution started after this Court's grant of certiorari in *Masterpiece Cakeshop* and continued through its decisions in that case, in *Fulton*, and in *303 Creative*.

After a week-long bench trial, the state trial court ruled for Petitioners under the Free Speech Clause.

The Fifth District Court of Appeal reversed, holding that this Court's precedents were inapplicable, that the white, multitiered cake Miller refused to design "conveyed no particularized message about the nature of marriage," and that the law was generally applicable under the Free Exercise Clause because it did not grant unfettered discretion or exemptions for identical secular conduct. The California Supreme Court declined review.

The questions presented are:

1. Whether the Free Speech Clause's protection against compelled participation in a ceremony only applies where third parties would view that participation as expressing endorsement of the ceremony.

2. Whether proving a lack of general applicability under the Free Exercise Clause requires a showing of

unfettered discretion or of categorical exemptions for identical secular conduct.

3. Whether *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990) should be overruled.

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INTEREST OF AMICUS CURIAE[1]

Foothills Christian Church is a nondenominational Christian church dedicated to reaching people with the truth of Jesus, being a family that encourages one another to follow Him, building the Kingdom of God on earth, and raising up the next generation to continue the work. They declare the Lordship of Christ in every sphere through the preaching of His Word, through prayer, and the lifestyle of the believer.

SUMMARY OF ARGUMENT

This case is a notable addition to an already long list of questionable results which *Smith* has yielded. *Smith*'s abandonment of strict scrutiny in Free Exercise cases challenging what it calls "neutral" and "generally applicable" laws is contrary to the Constitution's original public meaning and is unworkable.

California's Unruh Civil Rights Act prohibits "arbitrary" or "unreasonable" discrimination. It allows soundly based or reasonable discrimination. It thus places vast discretion in the courts to determine what discrimination falls within these definitions. What is "arbitrary" or "unreasonable"

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[1] Under Rule 37(2), *amicus curiae* gave 10 days' notice of its intent to file this brief to all counsel. *Amicus curiae* states further that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity, other than *amicus curiae*, its members or its counsel, made a monetary contribution to the preparation or submission of this brief.

discrimination or soundly based or reasonable discrimination under the Unruh Act varies widely and unpredictably in subject matter and over time.

The Unruh Act is a platform for judicial policymaking. It is not a statute of general applicability.

As this case illustrates well, the "valid and neutral law of general applicability" test of *Smith* does not ensure constitutionally adequate protection for the right of free religious exercise. *Smith* supports the suppression of religion as readily as it supports the free exercise of religion.

The overwhelming weight of *Smith*'s deficiencies falls on adherents to minority religions and on small religious groups.

This Court should grant certiorari and reconsider *Smith*.

ARGUMENT

I. Smith's Abandonment Of Strict Scrutiny In Free Exercise Cases Is Contrary To The Constitution's Original Public Meaning And Is Unworkable.

A. The Right Of Free Religious Exercise Is A Preeminent Constitutional Right.

"The Free Exercise Clause of the First Amendment, which applies to the states through the Fourteenth Amendment, provides in relevant part that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.'" *Church of Lukumi Babalu Aye,*

Inc. v. City of Hialeah, 508 U.S. 520, 531 (1993); see also *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). Government enforcement of laws or policies that substantially burden the exercise of sincerely held religious beliefs is subject to strict scrutiny. See *id.* at 546; see also *Sherbert v. Verner*, 374 U.S. 398, 402–03 (1963).

"To satisfy the commands of the First Amendment, a law restrictive of religious practice must advance "'interests of the highest order'" and must be narrowly tailored in pursuit of those interests. *McDaniel v. Paty*, 435 U.S. 618, 628 (1978), quoting *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972). Where the government seeks to enforce a law that is neutral and of general applicability, however, it need only demonstrate a rational basis for its enforcement, even if enforcement of the law incidentally burdens religious practices. See *Church of Lukumi Babalu Aye, supra,* at 531; *Smith, supra,* 494 U.S. at 878–79.

