

**In the
Supreme Court of the United States**

JOSEPH MILLER, ET AL.,

Petitioners,

v.

JAMES V. MCDONALD, COMMISSIONER,
NEW YORK STATE DEPARTMENT OF HEALTH, ET AL.,

Respondents.

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

**BRIEF OF AMICI CURIAE
THE NATIONAL HEALTH FEDERATION,
43 ADDITIONAL PRO HEALTH FREEDOM GROUPS,
AND 44 PHYSICIANS
IN SUPPORT OF PETITIONERS**

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IDENTITY AND INTEREST OF THE AMICI CURIAE¹

The organizations and physicians joining this brief hold diverse, and sometimes divergent, views on broader public policy. Yet they speak with one voice on the question presented here: the Constitution demands respect for the religious sanctuary of the Amish and the fundamental liberties of the unvaccinated.

A. Health Freedom Groups

NATIONAL HEALTH FEDERATION (NHF) was established in 1955. The NHF is a 501(c)(4) and the oldest health-freedom nonprofit organization in the world. Based in California and Washington, the NHF works to protect and enhance the health and health freedoms of individuals around the world, with resources available at thenhf.com.

Counsel of Record for Amici possesses daily, practical experience advising and representing unvaccinated families, independent physicians, and medical practitioners navigating regulatory scrutiny surrounding statutory exemption laws. Having observed firsthand the systemic breakdown that occurs when states eliminate religious exemptions and subsequently police clinical medicine in the context of political winds, Amici

¹ No counsel for a party authored this amici curiae brief in whole or in part, and no person other than amici, its members, or its counsel made a monetary contribution to fund the production of the brief. The parties received timely notice of this filing. Petitioners support, and Respondents have no objection.

have a direct institutional interest in the constitutional questions presented in this petition.

Amici Curiae also include the following 43 organizations dedicated to preserving parental rights and informed refusal of vaccines:

ALLIANCE FOR NATURAL HEALTH USA is a 501(c)(4) nonprofit advocacy organization founded in 1992 dedicated to protecting and expanding health freedom, informed consent, and access to evidence-based natural health information, products, services, and healthcare options, with resources available at anh-usa.org.

BROWNSTONE INSTITUTE is a 501(c)(3) nonprofit organization providing research and content that is sophisticated but accessible, with a vision of a society that places the highest value on the voluntary interaction of individuals and groups while minimizing the use of violence and force including that which is exercised by public or private authorities, with resources available at brownstone.org.

HEALTH FREEDOM DEFENSE FUND is a 501(c)(3) non-profit organization which seeks to protect and advance health freedom, educating Americans on informed consent, advocating for human rights and bodily autonomy for all people, and legally challenging unethical mandates, laws, and policies when necessary, with resources at healthfreedomdefense.org.

STAND FOR HEALTH FREEDOM is a 501(c)(4) nonprofit organization dedicated to informing and activating a grassroots movement to protect our health and our families, with resources at standforhealthfreedom.com.

HEALTH FREEDOM LOUISIANA LLC is a consumer and human rights advocacy organization that works to protect and strengthen parental and human rights regarding healthcare decisions, with resources available at healthfreedomla.org.

VACCINE INJURY AWARENESS LEAGUE is a 501(c)(3) organization based in California and representing the interests of families and physicians nationwide seeking to preserve religious liberty and informed consent in educational and healthcare environments, with resources at v-ial.org.

NATIONAL HOME SCHOOL ASSOCIATION is the national headquarters for home schooling in America, providing comprehensive support, programs, activities, and resources to the nationwide community of homeschoolers, with resources available at nationalhomeschoolassociation.com.

MOMS ACROSS AMERICA is a 501(c)3 whose mission is to educate and empower mothers and others with actions and solutions to create healthy communities, with resources available at momsacrossamerica.com.

PROTECTION OF THE EDUCATIONAL RIGHTS OF KIDS is a 501(c)(3) organization that has reached millions of people to defend parental rights, educational rights, and medical freedom, with resources available at perk-group.com.

