

IN THE SUPREME COURT OF
THE UNITED STATES

No. 2013–2019

ANNA STOCKTON, *Petitioner*

v.

LET STUDENTS RUN TUTORING, INC., *Respondent*

On Writ of Certiorari to the Supreme
Court of the State of Calinois

ORDER OF THE COURT ON SUBMISSION

The petition for a writ of certiorari is granted, limited to the following two questions:

1. Whether the Paid Maternity Leave Act violates the Free Exercise Clause of the First Amendment as applied to LSR Tutoring?
2. Whether LSR Tutoring must grant Anna Stockton’s request to work from home under Title I of the Americans with Disabilities Act?

IN THE SUPREME COURT OF THE
STATE OF CALINOIS

No. 1890–1891

ANNA STOCKTON, *Plaintiff-Appellee*

v.

LET STUDENTS RUN TUTORING, INC., *Defendant-Appellant*

Appeal from the Calinois Court of Appeals
for the Second District

SHURBINE, C.J., delivered the opinion of the Court, in which COATS and ALLARI, JJ., joined. RUSANI, J., filed a dissenting opinion, in which GORLEMAN, J., joined.

CHIEF JUSTICE SHURBINE:

This case concerns a civil action brought by plaintiff Anna Stockton against defendant Let Students Run Tutoring, Inc. (LSR) over the defendant’s alleged violations of the Paid Maternity Leave Act (PMLA) and the Americans with Disabilities Act (ADA).

Stockton filed this suit in state superior court. In response to the PMLA claim, LSR conceded violating the statute but argued that the Free Exercise Clause of the First Amendment prohibited the enforcement of the PMLA against it. The trial court exercised concurrent jurisdiction to review the federal constitutional and ADA claims. It subsequently granted summary judgment for Stockton on both issues. The Court of Appeals affirmed.

LSR timely appealed to this court. We granted review to resolve these pressing questions of law. In this appeal, both parties have stipulated to the facts set out in Part I of

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this opinion. No issues of material fact or procedure are properly preserved on appeal. For the reasons stated herein, we now reverse the judgment of the Court of Appeals.

I

A

Since the mid-19th century, Calinois has been home to the Free Society of Believers, a religious sect commonly known as the Palmers, after its founder Marshall Palmer.¹

Palmer theology's core tenets include pacifism, community service, and gender equality. Additionally, all Palmers take a lifelong vow of celibacy and view childbearing as immoral. Despite this, many Palmers view it as their moral and religious duty to care for the most vulnerable of society, and Palmer-run organizations operate a substantial number of foster-care homes, homeless shelters, and charities for children with disabilities across the state.

Let Students Run Tutoring is a private, for-profit corporation headquartered in the state of Calinois. It was founded in 2006 by Alex Pidgin, a teacher and devout Palmer. Though LSR admits students of all kinds, it specializes in assisting students with learning disabilities and sensory issues that may pose a challenge to them in the classroom. As of September 2021, LSR had 17 full-time employees, 11 of whom were Palmers.

LSR provides a wide array of benefits to its full-time employees, many of which are considered among the most generous in its industry.² However, in accordance with its opposition to childbearing, LSR does not provide paid maternity leave.³

¹ A 2019 study estimated that Palmers make up around 0.2% of Calinois' population, or around 53,000 people.

² LSR provides all full-time employees five weeks of paid vacation each year; comprehensive medical, dental, vision, and life insurance; and reimbursement for wellness and fitness expenses.

³ As required by long-standing federal law, LSR does provide 12 weeks of unpaid maternity leave. However, LSR views financial support of childbearing as a violation of its religious beliefs.

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B

In December 2020, the Calinois Department of Labor issued a report entitled “Parental Leave and Workplace Equality: A Comprehensive Study.” Among other findings, the report found that only 16% of workers had access to paid parental leave in the state of Calinois. The report also presented a large body of evidence that paid maternity leave was associated with substantial benefits to the mental and physical health of both mothers and their children. Finally, the report found that paid maternity leave was associated with increased labor force participation and career earnings for women, as well as a reduced gender wage gap. The authors of the report recommended the creation of a state-level paid maternity leave mandate of no fewer than 12 weeks.

In response, the Calinois state legislature took up consideration of the Paid Maternity Leave Act (PMLA), which mandated that all businesses offer 12 weeks of paid maternity leave to expectant mothers under their employ. During the consideration of the bill, the legislature’s nonpartisan research office recommended that the law only apply to for-profit businesses with at least 10 employees, a provision it described as necessary to make the regulatory scheme practical to enforce and not overly burdensome on small enterprises.⁴ This recommendation was adopted into the bill. A coalition of Palmer businesses, including LSR, lobbied the legislature for the inclusion of a religious exemption in the law, but one was ultimately not included in the final bill. On March 7, 2021, the PMLA was passed with large bipartisan majorities in both houses of the state legislature and was subsequently signed into law by Governor Van Ayers.