Because "[t]he free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires," courts are not permitted to inquire into the centrality of a professed belief to the adherent's religion or to question its validity in determining whether a religious practice exists. *Smith, supra,* 494 U.S. at 886–87. "[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Review Board of the Indiana Employment Security Division,* 450 U.S. 707, 714 (1981). An individual claiming violation of free exercise rights need only demonstrate that the beliefs professed are

"sincerely held" and in the individual's "own scheme of things, religious." *United States v. Seeger,* 380 U.S. 163, 185 (1965); see also *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 584 U.S. 617, 635 (2018).

B. *Smith*'s Abandonment Of Strict Scrutiny In Free Exercise Cases Challenging What It Terms "Neutral" And "Generally Applicable" Laws Is Contrary To The Constitution's Original Public Meaning And Is Unworkable.

Smith's abandonment of strict scrutiny in Free Exercise cases challenging what it calls "neutral" and "generally applicable" laws is contrary to the Constitution's original public meaning and is unworkable. This case notably illustrates this point.

In *Fulton v. City of Philadelphia, Pennsylvania*, 593 U.S. 522 (2021), this Court reaffirmed the centrality of religious liberty to our Constitutional order. It observed that at the time when our Bill of Rights was ratified, "the right to religious liberty already had a long, rich, and complex history in this country." *Id.* at 572 (Alito, J., concurring). In many State Constitutions, "freedom of religion enjoyed broad protection, and the right was universally said to be an unalienable right. *Id.* at 574 (internal quotation omitted). Freedom of religion was understood at the time to provide "broad protection for the free exercise of religion except where public 'peace' or 'safety' would be endangered." *Id.* at 578.

Justice Alito noted in his concurrence in *Fulton* that the Continental Congress granted exemptions

for Revolutionary War service to religious objectors "because conscription would do 'violence to their consciences.' Resolution of July 18, 1775, in 2 Journals of the Continental Congress, 1774–1789, p. 189 (W. Ford ed. 1905) (quoted in [McConnell, The Origins and Historical Understanding of Free Exercise of Religion, 103 Harv. L. Rev. 1409, 1469 and n. 299 (1990)]. This decision is especially revealing because during that time the Continental Army was periodically in desperate need of soldiers, the very survival of the new Nation often seemed in danger, and the Members of Congress faced bleak personal prospects if the war was lost. Yet despite these stakes, exemptions were granted." *Fulton, supra*, 593 U.S. at 583-584 (Alito, J., concurring).

This Court observed, even at the time it was decided, that *Smith* departed significantly from these understandings and from prior Court precedent. In *Smith*, Justice O'Connor wrote that *Smith* is "incompatible with our Nation's fundamental commitment to individual religious liberty." *Smith, supra,* 494 U.S. at 891 (O'Connor, J., concurring in the judgment). As Justice Alito has observed in his concurrence in *Fulton*, *Smith* "ignored the 'normal and ordinary' meaning of the constitutional text, . . . and it made no real effort to explore the understanding of the free-exercise right at the time of the First Amendment's adoption. *Fulton, supra,* 593 U.S. at 595 (Alito, J., concurring) (internal citation omitted).

Smith also disregarded substantial contrary precedent. In *Smith*, Justice Blackmun wrote in his dissenting opinion that "the majority had 'mischaracteriz[ed]' and 'discard[ed]' the Court's free-

exercise jurisprudence on its way to 'perfunctorily dismiss[ing]' the 'settled and inviolate principle' that state laws burdening religious freedom may stand only if 'justified by a compelling interest that cannot be served by less restrictive means.'" *Id.* at 907–908 (BLACKMUN, J., joined by BRENNAN and MARSHALL, JJ., dissenting). Justice Alito further observed that *Smith* is "discordant" with such authority as *Hosanna-Tabor* and *Masterpiece Cake*. (*Id.* at 600.)

Smith's workability in practice has been subject to similar challenge. See *Doe 1-3 v. Mills*, ___ U.S. ___, 142 S. Ct. 17, 20 (2021) (Gorsuch, J., dissenting from the denial of application for injunctive relief related to regulation mandating COVID-19 vaccinations for Maine healthcare workers) ("[W]hen judging whether a law treats a religious exercise the same as comparable secular activity, this Court has made plain that only the government's actually asserted interests as applied to the parties before it count—not post-hoc reimaginings of those interests expanded to some society-wide level of generality").

