No. 26A ___

In the Supreme Court of the United States

SAMUEL STRULOVITCH, MS ACQUISITION I, LLC, AND 10 CLAREMONT AVENUE, LLC,
Applicants,
v.
MOSHE BAIN,
Respondent,
and
PARKVIEW OPERATING CO., LLC, WESTCHESTER GARDENS REALTY LLC, JONATHAN BLEIER, AND ROBERT BLEIER,
Nominal Respondents.

To the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Second Circuit

EMERGENCY APPLICATION FOR STAY PENDING APPELLATE REVIEW OR, IN THE ALTERNATIVE, PETITION FOR WRIT OF CERTIORARI AND STAY PENDING RESOLUTION

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QUESTIONS PRESENTED

1. Whether a civil court may forbid a person from participating in religious adjudication before a tribunal of his own faith, as his beliefs require him to do.
2. Whether a civil court may compel a person to ask clerics of his own faith to retract a religious determination that the person agrees with and does not wish to see disturbed.

THE PARTIES, CORPORATE DISCLOSURE STATEMENT, AND RELATED PROCEEDINGS

Applicants are Samuel Strulovitch, MS Acquisition I, LLC, and 10 Claremont Avenue, LLC. Respondent is Moshe Bain. Nominal Respondents are Parkview Operating Co., LLC, Westchester Gardens Realty LLC, Jonathan Bleier, and Robert Bleier.

Applicants MS Acquisition I, LLC and 10 Claremont Avenue, LLC disclose that there is no parent or publicly held company owning 10% or more of their stock.

The related proceedings are:

Matter of Bain v. Strulovitch, Index No. 75548/2024 (N.Y. Sup. Ct., Westchester Cnty., Commercial Div.) (Jamieson, J.):

— Decision and Order dated December 9, 2024 (preliminary injunction barring Strulovitch from taking any action to confirm or enforce the Rockland Arbitration Award, including seeking modification, clarification, or explanation of that Award from the issuing rabbinical court);

— Temporary Restraining Order dated March 24, 2026 (enjoining any proceedings in any other forum, including any beis din);

— Decision and Order dated April 24, 2026, entered April 29, 2026 (the "Order") (granting a preliminary injunction barring Strulovitch from furthering any action, whether civil or religious, before any tribunal other than the Supreme Court, Westchester County and directing Strulovitch to take all steps necessary to have the

beis din withdraw the seruv issued against Bain, including withdrawing the entire proceeding).

Matter of Bain v. Strulovitch, Case No. 2026-04501 (N.Y. App. Div., 2d Dep't):

— Order to Show Cause and Affirmation in Support of Stay Pending Appeal, filed May 6, 2026;

— Bench denial of interim stay relief by the trial court;

— Denial of interim emergency relief by the Appellate Division, Second Department, dated May 7, 2026;

— Motion for a stay pending appeal, fully briefed as of May 21, 2026 and, as of the date of this application, undecided notwithstanding counsel's July 20, 2026 letter requesting a decision.

The underlying commercial action, including the parties' cross-motions for summary judgment concerning ownership of the nursing home, remains pending in Supreme Court, Westchester County, and is not the subject of this application.

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TO THE HONORABLE SONIA SOTOMAYOR, ASSOCIATE JUSTICE OF THE UNITED STATES SUPREME COURT AND CIRCUIT JUSTICE FOR THE SECOND CIRCUIT:

A New York trial court has directly intruded on the free exercise of religion by ordering Applicant Samuel Strulovitch, who is a religious Jew, to refrain from trying to resolve a monetary dispute in a rabbinical court (Hebrew: "beis din"), as he sincerely believes he must. That alone would be extraordinary. But the trial court went further still by ordering Strulovitch to attempt to convince that same rabbinical court to reverse a religious determination that he agrees with.

In this case, Strulovitch brought an underlying commercial dispute between two Jewish parties to a beis din, attempting to have the parties voluntarily agree to resolve it under Jewish law—as he sincerely believes he must. The beis din then issued a *seruv* (a religious censure of recalcitrance, with no civil consequences) against Respondent Moshe Bain for having previously sought and obtained an order enjoining Strulovitch from fulfilling his obligation under Jewish law to pursue his case in Jewish court. Strulovitch believes the beis din was right, as a matter of Jewish law, to issue the seruv. App. 156 at ¶ 2. The trial court nonetheless ordered him to cease his efforts before the beis din and "take all steps necessary" to undo the seruv, including withdrawing the proceeding altogether. App. 009.

