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 DEPARTMENT OF FINANCIAL SERVICES, ET AL.,
Respondents.

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

BRIEF OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS; THE ETHICS AND RELIGIOUS LIBERTY COMMISSION OF THE SOUTHERN BAPTIST CONVENTION; THE LUTHERAN CHURCH – MISSOURI SYNOD; THE CHAPLAIN ALLIANCE FOR RELIGIOUS LIBERTY; AND THE JURISDICTION OF THE ARMED FORCES AND CHAPLAINCY OF THE ANGLICAN CHURCH IN NORTH AMERICA AS *AMICI CURIAE* SUPPORTING PETITIONERS

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October 21, 2024

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20002

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

CASES Page(s)

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

STATUTES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

INTERESTS OF *AMICI CURIAE*[1]

Amici are religious organizations with a profound interest in the Constitution's guarantee that religious organizations are free to govern their own ecclesiastical affairs. See, *e.g.*, *Our Lady of Guadalupe Sch.* v. *Morrissey-Berru*, 591 U.S. 732 (2020); *Hosanna-Tabor Evangelical Church & Sch.* v. *EEOC*, 565 U.S. 171 (2012) (unanimous). Some of us joined an amicus brief supporting petitioners at an earlier stage of the case. See Br. Amici Curiae of The Church of Jesus Christ of Latter-day Saints, et al., *Roman Catholic Diocese of Albany* v. *Emami*, No. 20-1501 (U.S. May 26, 2021). We submit this brief out of concern that, unless reviewed and reversed, the decision below will severely undermine the principle of religious autonomy.

SUMMARY OF ARGUMENT

Here we go again. New York persists in requiring religious employers to cover abortion procedures in their employee healthcare plans despite this Court's GVR. Ordered to reconsider the petitioners' claims in light of *Fulton* v. *City of Philadelphia*, 593 U.S. 522 (2021), see *Roman Catholic Diocese of Albany* v. *Emami*, 142 S. Ct. 421 (Mem.) (2021), New York courts doubled down. The Court of Appeals brushed aside the petitioners' claims by minimizing *Fulton*'s relevance and rehashing principles of governmental deference grounded in a two-decade-old State precedent that

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[1] Pursuant to Supreme Court Rule 37.6, amici state that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from amici, their members, and their counsel, made any monetary contribution toward the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.2, amici certify that counsel of record for all parties received notice of the intent to file this brief at least 10 days before it was due.

undervalues the unique sensitivities of abortion and this Court's current approach to the Free Exercise Clause. See Pet.App.30a.

We fully endorse the petition and underscore three reasons to grant certiorari.

First, New York's abortion mandate invades petitioners' religious autonomy. New York's mandate interferes in the religious relationship between petitioners and their employees by compelling financial support for conduct the employer believes immoral. The statute's narrow exemption for religious employers deepens New York's incursion into petitioners' religious autonomy. Employers are exempt only if their central activity is inculcating religious values and they primarily employ and serve members of the employer's faith. But under the First Amendment, no secular official may presume to instruct a religious organization on the content of its religious beliefs, the religious composition of its workforce, or the audience for its religious mission.

Second, the New York court misread *Fulton* as an ultimately irrelevant explication of what qualifies as a "generally applicable law" requiring strict scrutiny. Pet.App.16a–18a. With that decision, the need to revisit *Employment Division, Department of Human Resources of Oregon* v. *Smith*, 494 U.S. 872 (1992), becomes urgent. If the Court of Appeals applied *Smith* correctly, then *Smith* should be overruled. The Constitution's guarantee of the free exercise of religion cannot be reconciled with the State's determination to force Catholic organizations and other objecting religious employers to subsidize their employees' abortions as the price of operating in New York.

Third, this case offers an ideal vehicle to resolve the questions presented. New York courts have had ample

opportunities to consider petitioners' constitutional claims but remain entrenched in the view that the State can force religious employers to choose between obedience to law or fidelity to faith—the same choice this Court rejected in *Fulton*. See 593 U.S. at 532. The issue of religious autonomy holds profound importance for amici and other religious organizations. And the questions presented will continue to recur for religious employers until they are resolved. We therefore urge the Court to grant review.

