

No. 24-319

---

---

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

---

Roman Catholic Diocese of Albany, et al.,  
*Petitioners,*

v.

Adrienne A. Harris, Superintendent, New York  
State Department of Financial Services; New York  
State Department of Financial Services,  
*Respondents.*

---

**On Petition for a Writ of Certiorari to the  
New York State Court of Appeals**

---

**BRIEF OF LINDSAY AND MATT MOROUN  
RELIGIOUS LIBERTY CLINIC AS *AMICUS  
CURIAE* IN SUPPORT OF PETITIONERS**

---

JOHN A. MEISER

*Counsel of Record*

DOMENIC CANONICO

LINDSAY & MATT MOROUN

RELIGIOUS LIBERTY CLINIC

Notre Dame Law School

1338 Biolchini Hall

Notre Dame, IN 46556

(574) 631-3880

jmeiser@nd.edu

*Counsel for Amicus Curiae*

---

---

**TABLE OF CONTENTS**

TABLE OF CONTENTS ..... i

TABLE OF AUTHORITIES ..... ii

INTEREST OF *AMICUS CURIAE* ..... 1

SUMMARY OF ARGUMENT ..... 2

ARGUMENT ..... 4

I. The abortion mandate impermissibly invites State officials to inquire into religious affairs and discriminates between groups of different faiths. .... 4

    A. New York’s law entangles civil authorities in fundamentally religious affairs. .... 4

    B. New York’s law discriminates between religions. .... 10

II. New York’s law will substantially harm religious charitable ministries and the communities they serve. .... 13

CONCLUSION ..... 23

## TABLE OF AUTHORITIES

### Cases

<i>Am. Legion v. Am. Humanist Ass’n</i> , 588 U.S. 29 (2019).....	12
<i>Carson v. Makin</i> , 596 U.S. 767 (2022).....	10
<i>City of Grants Pass v. Johnson</i> , 144 S. Ct. 2202 (2024).....	18, 19
<i>Cruz v. Beto</i> , 405 U.S. 319 (1972) (per curiam) .....	12
<i>Emp. Div., Dep’t of Human Resources v. Smith</i> , 494 U.S. 872 (1990).....	2
<i>Epperson v. Arkansas</i> , 393 U.S. 97 (1968).....	10
<i>Fulton v. City of Philadelphia</i> , 593 U.S. 522 (2021).....	2, 11, 12, 21
<i>Good News Club v. Milford Cent. Sch.</i> , 533 U.S. 98 .....	11
<i>Hosanna-Tabor Evangelical Lutheran Church &amp; Sch. v. EEOC</i> , 565 U.S. 171 (2012).....	5
<i>Jones v. Wolf</i> , 443 U.S. 595 (1979).....	5

<i>Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in N. Am., 344 U.S. 94 (1952)</i> .....	5, 7, 8, 10
<i>Lamb’s Chapel v. Center Moriches Union Free Sch. Dist., 508 U.S. 384 (1993)</i> .....	12
<i>Larson v. Valente, 456 U.S. 228 (1982)</i> .....	10, 11
<i>Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania, 591 U.S. 657 (2020)</i> .....	14
<i>Lynch v. Donnelly, 465 U.S. 668 (1984)</i> .....	12
<i>Martin v. City of Boise, 920 F.3d 584 (9th Cir. 2019)</i> .....	18
<i>NLRB v. Catholic Bishop of Chi., 440 U.S. 490 (1979)</i> .....	5
<i>Our Lady of Guadalupe v. Morrissey-Berru, 591 U.S. 732 (2020)</i> .....	5, 6, 9, 14, 17
<i>Serbian E. Orthodox Diocese for U.S. &amp; Can. v. Milivojevich, 426 U.S. 696 (1976)</i> .....	8
<i>Thomas v. Rev. Bd. of Ind. Emp. Sec. Div., 450 U.S. 707 (1981)</i> .....	8
<i>Town of Greece v. Galloway, 572 U.S. 565 (2014)</i> .....	12

<i>Trinity Lutheran Church of Columbia, Inc. v. Comer</i> , 582 U.S. 449 (2017).....	11
<i>W. Va. State Bd. of Educ. v. Barnette</i> , 319 U.S. 624 (1943).....	8, 10
<i>Watson v. Jones</i> , 80 U.S. 679 (1871).....	5, 8
<b>Statutes</b>	
H.B. 110, 152nd Gen. Assemb., Reg. Sess. (Del. 2024).....	22
Mass. Gen. Laws ch. 176A, § 8H.....	22
Me. Stat. tit. 24-A, § 4320-M.....	22
N.Y. Ins. Law § 4303 .....	2, 4, 6, 8, 15
Or. Rev. Stat. § 743A.066 .....	22
Or. Rev. Stat. § 743A.067 .....	22
<b>Other Authorities</b>	
Associated Press, <i>America’s Child Care Crisis Is Holding Back Moms Without College Degrees</i> , U.S. News & World Rep. (Apr. 23, 2024, 12:05 AM), <a href="https://bit.ly/3BB3lRC">https://bit.ly/3BB3lRC</a> .....	20
Brief for Nat’l All. to End Homelessness, et al., as Amici Curiae Supporting Respondents, <i>Grants Pass v. Johnson</i> , 144 S. Ct. 2202 (2024) (No. 23-175) .....	18