Justice Alito amplified these fidelity and workability concerns in his concurrence in *Fulton*:

There is no question that Smith's interpretation can have startling consequences. Here are a few examples. Suppose that the Volstead Act, which implemented the Prohibition Amendment, had not contained an exception for sacramental wine. See Pub. L. 66, § 3, 41 Stat. 308–309. The Act would have been consistent with *Smith* even though it would have prevented the celebration of a Catholic Mass anywhere in the United States. Or suppose that a State, following the example of several

European countries, made it unlawful to slaughter an animal that had not first been rendered unconscious. That law would be fine under *Smith* even though it would outlaw kosher and halal slaughter. Or suppose that a jurisdiction in this country, following the recommendations of medical associations in Europe, banned the circumcision of infants. A San Francisco ballot initiative in 2010 proposed just that. A categorical ban would be allowed by *Smith* even though it would prohibit an ancient and important Jewish and Muslim practice. Or suppose that this Court or some other court enforced a rigid rule prohibiting attorneys from wearing any form of head covering in court. The rule would satisfy *Smith* even though it would prevent Orthodox Jewish men, Sikh men, and many Muslim women from appearing. Many other examples could be added. *Fulton, supra,* 593 U.S. at 545-546.

C. This Case, And Cases Involving Vaccine Mandates Decided Since *Fulton*, Notably Illustrate *Smith*'s Workability Limitations.

1. The Application Of Rational Relation Scrutiny Under Smith *Is Manipulable By The Adoption Of An Excessively Narrow View Of Officials' Discretion In The Enforcement And Application Of The Challenged Law.*

As petitioners note in their Petition, the lower court has deepened a now 7-4 split over how to assess whether a law is generally applicable under the Free Exercise Clause. Petition at p. 28. The majority rule

evaluates all discretion and exemptions allowed by a regulatory scheme to determine if they pose a similar threat to the government's asserted interest as the prohibited religious conduct. See *Fellowship of Christian Athletes v. San Jose Unified School District*, 82 F.4th 664 (9th Cir. 2023) (en banc). The minority rule, which California has now joined, holds that only unfettered discretion or exemptions for identical secular conduct undermine general applicability. See *We The Patriots USA, Inc. v. Hochul*, 17 F.4th 266, 288-289 (2d Cir. 2021) (quoting *303 Creative v. Elenis*, 6 F.4th 1160, 1187 (10th Cir. 2021), rev'd on other grounds, 600 U.S. 570 (2023)).

The lower court opinion finds, relying on *North Coast Womens Care Medical Group, Inc. v. Superior Court*, 44 Cal.4th 1145 (2008), that California's public accommodations law, the Unruh Civil Rights Act (Cal. Civ. Code, § 51) (the Unruh Act), is neutral and generally applicable. App. 81a; see *North Coast, supra,* 44 Cal.4th at 1155. *North Coast* determined that the Unruh Act is "'a valid and neutral law of general applicability.'" *North Coast, supra,* 44 Cal.4th at 1156, quoting *Smith, supra,* 494 U.S. at 879. *North Coast* found further that "a religious objector has *no federal constitutional right* to an exemption from a neutral and valid law of general applicability on the ground that compliance with that law is contrary to the objector's religious beliefs." *Id.* at 1155 (emphasis in original).

The lower court opinion, and *North Coast*, are incorrect. The Unruh Act provides courts with vast discretion to determine what discrimination the Act permits and what discrimination it prohibits.

The Unruh Act prohibits only discrimination which it defines as "arbitrary" or "unreasonable." *Angelucci v. Century Supper Club*, 41 Cal.4th 160, 167 (2007); *In re Cox*, 3 Cal.3d 205, 216 (1970). It thus permits discrimination which courts find soundly based or reasonable. *Ibid.*

Examples of "unreasonable" discrimination include charging women lower prices at a car wash (*Koire v. Metropolitan Car Wash*, 40 Cal.4th 24, 39 (1985)); the predecessor to a 55-and-over housing community (*Marina Point, Ltd. v. Wolfson*, 30 Cal.3d 721, 744-745 (1982); see also *id.* at 745-746 (Richardson, J., dissenting)); and charging younger people lower prices for a Tinder account (*Candelore v. Tinder, Inc.*, 19 Cal.App.5th 1138, 1142-1143 (2018)).