C

Anna Stockton has worked for Let Students Run Tutoring since 2016. She has been described as a model employee throughout her time at LSR, consistently meeting deadlines and receiving positive feedback in performance reviews. Stockton is not a member of the Palmer faith.

In 2018, Stockton was promoted to the position of Standing Teacher. There are only 6 Standing Teachers at LSR. Standing Teachers are considered to hold a more

⁴ The research office estimated that, under this revised scheme, 85% of full-time workers would be covered by the Act.

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permanent position with more leeway for the tutor to make decisions about how they want to engage their students. Standing Teachers are often assigned to the same students for years. Frequently they form important personal connections with students and learn how to best meet their educational needs. LSR has found that students respond favorably to seeing the same tutor over the course of several years, as it allows them to form a trusting tutor-tutee relationship. LSR also retains students at a higher rate when they are paired with Standing Teachers. When Stockton was promoted, the LSR job was described as “a senior teaching position in which tutors are entrusted with the highest degree of responsibility for their student’s learning.”

In March 2020, due to the COVID-19 pandemic, Let Students Run moved all of their operations online. At the start of the pandemic, Stockton had 14 long-term students, 5 short-term students, and 2 “mayfly” students—students who only receive tutoring on a session-by-session basis. LSR defines long-term students as those who have been with their assigned tutor for at least a full academic year, and short-term students are those who have been with them for a semester. Stockton stated that, thanks to her familiarity with her students, she was able to adapt lesson plans effectively to online learning. For instance, Stockton would send her students different “fidget” devices that could occupy their hands while learning to increase concentration. For students with learning disabilities, Stockton would engage their families in learning so that there was somebody nearby to help, as well as to take time for sensory activities, like doing 20 jumping jacks. By the end of the period of online learning at LSR, two of Stockton’s short-term students chose to switch to a long-term arrangement. Most other teachers lost students during this time period.

Like many small businesses, LSR took a financial hit during the pandemic. Between March 2020 and April 2021, LSR’s revenue dropped by 25%. Simultaneously, the company lost 2 employees and 5 long-term clients. Luckily, only its CEO, Alex Pidgin, had to take a 3% pay cut.⁵

Despite the adaptations made for online learning, LSR’s internal studies showed students, tutors, and parents alike were negatively impacted by online learning. In compliance with Calinois protocol, on September 1, 2021, LSR re-opened for fully in-

⁵ Financial information gathered from Let Students Run FY2020–2021 budget reports.

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person learning. During their re-opening ceremony, Pidgin said: “we guarantee that, health restrictions allowing, we will keep all Let Students Run programming fully in person. Our goal is for your child’s educational needs to be met, which we believe is most effectively done in-person.” Since this announcement, LSR has received 2 new short-term clients and 3 mayfly clients, all of whom they hope to transition to long-term arrangements. Only one client requested to remain online and therefore discontinued their engagement with LSR’s services. LSR has been unable to replenish the size of its staff pool.

Around this time, Stockton became pregnant. On September 15, 2021, then six months pregnant, Stockton filed a request with LSR for paid maternity leave beginning the month after. Pidgin denied Stockton’s request, explaining that she could not in good conscience provide paid maternity leave because of her Palmer faith.⁶ Pidgin explained that “Palmer principles are at the core of everything LSR does,” and that financial support of childbirth was incompatible with those principles.

In October 2021, a month after returning to in-person work at LSR, Stockton was diagnosed with Hyperemesis Gravidarum. Throughout her pregnancy, Stockton had felt intense nausea and had experienced uncommonly high levels of vomiting and dizziness.⁷ Hyperemesis Gravidarum is a condition in which the ordinary morning sickness that most pregnant people experience becomes much more severe, which leads to intense nausea and dehydration. After ignoring the warning signs for months, Stockton was admitted to the hospital on October 6 so that she could receive intravenous fluid and nutrition. After this episode, Stockton’s doctor advised her to remain on bedrest for the remainder of her pregnancy, which would span another two months.

Stockton submitted a request to LSR to work from home, as she would be unable to come into the office for the duration of her pregnancy. Thanks to her previous experience working with students online, she believed that she would be able to provide appropriate programming for students over video. Stockton would use her own computer and educational materials as she had before LSR’s reopening for in-person learning. However,

⁶ In addition to founding and managing LSR, Pidgin owns 100% of the company’s equity.

⁷ Hyperemesis Gravidarum has been recognized as a disability under the ADA. Both parties recognize that Ms. Stockton does have a disability as defined by the ADA.

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LSR denied the claim, asserting it would be an unreasonable accommodation that would place an undue burden on the company.

Stockton then filed a lawsuit in state superior court asserting that LSR had violated both the PMLA and the ADA. The trial court granted summary judgment for Stockton on both issues. The Court of Appeals affirmed. We now take each issue in turn.