Byron Johnson et al., <i>Assessing the Faith-Based Response to Homelessness in America: Findings from Eleven Cities</i> , Baylor Inst. for Study of Relig. (2017) .....	18
Catechism of the Catholic Church (2d ed. 2016).....	16
Cathleen Kaveny, <i>Ethics at the Edges of Law</i> (2018).....	14
Catholic Charities USA, <i>And They Shall Know Us By Our Love</i> , <a href="https://bit.ly/3YtOKQT">https://bit.ly/3YtOKQT</a> (last visited Oct. 20, 2024) .....	16
David Masci, <i>Where Major Religious Groups Stand on Abortion</i> , Pew Rsch. Ctr. (June 21, 2016), <a href="https://bit.ly/3NfWtvv">https://bit.ly/3NfWtvv</a> .....	13
Emilie Kao, <i>Religious Discrimination Makes Children Pay the Price</i> , Heritage Found. (Nov. 16, 2020), <a href="https://bit.ly/4dxhEnq">https://bit.ly/4dxhEnq</a> .....	19
<i>Faith Based Ministries and Service Resource Directory</i> , N.Y.S. Dep't of Health (April 18, 2019), <a href="https://bit.ly/3YckUQR">https://bit.ly/3YckUQR</a> .....	21
Islamic Relief USA, <i>Mission, Vision &amp; Values</i> , <a href="https://bit.ly/3NRo6eV">https://bit.ly/3NRo6eV</a> (last visited Oct. 17, 2024) .....	17
J. Bryan Hehir, <i>Charity, Justice, and the Church in Boston, in Two Centuries of Faith</i> 51 (Thomas H. O'Connor ed., 2009).....	19

Jessica Eby et al., <i>The Faith Community's Role in Refugee Resettlement in the United States</i> , 24 J. Refugee Stud. 586 (2011).....	20
John Kelly, <i>In Foster Care, Emergency Shelters Frequently Come Under Fire</i> , The Imprint (March 11, 2019, 9:42 AM), <a href="https://bit.ly/3TTTuwz">https://bit.ly/3TTTuwz</a> .....	19
<i>Less God, Less Giving? Religion and Generosity Feed Each Other in Fascinating Ways</i> , Philanthropy Roundtable (Winter 2019), <a href="https://bit.ly/4ewLI4">https://bit.ly/4ewLI4</a> .....	20
Leviticus 19:34.....	17
Liam Stack, <i>A Look Inside New York's Swirling Kaleidoscope of Faiths</i> , N.Y. Times (Dec. 19, 2022), <a href="https://bit.ly/3XXbJCG">https://bit.ly/3XXbJCG</a> .....	7, 11, 15
Mennonite Central Committee, <i>Principles and Practices</i> (2011), <a href="https://bit.ly/3NtJEhp">https://bit.ly/3NtJEhp</a> .....	17
Moshe Borowski, <i>Chayim Aruchim: When Six Weeks Becomes a Lifetime</i> , 5 Towns Jewish Times (May 30, 2014), <a href="https://bit.ly/3ZINPgb">https://bit.ly/3ZINPgb</a> .....	7
Nat'l All. to End Homelessness, <i>Faith-Based Organizations: Fundamental Partners in Ending Homelessness</i> (2017) .....	18
Natalie D. Riediger et al., <i>A Descriptive Analysis of Food Pantries in Twelve American States</i> , 22 BMC Pub. Health 525 (2022) .....	20

Natalie Goodnow, <i>The Role of Faith-Based Agencies in Child Welfare</i> , Heritage Found. (May 22, 2018), <a href="https://bit.ly/3Y8OEOs">https://bit.ly/3Y8OEOs</a> .....	19
<i>New York Religious Organizations</i> , Cause IQ, <a href="https://bit.ly/3BzAixT">https://bit.ly/3BzAixT</a> (last visited Oct. 2, 2024) ..	15
OSV News, <i>Harris to Skip Al Smith Dinner, Annual NY Catholic Charity Event and Staple for Presidential Nominees</i> , Nat'l Cath. Rep. (Sept. 23, 2024), <a href="https://bit.ly/4gWAVSf">https://bit.ly/4gWAVSf</a> .....	21
Pope Francis, <i>Fratelli Tutti: On Fraternity and Social Friendship</i> (2020).....	16
Qur'an 2:215 .....	17
<i>Religious Landscape Study: Religious Composition of Adults in New York</i> , Pew Rsch. Ctr. (2014), <a href="https://bit.ly/3UetLyY">https://bit.ly/3UetLyY</a> .....	15
<i>Religious Organizations in the US</i> , IBIS World (Sept. 2023), <a href="https://bit.ly/3XV5IGu">https://bit.ly/3XV5IGu</a> .....	15
Riyadh Mohammed, <i>Hot Trend in 2017: Rise of Islamic Banks on Main St. USA</i> , CNBC (Dec. 2, 2016, 9:16 AM), <a href="https://bit.ly/3zHLmIF">https://bit.ly/3zHLmIF</a> .....	7
Stephanie H. Barclay, <i>An Economic Approach to Religious Exemptions</i> , 72 Fla. L. Rev. 1211 (2020).....	14
Suzann Morris & Linda K. Smith, <i>Examining the Role of Faith-Based Child Care</i> , Bipartisan Pol'y Ctr., May 2021 .....	20



U.S. Religious Landscape Survey: Religious Beliefs  
and Practices, Pew Rsch. Ctr. (Jun. 1, 2008),  
<https://bit.ly/3N7SdhN>..... 8

Zakat Foundation of America, *The Story of Zakat  
Foundation of America*, <https://bit.ly/3zUgfKb> (last  
visited Oct. 17, 2024) ..... 17

## INTEREST OF *AMICUS CURIAE*<sup>1</sup>

Notre Dame Law School's Lindsay and Matt Moroun Religious Liberty Clinic promotes and defends religious freedom for all people. It advocates for the right of all people to exercise, express, and live according to their religious beliefs. And it defends individuals and organizations of all faith traditions against interference with these fundamental liberties. It has represented groups from an array of faith traditions to defend the right to religious exercise, to preserve sacred lands from destruction, to promote the freedom to select religious ministers and shape religious doctrine, and to prevent discrimination against religious believers and institutions.