ARGUMENT

I. REVIEW IS URGENT TO PRESERVE PETITIONERS' RELIGIOUS AUTONOMY.

A. The First Amendment Guarantees Religious Organizations Autonomy over Significant Internal Matters.

More than a century of unbroken precedents affirm that government holds no authority to act in any matter "ecclesiastical in its character." *Watson* v. *Jones*, 80 U.S. (13 Wall.) 697, 733 (1871). The First Amendment guarantees religious organizations the "power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff* v. *St. Nicholas Cathedral of Russ. Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952). Decisions since *Kedroff* uniformly sustain that principle. See, *e.g.*, *Kreshik* v. *Saint Nicholas Cathedral*, 363 U.S. 190, 191 (1960) (per curiam); *Serbian E. Orthodox Diocese for U.S. of Am. & Can.* v. *Milivojevich*, 426 U.S. 696, 721–22 (1976); *Hosanna-Tabor*, 565 U.S. at 186–87; *Our Lady of Guadalupe*, 591 U.S. at 746.

Under this principle, religious organizations enjoy "autonomy with respect to internal management decisions that are essential to the institution's central

mission." *Our Lady of Guadalupe*, 591 U.S. at 746. In particular, religious organizations are free to "select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions." *Corp. of Presiding Bishop of The Church of Jesus Christ of Latter-day Saints* v. *Amos*, 483 U.S. 327, 341 (1986) (Brennan, J., concurring) (internal quotation marks omitted). The religious autonomy doctrine reflects the First Amendment's "special solicitude" toward religious institutions. *Hosanna-Tabor*, 565 U.S. at 189.

Religious autonomy operates as a categorical rule, not a balancing standard. Take *Hosanna-Tabor*. Once Cheryl Perich was deemed a minister in the constitutional sense, "the First Amendment require[d] dismissal of [her] employment discrimination suit against her religious employer." *Id.* at 194. No balancing was appropriate because "the First Amendment has struck the balance for us." *Id.* at 196.

Nor does religious autonomy become impotent when a dispute affects an area of traditional State power. *Kedroff* declared a New York law invalid that purported to resolve a dispute concerning ecclesiastical leadership, even when it determined who would control property belonging to the American branch of the Russian Orthodox Church. 344 U.S. at 96. The Court explained, "[e]ven in those cases when the property right follows as an incident from decisions of the church custom or law on ecclesiastical issues, the church rule controls. This under our Constitution necessarily follows in order that there may be free exercise of religion." *Id.* at 120–21; see also *Milivojevich*, 426 U.S. at 720 (holding that although a dispute over ecclesiastical leadership would decide control of real property and "property-holding corporations, the civil courts must accept that consequence as the incidental

effect of an ecclesiastical determination that is not subject to judicial abrogation").

By the same logic, New York does not have *carte blanche* to mandate abortion coverage by religious employers merely because the State may regulate employer-employee relationships. The First Amendment's guarantee of religious autonomy still prevails.

B. New York's Abortion Mandate Is an Affront to Religious Autonomy.

New York's abortion mandate crosses the line separating religious and civil authority. Petitioners are led by a Catholic diocese, which believes that "[s]ince the first century the Church has affirmed the moral evil of every procured abortion. * * * Formal cooperation in an abortion constitutes a grave offense." *Catechism of the Catholic Church* § 2271 (USCCB 2d ed. 2019). Petitioners are hardly alone in their convictions. Millions of Americans oppose abortion as a "profound moral issue." *Dobbs* v. *Jackson Women's Health Org.*, 597 U.S. 215, 223 (2022). Respect for that sincere belief is reflected throughout this Court's precedents. See *id.* at 223–24 ("Some believe fervently that a human person comes into being at conception and that abortion ends an innocent life.").

New York's abortion mandate interferes with petitioners' religious autonomy in numerous ways.