Examples of "reasonable" discrimination include offering baby boomers discounted admission prices to attend a musical about the baby boom generation (*Pizzaro v. Lambs Players Theater*, 135 Cal.App.4th 1171, 1174, 1176 (2006)); the exclusion of "punk rockers" from a funeral at the request of the mother of the deceased (*Ross v. Forest Lawn Memorial Park*, 153 Cal.App.3d 988, 993 (1984)); and the exclusion from a casino of "a compulsive gambler who had manifested a propensity to gamble beyond her means to the extent of committing what was possibly an illegal act, all of which was having a detrimental effect on her own well-being as well as that of her husband" (*Wynn v. Monterey Club*, 111 Cal.App.3d 789, 797 (1980)).

The categories of discrimination enumerated in the Unruh Act are "'*illustrative rather than restrictive*.'" *Marina Point, supra,* 30 Cal.3d at p.

732, quoting *Cox, supra,* 3 Cal.3d at 216 (italics added in *Marina Point*). California courts construe the Unruh Act liberally in order to carry out its purpose. *Marina Point, supra,* 30 Cal.3d at 167; see also *Koire, supra,* 40 Cal.3d at 28.

Hales v. Ojai Valley Inn And Country Club, 17 Cal.App.3d 25 (1977), is a case in point. Robert Hales made reservations for a family vacation at the Ojai Valley Inn And Country Club. *Id.* at 29, 30. Robert and his family went to the club restaurant for dinner. *Id.* at 28.

Robert was attired in a leisure suit. *Id.* at 28. He was told that he could not be served unless he wore a tie. *Ibid.* Robert observed that, at that time, food and drink were being served to female patrons who were similarly attired in leisure suits. *Ibid*.

Robert sued. *Id.* at 28. He brought a claim among others under the Unruh Act. *Ibid*. His complaint alleged, "(1) that plaintiff Hales is a member of the male sex; (2) that he entered defendant's place of business, with his family, desiring to purchase food and drink; (3) that he was 'attired in a leisure suit'; (4) that he was told that he could not be served unless he wore a tie; and (5) that, at that time, food and drink were being served 'to female patrons who were similarly attired in leisure suits.'" *Ibid*. The trial court dismissed the complaint on a demurrer without leave to replead. *Id.* at 27.

Robert appealed, and the Court of Appeal reversed. *Id.* at 27. The Court held that resolution of the question of whether requiring men but not women to wear ties to dinner was reasonable under the Unruh Act was not appropriate at the pleading

stage. *Id.* at 28-29. It found that "[w]hether the requirement that men wear ties but women need not is arbitrary or reasonable turns not on the bare facts pleaded by Hales but upon other facts. It requires a factual showing as to what is meant by the term 'leisure suit' and by a factual determination, based on the nature of defendant's establishment and on local community standards of dress for both sexes. Those are facts that can only be determined on trial and not on demurrer." *Ibid.*

The discretion which the Unruh Act provides is so vast that it is not "generally applicable" under either the broader definition of "generally applicable" or under the narrower definition which California courts have now adopted. A statute that allows for the possibility of invidious discrimination against men wearing leisure suits at the same time that it requires Cathy Miller to bake a cake in violation of her sincerely held religious beliefs is not generally applicable.

Smith here supports the suppression of religion as readily as it supports the free exercise of religion. As this case illustrates, *Smith* does not ensure constitutionally adequate protection for the right of free religious exercise.

2. The Application Of Rational Relation Scrutiny Under Smith *Is Manipulable By The Adoption Of An Excessively Narrow View Of Conduct Comparable To The Religious Conduct Which The Challenged Law Burdens.*

The Petition notes further that the lower court adopted an excessively narrow view of conduct comparable to the burdened religious conduct. Petition at 36. The lower court found that a law fails general applicability *only* where the permitted categorical secular exemption is formally *identical* to the requested religious exemption. App.90a-91a (emphasis in original).