The Clinic has an interest in protecting religious organizations from infringements of their First Amendment rights—and, in particular, in ensuring that religious charitable groups may continue their important ministries of service to their communities.

---

<sup>1</sup> No party or counsel for a party wrote any part of this brief. No person other than *amicus* and its counsel made any financial contribution to the preparation of this brief. Counsel for all parties were notified of *amicus*'s intention to file a brief ten days in advance of the filing deadline pursuant to Supreme Court Rule 37.2.

## SUMMARY OF ARGUMENT

New York’s abortion-coverage mandate requires many faith-based organizations to violate their deeply held religious beliefs about the sanctity of life. The exemption New York offers to only a narrowly drawn, ill-defined subset of preferred religious groups does not remedy that dramatic intrusion into free exercise rights. Indeed, it only compounds the problem.

New York requires religious organizations—regardless of their beliefs about human life—to pay for abortion coverage. It purports to guard against the obvious harm to religious freedom that results from that command with one idiosyncratic, narrowly drawn exemption: A religious group need not comply with the abortion mandate if (but only if) its “purpose” is to “inculcat[e] . . . religious values” and it “primarily employs” and “serves” only members of its own faith. N.Y. Ins. Law § 4303(cc)(5)(A)(i), (ii), (iii). As Petitioners demonstrate, New York’s mandate, with its poorly drawn religious exemption, plainly violates the First Amendment and basic free exercise principles articulated under *Employment Division v. Smith*, 494 U.S. 872 (1990), and *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021).

But New York’s law raises even deeper First Amendment problems than that. The law impermissibly invites State officials to probe religious groups’ beliefs, motivations, and organizational characteristics. This Court has made clear, time and again, that civil officials have no authority (or ability) to entangle themselves in questions like that. What’s more, that inquiry and the idiosyncratic lines drawn by the law will impermissibly discriminate between

religions. Indeed, by picking and choosing what kinds of religious ministries get favor, New York necessarily privileges some faiths and some forms of religious exercise over others. Faiths with more inward-focused ministries can receive safe haven from the abortion mandate, while those that require outward evangelization or service to the community are denied the same. This Court has long held that the First Amendment bars exactly this kind of discrimination.

And New York's discriminatory law will not even further its purported goals but instead threatens harmful consequences for New York's most vulnerable populations—consequences *no* State can have an interest in. Many faith-based charities have deep-seated objections to abortion and will modify their behavior to avoid subsidizing what they see as a grave wrong. Their only options will be to reduce their ministries to conform to New York's narrow vision of worthy religious activity or—for the many groups that *cannot* conform by turning away nonbelievers in need—to simply shut down. Either outcome would be devastating to those who rely on the great variety of services religious organizations provide, including shelter, meals, foster care, child care, and much more.

This Court's review is needed to prevent these damaging consequences, to protect the constitutional rights of all religious organizations, and to safeguard their charitable ministries for all who rely on them.

## ARGUMENT

### **I. The abortion mandate impermissibly invites State officials to inquire into religious affairs and discriminates between groups of different faiths.**

New York’s abortion-coverage mandate, with its confined scheme for religious exemptions, offends the First Amendment in a multitude of ways. As Petitioners ably demonstrate, the offer of exemption only to entities whose “purpose” is “[t]he inculcation of religious values” and which primarily serve and employ co-religionists, N.Y. Ins. Law § 4303(cc), plainly triggers strict scrutiny under *Fulton* and violates the straightforward rule of this Court’s free exercise cases. *See* Pet. 23–33. But that is far from its only First Amendment offense. New York’s invitation to State regulators to scrutinize the religious missions of faith-based organizations flouts basic principles of the First Amendment by entangling civil authorities in central questions of faith. And worse still, New York’s denial of an exemption to organizations that don’t engage in the “right” sort of religious exercise ultimately discriminates along religious lines.

The First Amendment simply does not tolerate actions like these.

#### **A. New York’s law entangles civil authorities in fundamentally religious affairs.**

New York’s law invites State regulators to impermissibly entangle themselves in core matters of faith by scrutinizing an organization’s religious doctrine, organization, and membership. The First Amendment prohibits the State from doing just that.

“The First Amendment protects the right of religious institutions to ‘decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.’” *Our Lady of Guadalupe v. Morrissey-Berru*, 591 U.S. 732, 737 (2020) (quoting *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952)). This church autonomy doctrine recognizes that the State lacks authority even to “inquire” into “the doctrinal theology, the usages and customs, the written laws, and fundamental organization” of religious organizations. *Watson v. Jones*, 80 U.S. 679, 733 (1871); see *Jones v. Wolf*, 443 U.S. 595, 602 (1979) (State decisions must “involve[] no consideration of doctrinal matters,” including “the tenets of faith.”). That “very process of inquiry” threatens the “rights guaranteed by the Religion Clauses” of the First Amendment. *NLRB v. Catholic Bishop of Chi.*, 440 U.S. 490, 502 (1979). Nor is this doctrine limited to “churches” as such; it applies generally to organizations of a religious character. See, e.g., *Our Lady of Guadalupe*, 591 U.S. at 746, 756–57; *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 190 (2012).