SCARLET'S KIDS FOUNDATION is a 501(c)(3) organization that shares evidence of child vaccine injury at scarletskids.org.

ALLIANCE FOR TRANSFORMING THE LIVES OF CHILDREN is a 501(c)(3) organization dedicated to

supporting parents, caregivers, professionals, and policymakers in practicing the art and science of nurturing children, with resources available at atlc.org.

The **ALOHA FREEDOM COALITION** is an organization that connects grassroots organizations across Hawai'i to build unity and strength, with resources available at alohafreedomcoalition.org.

INDIANA MEDICAL FREEDOM is a volunteer organization devoted to medical freedom and parental rights, with resources available at indianaformedicalfreedom.org.

STOP MANDATORY VACCINATION is a health freedom organization working with related groups Unvaccinated Children, The Vaccine Free Child Uncensored, and Nonverbal to Verbal, with resources available at stopmandatoryvaccination.com.

AUTISM ACTION NETWORK is a nationwide, non-partisan 501(c)(4) advocacy organization focused on public policy and legislation that affects people with autism, vaccine injuries, and related developmental conditions, with resources available at autismactionnetwork.org.

INFORMED CHOICE MARYLAND is a non-profit 501(c)4 organization working to protect the fundamental right to safe and effective health care, with resources available at informedchoicemaryland.com.

PENNSYLVANIA COALITION FOR INFORMED CONSENT is a Pennsylvania-based, nonprofit 501(c)(4) grassroots advocacy organization founded in 2015 and dedicated to protecting informed consent, parental rights, religious liberty, medical privacy, and individual

autonomy in healthcare decision-making, with resources available at informedconsentpa.org.

AMERICAN HEALTH REVOLUTION is a 501(c)(3) nonprofit organization focused on education, advocacy, and transparency to reclaim health from the chronic disease epidemic, with resources available at americanhealthrevolution.org.

RESTORE THE FIRST is an unincorporated citizens' coalition convened by the six named plaintiffs in *Finn et al. v. Global Engagement Center et al.*, No. 3:25-cv-00543 (M.D. Fla.), with resources available at restorethe1st.com.

GREENMEDINFO, INC. is an organization dedicated to providing the world an open access, evidence-based natural health resource comprised of over 100,000 peer-reviewed study abstracts, across 10,000+ distinct topic areas, with resources available at greenmedinfo.com.

KENTUCKY MEDICAL FREEDOM COALITION is a 501(c)4 organization supporting medical freedom education and activism, with resources available at kmfc.org.

PEOPLE OVER POLITICS is an independent, non-partisan educational organization dedicated to protecting constitutional rights, including religious and medical freedom, with resources available at peopleoverpolitics.org

THE HEALTHY AMERICAN is an organization by Peggy Hall providing practical solutions supporting religious freedom and inspiring others to take positive action to defend God-given rights as protected by the

Constitution, with resources available at thehealthyamerican.org.

MICHIGAN FOR VACCINE CHOICE a 501(c)(3) organization dedicated to providing educational information about the subject of vaccinations, while protecting and supporting individuals and parents to make vaccine decisions in Michigan, with resources available at [a michiganvaccinechoice.org](http://michiganvaccinechoice.org).

BIBLICAL CITIZEN is a small group of podcasters and radio broadcasters in the public square committed to educating the public on having a Biblical worldview.

AMERICAN POLICY CENTER is a 501(c)(4) foundation to protect and defend the ideals of limited government intrusion as envisioned by the nation's founders, with resources available at americanpolicy.org.

FREEDOM HEALTHCARE is a Private Health Membership Association, providing options for individuals to step out of the insurance-based medical system, along with a growing nationwide community of independent health-focused practitioners, who empower individuals and families to take an active role in their health journey. Resources available at freedom-healthcare.us.

