
No. 25-836

WEST VIRGINIA BOARD OF EDUCATION, et. al.,

Petitioners,

v.

MIRANDA GUZMAN, et al.,

Respondents.

***AMICUS CURIAE* BRIEF OF LIBERTY COUNSEL IN SUPPORT OF RESPONDENTS**

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I. INTEREST OF AMICUS CURIAE

Liberty Counsel is a national civil liberties organization that provides education and legal defense on issues relating to religious liberty, the sanctity of life, and the family.¹ Liberty Counsel attorneys have argued before the United States Supreme Court, federal courts of appeals, and federal and state trial courts nationwide. Its attorneys have spoken or testified before Congress on matters relating to government infringement on First Amendment rights.

Over the last three-and-a-half decades, Liberty Counsel has litigated landmark First Amendment cases across the country, and it has extensive experience confronting efforts to curtail free exercise of religion under the guise of public health. For example, Liberty Counsel successfully defended military members who were unlawfully denied a religious exemption to the COVID-19 vaccine. *See Colonel Fin. Mgmt. Officer v. Austin*, 622 F. Supp. 3d 1187, 1199 (M.D. Fla. 2022) (certifying class action and issuing preliminary injunction against U.S. Marine Corps for discriminatory COVID-19 vaccine religious accommodation policies and practices); *Navy Seal I v. Biden*, 586 F. Supp. 3d 1180 (M.D. Fla. 2022) (preliminarily enjoining the Secretary of Defense from removing a Navy Commander and Lieutenant Colonel in the United States Marine Corps); *Navy Seal I v. Biden*, 599 F. Supp. 3d 1233 (M.D. Fla. 2022) (preliminarily enjoining Secretary of Defense from separating a United States Marine Corps Captain for declining vaccination in violation of his religious beliefs).

Liberty Counsel achieved a \$10.3 million settlement on behalf of a class of employees who were unlawfully terminated by NorthShore University HealthSystem for refusing the COVID-19

¹ Pursuant to West Virginia Rule of Appellate Procedure 30(e)(5), amicus curiae, by counsel, represents that no counsel for a party to this action authored this Brief in whole or in part. Moreover, no such counsel or party made a monetary contribution specifically intended to fund the preparation or submission of this Brief. Finally, no other person who would need to be identified under Rule 30(e)(5) made a monetary contribution toward this Brief.

vaccine. *See Doe v. NorthShore Univ. Health System*, No. 1:21-cv-05683 (N.D. Ill., Oct. 25, 2021). Liberty Counsel reached a settlement with Artis-Naples, Inc. on behalf of employees who were refused a religious exemption to the COVID-19 vaccine. *See Leigh v. Artis-Naples, Inc.*, No. 2:22-cv-606-JLB-KCB (M.D. Fla., Nov. 15, 2024).

During the height of the COVID-19 pandemic, Liberty Counsel obtained Supreme Court relief against California’s discriminatory restrictions on religious worship. *See Harvest Rock Church, Inc. v. Newsom*, 141 S. Ct. 889 (2020); *Harvest Rock Church, Inc. v. Newsom*, 141 S. Ct. 1289 (2021). Liberty Counsel represents petitioners challenging New York’s COVID-19 vaccine mandate for healthcare workers in a case now pending before the Supreme Court. *John Does 1–2 v. Hochul*, No. 24-1015 (U.S. filed Mar. 20, 2025). The Court has invited the Solicitor General to file a brief expressing the views of the United States.

Liberty Counsel has also advocated in favor of parental rights for decades and has a strong interest in protecting the right of parents to raise, nurture, and educate their children pursuant to their sincere religious beliefs. Liberty Counsel therefore submits this *amicus curiae* brief in support of Respondents, who are parents seeking to exempt their children from school-mandated vaccines pursuant to their sincere religious beliefs.

II. SOURCE OF AUTHORITY

Liberty Counsel submits this *amicus curiae* brief consistent with Rule 30 of the West Virginia Rules of Appellate Procedure. Liberty Counsel provided notice of its intent to file this *amicus curiae* brief, and all parties have consented to the filing of this brief. On May 6, 2026, Petitioners’ counsel, via email, confirmed that Petitioners consented to the filing of this brief but reserve the right to oppose arguments in this brief.