II

We begin with LSR’s free exercise claim. LSR claims that, in accordance with its religious beliefs, it may not provide direct financial support to the practice of childbearing. Accordingly, it refuses to comply with the requirements of the Paid Maternity Leave Act.

It is not this court’s prerogative to doubt the sincerity of LSR’s religious beliefs. See *Employment Division v. Smith*, 494 U.S. 872, 887 (1990) (“Repeatedly and in many different contexts, we have warned that courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim.”). We thus accept as true LSR’s contention that the paid leave mandate burdens its religious exercise and proceed to the analysis of whether that burden is acceptable under our precedents.

A

The Supreme Court laid out the modern standard for analyzing free exercise claims in the 1990 case *Employment Division v. Smith*. The majority explained that “the right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).” *Id.* at 879.

The PMLA may not explicitly single out religious entities or practices for adverse treatment. But as two of the Supreme Court’s recent precedents indicate, that fact alone is not enough to deem it a “neutral law of general applicability.”

We first turn to *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021). In *Fulton*, the Court held that Philadelphia could not require a Catholic Social Services, a religious foster-care agency, to certify same-sex foster couples. *Id.* The majority explained that because the law in question contained a provision allowing the city commissioner to make “individualized exemptions” to the blanket non-discrimination requirement, it was by

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definition not “generally applicable.” *Id.* at 1883. The fact that the commissioner had never exercised that discretion was not relevant, the Court explained, because the mere existence of a “formal mechanism for granting exceptions renders a policy not generally applicable,” since it “invited” the government to decide which reasons for not complying with the policy [were] worthy of solicitude.” *Id.* at 1879.

The PMLA does not contain a provision allowing individualized exemptions. But its exemption of small enterprises and nonprofits amounts to much the same value judgment as to what reasons for noncompliance are “worthy of solicitude.” Here, that value judgment is that religious reasons are less deserving of accommodation than secular ones.

The Court further underscored the requirement that religious exercise be given equal footing to secular activities in *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020). *Roman Catholic Diocese*, decided in 2020, concerned strict capacity limits on religious services enacted by New York state as part of its COVID-19 response. The Court struck down those limitations, finding that because the restrictions “single[d] out houses of worship for especially harsh treatment” compared to secular businesses the state deemed “essential,” they could not be deemed “neutral.” *Id.* at 66.

The combined effect of *Fulton* and *Roman Catholic Diocese* is clear: regulations that exempt certain kinds of secular conduct but not comparable religious conduct are not “generally applicable” under *Smith*. By its own terms, the state’s regulation is not universal in its coverage: it exempts “very small businesses and nonprofits” because they “would be likely to face significant financial hardship if subjected to the terms of” the PMLA. Paid Medical Leave Act of 2021, Section 2(g).

That these exemptions are based on bright-line standards and not the government’s case-by-case discretion is immaterial. Section 3(b)(2) exempts those businesses that would experience financial (i.e. secular) hardship but makes no such accommodation for religious hardship. When a law “fail[s] to [regulate] nonreligious conduct that endangers [government] interests in a similar or greater degree,” it ceases to be generally applicable. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 543 (1993). The exclusion of nonprofits and small businesses from the paid-leave mandate almost certainly

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undermines the state’s interests to a greater degree than a religious exemption would. As such, we find that the PMLA lacks general applicability and move to the scrutiny analysis.

B

Under Supreme Court precedent, laws that lack general applicability must survive strict scrutiny. See, e.g., *Lukumi*, 508 U.S., at 546; *Fulton*, 141 S. Ct., at 1881; *Roman Catholic Diocese*, 141 S. Ct., at 67. To satisfy strict scrutiny, “a law restrictive of religious practice must advance [compelling] interests..., and must be narrowly tailored in pursuit of those interests.” *Lukumi*, 508 U.S., at 546. The application of the paid leave mandate to LSR cannot withstand this high standard.

We first examine the state’s interest. We do not doubt the government’s assertions regarding the benefits of paid maternity leave for both mothers and their children. But the mere existence of some cognizable societal benefit arising from the law does not make an interest compelling. The interest the government provides must justify the specific regulatory scheme it chose to enact: not a universal mandate, but one that contains accommodations for situations where compliance with the mandate could cause financial hardship.

Given that statutory carve-out, we are unable to find a valid, religiously neutral government interest that is “of the highest order.” *Smith*, 494 U.S., at 888. As such, we conclude that the government’s interest in enacting the PMLA is not compelling. See *Lukumi*, 508 U.S., at 547 (“It is established in our strict scrutiny jurisprudence that a law cannot be regarded as protecting an interest of the highest order . . . when it leaves appreciable damage to that supposedly vital interest unprohibited.”) (internal quotations omitted).