POLYFACE FARMS is a farm with a mission to develop emotionally, economically, environmentally enhancing agricultural enterprises and facilitate their duplication throughout the world, and that arguably represents America's premier non-industrial food production oasis, with resources available at polyfacefarm.com.

JOSHUA LANE/HERE'S TO YOUR HEALTH with Joshua Lane wellness radio is a group broadcasting celebrities offering current thinking about Beauty, Fitness and Longevity, with resources available at herestoyourhealthwithjoshlane.com.

DISABLED RIGHTS ADVOCATES PLLC is a law firm that primarily serves US military service-members and families across the world seeking exemptions from compulsory vaccination due to injuries and disabilities which are exacerbated by the pathogenic causative agents in most all vaccines, with resources available at www.dradvocates.com.

REACT19 is a science-based 501(c)(3) non-profit offering financial, physical, and emotional support for those suffering from long-term Covid-19 vaccine adverse events worldwide, with resources available at react19.org.

ENERGETIC HEALTH INSTITUTE AND HEALING is an institute providing education in natural medicines and holistic healthcare, with resources available at energetichealthinstitute.org.

GMOSCIENCE is a 501(c)(3) charitable organization begun in 2014 in the state of California, created to challenge the narrative regarding GMO and pesticide safety from government and industry, based on scientific rigorous research, with resources available at gmoscience.org.

SAFE BLOOD DONATION ASSOCIATION is a grassroots effort revolutionizing blood donation by connecting Covid-19 unvaccinated blood donors with those in their own communities who need blood transfusions, with resources available at safeblood.com.

TEXANS FOR VACCINE CHOICE EDUCATION FOUNDATION is a 501(c)(3) educational non-profit organization, and Texans for Vaccine Choice a 501(c)(4) organization, with resources available at texansforvaccinechoice.com.

VACCINE SAFETY COUNCIL OF MINNESOTA is an all-volunteer advocacy team of parents, health professionals and educators united in the goal of protecting people from injuries and deaths caused by vaccines, with resources available at vaccinesafetycouncilminnesota.org.

GLOBAL WELLNESS FORUM is a coalition of dedicated grassroots organizations and stakeholders who share a shared, actionable vision of creating a healthier, brighter future for America and the world, with resources available at globalwellnessforum.org.

INFORMED CHOICE WASHINGTON is a Washington State nonprofit advocating and educating for healthy immunity and freedom of health care choice, and whose thousands of members believe the right to make those choices without coercion is fundamental to our civil liberties. Resources available at InformedChoiceWA.org.

COALITION FOR AFFORDABLE HEALTH CARE is a coalition of healthcare providers and activists respecting informed refusal to vaccination.

MICHIGAN HEALTHCARE FREEDOM is a 501(c)(3) nonprofit organization that educates on how state policy makes healthcare more expensive, with resources available at mihealthfreedom.org.

THE WELLNESS FORUM FOUNDATION is a 501(c)(3) organization founded and directed by Dr. Pamela

Popper, protects informed consent, bodily autonomy, and medical freedom, through its nation-wide litigation team and resources available at wf-foundation.org.

CITIZENS' COUNCIL FOR HEALTH FREEDOM is a 501(c)(3) national, non-profit, health policy organization that for over two decades has been a powerful force in promoting the mission of health freedom by providing useful resources, policy research, and unique initiatives, with resources at cchfreedom.org.

B. Physicians

Amici Curiae also include the following 44 physicians who have a direct professional interest in preserving the integrity of the physician-patient relationship, informed refusal, and independent clinical judgment free from bureaucratic coercion:

