No. 25-581

In the
Supreme Court of the United States

**St. Mary Catholic Parish,
Littleton, Colorado, et al.,**
Petitioners,

v.

**Lisa Roy, in Her Official Capacity as
Executive Director of the Colorado
Department of Early Childhood, et al.,**
Respondents.

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

BRIEF OF *AMICUS CURIAE* PACIFIC JUSTICE INSTITUTE *in Support of Petitioners*

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STATEMENT OF INTEREST[1]

The Pacific Justice Institute (PJI) is a non-profit legal organization established under section 501(c)(3) of the Internal Revenue Code. Since its founding in 1997, PJI has advised and represented in court and administrative proceedings thousands of individuals, businesses, and religious institutions, particularly in the realm of First Amendment rights. PJI often represents institutions such as the Petitioners in this case to vindicate their constitutional rights. As such, PJI has a strong interest in the proper application of the law in this area.

SUMMARY OF ARGUMENT

The Tenth Circuit ruled that the State of Colorado may restrict the free exercise of religion because its anti-discrimination law is neutral and generally applicable. The Tenth Circuit's decision in *St. Mary Catholic Parish in Littleton, et al. v. Roy, et al.,* No. 24-1267 (10th Cir. Sept. 30, 2025), continues a pattern of lower courts moving further away from the original meaning and intent of the First Amendment. Such decisions often rely on *Employment Division v. Smith*, 494 U.S. 872 (1990).

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[1] No counsel for any party authored this brief in whole or in part. No person or entity other than amicus and its counsel made a monetary contribution intended to fund the preparation or submission of this brief. Timely notice was given to all parties.

Contrary to the majority's ruling in *Smith*, a law that is facially neutral and generally applied can still wreak havoc on religious liberty. This Court's ruling in *Smith* is confusing as it defies both the textual meaning of the Free Exercise Clause and Free Exercise precedent. Importantly, the *Smith* majority's assertion that anarchy would ensue if religious exercise were protected from generally applicable laws has proven unfounded through the years. Alarmingly, such an assertion that religious exercise will lead to anarchy communicates that religion is dangerous, violating the crux of First Amendment jurisprudence: government must be neutral toward religion.

ARGUMENT

I. *Smith's* assertion that religious exemptions lead to anarchy in society is without merit.

The U.S. Constitution does not protect religious exercise from generally applicable laws because doing so "would be courting anarchy." *Smith*, 494 U.S. at 888. This policy concern has not proven to be true either before or after the majority decision in *Smith*.

This Court's ruling in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), allowed the Amish to be exempted from a general law that required children attend school until a certain age. The Amish's religious exercise demanded that their children only attend

school until the eighth grade. After the Court's ruling that such an exemption is required by the Free Exercise Clause, there has been no proffered evidence that providing this religious exemption to a generally applicable law led to anarchy.

This Court also ruled that obtaining a public benefit such as unemployment compensation without a religious exemption for those whose conduct is mandated by religious belief is an unconstitutional burden on religious exercise. *Thomas v. Review Bd., Ind. Empl. Sec. Div.*, 450 U.S. 707 (1981). The test of time has not revealed that such exemptions have led to an inordinate number of religious individuals requesting unemployment benefits who had a conflict between their employment duties and their religion.

Perhaps most prominently, after *Smith* was decided, the federal government and many states passed RFRA[2]. These laws demand what the Court