The Religion Clauses likewise bar the government from wading into the question of who counts as a “member” of a religious community. See *Our Lady of Guadalupe*, 591 U.S. at 761–62; *Kedroff*, 344 U.S. at 106–10. In *Kedroff v. Saint Nicholas Cathedral*, for example, this Court forbade New York State from opining on the “strictly . . . ecclesiastical” question of who leads a church. 344 U.S. at 115. The First Amendment, this Court explained, reserves for religious organizations “an independence from secular

control or manipulation” that promises them sole authority over that determination. *Id.* at 116. And in *Our Lady of Guadalupe*, this Court rejected the argument that a school could invoke the ministerial exception only for those employees who were “practicing” members of the school’s religion. 591 U.S. at 761–62. Indeed, inviting a court to “determin[e] whether a person is a ‘co-religionist’ . . . would risk . . . [impermissible] entanglement in religious issues.” *Id.*

The abortion mandate’s narrow religious exemption runs afoul of these bedrock principles by inviting the State to impose regulatory obligations on the basis of its own answers to questions like these. In particular, eligibility for the exemption turns on (1) whether an organization’s “purpose” is “[t]he inculcation of religious values,” and (2) whether the organization and those it employs and serves “share” the same “religious tenets.” N.Y. Ins. Law § 4303(cc)(5)(A)(i), (ii), (iii). To apply these criteria, New York must evaluate—and make judgments about—the mission, doctrine, and membership of religious groups. Those are tasks that the State is neither competent nor entitled to undertake.

To start, it is not clear how the State is to determine what counts as “[t]he inculcation of religious values.” *Id.* § 4303(cc)(5)(A)(i). Consider a few examples from New York. What of an Islamic financial institution, for instance, that exists specifically to provide financing needs for the Muslim

community in accordance with religious law?<sup>2</sup> Or an Orthodox Jewish medical organization that works to ensure that Orthodox Jews are given religiously appropriate end-of-life care?<sup>3</sup> Or a Catholic Church whose pastor “spends more than half his time each week” as a religious “psychologis[t] for . . . immigrants”?<sup>4</sup> Or a vocational and professional training program run by an Antioch Baptist pastor who preaches that “God don’t want you to be poor another day in your life”?<sup>5</sup>

Do these activities “inculcate” “religious values”? And where would a regulator draw that line? Must a group explicitly “teach” religious beliefs as it lives them out? What if it believes that charitable work itself furthers religious teaching? And what evidence would a religious organization need to satisfy this requirement? Inquiries like these present exactly the sort of governmental entanglement in religious affairs that is barred by the First Amendment. They strike at the heart of religious organizations’ “power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Kedroff*, 344 U.S. at 116.

Even if the State could accurately, and permissibly, identify qualifying “religious values” and

---

<sup>2</sup> See, e.g., Riyadh Mohammed, *Hot Trend in 2017: Rise of Islamic Banks on Main St. USA*, CNBC (Dec. 2, 2016, 9:16 AM), <https://bit.ly/3zHLmIF>.

<sup>3</sup> See, e.g., Moshe Borowski, *Chayim Aruchim: When Six Weeks Becomes a Lifetime*, 5 Towns Jewish Times (May 30, 2014), <https://bit.ly/3ZINPGB>.

<sup>4</sup> Liam Stack, *A Look Inside New York’s Swirling Kaleidoscope of Faiths*, N.Y. Times (Dec. 19, 2022), <https://bit.ly/3XXbJCG>.

<sup>5</sup> *Id.*



those organizations that promote them, it cannot restrict exemptions based on the State's own assessment of whether the religious beliefs of the organization's members pass muster. *See* N.Y. Ins. Law § 4303(cc)(5)(A)(ii), (iii). A State can neither define for itself an entity's religious tenets nor decide what degree of similarity in belief is enough for members to "share" those tenets.

First, it is not clear what a government official could consult to determine a faith's "tenets." Many faiths do not have formally or comprehensively codified doctrine. Even for those that do, there can be wide disagreement or confusion over official tenets.<sup>6</sup> And, regardless, "the guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect." *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 715–16 (1981).

Second, the government has no power to decide what constitutes orthodox belief, let alone to decide whose beliefs are sound, or sound enough, to qualify for membership in a religious group. *See W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (The State may not "prescribe[] what shall be orthodox in . . . religion."); *Watson*, 80 U.S. at 729 (The government cannot "be as competent in the ecclesiastical law and religious faith . . . as the ablest men in each are in reference to their own."); *Serbian E. Orthodox Diocese for U.S. & Can. v. Milivojevich*, 426 U.S. 696, 714 n.8 (1976) (same). "Are Orthodox

---

<sup>6</sup> *See, e.g.*, U.S. Religious Landscape Survey: Religious Beliefs and Practices, Pew Rsch. Ctr. (Jun. 1, 2008), <https://bit.ly/3N7SdhN> (indicating that 68% of Americans affiliated with a major religion agree that there is more than one true way to interpret the teachings of their religion).