III. STATEMENT OF THE CASE

In 1937, the West Virginia Legislature passed West Virginia’s Compulsory Vaccination Law (“Vaccine Law”), which requires children entering public schools to become “immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and whooping cough.” W. Va. Code § 16-3-4(b). West Virginia permits medical exemptions to the Vaccine Law, but not religious exemptions. *Id.* § 16-3-4(h). Nor does it require proof of vaccination for homeschooling, “learning pods”, and “microschools.” *Id.* § 18-8-1(n).

In 2023, the Legislature passed the Equal Protection for Religious Act (“EPRA”), which was modeled after the federal Religious Freedom Restoration Act (“RFRA”). EPRA states:

Notwithstanding any other provision of law, no state action may: (1) Substantially burden a person's exercise of religion unless applying the burden to that person's exercise of religion in a particular situation is essential to further a compelling governmental interest; and is the least restrictive means of furthering that compelling governmental interest; nor (2) Treat religious conduct more restrictively than any conduct of reasonably comparable risk; nor (3) Treat religious conduct more restrictively than comparable conduct because of alleged economic need or benefit.

Id. § 35-1A-1(a).

Respondents are parents who have sought to exempt their children from school-mandated vaccination. They filed a lawsuit seeking to enjoin Petitioners from enforcing the Vaccine Law, insofar as it burdens their sincerely held religious beliefs in violation of the EPRA. On November 26, 2025, the Circuit Court of Raleigh County, West Virginia (“Circuit Court”) granted Respondents permanent injunctive and declaratory relief, concluding the Vaccine Law violated the EPRA (“Order”).

The Circuit Court found that the Vaccine Law imposed a substantial burden on Respondents’ exercise of religion by forcing parents to choose between a government benefit and the exercise of religion. Order at 52–54 (citing *Sherbert v. Verner*, 374 U.S. 398, 403–04 (1963);

Thomas v. Review Bd. of Ind. Emp. Sec. Div., 450 U.S. 707, 717–18 (1981); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 720–23 (2014)). The Circuit Court concluded that the Petitioners’ generalized public health concerns could not satisfy strict scrutiny, and the Respondents therefore established a violation of W. Va. Code § 35-1A-1(a)(1). Order at 55–66. The Circuit Court also found that Respondents established an independent violation of section 35-1A-1(a)(2) because the Vaccine Law treated religious conduct more restrictively than comparable secular conduct, including learning pods, homeschools, microschools, and individuals with medical exemptions. *Id.* at 67–68.

IV. SUMMARY OF THE ARGUMENT

The Circuit Court’s ruling sits on solid ground and is fully supported by well-established Supreme Court precedent. Petitioners’ contrary arguments fail for three independent reasons.

First, Petitioners’ demand for a “sincerity” inquiry is not a legitimate effort to test good faith, but a constitutionally impermissible effort to evaluate the validity and orthodoxy of Respondents’ religious beliefs. Petitioners effectively deem Respondents’ religious beliefs invalid because they conflict with public health objectives. The First Amendment strictly forbids courts from judging the truth, logic, or theological consistency of religious beliefs. *See, e.g., United States v. Ballard*, 322 U.S. 78 (1944); *Thomas*, 450 U.S. at 714–16. Petitioners’ position – reiterated by their *amici* – would require the kind of doctrinal evaluation the Constitution prohibits.

Second, the Circuit Court correctly found that the Vaccine Law substantially burdened Respondents’ sincere religious beliefs under the unconstitutional conditions doctrine. Order at 53-54 (citing cases). The Order is further reinforced by a century of parental-rights jurisprudence. The Court has long recognized that parents have a fundamental right to direct their children’s religious upbringing. *See, e.g., Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268

U.S. 510 (1925); *Wisconsin v. Yoder*, 406 U.S. 205 (1972). As the Supreme Court recently reaffirmed, “when a law imposes a burden of the same character as that in *Yoder*, strict scrutiny is appropriate regardless of whether the law is neutral or generally applicable.” *Mahmoud v. Taylor*, 606 U.S. 522, 565 (2025).