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[2] *See* ALA. CONST. art. I, § 3.01; ARIZ. REV. STAT. ANN. § 41-1493.01 (1999); ARK. CODE ANN. § 16-123-401, et seq. (2020); CONN. GEN. STAT. § 52-571b (1993), FLA. STAT. § 761.01, et seq. (1998); IDAHO CODE § 73-402 (2000); 775 ILL. COMP. STAT. ANN. 35/1, et seq. (West 1998); IND. CODE § 34-13-9-0.7, et seq. (2015); KAN. STAT. ANN. § 60-5301, et seq. (2013); KY. REV. STAT. ANN. § 446.350 (West 2013); LA. STAT. ANN. § 13:5231, et seq. (2010); MISS. CODE. ANN. § 11-61-1 (2014); MO. REV. STAT. § 1.302 (2003); Mont. Laws ch. 276 (SB 215) (2021); N.M. STAT. ANN. § 28-22-1, et seq. (2000); OKLA. STAT. tit. 51, § 251, et seq (2000); 71 PA. STAT. AND CONS. STAT. § 2403 (West 2002); 42 R.I. GEN. LAWS ANN. § 42-80.1-1, et seq. (West 1993); S.C. CODE ANN. § 1-32-10, et seq. (1999); S.D. CODIFIED LAWS § 1-1A-4 (2021); TENN. CODE ANN. § 4-1-407 (West 2018); TEX. CIV. PRAC. & REM. CODE ANN.

said would lead to anarchy in *Smith*. Under RFRA, the government cannot substantially burden religious exercise unless it is in furtherance of a compelling governmental interest and done in the least restrictive means. In the many years since the passing of these laws, anarchy has not ensued. At a minimum, RFRA proves that the policy argument that religious exemptions will lead to anarchy is simply wrong.

Similarly, Congress passed RLUIPA in the year 2000 after the *Smith* decision, which also contains the pre-Smith substantial burden on religion provision. Like RFRA, there is no evidence that RLUIPA has led to anarchy in the past 25 years since its passing.

More recently we have seen how parents exempting their children from public school teachings that violate their religious exercise, or allowing churches to gather during a pandemic, do not cause anarchy. *Mahmoud v. Taylor*, 606 U.S. ____ (2025); *Roman Catholic Diocese of Brooklyn v. Cuomo,* 592 U.S. 14 (2020). Summarily, religious freedom does not lead to anarchy and this is a flawed policy argument from *Smith*.

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§ 110.001, et seq. (West 1999); VA. CODE ANN. § 57-2.02 (West 2007).

II. *Smith's* claim that full Free Exercise rights will lead to anarchy communicates that religion is dangerous, which violates the First Amendment's mandate for neutrality.

Government action cannot disfavor religion. *Everson v. Board of Educ.*, 330 U.S. 1, 18 (1947) (stating that the First Amendment requires the state to be neutral as to religious believers and non-believers). The *Smith* majority's concern of anarchy if robust religious exemptions are allowed communicates that religion is somehow menacing and must be contained. This is not consistent with the First Amendment in any way.

The Constitution protects against indirect coercion or penalties, not only outright prohibition or compulsion of religion. *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 463 (2017) (citing *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 450 (1988)).

Public policy arguments that associate anarchy and religion steer away from the First Amendment's mandate of neutrality. Such a statement leads one to believe that somehow religious freedom would permit crimes such as murder. However, Free Exercise jurisprudence is clear that a compelling government interest can curb such acts.

The stated fears in *Smith* are also incongruent with this Court's more recent approach to religious liberty in the realm of Title VII religious exemption and accommodation. In *Muldrow v. City of St. Louis*,

601 U.S. 346 (2023), this Court rejected an argument that a broad statutory interpretation in favor of religious freedom would open the floodgates and there instead needs to be a narrower interpretation of the statute. *Id*. at 357-358. This Court continued that even if this argument came true, "that would be the result of the statute Congress drafted . . . this Court does not get to make that judgment." *Id.* at 358. Smith invokes this same "floodgates" argument for constitutional interpretation. Unfortunately, lower courts continue to express anarchy-like fears toward religious adherents, while others have been more accommodating. *See*, *e.g.*, *Detwiler v. Mid-Columbia Med. Ctr.,* No. 23-3710, 2025 U.S. App. LEXIS 24567 (9th Cir. Sept. 23, 2025). A reversal of *Smith* could be clarifying.

The Founders of our nation saw religious freedom as a solution to problems, not a problem in itself. *Smith* flies in the face of this principle.

CONCLUSION

It is time for this Court to re-examine *Smith* and the problems its precedent creates for religious liberty. This Court should grant certiorari.

Respectfully submitted this 4th day of December 2025.

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