Jews and non-Orthodox Jews coreligionists? . . . Would Presbyterians and Baptists be similar enough? Southern Baptists and Primitive Baptists?" *Our Lady of Guadalupe*, 591 U.S. at 761. These are questions, of course, the government cannot answer.

Nor do other questions required by New York's law fare any better. Who, for example, is the primary population "served" by a church that is active in its community? Is it those who worship in the congregation on Sundays? Or is it those who live in the church's transitional housing, who eat the food offered at the church's neighborhood pantry, or who participate in the church's addiction recovery programs? Such a church likely does not even know the religious affiliation of those to whom it ministers. Does it count? Or, in order to do so, must it start asking the tired or hungry or ailing what they believe about God, and turn away those whose beliefs are too dissimilar? New York, plainly, cannot force such a choice upon a religious group.

\* \* \*

At bottom, the government has no authority or ability to make religious judgments like those implicated by New York's law. In asking such questions, the State pressures organizations to change their religious conduct, ministry, structure, and membership to conform to the *State's* vision of worthy religious activity. The First Amendment promises Petitioners, and all religious believers, "independence" from just such "secular control [and] manipulation." *Kedroff*, 344 U.S. at 116.

**B. New York’s law discriminates between religions.**

By “scrutinizing whether and how” religious institutions pursue their missions, New York’s law not only raises “serious concerns about state entanglement” but also threatens to impose “denominational favoritism.” *Carson v. Makin*, 596 U.S. 767, 787 (2022). Indeed, the State explicitly favors religious groups of a particular kind—namely those who direct their attention more inwards—to the exclusion of groups whose beliefs lead them to interact more broadly with the outside community. The First Amendment plainly does not permit the government to choose religious favorites in this way.

“The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.” *Larson v. Valente*, 456 U.S. 228, 244 (1982). No government official may “prescribe[] what shall be orthodox in . . . religion.” *Barnette*, 319 U.S. at 642. The government “must be neutral” not only “in matters of religious theory [and] doctrine,” but also regarding “religious . . . practice.” *Epperson v. Arkansas*, 393 U.S. 97, 103–04 (1968). Thus, “no State can pass laws . . . that prefer one religion over another.” *Larson*, 456 U.S. at 246 (quotation marks omitted).

This Court has struck down laws that even indirectly result in such favoritism. In *Larson*, for example, a Minnesota statute placed requirements only on “those religious organizations that solicit more than fifty per cent of their funds from nonmembers.” *Id.* at 230. While the statute did not discriminate facially between religious denominations, the Court invalidated it because it “effectively distinguishe[d]

between ‘well-established churches’ and ‘churches which are new and lacking in a constituency.’ *Id.* at 246 n.23. “Th[e] constitutional prohibition of denominational preferences is inextricably connected with the continuing vitality of the Free Exercise Clause.” *Id.* at 245.

The circumscribed criteria of New York’s exemption present the same kind of denominational discrimination condemned in *Larson*. Here, the State’s preference is not for “well-established” religious groups but for those whose mission and beliefs lead them to serve and promote religious values among their own coreligionists. That leaves out groups whose faith leads them to pursue a more outward religious mission, whether through evangelization or service. That undoubtedly leaves many religious groups in the cold.<sup>7</sup>

Nor has the right to freely exercise one’s religion ever been limited to the inculcation of faith among fellow believers. Rather, our tradition—and this Court’s caselaw—is rich with examples of people of faith who go into the world to speak to, interact with, and serve those of different beliefs. *See, e.g., Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 454 (2017) (preschool serving “students of any religion”); *Fulton*, 593 U.S. at 526–30 (Catholic foster care agency that served families and children of different faiths); *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 103 (2001) (Christian youth group

---

<sup>7</sup> New York is a “home for many different world religions,” which “express their faith . . . in a multitude of ways.” *Stack, supra* note 4. Often that includes through service or ministry to those outside their own faith community—as is the case with the Petitioners, Pet. 10, but also many others. *See infra* Part II.

with evangelizing mission); *Cruz v. Beto*, 405 U.S. 319, 322 (1972) (per curiam) (prisoner who evangelized and “shared his Buddhist religious material with other prisoners”). Indeed, this Court has recognized that the Religion Clauses contemplate just this sort of public religious pluralism. See, e.g., *Lynch v. Donnelly*, 465 U.S. 668, 677 (1984) (America’s history replete with “evidence of accommodation of all faiths and all forms of religious expression, and hostility toward none”); *Town of Greece v. Galloway*, 572 U.S. 565, 584 (2014) (“These ceremonial [legislative] prayers strive for the idea that people of many faiths may be united in a community of tolerance and devotion.”); *Lamb’s Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384, 400 (1993) (Scalia, J., concurring) (“[T]hose who adopted our Constitution . . . believed that the public virtues inculcated by religion are a public good.”); *Am. Legion v. Am. Humanist Ass’n*, 588 U.S. 29, 38 (2019) (“The Religion Clauses of the Constitution aim to foster a society in which people of all beliefs can live together harmoniously . . .”).

New York’s discriminatory religious exemption is at odds with these basic principles of the First Amendment. Having created “a formal mechanism for granting exceptions” from its mandate, the State may not decide that only its preferred form of religious exercise is “worthy of solicitude.” *Fulton*, 593 U.S. at 537.