Critically, *Mahmoud* also affirmed that *Yoder* was not limited to its facts and applies whenever the state forces parents to forego religious control over their children in the public-school context. *Id.* at 557–58. The Vaccine Law imposes a burden of the same character: it conditions school attendance on parents’ willingness to violate their religious beliefs concerning the upbringing of their children.

Finally, the Vaccine Law fails strict scrutiny. Petitioners and their *amici* urge this Court to adopt a more deferential approach. But the Supreme Court has consistently held that burdens on religious exercise cannot be sustained by broad appeals to public health and welfare. Under RFRA, and by extension, the EPRA, strict scrutiny demands a targeted, evidence-based showing that the restriction is necessary as applied to the specific claimant. *See Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006). That standard remains robust even during extraordinary conditions like a once-in-a-lifetime pandemic. *See Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020); *Tandon v. Newsom*, 593 U.S. 61 (2021). If sweeping emergency measures failed strict scrutiny during an unprecedented public health crisis, Petitioners cannot meet their burden here, particularly given that most states employ less restrictive measures under comparable conditions.

V. ARGUMENT

A. The EPRA Incorporates RFRA's Restored Free Exercise Framework for Claims Burdening Religious Exercise, Including in the Education Context.

The EPRA adopts the same substantive framework as the federal RFRA and therefore incorporates the broad protections for religious exercise recognized in pre-*Smith* jurisprudence. The Legislature expressly modeled the EPRA on RFRA. *See* Order at 48. State legislators, including the bill sponsors, explained that the EPRA “simply codifies the existing U.S. Supreme Court case law and the U.S. Supreme Court of Appeals [sic] here in this state’s rulings.” W. Va. House of Delegates Com. Sub. for H.B. 3042 (Feb. 27, 2023).

RFRA “was designed to provide very broad protection for religious liberty,” *Hobby Lobby*, 573 U.S. at 685, and affords even “greater protection for religious exercise than is available under the First Amendment,” *Holt v. Hobbs*, 574 U.S. 352, 357 (2015) (citing *Hobby Lobby*, 573 U.S. at 694–96). Congress enacted RFRA in 1993 in response to *Employment Division v. Smith*, 494 U.S. 872 (1990), where the Court repudiated *Sherbert* and *Yoder* and held that neutral and generally applicable laws ordinarily do not trigger strict scrutiny under the Free Exercise Clause.

The stated purpose of RFRA is “to restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened; and to provide a claim or defense to persons whose religious exercise is substantially burdened by government.” 42 U.S.C. § 2000bb(b)(1). Under RFRA, government action that substantially burdens the exercise of religion is subject to strict scrutiny. *Id.* § 2000bb-1(b).

The government must demonstrate that the application of the challenged law “to the person” furthers a compelling governmental interest through the least restrictive means. *Gonzales*, 546 U.S. at 430–31. And RFRA broadly defines religious exercise to include “any exercise of

religion, whether or not compelled by, or central to, a system of religious belief,” reflecting the longstanding constitutional principle that religious liberty is not conditioned on institutional adoption or doctrinal consistency. *Hobby Lobby*, 573 U.S. at 696.

RFRA’s express incorporation of *Yoder* is particularly important here. RFRA restored Free Exercise doctrine addressing government action that substantially burdens religious exercise in connection with public education and the upbringing of children. *See* 42 U.S.C. § 2000bb-1(b). The EPRA therefore applies with full force where education requirements are alleged to impose a substantial burden on sincere religious exercise.

B. The Vaccine Law Substantially Burdens Respondents’ Religious Beliefs Concerning Vaccination and Is Therefore Subject to Strict Scrutiny.

1. Petitioners’ demand for a sincerity inquiry functions as an impermissible attempt to evaluate the validity and orthodoxy of Respondents’ beliefs.