Even assuming the government’s interests are compelling, it cannot be said that the means it employs to achieve those interests are narrowly tailored. As the record indicates, 15% of workers would not be covered because of the Act’s existing exemptions. An alternative statutory scheme that would not burden LSR’s free exercise could simply add free-exercise exemptions to the law alongside what accommodations already exist. See *Fulton*, 141 S. Ct., at 1883 (“The creation of a system of exceptions under the contract undermines the [government]’s contention that its... policies can brook no departures.”). Additionally, if the state wishes for paid leave to be universal, it may provide said financial

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support itself through its power to tax and spend. What it may *not* do is unconstitutionally burden LSR's free exercise simply because it prefers its chosen scheme over less restrictive alternatives.

We therefore find the PMLA's application to Let Students Run Tutoring unconstitutional under the Free Exercise Clause and reject Stockton's claim under the Act.

III

"We do not suggest that the line between a lawful refusal to extend affirmative action and illegal discrimination against handicapped persons always will be clear... In this case, however, it is clear that Southeastern's unwillingness to make major adjustments in its nursing program does not constitute such discrimination." *Southeastern Commun. Coll. v. Davis*, 442 U.S. 397, 412–413 (1979). The lack of clarity the Supreme Court identified 43 years ago in *Davis* is evident in the case before us today. Discrimination in the realm of disabilities have long confounded the courts, we have long recognized that the types of discrimination that befall those with disabilities often look entirely different than those that courts are used to handling. Nevertheless, it is our duty to attempt to find the contours of this particular brand of discrimination using the means that the ADA sets forth.

Three factors are relevant in determining whether the ADA requires Let Students Run to allow Anna Stockton to work from home. (1) Whether Stockton's request to work from home constitutes a "reasonable accommodation"; (2) whether Stockton can be considered a "otherwise qualified individual"; and (3) whether the proposed accommodation places an "undue hardship" on the operation of Let Students Run. The first two questions may be assessed together, and the third separately. ADA, Title I, Section 12112.

There is no question that Anna Stockton has a disability as recognized in the ADA. However, as a business of less than 20 employees, Let Students Run cannot be expected to accommodate its employees to the extent that it interferes with their ability to operate. In light of the pandemic, businesses such as LSR are more fragile than ever. We find that Stockton's requested accommodation is unreasonable and places an undue hardship on Let Students Run.

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A

First, we must assess the reasonableness of Stockton's request to work from home. The reasonableness of the request and the question of whether a candidate is "otherwise qualified" to perform the tasks of the job are fundamentally interconnected. In *Southeastern Commun. Coll. v. Davis*, 442 U.S. 397 (1979) the Court determined that a deaf woman would not be accommodated as a nursing student because hearing was integral to the functions of a nurse. An "otherwise qualified" candidate would need to be able to communicate with patients independently. Under the *Davis* standard, then, a reasonable accommodation does not require affirmative action. Instead, employers must only accommodate their employees to the extent that they are still qualified candidates for the position. See *id.* at 406 ("An otherwise qualified person is one who is able to meet all of a program's requirements in spite of his handicap"). If Stockton's disability makes her unable to perform the duties of her job, then she is no longer qualified for that job. Any accommodation that would attempt to alter the nature of the job itself so that she can still be considered qualified is an unreasonable one. If Stockton is unable to attend an in-person job, then she is no longer qualified for that role. Asking LSR to alter the nature of the position itself by allowing her to continue her work away from the LSR facilities is unreasonable under these guidelines.

During the COVID-19 outbreak, this nation has been no stranger to reconfiguring the workplace. Let Students Run, like many businesses and schools, moved entirely online while Calinois requirements limited in-person interactions. However, the return of in-person learning at LSR came as a great relief to many parents. As an organization that often deals with young children, especially those with sensory issues, it is critical that LSR allows children to learn in the manner most beneficial to them. The choice to return to in-person instruction reflects the needs of LSR's clients.

LSR's decision to transition back to in-person learning is critical. The dissent suggests that because Stockton has been able to teach online, she should be able to do so again. However, teaching online in the post-September 2021 context is a different beast entirely. Once all LSR operations moved back to an in-person format, this became part of the job qualifications. Section 12111(8) in Title I of the ADA explains that, in determining whether an employee is "otherwise qualified...", consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this

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description shall be considered evidence of the essential functions of the job.” ADA, Title I, Section 12111(8). Our principal consideration should therefore lie in the duties of the job as instructed by the employer. As is clear from LSR CEO Alex Pidgin’s statements upon reopening, LSR now guarantees total in-person programming. Hosting classes online fundamentally alters this understanding of LSR’s programming, and therefore of the position that Stockton holds. Though we understand that Stockton is capable of teaching online, doing so at LSR would change the nature of the job itself. Unfortunately, if Ms. Stockton is unable to do her job in person, she is no longer a “qualified individual.”