**II. New York’s law will substantially harm religious charitable ministries and the communities they serve.**

New York’s mandate unquestionably threatens serious consequences for the many religious charitable organizations that serve the public but oppose abortion. Yet those consequences reach far beyond the organizations themselves. Many such organizations cannot—and thus *will not*—help pay for abortions, meaning New York’s law will not even further its purported goals. Rather, by narrowly limiting the kinds of religious organizations that can be exempted from that demand, New York leaves such groups with only two choices: limit their ministries or shut down altogether. Either choice will harm not only those groups but also the many vulnerable communities that depend on their charity—a consequence which surely the State has no interest in encouraging.

The number of organizations affected by the abortion mandate is substantial. Indeed, a great many faith traditions teach that abortion is a grave moral wrong. *See* David Masci, *Where Major Religious Groups Stand on Abortion*, Pew Rsch. Ctr. (June 21, 2016), <https://bit.ly/3NfWtvv>. Many Roman Catholics and Southern Baptists, for example, believe abortion is wrong in all or most circumstances; many members of the Church of Jesus Christ of Latter-day Saints take a similar position. *Id.* Among Muslims and Jews, there is a somewhat broader range of views on when and whether abortion is morally permissible. *Id.* And, of course, “[e]ven when a religious institution has a clearly stated policy, church members may not always agree.” *Id.* In short, in the eyes of many individuals and groups who oppose abortion for religious reasons,

subsidizing abortions is morally unacceptable. *Cf.*, e.g., *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 591 U.S. 657, 668 (2020) (Catholic organization objected to an accommodation under which its actions would “directly cause others to provide contraception”).

The State’s demand that such organizations abandon their deeply held beliefs to participate in what they understand to be a grave sin is unlikely to work. Indeed, for many faith-based organizations, their religious convictions are “the very reason for [their] existence.” *Our Lady of Guadalupe*, 591 U.S. at 738. Such organizations are often willing to accept dramatic consequences to avoid compromising their faith. See Stephanie H. Barclay, *An Economic Approach to Religious Exemptions*, 72 Fla. L. Rev. 1211, 1231–38 (2020); see also Cathleen Kaveny, *Ethics at the Edges of Law* 186 (2018) (discussing Catholic Charities of Boston’s decision to close its adoption program because it could not “reconcile the teaching of the church, which guides [Catholic Charities’] work, and the statutes and regulations of the Commonwealth”).

These groups are unlikely to choose to facilitate abortion services as the State hopes. New York’s exemption will instead put such groups to a different choice to avoid severe penalty: (1) they can limit the scope of their ministries in order to gain the State’s approval, or (2) they can shut down altogether. The State’s supposed effort to make abortions more available will incentivize many charitable organizations not to do that, but instead to do something else that surely the State has no interest

in: *withhold* an array of services that they presently provide to the wider community.

Consider, first, a relatively straightforward consequence: New York’s requirement that a religious organization *employ* primarily coreligionists. *See* N.Y. Ins. Law § 4303(cc)(5)(A)(ii). Religious organizations employ thousands of people in New York and roughly one million nationwide.<sup>8</sup> Limiting those positions to individuals who share an organization’s religious beliefs would harm any number of people—primarily, of course, those individuals who might find themselves without a job. But instructing such organizations to severely limit their pool of potential employees also threatens to undermine the viability of the organizations themselves. Smaller religious groups, in particular, may find it difficult to find coreligionists to fill positions. In 2014, Pew Research Center found that many minority religions—including Jehovah’s Witnesses, Muslims, Buddhists, Hindus, and members of the Church of Jesus Christ of Latter-day Saints—each represented two percent or less of the total population.<sup>9</sup> In any given area, or for many other faiths, that number might be much smaller.<sup>10</sup> For many religious organizations, New York’s employment requirement may simply be impossible to

---

<sup>8</sup> *See New York Religious Organizations*, Cause IQ, <https://bit.ly/3BzAixT> (last visited Oct. 2, 2024); *Religious Organizations in the US*, IBIS World (Sept. 2023), <https://bit.ly/3XV5IGu>.

<sup>9</sup> *Religious Landscape Study: Religious Composition of Adults in New York*, Pew Rsch. Ctr. (2014), <https://bit.ly/3UetLyY>.

<sup>10</sup> Consider just New York City, where, in addition to many larger religious groups, “[t]here are Buddhist and Jain temples, Sikh soup kitchens, Orthodox grade schools that teach in Greek, and communities that follow Bon.” Stack, *supra* note 4.



satisfy. The natural consequence will be to force such organizations to limit or cease their work.

But the consequences of that employment restriction likely pale in comparison to New York’s broader requirement that an organization primarily *serve* its own faith community. For many religious groups, that demand itself violates their beliefs, which dictate service to all, regardless of creed. Catholic Charities USA, for instance, proclaims: “We serve all those in need who come to us—regardless of . . . faith—not because they are Catholic, but because we are.”<sup>11</sup> Cf. Pope Francis, *Fratelli Tutti: On Fraternity and Social Friendship* ¶ 80 (2020) (in the parable of the Good Samaritan, Jesus “asks us not to decide who is close enough to be our neighbour, but rather that we ourselves become neighbours to all”). Indeed, in Catholic teaching, “[c]harity is superior to all the virtues”; it is the “virtue by which we love God above all things . . . and our neighbor as ourselves for the love of God.” Catechism of the Catholic Church ¶¶ 1822, 1826. Catholics are thus called to “works of mercy,” especially in “feeding the hungry, sheltering the homeless, clothing the naked, visiting the sick and imprisoned, . . . and giving alms to the poor.” *Id.* ¶ 2447. A Catholic charitable organization *cannot* reduce its ministry—or turn away those in need—based on what the person might herself believe.