Robert Malone MD; Donald Adema DO; K. Paul Stoller MD; Meryl Nass MD; Michelle Veneziano DO; Michelle Perro MD; Robert Rowen MD; Terri Su MD; Rachel West DO; Doug Hulstedt MD; Jorge Moreno DO; Paul Thomas MD; Veronica Tilden DO; Robert Campbell MD; Timothy R Dooley MD; Lindy Woodard MD; Yoshi Rahm DO; Ben Edwards MD; Cammy Benton MD; Donna Ruiz MD; Bob Sears MD; Joel Warsh MD; Sanjay Verma MD; Brad Banko MD; William Lee Cowden MD; Daniel Rizzo MD; James R. Neuenschwander MD; Lee D. Merritt MD; Lisa Ma MD; Courtney King MD; Mel Friedman DO; Reem Abu-Sbaih DO; Katie Long MD; James E Gaydos DO; Caroline Schier MD; Douglas J. Mackenzie MD; Ricardo R Bartelme MD; Diane Culik MD; Richard Moskowitz MD; LeTrinh Hoang DO; Rosann Volmert DO; Jocelyn Stamat MD; Sherri Tenpenny DO; David Shoup DO.



SUMMARY OF ARGUMENT

The central question in this case is whether New York may enforce a statutory scheme that categorically eliminates long-standing religious accommodations while preserving comparable secular exemptions and permitting unvaccinated secular individuals in educational settings. The Second Circuit affirmed the dismissal of Petitioners' claims under an outdated and overruled application of *Employment Division v. Smith*, 494 U.S. 872 (1990), claiming that New York's mandate should remain unaccountable to strict scrutiny despite this Court's recent instructions in *Mahmoud v. Taylor*, 606 U.S. 522 (2025).

Amici submit this brief to illustrate how the elimination of religious exemptions fundamentally destabilizes both First Amendment protections and foundational principles of clinical independence.

First, New York's categorical ban is a dramatic outlier among the States. Forty-five states (and the District of Columbia) currently maintain religious exemptions to school vaccination. A supermajority consensus across diverse geographic and political landscapes establishes that categorical suppression of religious exercise is entirely unnecessary to achieve the government's claimed interest. Furthermore, informed refusal is a deeply rooted common law and statutory tradition across the nation.

Second, the statutory history of California provides a clear cautionary model demonstrating the administrative and constitutional damage that inevitably flows from eliminating religious exemptions. When

California eliminated religious belief exemptions in 2015 through Senate Bill 277, state officials explicitly pledged that physicians would retain unconstrained professional discretion to grant medical exemptions based on broad clinical considerations, including family medical history and genetic risk. Yet once the religious exemption was removed, state regulators predictably intervened to police medical exemptions, enacting Senate Bills 276 and 714 to narrow permissible exemptions to rigid federal agency contraindications. This shift chilled physicians from exercising individualized medical judgment. The end result was physically detrimental to California's children.

New York's regime subjects the Amish community to an unconstitutional choice: compromise deeply held religious convictions or face ruinous statutory fines and expulsion from community-built schools. In keeping with the framework established by *Tandon v. Newsom*, 593 U.S. 61 (2021), the religious freedom issues raised by the petition illustrate why *Smith* must be reconsidered. Certiorari should be granted to enforce *Mahmoud* and restore the proper constitutional balance.



ARGUMENT

I. The 45-State Consensus Demonstrates That Categorical Exclusions of Religious Belief Are Not Narrowly Tailored to Further Public Health

Under this Court's First Amendment jurisprudence, a state law burdening religious practice cannot survive constitutional review where the state's asserted interests are routinely and successfully served by less restrictive means. When evaluating whether a state policy is narrowly tailored, the prevailing practices of sister jurisdictions provide significant empirical evidence.

Forty-five states (and the District of Columbia) allow religious exemptions to compulsory school vaccination requirements. These states maintain functional educational systems and stable public health environments while respecting the rights of religious adherents. For more than half a century, before political winds impugned constitutional rights, New York itself operated within this constitutional tradition, granting statutory accommodations without issue under Public Health Law § 2164.

In 2019, New York departed from this consensus by eliminating its religious exemption entirely. In doing so, the State did not institute a universal requirement: it retained discretionary medical exemptions, accommodated unvaccinated teachers and non-student staff in school facilities, permitted unvaccinated children in various non-school congregate settings, and tolerated tens of thousands of noncompliant students within its administrative apparatus.