The abortion mandate forces petitioners to be complicit in what they believe is immoral conduct. Under the statute, any employee insurance plan must include coverage for abortions. N.Y. Ins. Law §§ 3221(k)(22), 4303(ss) (2024).[2] Only petitioners can judge how

[2] The mandate also appears in New York's regulatory code. See N.Y. Comp. Codes R. & Regs. tit. 11, § 52.16(o)(1) (2024). The

complicit New York's mandate would render them. See, *e.g.*, *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U.S. 682, 724 (2014) (government cannot "tell the plaintiffs their beliefs are flawed" because the government perceives degrees of separation between providing contraceptive coverage and the destruction of an embryo).

New York's abortion mandate "impos[es] secular morality *inside* religious institutions." Douglas Laycock, *Religious Liberty and the Culture Wars*, 2014 U. Ill. L. Rev. 839, 867 (emphasis added) (footnote omitted). It does that by forcing petitioners to use sacred funds and institutional structures to subsidize their employees' abortion procedures. Overriding petitioners' management of their religious institutions on a matter of profound religious importance violates the doctrine of religious autonomy.

Among a religious organization's "ecclesiastical functions" is deciding how its property and assets will be used. *People* v. *Worldwide Church of God*, 178 Cal. Rptr. 913, 915 (Cal. Ct. App. 1981); see also *Church of Scientology Flag Serv. Org., Inc.* v. *Clearwater*, 2 F.3d 1514, 1537 (11th Cir. 1993). The decision whether to cover abortion is an "internal management decision[] that [is] essential to the * * * central mission" of petitioners. *Our Lady of Guadalupe*, 591 U.S. at 746.

New York's disregard for petitioners' constitutional rights compares poorly with the respect for religious institutions expressed by Congress. For decades, it has adopted provisions reflecting a concern for religious and moral objections to abortion. See, *e.g.*, Church

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State has confirmed that the statute and regulation are "co-extensive as to both the scope of the coverage requirement and the religious accommodation." Pet.17 (quoting APL-2022-00089, Resp.Br.19 (N.Y. Sept. 28, 2023)).

Amendment, 42 U.S.C. § 300a-7; Danforth Amendment, 20 U.S.C. § 1688. The Weldon Amendment deserves special mention. It withholds HHS funding from a government program that discriminates against health entities or insurance plans that "do[] not provide, pay for, provide coverage of, or refer for abortions." Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, § 507(d)(1), 136 Stat. 4459 (2022).

In pressing the importance of religious autonomy, we acknowledge that religious institutions have no "general immunity" from State law. *Our Lady of Guadalupe*, 591 U.S. at 746. A religious employer must comply with religiously uncontroversial wage-and-hour and health-and-safety statutes on equal terms with other employers. See, *e.g.*, *Jimmy Swaggart Ministries* v. *Bd. of Equalization of Cal.*, 493 U.S. 378, 391 (1990); *Tony & Susan Alamo Found.* v. *Sec'y of Lab.*, 471 U.S. 290, 304–05 (1985). But the First Amendment "protect[s] autonomy with respect to internal management decisions that are essential to the institution's central mission." *Our Lady of Guadalupe*, 596 U.S. at 746. When a religious employer's religious beliefs condemn abortion, excluding insurance coverage for it is "essential to the institution's central mission." *Ibid.* New York's determination to override that judgment invades religious autonomy.

C. New York's Exemption Interferes with Religious Autonomy.

New York law contains an exemption from its abortion mandate for "religious employers." But the exemption's cramped and arbitrary terms make the intrusion into religious autonomy worse, not better.

To qualify, an employer must show that (1) its purpose is "[t]he inculcation of religious values"; (2) it

"primarily employs persons who share [its] religious tenets"; (3) it "serves primarily persons who share [its] religious tenets"; and (4) it "is a nonprofit organization as described in [the Internal Revenue Code]." N.Y. Ins. Law §§ 3221(*l*)(16)(E)(1), 4303(cc)(5)(A) (2024); see *id.* §§ 3221(k)(22)(C), 4303(ss)(4). The exemption is temporary. An insurer must obtain "an annual certification" from each employer asserting the exemption. *Id.* §§ 3221(k)(22)(C)(i), 4303(ss)(4)(A). That certification must state that "the policyholder is a religious employer and that the religious employer requests a contract without coverage for abortion." *Ibid.* Also, the insurer must issue a rider to the religious employer's employees, providing "coverage for abortion" along with a notice of the rider. *Id.* §§ 3221(k)(22)(C)(ii), 4303(ss)(4)(B). Both the policy and the rider must be approved by the New York Superintendent of Financial Services. *Id.* §§ 3221(k)(22)(C)(iii), 4303(ss)(4)(C).