Petitioners’ demand for a “sincerity” inquiry is not a permissible application of the Free Exercise Clause. It is an effort to probe the legitimacy and orthodoxy of Respondents’ religious beliefs. Petitioners identify no evidence of insincerity, fraud, or bad faith. Instead, Petitioners justify their inquiry by asserting that religious exemptions from compulsory vaccinations are incompatible with public health objectives, an argument that does not test sincerity, but improperly questions the validity of the underlying beliefs. Opening Br. at 22–25.

That framing is further exposed by the arguments advanced by *amici* Center for Rural Health Department, Inc. and the West Virginia Immunization Network, which contend that Respondents fail to show a substantial burden because their beliefs are not tied to an organized religion and purportedly conflict with the positions of the Catholic Church. Amicus Br. at 14–15. But such arguments do not test sincerity—they invite the Court to weigh the legitimacy, coherence, and orthodoxy of Respondents’ beliefs, an inquiry the First Amendment has long forbidden. “If

there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943); *Cantwell v. State of Connecticut*, 310 U.S. 296, 303 (1940) (“Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law.”).

The Framers of the Constitution “fashioned a charter of government which envisaged the widest possible toleration of conflicting views.” *Ballard*, 322 U.S. at 87. In *Ballard*, the Supreme Court specifically held that the First Amendment precludes courts from instructing juries to adjudicate the veracity of religious beliefs. *Id.* at 88. Strongly speaking in defense of religious freedom, the Court stated: “Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs.” *Id.* at 86.

Given the broad protections afforded to religion, the Supreme Court has repeatedly adopted a “narrow function” in free exercise cases when addressing a claimant’s “particular belief or practice in question.” *Thomas*, 450 U.S. at 714–16. This is because “[t]he determination of what is a ‘religious’ belief or practice is more often than not a difficult and delicate task” that does not turn on “judicial perception.” *Id.* at 714. “[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.” *Id.*

Based on these settled principles, the judiciary is ill-equipped to judge the veracity of an adherent’s religious beliefs. “It is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants’ interpretation of those creeds.” *Hernandez v. Comm’r*, 490 U.S. 680, 699 (1989) (citation omitted). “Properly cognizant of the

judiciary’s incapacity to judge the religious nature of an adherent’s beliefs, courts have jettisoned the objective, content-based approach previously employed to define religious beliefs....” *Patrick v. LeFevre*, 745 F.2d 153, 157–58 (2d Cir. 1984) (citing cases). The judicial inquiry is limited to determining “whether the beliefs professed by a [claimant] are sincerely held and whether they are, in his own scheme of things, religious.” *United States v. Seeger*, 380 U.S. 163, 185 (1965).

Here, Petitioners attempt to expand the sincerity inquiry into a vehicle for judging the validity and orthodoxy of Respondents’ religious beliefs. Petitioners’ position is unsupported by the record and is foreclosed by well-established constitutional authority. Respondents submitted sworn declarations affirming “that their religious beliefs and practices in conflict with vaccination have been severely burdened....” Order at 54 (citations omitted). The Respondents believe that taking the school-mandated vaccines would conflict with their religious conviction to maintain the sanctity and purity of their bodies, as outlined in the Bible. Petitioners and *amici* identify no evidence suggesting those beliefs are insincere or brought in bad faith. Instead, they deem those beliefs unworthy of protection because they conflict with public health preferences and institutional religious positions.

The Constitution does not permit the Petitioners or *amici* to dismiss the Respondents’ beliefs as unreasonable, invalid, or theologically unsound. “The religious views espoused by [Respondents] might seem incredible, if not preposterous, to most people. But ... those doctrines are [not] subject to trial....” *Ballard*, 322 U.S. at 87. This Court should reject Petitioners’ attempt to circumvent this well-settled constitutional boundary.

2. The Supreme Court’s parental-rights jurisprudence further confirms that the Vaccine Law imposes a substantial burden under the EPRA.