A narrow definition of comparable conduct allows "the definition of a particular" regulatory scheme to "always be manipulated" to evade review, reducing First Amendment protections "to a simple semantic exercise." *Carson v. Makin*, 596 U.S. 767, 784 (2022).

3. The Application of Rational Relation Scrutiny Under Smith *Is Also Manipulable By Excessively General Framing Of The Interest Which The Challenged Statute Is Intended To Protect.*

In *Doe v. San Diego Unified School District*, Doe sought an injunction pending appeal barring the San Diego Unified School District (SDUSD) from requiring compliance with a student COVID-19 vaccination mandate. *Doe v. San Diego Unified School District*, 19 F.4th 1173, 1175 (2021). SDUSD's mandate allowed for medical exemptions as

well as conditional enrollment in on-site education for 30 days for certain categories of newly enrolling students (students who are homeless, in "migrant" status, in foster care, or in military families), and provided certain accommodations for students with Individualized Education Programs (IEP's). *Id.* at 1176. It did not have a religious exemption. *Ibid.* Doe brought a Free Exercise challenge to the mandate, alleging that the mandate was unconstitutional on its face and as applied to her because it treated comparable secular conduct more favorably than religious exercise. *Ibid.*

The Ninth Circuit denied her request for an injunction. *Doe, supra,* 19 F.4th at 1175. The Court found that the mandate was both neutral and generally applicable. *Id.* at 1180.

The Court found that the medical exemption and a religious exemption were not comparable. *Doe, supra.* 19 F.4th at 1177-78. It found that "[t]he medical exemption is limited to students with contraindications or precautions recognized by the Centers for Disease Control and Prevention or the vaccine manufacturer, and the request must be certified by a physician. Limitation of the medical exemption in this way serves the primary interest for imposing the mandate — protecting student "health and safety" — and so does not undermine the District's interests as a religious exemption would." *Id.* at 1178. It concluded therefore that "[a]ppellants have not demonstrated a likelihood of success in showing that the district court erred by applying rational basis review." *Id.* at p. 1180.

The dissent countered that the majority had reached its result by mis-framing SDUSD's interest.

Doe, supra, 19 F.4th at 1184 (Ikuta, J., dissenting). The dissent contended that the majority's formulation allowed it incorrectly to take into account that the reason for medical exemption is to protect the health of students with recognized contraindications or precautions for vaccination. *Id.* at 1185. The dissent found that SDUSD's interest was to "'ensure the highest-quality instruction in the *safest environment* possible for all students and employees' by preventing the transmission and spread of COVID-19. *Ibid* (emphasis in original). Measured against this interest, the reasons why a given person is exempt are irrelevant. *Ibid.* All exempt people pose the same risks to the health and safety of students and employees regardless of why they are exempt. *Ibid.*

The dissent therefore reasoned that "[b]ecause in-person attendance by students who are unvaccinated for religious reasons poses "similar risks" to the school environment as in-person attendance by students who are unvaccinated for medical or logistical reasons, the mandate is not generally applicable." *Doe, supra,* 19 F.4th at 1184. Applying strict scrutiny, the dissent would have granted Doe's application for an injunction pending appeal. *Id.* at 1188.

Thus, under *Smith*, the vindication of Doe's preeminent Constitutional right of free exercise of religion turned on whether the court framed SDUSD's interest in its COVID-19 vaccine mandate as "protecting student health and safety" or as "ensur[ing] the highest-quality instruction in the *safest environment* possible for all students and employees' by preventing the transmission and

spread of COVID-19." See *Doe, supra,* 19 F.4th at 1178, 1185 (emphasis in original).

A similar mis-framing occurred in *We The Patriots USA, Inc v. Connecticut Office of Early Childhood Development*, 76 F.4th 130, 151-155 (2023). *We The Patriots* considered whether Connecticut's repeal of a religious exemption to a school vaccine mandate was constitutional under *Smith* when the mandate retained a medical exemption. *Id.* at 135. The Court found the law to be "generally applicable" and thus constitutional under rational relation because it found that the medical exemption protects the health of medically exempt persons by not forcing them to take a medically counterindicated vaccine. *Id.* at 151-155. The dissent countered that a medically exempt student poses the same health risk to other students as a religiously exempt student. *Id.* at 165 (Bianco, J., concurring in part and dissenting in part).