Indeed, the discretionary nature of New York's medical exemptions is evidenced in the lower court record as exemption grant rates hinged on various bureaucrats (who are not the patient's physician) interpreting medicine in their own ways.

The State cannot credibly demonstrate that accommodating sincere religious objections—such as those maintained for generations by the Old Order Amish in their self-funded, rural community schools—undermines public health when forty-five other sovereign states (and the District of Columbia) accommodate religious exercise daily. Where the supermajority harmonize free exercise with disease prevention, New York's outlier insistence on categorical exclusion demonstrates that its statute fails any meaningful standard of tailoring.

II. The Venerable Common Law and Statutory Tradition of Informed Refusal Confirms That Accommodations Are Deeply Rooted in American Law

New York's elimination of religious accommodations defies not only the supermajority consensus of 45 sister States (and the District of Columbia), but also the historical trajectory of American common law

and statutory protections for bodily integrity and informed refusal.

The right to refuse unwanted medical interventions is woven into the fabric of American jurisprudence. State legislatures routinely codify the absolute right of individuals to determine what happens to their own bodies. *See, e.g.*, Cal. Probate Code § 4623 (codifying the right to refuse medical intervention). Several States explicitly preserve this right even in the midst of acute societal threats: Minnesota, for example, has statutorily codified that even during a declared emergency, “individuals have a fundamental right to refuse medical treatment, testing, physical or mental examination, [and] vaccination.” Minn. Stat. Ann. § 12.39.

At the federal level, the legal requirement of informed consent and its necessary corollary, informed refusal, is enshrined in human-subject protections and statutory research frameworks. *See* 21 U.S.C. § 360j; 45 C.F.R. § 46.116; *see also* Cal. Health & Safety Code § 24170 *et seq.* (California’s Protection of Human Subjects in Medical Experimentation Act).

When forty-five States (and the District of Columbia) recognize religious exemptions to school mandates, they act in direct continuity with this statutory tradition. By contrast, New York’s categorical refusal to accommodate the religious convictions of Amish families in their own private community schools breaks sharply from both sister-state consensus and bedrock American principle that free individuals can decline shots.

III. The California Experience Demonstrates That Stripping Religious Exemptions Inevitably Collapses Clinical Discretion and Burdens Religious Minorities

When the state forecloses religious accommodations, the tension between statutory mandates and religious belief is driven directly into the medical examination room. The statutory and regulatory trajectory of California between 2015 and the present day provides an instructive case study of political winds weakening constitutional governance: how the state moved the goal posts on doctors then prosecuted their licenses and the patients suffered needlessly because the equal protection clause remained unenforced in the state.

A. California's Initial Promise: Preserving Individualized Medical Discretion Under SB 277

Prior to 2015, California law afforded robust protection to religious belief under former Health and Safety Code § 120365, while maintaining a narrow medical exemption tied to conditions that “contraindicate immunization” under § 120370 (1995 Cal. Stats. ch. 415). In 2010, California courts interpreted this standard as applying only where a vaccination was demonstrably “dangerous due to medical or physical condition.” *Brown v. Shasta Union High Sch. Dist.*, No. C061972, 2010 Cal. App. Unpub. LEXIS 7051, at *25 (Cal. Ct. App. Sept. 2, 2010) [cited here for historical context only].

When the California Legislature repealed personal belief exemptions in 2015 through Senate Bill 277, the legislature encountered substantial resistance from

families and medical professionals concerned about loss of constitutional rights. To secure the bill's passage, legislative leaders explicitly promised that physicians would be granted broad, unreviewable discretion to protect vulnerable children through expanded medical exemptions.