Each element of the exemption, including the required annual certification, impinges on petitioners' religious autonomy.

Consider the obligation to show that an employer is engaged in "the inculcation of religious values." *Id.* §§ 3221(*l*)(16)(E)(1), 4303(cc)(5)(A). Deciding what values to teach and espouse lies at the very core of religious autonomy. *Kedroff*, 344 U.S. at 116. Limiting the exemption to employers whose purpose is "the inculcation of religious values" licenses State officials and insurers to go "trolling through a person's or institution's religious beliefs." *Mitchell* v. *Helms*, 530 U.S. 793, 828 (2000) (citation omitted). The exemption further intrudes into religious autonomy by withholding legal protection unless a religious organization confines itself to "hard-nosed proselytizing." *Univ. of Great Falls* v. *NLRB*, 278 F.3d 1335, 1346 (D.C. Cir.

2002). Excluding religious charities draws a false distinction between religious inculcation and charitable activity. Churches themselves "often regard the provision of [community] services as a means of fulfilling religious duty and of providing an example of the way of life a church seeks to foster." *Amos*, 483 U.S. at 344 (Brennan, J., concurring). New York's inquiry into religious inculcation thus "boils down" to whether an employer asserting the exemption is "sufficiently religious" *as the State defines religion*—an enterprise that the First Amendment squarely prohibits. *Univ. of Great Falls*, 278 F.3d. at 1343 (punctuation altered).

On this score, New York's exemption resembles the city ordinance struck down in *Espinosa* v. *Rusk*, 634 F.2d 477 (10th Cir. 1980), *aff'd sub nom. Rusk* v. *Espinosa*, 456 U.S. 951 (1982). There, the Tenth Circuit overturned an Albuquerque rule exempting religious organizations from licensing and registration requirements only when they sought contributions for "evangelical, missionary or religious but not secular purposes." *Id.* at 479. Despite charity being a pillar of Christianity, Albuquerque thought "secular" purposes included gathering donations to "provid[e] food, clothing, and counseling." *Ibid.* The city's cramped "conception of religion" rendered the ordinance void. *Ibid.* Here, New York's exemption betrays the same error by presuming that the State has the "competence" and "legitimacy" to determine what values count as religious. *Colo. Christian Univ.* v. *Weaver*, 534 F.3d 1245, 1265 (10th Cir. 2008) (McConnell, J.).

Other elements of the exemption are equally objectionable:

- *Whether a religious entity should employ persons who "share the [same] religious tenets."* N.Y. Ins. Law §§ 3221(*l*)(16)(E)(1)(b), 4303(cc)(5)(A)(ii).

Deciding whom to employ is inseparable from a religious organization's doctrine and mission. This Court has affirmed, for instance, that "the selection and supervision of the teachers upon whom [religious] schools rely * * * lie at the core of their mission." *Our Lady of Guadalupe*, 591 U.S. at 738.

- *Whether a religious organization should primarily serve persons who share its "religious tenets."* N.Y. Ins. Law §§ 3221(*l*)(16)(E)(1)(c), 4303(cc)(5)(A)(iii). The choice whom to serve and proselyte is a purely ecclesiastical matter related to "conveying the Church's message and carrying out its mission." *Our Lady of Guadalupe*, 591 U.S. at 733 (quoting *Hosanna-Tabor*, 565 U.S. at 192).

All these decisions belong to a religious organization—not to the government—because the First Amendment makes religious organizations "free from state interference" in "matters of church government as well as those of faith and doctrine." *Id.* at 737 (quoting *Kedroff*, 344 U.S. at 116). It is constitutionally offensive for a secular official to instruct a religious organization on the content of its religious beliefs, the religious composition of its workforce, or the audience for its religious mission. Yet that's what New York's exemption effectively authorizes. Qualifying for the exemption may pressure a religious organization to violate its own religious doctrines. To avoid the costs of noncompliance with the abortion mandate, a religious organization may change its internal mission, structure, and governance to preserve its innocence from facilitating abortions. In this way too, the exemption burdens petitioners' religious autonomy.