In this case, there is an even more pressing need to keep all employees in-person than in many others. As the 10th Circuit pointed out in *Mason v. Avaya Communications, Inc.*, 357 F.3d 1114 (10th Cir. 2004), working from home has, on the circuit level, been recognized in only one case as a reasonable accommodation, where other employees in a similar position without disabilities were granted the ability to work from home. In *Mason*, the desire to supervise the employee was sufficient to demonstrate that the duties of the role were not able to be fulfilled from home. Here, no other employee of Let Students Run is permitted to work from home, and the role that any Standing Teacher plays by being an in-person tutor for their students is integral to the job itself. Stockton’s request goes beyond the reasonable requests granted by the ADA.

The Court in *PGA TOUR, Inc. v. Martin*, 532 U.S. 661 (2001) stated that for golf, “the essence of the game has been shotmaking-using clubs to cause a ball to progress from the teeing ground to a hole some distance away with as few strokes as possible.” The essence of the job of an in-person tutor is to instruct and teach children in a close physical space. Ms. Stockton’s request asks us to defy that definition.

B

Even if Stockton’s request to work from home is reasonable, the ADA provides a protection for small businesses like Let Students Run through the “undue hardship” standard. An undue hardship, as outlined in Section 12111, must take into consideration a number of factors, namely:

- (i) the nature and cost of the accommodation needed under this chapter;
- (ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility;

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the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

The size and financial resources of Let Students Run is of great relevance to this case. As a small business, LSR took on a significant financial burden during online learning, as is evident by their drop in revenue and clientele. Returning to in-person education is a way for LSR to get back on its feet. It has already acquired five new students since announcing guaranteed in-person learning. Allowing employees of the company to break this policy, as Ms. Stockton asks LSR to do, adds an unnecessary risk for LSR's already precarious financial situation. With only 15 employees, allowing a member of the staff to shirk their in-person duties would hurt the company's ability to function. Notably, Stockton is a "Standing Teacher," meaning that she is one of only 6 employees to be able to work with clients in the way she does. The Court's decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999) demonstrates the weight that these financial burdens carry.

Beyond the financial repercussions Stockton's accommodation would create, asking Let Students Run to renege on its own policies presents a hardship in and of itself. The Court has recognized the benefits a company could find in maintaining strictly its seniority policy. See *US Airways, Inc. v. Barnett*, 535 U.S. 391 (2002). Similarly here, the policy of the company to remain fully in person is undermined on its whole by having Stockton work from home. We have discussed at length the benefits afforded LSR by its return to in-person learning. We must now recognize the importance of its nature as a policy. LSR's CEO presented in-person learning as a guarantee. Determining that the 20+ students Stockton teaches on a regular basis are not included in that guarantee certainly places a hardship on LSR.

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C

Though we are sympathetic to the plight of Stockton’s current condition, we cannot find that her requested accommodation is reasonable. Working from home in an organization that just announced it will not force any student to learn from home fundamentally alters the nature of the organization and places undue hardship on its operation.

IV

For the foregoing reasons, we find for LSR Tutoring on both the free exercise and ADA claims. The judgment of the Court of Appeals is reversed.

It is so ordered.

JUSTICE RUSANI, dissenting:

Today’s opinion insulates Let Students Run from the ordinary obligations of employers to their employees. Both the PMLA and ADA were created to protect employees, a purpose that is undermined by this decision. Because the majority misconstrues well-settled precedent, I respectfully dissent.

I

The first question this court is presented with is whether LSR’s religious beliefs entitle it to an exemption from the paid-leave mandate. The majority answers yes. In my view, that conclusion is inconsistent with both precedent and the rule of law.

A

The majority correctly identifies the controlling standard in this case from *Employment Division v. Smith*: that “neutral laws of general applicability” do not violate the Free Exercise Clause even if they substantially burden an individual’s religious exercise. 474 U.S. 872, 879 (1990). But even assuming the burden on LSR’s religious exercise is substantial, the majority’s application of *Smith*’s test has gone badly awry.

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The PMLA does not single out religion in any way, nor does it make any mention of religious practices. Unlike the implicit and explicit religious targeting present in *Church of Lukumi Babalu v. City of Hialeah* (banning animal slaughter virtually only in religious contexts) and *Roman Catholic Diocese of Brooklyn v. Cuomo* (placing stricter capacity limitations on houses of worship than comparable secular businesses), no one argues that there is any actual religious animus behind the PMLA. So how does it lack general applicability? In the majority's telling, because LSR's religious beliefs are incidentally implicated by the statute, and no accommodation is made for those beliefs, the law must be read to treat religious exercise unfairly. *Ante*, at 6–7.