The legislative record confirms this accommodation. During the Assembly Health Committee hearing on June 9, 2015, the bill's principal co-author, Senator Ben Allen, testified that the amendments were specifically designed to create "a strong and robust medical exemption so that anybody who had a legitimate medical concern, genetic predisposition, some sort of immunological problem, they can go to a doctor anywhere in the state and get an exemption from that doctor." California Assembly Committee on Health, Hearing Transcript on SB 277, June 9, 2015, at 15.

Committee Chairman Rob Bonta directly confirmed this statutory compromise with bill author Senator Richard Pan:

"Rob Bonta: . . . I have asked the author to take an amendment to clarify that a medical exemption is entirely within the professional judgment of a physician. And we have agreement on that amendment?" "Senator Richard Pan: Yes."

Id. at 31–32.

Senator Pan repeatedly emphasized on the legislative record that medical exemptions would not be tethered to federal agency guidelines:

“If the physician feels that there’s a genetic association in a sibling, a cousin, some other relative, it’s not safe for a vaccine, they can provide a medical exemption for that vaccine. There is no limitation on a physician from doing that other than their own professional judgment, their own knowledge and expertise about what they believe is safe for the patient . . . we have left that discretion open . . . There is no legal barrier at all.”

Id. at 116–17, 129, 131–32.

Reflecting this intent, the enacted version of SB 277 eliminated the strict term “contraindicate” and replaced it with a flexible standard: an exemption was lawful whenever “the physical condition of the child is such, or medical circumstances relating to the child are such, that immunization is not considered safe, indicating the specific nature and probable duration of the medical condition or circumstances, including, but not limited to, family medical history, for which the physician does not recommend immunization.” Cal. Health & Safety Code § 120370(a) (2015 Cal. Stats. ch. 35).

Following enactment, state regulatory agencies confirmed this broad discretion. In formal correspondence dated March 18, 2016, the Medical Board of California advised practicing physicians seeking guidance on acceptable exemption grounds that “[i]t is up to you, as the treating physician, to determine what an appropriate medical exemption is” under the text of § 120370. This executive department record was introduced in the closed proceeding *In Re Dr. Stoller* (via Witness Statement of the undersigned dated February 2020, Exhibit G), with such case

concluding in *Stoller v. Superior Court* (Apr. 13, 2022, No. S273151) ___ Cal.5th___ [2022 Cal. LEXIS 2116].

B. The Subsequent Contraction: SB 276, SB 714, and the Administrative Chilling of Legitimate Medical Exemptions

California's statutory compromise proved short-lived. The elimination of religious-based exemptions triggered an increase in clinical evaluations for medical exemptions, as families with complex medical histories—who had previously relied on religious exemptions—sought formal clinical review. Rather than respecting the individualized clinical judgments authorized by SB 277, the State responded with regulatory retrenchment.

In 2019, the Legislature enacted Senate Bills 276 and 714, dismantling the individualized discretion established four years earlier. Codified at Health and Safety Code §§ 120370 and 120372, this legislation stripped treating physicians of final clinical authority and established a centralized, state-administered electronic surveillance database.

Under § 120372(d), the California Department of Public Health was mandated to review medical exemptions and systematically flag those that failed to adhere strictly to federal criteria established by the Centers for Disease Control and Prevention (CDC), the Advisory Committee on Immunization Practices (ACIP), or the American Academy of Pediatrics (AAP). The statute empowered non-treating state health bureaucrats to revoke exemptions written by licensed clinicians and required automatic reporting of issuing physicians to the Medical Board of California for administrative discipline if five or more exemptions

were revoked in a calendar year. Cal. Health & Safety Code § 120372(d)(3)(C), (d)(7)–(8).

The threat of license revocation under SB 276 effectively chilled physicians from evaluating individualized risk beyond rigid CDC guidelines. This contraction of clinical independence is particularly alarming given the regulatory vacuum created by the National Childhood Vaccine Injury Act of 1986 (NCVIA), which preempts all design-defect claims against vaccine manufacturers. *See Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 243 (2011). Because Congress shielded manufacturers from traditional civil tort liability, judicial oversight over state vaccine mandates—especially under the Free Exercise Clause—serves as an indispensable structural check against centralized administrative overreach.