Independent of the Circuit Court’s reliance on the unconstitutional conditions doctrine, the Supreme Court’s century-spanning parental-rights jurisprudence further confirms that the Vaccine

Law imposes a substantial burden on Respondents' religious exercise under the EPRA. The Supreme Court has consistently refused to allow the government to override parents' primary authority over their children's moral and religious development. That principle is deeply embedded in constitutional doctrine. The Court has recognized "the interest of parents in the care, custody, and control of their children" as "the oldest of the fundamental liberty interests recognized by this Court." *Troxel v. Granville*, 530 U.S. 57, 65 (2000). This parental right is firmly rooted in "[t]he history and culture of Western civilization" and is "established beyond debate as an enduring American tradition." *Yoder*, 406 U.S. at 232.

The constitutional right of parents to direct their children's upbringing was recognized initially in two Supreme Court cases. In *Meyer*, the Court held that the Due Process Clause protects the right of parents to "establish a home and bring up children" and to "control the education of their own." 262 U.S. at 399. The Supreme Court reaffirmed this right in *Pierce*, explaining that "[t]he child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." 268 U.S. at 534–35.

In *Barnette*, the Supreme Court reinforced the First Amendment as an independent constitutional safeguard limiting the government's ability to interfere with a public-school student's religious upbringing. In *Barnette*, several parents objected to West Virginia's requirement that public school students salute and pledge allegiance to the flag, claiming it violated the religious beliefs of Jehovah's Witnesses. 319 U.S. at 625–26, 629. The Court held that the requirement violated the First Amendment because compelling the Pledge required "affirmation of a belief and an attitude of mind." *Id.* at 633.

The Supreme Court extended *Barnette*'s holding to more "subtle forms of interference with the religious upbringing of children." *Mahmoud*, 606 U.S. at 524. For example, in *Yoder*, the Court addressed a compulsory attendance law requiring all Wisconsin children to attend public school until the age of sixteen. 406 U.S. at 207. The respondents in *Yoder* were members of the Amish community and refused to send their children to "an environment hostile to Amish beliefs," where they would face "pressure to conform..." *Id.* at 211. The Court concluded that the law violated the parents' free exercise rights because it "substantially interfered with the religious development of Amish children" and therefore "carrie[d] with it precisely the kind of objective danger to the free exercise of religion that the First Amendment was designed to prevent." *Id.* at 218.

Recently, *Mahmoud* reaffirmed that the Supreme Court has "long recognized the rights of parents to direct 'the religious upbringing' of their children," and that "those rights are violated by government policies that 'substantially interfer[e] with the religious development' of children." 606 U.S. at 546 (quoting *Espinoza v. Montana Dep't of Revenue*, 591 U.S. 464, 486 (2020), and *Yoder*, 406 U.S. at 212–13, 218). This right, which "extends to the choices that parents wish to make for their children outside the home," "would be an empty promise if it did not follow those children into the public school classroom." *Mahmoud*, 606 U.S. at 547.

In *Mahmoud*, the petitioners were parents who challenged a Maryland school board's requirement that teachers introduce LGBTQ+ storybooks to students in the classroom without parental involvement or consent. *Id.* at 540–43. The Court concluded that by "withhold[ing] notice to parents" when such instruction would occur and "forbid[ding] opt outs," the school board's policy "substantially interfere[d] with the religious development of their children and impose[d] the kind of burden on religious exercise that *Yoder* found unacceptable." *Id.* at 550.

Mahmoud rejected the school board’s attempt to limit the scope of the parental free exercise right established in “*Yoder* to its facts.” *Id.* at 558. *Mahmoud* affirmed that parental religious control over children is “a principle of general applicability” and applies to a public school’s “rules and standards of conduct on its students...” *Id.* at 557 (citing *Mahanoy Area Sch. Dist. v. B.L.*, 594 U.S. 180, 187–88 (2021)). This is why the “government’s operation of the public schools is not a matter of ‘internal affairs’...” *Mahmoud*, 606 U.S. at 557 (citation omitted). Rather, any “direct, coercive interactions between the State and its young residents” through the public schools can implicate the parental free exercise right. *Id.*

The Supreme Court’s recent decision in *Mirabelli v. Bonta* further demonstrates that the holding in *Yoder* is not cabined to curricular mandates or formal schooling requirements. 146 S. Ct. 797 (2026). In *Mirabelli*, several parents sought an exemption from California’s gender secrecy policies, which required schools to conceal a student’s gender transition from their parents. *Id.* at 801–02. The policies were outside the scope of the curricular requirements at issue in *Mahmoud*, but the Supreme Court concluded they violated the parents’ religious beliefs and imposed “‘the kind of burden on religion that *Yoder* found unacceptable.’” *Id.* at 802–03 (citing *Mahmoud*, 606 U.S. at 550).