But this line of reasoning runs directly contrary to the *Smith* Court's own explanation of its standard. "Precisely because we are a cosmopolitan nation made up of people of almost every conceivable religious preference," we cannot infer a lack of general applicability from a law's failure to contemplate all possible religious objections. *Smith*, 494 U.S., at 888. This much is evident from common sense: LSR is regulated because it is a for-profit corporation with more than 10 employees, not because of its religion. See *United States v. Lee*, 455 U.S. 252, 261 (1982) ("When followers of a particular sect enter into commercial activity as a matter of choice, the limits they accept on their own conduct as a matter of conscience and faith are not to be superimposed on the statutory schemes which are binding on others in that activity."). That is a neutral and generally applicable rule and is justifiable without reference to any religious exercise.

The majority points to *Fulton v. Philadelphia* and *Roman Catholic Diocese of Brooklyn v. Cuomo* as analogues to the case we are presented with. 141 S. Ct. 1868 (2021); 141 S. Ct. 63 (2020). Because neither is applicable to the case at hand, it pretends as if some imagined chimera of the two can justify its strained reasoning. *Ante*, at 7.

Fulton's holding turned on a provision of the anti-discrimination ordinance concerned there allowing "individual exemptions" to be made at the "sole discretion" of the city commissioner. *Fulton*, 141 S. Ct., at 1878 (emphasis added). Note the key word "individual." The majority contorts *Fulton*'s reasoning to argue that it applies to any provision that limits a law's applicability. Since almost every law on the books necessarily applies to some group of people and not others, the majority's logic would result in strict scrutiny being applied in virtually all free exercise cases, exactly what the *Smith* court

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warned against. The salient issue in *Fulton* was that a single official possessed unlimited discretion to decide who the law should or should not apply to, not that a statutory definition of the law's reach was insufficiently accommodating of religion.

Roman Catholic Diocese is no more applicable. The COVID-19 regulations struck down in that case, as the majority acknowledges, “singled out houses of worship for especially harsh treatment” compared to secular businesses deemed essential. *Roman Catholic Diocese*, at 66. Not so, here. LSR's principal complaint is that it is treated exactly like every other business of its kind, not that it is treated worse than them.

The majority distills the two decisions into a principle that applies to a case meeting neither fact pattern: that laws like the PMLA are ostensibly invalid because they exempt some secular conduct but not “comparable” religious conduct. *Ante*, at 7. But the majority's legal theory—charitably described as novel—fails even on its own terms: there is no comparable religious conduct being burdened. The law makes no mention of religion (as in *Roman Catholic Diocese*) and contains no provision for individualized exemptions (as in *Fulton*). Accordingly, there is no basis for concluding it either targets religious exercise or allows the government discretion to target it in the future.

LSR does not seek to be treated neutrally, without regard to its religious beliefs. Instead, it “seeks *preferential*, not equal treatment; it therefore cannot moor its request for accommodation to the Free Exercise Clause.” *Christian Legal Soc. Chapter v. Martinez*, 561 U.S. 661, 697 n.27 (2010) (emphasis added). See also *Smith*, 494 U.S., at 885 (1990) (“To make an individual's obligation to obey a law contingent upon the law's coincidence with his religious beliefs, except where the State's interest is compelling — permitting him, by virtue of his beliefs, to become a law unto himself — contradicts both constitutional tradition and common sense.”).

B

I turn next to the scrutiny analysis. If the PMLA is neutral and generally applicable, it is subjected to rational basis review, which it plainly passes. Assuming, *arguendo*, that strict scrutiny is the appropriate standard, I come to the same conclusion.

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The Calinois state legislature made detailed factual findings as to the benefits of universal paid maternity leave. But these are merely “some cognizable societal benefits,” explains the majority, not a compelling interest. *Ante*, at 8. I respectfully disagree. Few interests are as important to a state as the wellbeing of children, financial security of families, and gender equality. The legislature deemed that these interests would be best served by a more workable, economically sustainable statutory scheme that excluded nonprofits and small corporations from coverage. We possess neither the expertise nor the prerogative to cast doubt on that judgment. It is therefore misplaced for the majority to claim the legislature’s chosen scheme undermines its interests when the legislature made reasonable findings to the contrary.

It bears noting as well that we are not presented with the free exercise claim of an individual, or even an explicitly religious body like a church. LSR is a for-profit corporation, run for the financial benefit of its owner. Supreme Court precedent allows closely held corporations such as LSR to bring free exercise claims. But analysis of these claims ought to be viewed in light of a host of other considerations. Should companies with sincere religious objections to occupational safety regulations be permitted to endanger their employees? Granting an exemption to a religious employer has the effect of “impos[ing] the employer’s religious faith on their employees,” and the government’s interest here is enhanced because of the special need to protect employee interests. *Lee*, 455 U.S., at 261.

United States v. Lee illustrates this dilemma well. In *Lee*, an Amish employer refused to withhold or pay social security taxes on the grounds that paying such taxes or benefiting from the national social security system would violate the Amish faith. *Id.* at 254. Because *Lee* predated *Smith*’s more permissive standard, the Court looked to strict scrutiny to analyze whether social security taxes unconstitutionally burdened Lee’s free exercise. *Id.* at 258. The Court rejected Lee’s argument, explaining that the government’s application of the tax to Lee was justified because “the Government’s interest in assuring mandatory and continuous participation in and contribution to the social security system [was] very high” *Id.* at 258-59.