The political wind in California that moved SB277 (doctor discretion before Covid-19) to SB276 (regulatory lockdown during Covid-19) had an immediate, chilling effect on medical practice. Federal agency contraindications are notoriously narrow, addressing acute anaphylactic reactions or severe immunosuppression. They rarely account for broader clinical realities, such as familial genetic susceptibilities, complex autoimmune clustering within families, or emerging peer-reviewed risk assessments.

Although California law nominally protects alternative clinical methodologies under Business and Professions Code § 2234.1—which shields physicians offering complementary care upon informed consent, good-faith physical examination, and medical indication—the threat of license revocation under SB 276 effectively chilled physicians from evaluating individualized risk beyond rigid CDC guidelines. Indeed, two

California physicians (Drs. Stoller and Sutton) invoked the protections of § 2234.1 only to see their medical licenses revoked regardless of the asserted merits of their medical exemptions for medically vulnerable children. Such was the power of political winds on this issue before 2020 – effectively strong headwinds against any doctor associated with vaccine refusal. And those headwinds blew regardless of peer reviewed research supporting the doctor’s refusal. And then Covid-19 changed perspectives on vaccination, for the supermajority of Americans faced coercion of beliefs by employers, and in some instances government agencies, upon declining the third, fourth, fifth, sixth, seventh, and now eighth booster shot.

C. Public Choice Dynamics and the Perils of Over-Centralized Administrative Standards

The experience in California and across the country demonstrates the administrative hazard of subordinating clinical discretion to centralized regulatory bodies. When States eliminate religious exemptions and restrict medical exemptions to narrow federal guidance, they mistake administrative standardization for clinical certainty.

Medical and academic literature has long identified the institutional risks and conflicts inherent in centralized public health regulatory apparatuses. See, e.g., J. Lenzer, *Centers for Disease Control and Prevention: Protecting the Private Good?*, *BMJ*. 2015 May 15;350:h2362. <https://pubmed.ncbi.nlm.nih.gov/25979454/> (examining industry funding and institutional ties within federal agencies); P.M. Tereskerz et al., *Prevalence of Industry Support and Its Relationship to Research Integrity*, *Account Res.* 2009

Apr-Jun;16(2):78-105. <https://pubmed.ncbi.nlm.nih.gov/19353387/>; R. Smith, *Medical Journals Are an Extension of the Marketing Arm of Pharmaceutical Companies*, LoS Med. 2005 May;2(5):e138. <https://pubmed.ncbi.nlm.nih.gov/15916457/>; G.A. Fava, *Preserving Intellectual Freedom in Clinical Medicine*, Psychother Psychosom. 2009;78(1):1-5. <https://pubmed.ncbi.nlm.nih.gov/18852496/>

Because regulatory guidance from centralized agencies is subject to bureaucratic inertia, it is ill-suited to act as an unyielding ceiling on clinical discretion. Legitimate peer-reviewed research routinely documents nuanced outcomes in pediatric health across diverse patient cohorts, suggesting plausibility for clinical caution among practitioners. *See, e.g.,* B. Hooker et al., *Analysis of Health Outcomes in Vaccinated and Unvaccinated Children: Developmental Delays, Asthma, Ear Infections and Gastrointestinal Disorders*, SAGE Open Med. 2020 May 27;8: 2050312120925344. <https://pmc.ncbi.nlm.nih.gov/articles/PMC7268563/>

For religious minorities like the Old Order Amish, whose lifestyle, genetic isolation, and communal practices diverge significantly from standard metropolitan populations, the subordination of decentralized, individualized medicine to uniform federal metrics is devastating. Accommodating their faith under the Free Exercise Clause preserves the essential buffer between religious belief and centralized administrative overreach.