The burden on parental free exercise here is clear. The Vaccine Law imposes a standard of conduct that parents and students must comply with to enter public schools. Respondents’ religious beliefs do not permit them to inject their children with the school-mandated vaccines. Like *Barnette*, the burden on religion is straightforward because the Vaccine Law requires the students to *perform* an act “contrary to their parents’ religious beliefs.” *Id.* at 548. This direct form of coercion cannot “be squared with the First Amendment.” *Id.*

C. Strict Scrutiny Is Not Displaced by Generalized Public Health Justifications, Even during Exigent Public Health Conditions.

Petitioners and their *amici* erroneously rely on *Jacobson* and its progeny for the proposition that individual religious rights must yield to the state’s compulsory vaccination laws. Opening Br. at 22 (citing *Jacobson v. Massachusetts*, 197 U.S. 11, 37–38 (1905); *Zucht v. King*, 260 U.S. 174, 176 (1922); *Prince v. Massachusetts*, 321 U.S. 158, 166–67 (1944)). That reliance is misplaced under the governing standard of review.

Jacobson applied a deferential substantive due process standard, not strict scrutiny, and it predates strict scrutiny and First Amendment jurisprudence. As the Supreme Court has since clarified, *Jacobson* “involved an entirely different mode of analysis” and does not govern claims under the First Amendment. *Roman Catholic Diocese*, 592 U.S. at 23 (Gorsuch, J., concurring). Under the EPRA, strict scrutiny applies as a matter of law. That standard requires more than generalized assertions of health, safety, or public welfare. Strict scrutiny requires a focused, evidence-based justification for burdening religious exercise.

Modern Free Exercise jurisprudence confirms that categorical claims of health and safety cannot satisfy strict scrutiny where the law is underinclusive. *See Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 536, 540–43 (1993). In *Church of Lukumi*, the church used animal sacrifices as a central form of worship, and the City of Hialeah passed an ordinance prohibiting animal sacrifices for ritual purposes to deter the church’s religious activity, with exemptions for state-licensed activities. *Id.* at 526–28. The Court rejected the city’s interests in public health because the regulatory scheme left “appreciable damage to that supposedly vital interest unprohibited.” *Id.* at 547 (internal quotation marks and citation omitted). The same defect is present here. By permitting exemptions for medical reasons, homeschooling, learning pods, and

microschools, while categorically denying religious accommodations, Petitioners undermine their claim that denying religious exemptions is necessary to protect public health.²

On a broader level, the Supreme Court has also reviewed the laws in other jurisdictions when evaluating whether the government has met the “exceptionally demanding” least restrictive means test. *Holt*, 574 U.S. at 364 (internal quotation marks and citation omitted). In *Holt*, a prison claimed that its grooming policy ensured prison safety and security, but the Court rejected the policy for lack of narrow tailoring. *Id.* at 368–69. The Court emphasized that widespread adoption of less restrictive alternatives by “the vast majority of States and the Federal Government” undermined the prison’s interests in safety and security. *Id.*

“Forty-five states” allow religious exemptions to school-mandated vaccines. Order at 8. These jurisdictions are confronted with the same public health considerations and scientific principles about vaccination and disease transmission. The widespread implementation of less restrictive measures in most states is strong evidence that a categorical denial of religious exemptions is not narrowly tailored.