The same is true here. The Court has long adopted a strong presumption against religious objections to social insurance systems like the one concerned in *Lee*, and the PMLA should be viewed no differently. The omission of a religious exemption from the law

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does not undermine the government's interest, as the majority claims. Instead, it reflects the "overriding interest in keeping the government — whether it be the legislature or the courts — out of the business of evaluating the relative merits of differing religious claims." *Id.* at 263 (Stevens, J., concurring in the judgment). I would therefore find that the government's interest in a broadly applicable paid-leave mandate is compelling and that the PMLA is an appropriately tailored means of addressing that interest.

C

The Free Exercise Clause was intended to protect religious believers from targeted hostile treatment by the government. The majority today turns that principle on its head and holds that LSR may demand special treatment under the law because of its religious beliefs. That idea is certainly contrary to binding Supreme Court precedent. But it is also incompatible with basic principles of fairness and the rule of law. I cannot join the majority's decision on the free exercise issue for those reasons.

II

The majority uses as many avenues as possible to attempt to justify plain discrimination on the part of LSR. To allow employers to neatly side-step accommodations by redefining positions for their ends would be to undermine the whole of Title I of the ADA. In *PGA TOUR, Inc. v. Martin*, the Court explained the broad purpose of the ADA:

In the ADA, Congress provided that broad mandate. See 42 U. S. C. § 12101(b). In fact, one of the Act's "most impressive strengths" has been identified as its "comprehensive character," and accordingly the Act has been described as "a milestone on the path to a more decent, tolerant, progressive society."

532 U.S. 661, 675 (2001) (internal citations and quotations omitted). Following *PGA TOUR*, we understand the ADA as a comprehensive act that must be granted the ability to forward the interests of disabled people. The majority forgets this purpose, and in doing so hinders the livelihood of Anna Stockton.

A

The majority argues that work-from-home is an unreasonable accommodation because of the present policies of Let Students Run. However, the ADA protects against

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mercurial employers in its text: “If an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job” ADA, Title I, Section 12111(8). At the time of Stockton’s employment as a Standing Teacher, the role was described to her as “a senior teaching position in which tutors are entrusted with the highest degree of responsibility for their student’s learning.” Nowhere in that statement is there a requirement that Stockton take the responsibility of her students from inside a particular physical space.

In fact, Stockton has demonstrated her ability to create student success in an online format. She has created new tactics for learning so effective that two of her students have opted for a “long-term” agreement simply from their experiences with her online. She therefore has fulfilled the duties of the job presented to her, and we can expect her to do no more than that. Unlike the decision in *Southeastern Commun. Coll. v. Davis*, 442 U.S. 397 (1979), Stockton is, in fact, an “otherwise qualified” candidate. The only function that Stockton cannot perform by working online is simply not being in-person. LSR presents no further job qualities that are hindered by her absence from the office.

The precedent in *Olmstead v. L.C.*, 527 U.S. 581 (1999) implores us to look for discrimination in places we do not expect. If we find, as the majority asserts, that it is unreasonable for Stockton to teach in the exact manner she had taught for the previous 17 months, then there is virtually no reasonable accommodation any disabled person can request. *Southeastern Commun. Coll. v. Davis* and *PGA TOUR Inc. v. Martin* both examine the essential nature of the activity that the parties in those cases were looking to modify. Here, the essential nature of tutoring is connecting with and educating a student. Just as in *PGA TOUR*, arbitrary rules cannot be deemed to the essential nature of an activity. That LSR chose to make a promise to its clients cannot be prioritized when the promise opens doors for discrimination. Whether or not teaching is in person is immaterial to the core functions of a tutoring company. Otherwise, LSR was not a tutoring company between March of 2020 and September 2021. It is hardly unreasonable for Stockton to ask for an accommodation that would allow her to fulfill the duties of her job in spite of her disability.

B

Next, we turn to the consideration of an “undue hardship” purportedly put upon Let Students Run. The concept of an “undue hardship” cannot be used to override entirely the necessities of the accommodations provided in the ADA. *Olmstead*, 527 U.S. 581, 607

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(opinion of Ginsburg, J.). The majority succumbs to this fallacy. There is no doubt that, in order to create reasonable accommodations, employers will have to incur some costs. That these accommodations must be made nonetheless is no less true. We interpret *Olmstead* to set a higher standard for an “undue hardship” than the majority presents.

This case does not present a significant strain on LSR by any metric. Stockton’s accommodation comes at very little real cost to LSR. The materials necessary for her to work from home do not come at the expense of the company. More notably, if Stockton is permitted this accommodation, then LSR does not need to risk a loss of the 20 or more students who have developed a close, personal connection with their teacher. Further, the financial impacts that the majority so heavily relies upon cannot be taken as examples of the impact of one employee. Rather, they are the result of a global pandemic. Putting the weight of a global economic crisis on the disabilities of one woman cannot be conducive to the expansive goals of the ADA recognized in *PGA TOUR*.