Nor is the pressure fleeting or temporary. New York demands an annual certification attesting to a religious

organization's eligibility for the exemption. See N.Y. Ins. Law §§ 3221(k)(22)(C)(i), 4303(ss)(4)(A). Religious organizations must operate with the knowledge that their religious governance is carried out under the eye of New York's officials, who at any misstep may deploy government resources to coerce a religious organization to become an accomplice to abortion. Continuous surveillance itself is a severe violation of the religious autonomy doctrine.

For these reasons, New York's exemption directly burdens petitioners' religious autonomy.

II. IF *SMITH* ALLOWS NEW YORK TO ENFORCE ITS ABORTION MANDATE AGAINST PETITIONERS, THEN *SMITH* SHOULD BE OVERRULED.

A. The New York Court of Appeals Badly Misread *Fulton*.

The Court's order remanded the case "for further consideration in light of *Fulton*." *Emami*, 142 S. Ct. at 421. But the New York Court of Appeals missed *Fulton*'s meaning and significance.

Fulton explained that a law is not generally applicable—and so must satisfy strict scrutiny—under two circumstances. One, "[a] law is not generally applicable if it 'invite[s]' the government to consider the particular reasons for a person's conduct by providing 'a mechanism for individualized exemptions.'" 593 U.S. at 533 (quoting *Smith*, 494 U.S. at 884). Two, "[a] law also lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Id.* at 534 (citations omitted).

Contrary to the decision below, *Fulton* does not hold that a law must be wholly "standardless" or entirely

"discretionary," Pet.App.25a, to fail the test of general applicability. *Fulton* clarified instead that laws are not generally applicable when they "permit[] the government to grant exemptions based on the circumstances underlying each application." *Fulton*, 593 U.S. at 534 (citing *Smith*, 494 U.S. at 884). The decision below likewise erred by suggesting that the abortion mandate exemption is generally applicable because it differentiates "among different types of religious employers" rather than between religious and secular employers. Pet.App.26a. That detail makes no difference when the exemption embodies the State's secular interests. See Pet.9 (New York official explaining that the State rejected a broader religious employer exemption because "the interests of ensuring access to reproductive care" and other asserted government interests "weigh[] far more heavily than the interest of business corporations to assert religious beliefs" (quoting Pet.App.182a)). By tailoring the exemption to its secular interests, New York effectively "prohibits religious conduct" for some religious employers, while permitting the same conduct by employers the State approves, even when their conduct "undermines the government's asserted interests in a similar way." *Fulton*, 593 U.S. at 534 (citations omitted).[3] Hence the exemption is not generally applicable and must satisfy strict scrutiny.

B. The New York Court of Appeals Relied on an Erroneous Conception of *Smith*.

The Court of Appeals likewise misconstrued *Smith*. By New York's reckoning, "even devoutly held religious beliefs must give way to generally applicable laws

[3] Even if *Fulton* does not directly resolve whether a law distinguishing among religious groups is subject to strict scrutiny, the circuit split on that point merits review. Pet.19–23.

where the government has not explicitly targeted a religion." Pet.App.12a. Since *Fulton* did not overrule *Smith* outright, the Court of Appeals said, precedents sustaining "government action burdening religious beliefs or practices" remain intact. *Id.* at 13a. The Court of Appeals stressed that "*Smith* remains good law," *id.* at 10a–11a, and apparently considered its harsh view of religious accommodation to be consistent with *Smith*'s professed concern with "a system in which each conscience is a law unto itself or in which judges weigh the social importance of all laws against the centrality of all religious beliefs," 494 U.S. at 890.