The Vaccine Law cannot survive ordinary strict scrutiny, and it certainly cannot satisfy the more focused inquiry required under RFRA and, by extension, the EPRA. In *Gonzales*, the Supreme Court rejected the government’s reliance on an abstract interest in uniform drug enforcement and held that RFRA requires “an inquiry more focused than the Government’s

² For these reasons, the Vaccine Law is not neutral or generally applicable under *Smith* and *Lukumi* because it selectively burdens religious exercise while permitting comparable secular exceptions and individualized determinations. *See Smith*, 494 U.S. at 884 (holding that a law is not generally applicable where the government maintains a system of generalized exemptions but refuses to extend comparable consideration to religious exercise); *Lukumi*, 508 U.S. at 542–46 (holding that a law is not neutral and generally applicable where it targets religious practice and selectively burdens religious conduct while permitting comparable secular conduct and exemptions).

categorical approach.” 546 U.S. at 430–32. Because the EPRA adopts RFRA’s strict scrutiny framework, *Gonzales* is directly instructive here. Petitioners have offered no evidence that granting a religious exemption to Respondents would undermine public health, instead relying on generalized claims of public health. The Petitioners’ failure to justify the burden “to the [Respondents]” is fatal under *Gonzales. Id.* at 431.

The Supreme Court’s COVID-19 decisions confirm that strict scrutiny remains fully operative even during extraordinary public health emergencies. In *Roman Catholic Diocese*, the Supreme Court declined to defer to New York’s COVID-19 regulatory framework, emphasizing that even in a pandemic, the Constitution, “cannot be put away or forgotten.” 592 U.S. at 19. The Court preliminarily enjoined the framework because New York could not satisfy strict scrutiny. *Id.* at 18. The Court further emphasized that New York’s regulations were not the least restrictive and were “tighter than those adopted by many other jurisdictions hard-hit by the pandemic....” *Id.*

Justice Gorsuch also rejected *Jacobson*’s application to New York’s restrictions on houses of worship: “*Jacobson* hardly supports cutting the Constitution loose during a pandemic. That decision involved an entirely different mode of analysis, an entirely different right, and an entirely different kind of restriction.” *Id.* at 23.

In *Tandon*, the Supreme Court sharpened its constitutional scrutiny at the height of the COVID-19 pandemic. The Court held 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.” *Tandon*, 593 U.S. at 62 (citation omitted) (emphasis in original). The Court emphasized that comparability is judged by risk, not by the government’s characterization of the activity, and California’s restrictions on private religious gatherings failed that standard. *Id.* The Court noted that it had repeatedly – five

times – “summarily rejected the Ninth Circuit’s analysis of California’s COVID restrictions,” signaling a firm willingness to enforce strict scrutiny even in emergency contexts. *Id.* at 64.

In sum, the Supreme Court has long required more than broad invocations of public health and safety. Strict scrutiny demands a focused, evidence-based showing that a restriction is necessary as applied to the claimant. That standard is resilient and fully operative even during extraordinary conditions like a global pandemic. If emergency measures could not survive strict scrutiny in response to a novel, rapidly spreading, and deadly virus, the Petitioners cannot satisfy their burden here, particularly when most states implement less restrictive measures under similar conditions.

VI. CONCLUSION

Considering the foregoing, Liberty Counsel joins the Respondents in urging affirmance of the Order. The EPRA incorporates RFRA’s compelling interest framework and applies with full force in the education context. Under that standard, the Vaccine Law imposes a substantial burden on Respondents’ parental free exercise rights by conditioning school access on conduct that conflicts with their sincerely held religious beliefs. That burden triggers strict scrutiny, and the Supreme Court has reaffirmed that public health emergencies do not displace the application of strict scrutiny. Petitioners have not demonstrated that the burden on religion is the least restrictive means of furthering a compelling government interest as applied to Respondents. Accordingly, this Court should affirm the judgment below.

Respectfully submitted,

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 25-836

WEST VIRGINIA BOARD OF EDUCATION, et al.,

Petitioners,

v.

MIRANDA GUZMAN, et al.,

Respondents.

CERTIFICATE OF SERVICE

I hereby certify that, on May 11, 2026, I electronically filed the foregoing ***AMICUS CURIAE BRIEF OF LIBERTY COUNSEL IN SUPPORT OF RESPONDENTS***, along with a copy of the Brief with the Clerk of Court by using the Court's online filing system and by emailing the same to all counsel of record.

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