Of course, it is hardly only Catholic organizations who share such a mission. The Mennonite Central Committee, a humanitarian arm of the Mennonite Church, explains that its work is motivated by the

---

<sup>11</sup> Catholic Charities USA, *And They Shall Know Us By Our Love*, <https://bit.ly/3YtOKQT> (last visited Oct. 20, 2024).

conviction that “God wills the well-being of all people,” and it declares: “[W]e expect to encounter Jesus not only within familiar walls, but also in the stranger and in our apparent enemies.”<sup>12</sup> Islamic Relief USA, “guided . . . by the revelations contained within the Qur’an and prophetic example,” “provides relief and development in a dignified manner regardless of gender, race, or religion.”<sup>13</sup> Another Islamic charitable group, the Zakat Foundation of America, states emphatically: “*What we never do* is ask those we serve about their race, ethnicity, or religious beliefs as a test of aiding them.”<sup>14</sup> Cf. Qur’an 2:215 (“Whatever donations you give are for parents, relatives, orphans, the poor, and needy travelers. Whatever good you do is certainly well known to Allah.”). And love of stranger is a central command in the Hebrew Scriptures. See, e.g., Leviticus 19:34 (“You shall treat the stranger who sojourns with you as the native among you, and you shall love him as yourself, for you were strangers in the land of Egypt: I am the Lord your God.”).

If such groups can operate only on the condition that they refuse to help those who do not share their faith, they may find that they have lost “the very reason for [their] existence.” *Our Lady of Guadalupe*, 591 U.S. at 738. Indeed, they may not be able to operate in accordance with that faith if they are told

---

<sup>12</sup> Mennonite Central Committee, *Principles and Practices* (2011), <https://bit.ly/3NtJEhp>.

<sup>13</sup> Islamic Relief USA, *Mission, Vision & Values*, <https://bit.ly/3NRo6eV> (last visited Oct. 17, 2024).

<sup>14</sup> Zakat Foundation of America, *The Story of Zakat Foundation of America*, <https://bit.ly/3zUgfKb> (last visited Oct. 17, 2024).

they must turn away nonbelievers. They may instead shut down altogether. That, perversely, will hurt those outside these religious groups most of all, as vulnerable people and communities in need lose an array of critical services on which they depend.

For example, religious organizations “serve as the backbone of the emergency shelter system in this country,” and operate roughly 40% of the nation’s shelter beds for single adults each night. *City of Grants Pass v. Johnson*, 144 S. Ct. 2202, 2209 (2024) (quoting Nat’l All. to End Homelessness, *Faith-Based Organizations: Fundamental Partners in Ending Homelessness* 1 (2017)).<sup>15</sup> In some cities, religious shelters account for as high as 70 to 90% of beds.<sup>16</sup> These shelters play a crucial role and are currently too scarce. In the United States, roughly 653,100 people are homeless on any given night, yet there is only enough shelter for 348,630 people at a time. Brief for Nat’l All. to End Homelessness, et al., as Amici Curiae Supporting Respondents at 12, *Grants Pass*, 144 S. Ct. 2202 (No. 23-175). Some have described homelessness as the “defining public health and safety crisis in the western United States” today. *Grants Pass*, 144 S. Ct. at 2208 (citation omitted). Compelling religious

---

<sup>15</sup> See also Byron Johnson et al., *Assessing the Faith-Based Response to Homelessness in America: Findings from Eleven Cities*, Baylor Inst. for Study of Relig. 20 (2017) (estimating nearly 60%); cf. *Martin v. City of Boise*, 920 F.3d 584, 605 (9th Cir. 2019) (Berzon, J., concurring) (finding that two of the three homeless shelters in Boise, making up over 70% of the beds available, were operated by Christian nonprofit organizations), *abrogated by Grants Pass*, 144 S. Ct. 2202.

<sup>16</sup> Johnson et al., *supra* note 15, at 20–21; Nat’l All. to End Homelessness, *supra*, at 1.

shelters to close would simply intensify the “homelessness crisis,” *id.*, in many cities.

Faith-based organizations are engaged in countless other charitable endeavors. Religious organizations have historically supplemented overtaxed public resources in the foster care system. By one count there are more than 8,000 faith-based foster care and adoption agencies in the United States, which in some states are responsible for facilitating more than 25% of foster care adoptions.<sup>17</sup> These ministries have already dwindled in some states under legal pressures similar to those imposed here. In Boston, for example, Catholic Charities “was providing 31 percent of the special needs adoptions in the state” when it was forced to withdraw from providing any adoption services because of new laws relating to gender and sexual orientation.<sup>18</sup> Such closures place additional pressure on a system that is already failing to care adequately for the children it serves.<sup>19</sup> And faith-based organizations routinely care for children in other ways. One recent survey found

---

<sup>17</sup> Emilie Kao, *Religious Discrimination Makes Children Pay the Price*, Heritage Found. (Nov. 16, 2020), <https://bit.ly/4dxhEnq>; Natalie Goodnow, *The Role of Faith-Based Agencies in Child Welfare*, Heritage Found. (May 22, 2018), <https://bit.ly/3Y8OEOs>.

<sup>18</sup> J. Bryan Hehir, *Charity, Justice, and the Church in Boston, in Two Centuries of Faith* 51, 70–71 (Thomas H. O’Connor ed., 2009).