But *Smith*'s interpretation of the Free Exercise Clause is hardly "a law trapped in amber." *United States* v. *Rahimi*, 144 S. Ct. 1889, 1897 (2024). Since *Smith*, this Court has steadily strengthened protections under the Free Exercise Clause while limiting the reach of *Smith*'s neutral-and-generally-applicable-law standard. Take three leading decisions. *Church of the Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520 (1993), applied a categorical "nonpersecution principle"—that "government may not enact laws that suppress religious belief or practice." *Id.* at 523. *Tandon* v. *Newsom*, 593 U.S. 61 (2021) (per curiam), taught that "government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise." *Id.* at 62. And *Fulton* reframed *Smith*'s reference to individualized exemptions, see 494 U.S. at 884, as a class of laws subject to strict scrutiny. *Fulton*, 593 U.S. at 533–34. By failing to understand *Smith* in light of later precedent, see Pet.24–27, the Court of Appeals gravely broke from its duty to apply the Free Exercise Clause as this Court has interpreted it.

C. If the Court of Appeals Properly Applied *Smith*, then *Smith* Should Be Overruled.

Suppose, however, that the Court of Appeals properly applied *Smith*. That would mean that the Free Exercise Clause permits a State to compel objecting religious organizations to subsidize their employees' abortions. That result should not stand. *Smith* should finally be overruled.

Reconsidering *Smith* would complete unfinished business from *Fulton*, where certiorari was granted to reconsider *Smith*. 593 U.S. at 540–41. Three Members of the Court would have overruled *Smith* then. *Id.* at 553–54 (Alito, J., concurring). But the majority declined to take that step because it concluded that Philadelphia "has burdened the religious exercise of [Catholic Social Services] through policies that do not meet the requirement of being neutral and generally applicable." *Id.* at 533 (majority op.).

If the New York Court of Appeals properly applied *Smith*, however, then *Smith* should be reconsidered.

Justice Alito detailed several reasons why *Smith* should be interred. It "paid shockingly little attention to the text of the Free Exercise Clause." *Id.* at 564 (Alito, J., concurring). In fact, "*Smith* is a methodological outlier" by ignoring constitutional text and history, and its treatment of precedent is deeply questionable. *Id.* at 595. "*Smith* is also discordant with other precedents," including *Hosanna-Tabor* and *Masterpiece Cakeshop* v. *Colorado Civil Rights Commission*, 584 U.S. 617 (2018). *Fulton*, 593 U.S. at 600 (Alito, J., concurring). As for workability, "serious problems have arisen and continue to plague courts when called upon to apply *Smith*." *Id.* at 603. These reasons track the

traditional factors for setting aside a constitutional precedent. See *Dobbs*, 597 U.S. at 268. No serious reliance interests need to be accounted for, since "parties have long been on notice that the decision might soon be reconsidered." *Fulton*, 593 U.S. at 614 (Alito, J., concurring).

Justice Alito's conclusion is spot-on: "*Smith* was wrongly decided. As long as it remains on the books, it threatens a fundamental freedom. And while precedent should not be lightly cast aside, the Court's error in *Smith* should now be corrected." *Ibid.* Like other dubious forays into constitutional interpretation, *Smith* should be discarded. See *Kennedy* v. *Bremerton Sch. Dist.*, 597 U.S. 507, 534 (2022) (overruling *Lemon* v. *Kurtzman*, 403 U.S. 602 (1971)); *Dobbs*, 597 U.S. at 231 (overruling *Roe* v. *Wade*, 410 U.S. 113 (1973)).

III. This Case Is an Ideal Vehicle to Resolve the Questions Presented.

A. New York Courts Have Persistently Refused to Recognize Petitioners' Free Exercise Rights in This Case.

When this case last appeared here, the Court issued a GVR directing New York courts to revisit their earlier decision in light of *Fulton*. *Emami*, 142 S. Ct. at 421. Justices Thomas, Alito, and Gorsuch would have granted plenary review. *Ibid.* But the New York Court of Appeals fumbled that opportunity by confining *Fulton* to its facts and treating *Smith* as if it were untouched by later precedent. See Pet.App.27a.

The GVR can be understood not only as a tool for conserving judicial resources, but also as gesture of respect for New York courts. They were afforded an additional chance to reevaluate petitioners' constitutional claims given the interpretive guidance in *Fulton*. But

New York courts regrettably declined to adjust their course. This Court should now grant review to vindicate petitioners' First Amendment rights.