Finally, the majority argues that altering the policies of LSR is, in and of itself, an undue hardship. Blurring the distinction between the accommodation and the hardship is precisely what the Court warned against in *Olmstead*. “By definition any special accommodation requires the employer to treat an employee with a disability differently, i.e., preferentially. And the fact that the difference in treatment violates an employer’s disability-neutral rule cannot by itself place the accommodation beyond the Act’s potential reach.” *US Airways, Inc. v. Barnett*, 535 U.S. 391, 397 (2002) (internal quotations omitted). That LSR has put into place an in-person rule is precisely the root of the discrimination in this case. “Restructuring” is within the definition of an accommodation. ADA, Section 1211(1), (9)(B).

Company policies must occasionally be altered for the sake of inclusion. The majority has erred in failing to recognize this.

III

The majority’s decision misapplies binding precedent and undermines the worker protections set out by the PMLA and ADA. I respectfully dissent.

Appendix A

Paid Maternity Leave Act of 2021⁸

Section 1. Purpose

The purpose of this Act is

- (a) to entitle employees to take a reasonable period of paid maternity leave;
- (b) to promote the physical and mental health of mothers and their children;
- (c) to promote the economic security and stability of families;
- (d) to promote the goal of equal employment opportunity for all genders; and
- (e) to accomplish the above goals in a manner that is consistent with the continued financial and economic vitality of employers.

Section 2. Findings

The Calinois state legislature finds:

- (a) it is important for the development of children that mothers be able to participate in early childrearing;
- (b) the lack of widely available paid leave policies can force mothers to choose between job security and parenting;
- (c) the primary responsibility for family caretaking often falls on women, and such responsibility affects the working lives of women more than it affects the working lives of men;
- (d) presently, only 16% of all women in the State of Calinois have access to paid maternity leave of at least 12 weeks;
- (e) paid maternity leave has been shown to have significant benefits with respect to:
 - (1) the physical and mental health of mothers and their children;
 - (2) the career earnings of women in the workforce who have children;
 - (3) the financial stability of families where one or both parents work; and
 - (4) equal employment opportunity for all genders.

And that:

- (f) most employers would be reasonably capable of bearing the costs of the mandate imposed by this Act; but

⁸ Portions of this Act are adapted from the Family and Medical Leave Act of 1993.

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- (g) very small businesses and nonprofit organizations would be likely to face significant financial hardship if subjected to the terms of this Act.

Section 3. Definitions

As used in this Act:

(a) Eligible employee

(1) In general

The term “eligible employee” means:

- (A) an employee who has been employed for at least 6 months by the covered employer with respect to whom leave is requested under this Act;
- (B) an employee who has been employed for at least 1,250 hours of service with such employer during the previous 12-month period; and
- (C) an employee who has been pregnant for at least 90 days at, or was pregnant no less than 90 days prior to, the time of requesting leave from an eligible employer under this Act.

(b) Eligible employer

(1) In general

The term “covered employer” means:

- (A) any person or organization in the state of Calinois engaged in commerce or in any activity affecting commerce that employs individuals to act in furtherance of the interests of the employer.

(2) Exclusions

The term “covered employer” does not include:

- (A) an employer who employs fewer than 10 employees at time of a request for leave; or
- (B) an employer that is a registered nonprofit organization in the state of Calinois; or
- (C) an employer that is an agency or entity of the federal government.

Section 4. Leave Requirement

- (a) An eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for the birth of a child and to care for such a child.

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- (b) During such leave period, the eligible employee shall be entitled to their full wages, less any performance bonuses, paid by their employer, prorated to the duration of the leave period.

Section 5. Enforcement

- (a) Any covered employer who violates Section 4 of this Act shall be liable to any eligible employee affected:
 - (1) For damages equal to the sum of:
 - (A) twice the full wages that would be paid to plaintiff during the maximum leave period allowed by law; and
 - (B) reasonable attorney's fee of the plaintiff.
- (b) A civil action by an eligible employee against a covered employer may be heard by any Calinois state trial court.

Appendix B

Americans with Disabilities Act (Title I)

Section 12112. Discrimination

No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

...the term “discriminate against a qualified individual on the basis of disability” includes...

(5) (A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

Section 12111. Definitions

(8) Qualified individual

The term “qualified individual” means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this subchapter, consideration shall be given to the employer’s judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(9) Reasonable accommodation

The term “reasonable accommodation” may include

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the

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provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

10) Undue hardship

(A) In general

The term “undue hardship” means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered

In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include

- (i) the nature and cost of the accommodation needed under this chapter;
- (ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
- (iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and
- (iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

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