<sup>19</sup> See, e.g., John Kelly, *In Foster Care, Emergency Shelters Frequently Come Under Fire*, The Imprint (March 11, 2019, 9:42 AM), <https://bit.ly/3TTTuwz>; see also Kao, *supra* note 17 (highlighting religious discrimination against religious foster care agencies in some states that forced them to shut down and that displaced 2,000–3,000 children in one state alone).

that, of the 31% of working-parent households who depend on center-based childcare, more than half send their children to one affiliated with a faith-based organization.<sup>20</sup> These services are crucial in a time when “high-quality child care programs are prohibitively expensive, government assistance is limited, and daycare openings are sometimes hard to find at all.”<sup>21</sup>

The list continues. Studies have shown that religious organizations operate nearly two-thirds of the food pantries in twelve studied states<sup>22</sup>; assist in resettling 70% of all refugees arriving in the United States<sup>23</sup>; “care for one out of every five U.S. hospital patients”; “provide 130,000 alcohol recovery programs”; offer 120,000 employment-related services; and support those living with HIV/AIDS at a rate of “one ministry for every 46 people infected with the virus.”<sup>24</sup> New York itself is home to hundreds of faith-based charities, including over one-hundred HIV/AIDS programs, over one hundred prison ministries, and more than fifty domestic violence

---

<sup>20</sup> Suzann Morris & Linda K. Smith, *Examining the Role of Faith-Based Child Care*, Bipartisan Pol’y Ctr., May 2021, at 3.

<sup>21</sup> Associated Press, *America’s Child Care Crisis Is Holding Back Moms Without College Degrees*, U.S. News & World Rep. (Apr. 23, 2024, 12:05 AM), <https://bit.ly/3BB3IRC>.

<sup>22</sup> Natalie D. Riediger et al., *A Descriptive Analysis of Food Pantries in Twelve American States*, 22 BMC Pub. Health 525, at 6–10 (2022).

<sup>23</sup> See Jessica Eby et al., *The Faith Community’s Role in Refugee Resettlement in the United States*, 24 J. Refugee Stud. 586, 591 (2011).

<sup>24</sup> *Less God, Less Giving? Religion and Generosity Feed Each Other in Fascinating Ways*, Philanthropy Roundtable (Winter 2019), <https://bit.ly/4ewLI48>.

programs.<sup>25</sup> Just last year, the Alfred E. Smith Memorial Foundation, a Catholic organization well-known for its annual charity dinner, raised a record \$7.3 million to distribute to organizations serving “the poor, sick, and underprivileged within the Archdiocese of New York regardless of race, *creed* or color.”<sup>26</sup>

\* \* \*

In New York and around the county, communities depend on the charitable services of religious organizations—organizations which, by and large do not require the people they serve to personally share their same beliefs. For many organizations, they cannot even ask that question, as turning away someone in need is anathema. But now, New York pressures such organizations to do just that. Under penalty of law, the State gives them three “choices”: either violate their religious beliefs against abortion, scale back their ministries of evangelization or charity (often *itself* a violation of their religious commands), or simply shut down altogether.

In recent years, this Court has made clear that governments may not force religious believers to either “[g]ive up [their] sincerely held religious beliefs or give up serving” the broader community in this way. *Fulton*, 593 U.S. at 625 (Gorsuch, J., concurring). This Court’s review is needed to protect those central rights

---

<sup>25</sup> *Faith Based Ministries and Service Resource Directory*, N.Y.S. Dep’t of Health (April 18, 2019), <https://bit.ly/3YckUQR>.

<sup>26</sup> OSV News, *Harris to Skip Al Smith Dinner, Annual NY Catholic Charity Event and Staple for Presidential Nominees*, Nat’l Cath. Rep. (Sept. 23, 2024), <https://bit.ly/4gWAVSf> (emphasis added). Among the grantees is Elizabeth Seton Children’s Center, the region’s largest long-term care center for children with complex medical needs. *Id.*

for an array of religious organizations, and to safeguard the vast network of services they provide for all who depend upon them. That intervention is needed to secure these crucial resources not only in New York, but indeed in the many other states around the country with similar laws.<sup>27</sup>

---

<sup>27</sup> Oregon, for example, requires all health benefit plans to cover abortion, Or. Rev. Stat. § 743A.067(2)(g), and its religious employer exemption is identical to New York's, *see id.* § 743A.067(1)(e) & (9); *id.* § 743A.066(4). Maine and Massachusetts have mandates incorporating even narrower religious exemptions that extend only to churches and qualifying organizations operated by churches. Me. Stat. tit. 24-A, § 4320-M; Mass. Gen. Laws ch. 176A, § 8H. And other states are sure to follow. *See, e.g.*, H.B. 110, 152nd Gen. Assemb., Reg. Sess. (Del. 2024) (codified in scattered sections of Del. Code Ann.).

**CONCLUSION**

For the foregoing reasons, *amicus curiae* urges the Court to grant certiorari and reverse.

Respectfully submitted,

JOHN A. MEISER

*Counsel of Record*

DOMENIC CANONICO

LINDSAY & MATT MOROUN

RELIGIOUS LIBERTY CLINIC

Notre Dame Law School

1338 Biolchini Hall

Notre Dame, IN 46556

(574) 631-3880

jmeiser@nd.edu

*Counsel for Amicus Curiae*

OCTOBER 21, 2024