B. Religious Autonomy Holds National Importance for Religious Employers.

The religious autonomy doctrine is crucial when a religious organization seeks to create a workplace reflecting its religious mission. Cf. *Little* v. *Wuerl*, 929 F.2d 944, 951 (3d Cir. 1991). As the Court has explained, "[t]he independence of religious institutions in matters of faith and doctrine is closely linked to independence in what we have termed 'matters of church government.'" *Our Lady of Guadalupe*, 591 U.S. at 746 (cleaned up). Employment-related laws must give way if they violate a religious institution's "autonomy with respect to internal management decisions that are essential to the institution's central mission." *Ibid.* New York's inflammatory demand that objecting religious employers subsidize abortions is a dramatic break from this Court's efforts to protect religious autonomy in the workplace. Only this Court's review can vindicate petitioners' First Amendment rights.

C. The Petition Presents Recurring Issues for Religious Employers.

Dobbs held that "the authority to regulate abortion must be returned to the people and their elected representatives." 597 U.S. at 292. But States must exercise that authority within constitutional limits—including the First Amendment. Many States are adopting abortion regulations that undermine First Amendment rights for religious organizations.

New York's abortion mandate is not unique. Nine other States also require abortion coverage for employers

that do not qualify for a religious exemption under the State's exacting standards.[4] Those States vary in the degree of coercive pressure they impose on religious groups. Compare, *e.g.*, Md. Code Ann., Ins. § 15-857(a)(3) (2024) (excusing religious organizations from the abortion mandate if providing coverage would "conflict with the organization's bona fide religious beliefs and practices"), with Vt. Stat. tit. 8, § 4099e(b) (2024) (containing no such exemption).

All these laws raise grave First Amendment questions by coercing religious organizations into subsidizing abortion despite their sincere religious objections. Consider a case from Washington State. A federal district court decision there sustained a State law requiring all employee health plans to provide "substantially equivalent coverage to permit the abortion of a pregnancy." *Cedar Park Assembly of God* v. *Kreidler*, 683 F. Supp. 3d 1172, 1176 (W.D. Wash. 2023). The statute contains a narrow exemption for a "religious or moral tenet opposed to a specific service." *Id.* at 1177. But the church could find no insurer that would offer healthcare plans without abortion coverage, nor could it comply by self-insuring. *Id.* at 1178. Faced with a legal mandate to buy abortion coverage, the church sued, alleging violations of the Free Exercise and Establishment Clauses. *Id.* at 1179. The court dismissed the church's complaint, ruling that the Washington law is neutral and generally applicable—even though the legislative sponsor announced that he

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[4] See, *e.g.*, Cal. Health & Safety Code § 1367.25(b) (2024); 215 Ill. Comp. Stat. 5/356z.4a (2024); Me. Stat. tit. 24, § 4320-M (2024); Md. Code Ann., Ins. § 15-857(b) (2024); Mass. Gen. Laws ch. 175, § 47F (2024); N.J. Admin. Code § 11:22-5.9A (2024); Or. Rev. Stat. § 743A.067(2) (2024); Vt. Stat. tit. 8, § 4099e(b) (2024); Wash. Rev. Code § 48.43.065 (2024).

expected lawsuits from religious organizations. *Id.* at 1183. The case is now on appeal before the Ninth Circuit, which recently heard oral argument. *Cedar Park Assembly of God* v. *Kreidler*, No. 23-35560 (9th Cir. Aug. 15, 2024), ECF No. 102.[5]

New York's assault on religious autonomy is, in short, not a one-off. Unless this Court intervenes, religious employers will continue to face State laws requiring them to subsidize abortions in defiance of their sincere religious beliefs.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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[5] Cases involving the clash between a statutory abortion mandate and religious employers have arisen elsewhere. See, *e.g.*, *Ill. Baptist State Ass'n* v. *Ill. Dep't of Ins.*, No. 2020 MR 325 (Ill. Cir. Ct. Sept. 4, 2024) (denying a State RFRA challenge to an Illinois law requiring abortion coverage).