Moreover, in *Doe,* the result also turned on SDUSD's modification of a prior vaccine mandate. *Doe, supra,* 19 F.4th at 1174. The Court entered an injunction pending appeal "only while a 'per se' deferral of vaccination is available to pregnant students under SDUSD's student vaccination mandate." *Ibid.* SDUSD had documented to the Court that it had removed the deferral option for pregnant students. *Ibid.* The court's prior injunction had therefore terminated under its own terms. *Ibid*; see also *Fulton*, 593 U.S. at 551-552 ("This decision might as well be written on the dissolving paper sold in magic shops. The City has been adamant about pressuring CSS to give in, and if the City wants to get around today's decision, it can simply eliminate

the never-used exemption power. If it does that, then, voilà, today's decision will vanish—and the parties will be back where they started.") (Alito, J., concurring).

D. *Smith*'s Unworkability Burdens Particularly Minority Religious And Smaller Religious Institutions.

In *Fulton*, this Court considered whether the refusal of the City of Philadelphia to refer children to Catholic Social Services (CSS) for placement in foster homes because CSS would not certify same-sex couples as foster parents due to its sincerely held religious beliefs about marriage. (*Id.* at 526.) Taken up on questions including the question of whether to overrule *Smith*, this Court concluded that the City's actions fell outside the scope of *Smith* because they were not generally applicable. (*Id.* at 618 (Gorsuch, J., concurring); see *id.* at 533.)

The Court found that the "uniquely selective" process for qualifying state-licensed foster agencies invites the government to "consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions." (*Id.* at 533 (internal quotations omitted).) Applying strict scrutiny, the Court found that the City's refusal to contract with CSS to provide foster-care services unless it agrees to certify same-sex couples as foster parents violates the First Amendment. (*Id.* at 542.)

The burdens of *Smith*'s lack of clarity fall hardest on adherents to minority religions and on smaller religious institutions. See *Fulton, supra,* 593 U.S. at 587 (Alito, J., concurring). As Justice Gorsuch observed further in his concurrence, the

Court's failure in *Fulton* to overrule *Smith* was a matter of great practical consequence, "Its litigation has already lasted years—and today's (ir)resolution promises more of the same. Had we followed the path Justice ALITO outlines — holding that the City's rules cannot avoid strict scrutiny even if they qualify as neutral and generally applicable — this case would end today. Instead, the majority's course guarantees that this litigation is only getting started. . . ." *Id.* at 624. He continues, "The City has expressed its determination to put CSS to a choice: Give up your sincerely held religious beliefs or give up serving foster children and families. If CSS is unwilling to provide foster-care services to same-sex couples, the City prefers that CSS provide no foster-care services at all. This litigation thus promises to slog on for years to come, consuming time and resources in court that could be better spent serving children." *Id.* at 625.

In her dissent in *Mahmoud v. Taylor*, Justice Sotomayor moreover noted the chilling effect of the strict scrutiny standard on state regulators, ". . . [T]he majority closes its eyes to the inevitable chilling effects of its ruling. Many school districts, and particularly the most resource strapped, cannot afford to engage in costly litigation over opt-out rights or to divert resources to tracking and managing student absences. Schools may instead censor their curricula, stripping material that risks generating religious objections." *Mahmoud v. Taylor* 606 U.S. ___, 145 S. Ct. 2332, 2381-2382 (2025) (Sotomayor, J., dissenting) (*Mahmoud*).

For every Roman Catholic Church, for every Cathy Miller, there are hundreds of people and

hundreds of small religious groups forced to capitulate to the anti-religious animus and disdain which this and similar cases, and which *Fulton*, reflect.

CONCLUSION

Smith does not ensure constitutionally adequate protection for the right of free religious exercise. Its abandonment of strict scrutiny in free exercise cases challenging what it terms "neutral" and "generally applicable" laws is contrary to the Constitution's original public meaning and is unworkable.

This Court should grant the Petition. It should further take the opportunity which this case provides to reconsider and overrule *Smith*.

DATED: September 29, 2025

Respectfully submitted,

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