D. The Resulting Impasse: Religious Communities Deprived of Religious Exemptions Are Denied Neutral Medical Protection

California's experience reveals the structural trap created when a state eliminates religious exemptions. When religious accommodations are abolished, religious families are forced to rely solely on medical exemptions. But the state, perceiving the influx of medical requests as an evasion of its mandate, inevitably moves to restrict medical exemptions to rare, hyper-technical clinical criteria.

This dynamic falls heavily on insular religious minorities. The Old Order Amish in New York represent a genetically and culturally distinct population. Their healthcare is rooted in close communal relationships, specialized clinical interactions, and family-specific medical histories. By abolishing religious exemptions, New York forces these families into leaving the State, which mirrors the post-2015 exodus of families leaving California when their children's religious exemption was removed. A system that denies religious exemptions while strictly policing medical exemptions ceases to offer a neutral public safety standard; it becomes an instrument of cultural and religious exclusion.

IV. The Second Circuit's Departure from *Tandon* and *Mahmoud* Warrants This Court's Review to Reconsider *Smith*

The decision below highlights a growing division among lower federal courts regarding the application of the Free Exercise Clause to state health regulations.

In *Tandon*, this Court affirmed that "government regulations are not neutral and generally applicable,

and therefore merit strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise.” Under *Tandon*, comparability is evaluated by reference to the asserted government interest—here, limiting the transmission of infectious disease in congregate environments.

New York’s statutory structure fails this benchmark. New York permits secular exemptions: it allows medical exemptions, tolerates unvaccinated staff in school classrooms, and exempts non-school congregate assemblies. Each of these secular exceptions introduces the same epidemiological risk the State asserts against Petitioners. Yet New York categorically denies accommodations to Amish children attending their own parochial schools.

This disparate treatment between secular and religious objectors is precisely the double standard that demands strict scrutiny. As dissenting Justices of this Court have noted in the context of recent vaccine mandates, when individuals with medical exemptions can avail themselves of alternatives such as protective gear, social distancing, and regular testing, but those invoking religious exemptions cannot, the mandate fails general applicability. Modern legal scholarship recognizes that this Court’s evolving doctrine properly frames free exercise as an equality right, ensuring that religious objectors receive the same accommodations and alternative mitigation options extended to secular counterparts.

Following this Court’s remand in light of *Mahmoud*, the Second Circuit evaded strict scrutiny by recharacterizing New York’s law as a general

“health-and-safety condition” rather than interference with a child’s religious development. This formalistic distinction misapprehends *Mahmoud* and contradicts *Wisconsin v. Yoder*, 406 U.S. 205 (1972), and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). For the Amish, directing the education and physical integrity of their children in harmony with religious faith is an indivisible exercise of parental and religious duty.

The Second Circuit’s reliance on rational basis review demonstrates the continuing deficiencies of *Employment Division v. Smith*. In *Smith*, this Court replaced the traditional strict scrutiny standard of *Sherbert v. Verner*, 374 U.S. 398 (1963), with a categorical rule of rational basis for neutral laws of general applicability. Lower courts continue to utilize *Smith* as a shield to insulate state mandates that target minority faiths and subordinate fundamental religious exercise to bureaucratic expedience. This case presents an ideal vehicle to repudiate the flawed framework of *Smith* and restore strict scrutiny protections to the Free Exercise Clause.

Members of this Court have explicitly signaled the need to resolve this recurring constitutional conflict outside the rushed posture of the emergency shadow docket. Dissenting from the denial of certiorari in *Dr A. v. Hochul* (2022) 142 S.Ct. 2569, 2571, Justice Thomas with Justices Alito and Gorsuch emphasized the necessity of answering this question “in the normal course on our merits docket,” observing that recent state health measures “were not neutral toward religious exercise or generally applicable.” Concurring in related pandemic-era cases, Justices Barrett and Kavanaugh have similarly indicated that

the proper mechanism for evaluating individualized exemptions to vaccine mandates is through the normal certiorari route. The instant case is the ideal vehicle and its time has arrived for the merits.



CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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