That unconstitutional order squarely violates the First Amendment, as incorporated against the States through the Fourteenth Amendment. Applicants have exhausted the state courts. The trial court denied a stay from the bench. App. 213. The Appellate Division, Second Department, denied emergency interim relief and has not ruled on Applicants' motion for stay, despite its having been fully briefed

months ago. App. 012–013. Counsel also submitted a letter to the Second Department on July 20, 2026, asking that court to decide the pending motion. App. 242. Every day that passes without relief is a day Strulovitch remains barred from a religious forum and subject to a plainly unconstitutional order, while the underlying civil litigation continues apace. And, as that litigation proceeds, the prospect of further injury to Strulovitch's free exercise continues to grow, including via a permanent injunction or the prospect of sanctions for failing to have the seruv withdrawn. This Court's intervention is thus necessary to preserve his religious liberty.

OPINIONS BELOW

The order for which a stay is sought is the Decision and Order of the Supreme Court of the State of New York, Westchester County, Commercial Division (Jamieson, J.), entered April 24, 2026 and filed April 29, 2026 (NYSCEF Doc. No. 125, Index No. 75548/2024) (the "Order"). The Order is reproduced at App. 002–010. The Appellate Division's denial of interim relief is unreported and reproduced at App. 012–013.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a) and may act on this application under 28 U.S.C. § 1651(a) and 28 U.S.C. § 2101(f).

The Order is final for purposes of this Court's jurisdiction even though the underlying commercial litigation continues. *See National Socialist Party of Am. v. Vill. of Skokie*, 432 U.S. 43, 44 (1977) (per curiam) (denial of stay pending interlocutory appeal of injunction infringing First Amendment right is "final" order even if underlying litigation is still pending). Indeed, that Order infringes

Strulovitch's First Amendment rights today—harm that cannot be undone by any later ruling in his favor. Whatever the ultimate resolution of the parties' underlying commercial dispute, that constitutional violation—and the question whether Strulovitch may be barred from a religious forum and conscripted to seek a religious ruling that he disagrees with—is entirely severable from that dispute and ready for this Court's review. *See Elrod v. Burns*, 427 U.S. 347, 373–74 (1976); *see also Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 481–87 (1975) (finality construed pragmatically where later review would be unavailable or ineffective); *Republic Nat. Gas Co. v. Oklahoma*, 334 U.S. 62, 68 (1948).

A stay is available under 28 U.S.C. § 1651(a), which authorizes a single justice to grant a stay after applying the ordinary factors of likely success, irreparable injury, the balance of equities, and the public interest. *Nken v. Holder*, 556 U.S. 418, 434 (2009); *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 15–21 (2020) (per curiam). "That requirement is met when a stay is 'necessary to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case.'" *Malliotakis v. Williams*, 146 S. Ct. 809, 811 (2026) (Alito, J., concurring) (quoting *Atlantic Coast Line R. Co. v. Locomotive Eng'rs*, 398 U.S. 281, 295 (1970)).

A stay is likewise independently available under 28 U.S.C. § 2101(f), which authorizes a single justice to stay "the final judgment or decree of any court" subject to certiorari review upon a showing of (1) a reasonable probability that certiorari will be granted, (2) a significant possibility that the judgment below will be reversed, and

(3) a likelihood of irreparable harm absent a stay. *See Barnes v. E-Systems, Inc. Grp. Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1302 (1991) (Scalia, J., in chambers).

Because the considerations under both provisions overlap, they are addressed together below.

STATEMENT OF THE CASE

This application concerns an unconstitutional state court order that intrudes directly into the affairs of an indisputably religious tribunal and that forbids Strulovitch from following the dictates of his religion. Indeed, it compels him to violate his religious faith. While the underlying civil dispute and procedural history provide context for that order, the Court need not wade into them to resolve this Application. On the contrary, granting the Application would not prohibit the civil litigation from proceeding in New York state court. Nor will it require any enforcement of the beis din award in secular court. Instead, it would simply—but critically—restore the First Amendment's protections.

The order in question arises out of a civil dispute. The Jewish faith, as understood by Applicant Strulovitch, requires Jews with monetary claims against other Jews to bring those claims in a religious Jewish court or beis din. Samuel Strulovitch and Jonathan Bleier disputed ownership of a nursing home in Mount Vernon, New York. App. 017; App. 064. Consistent with his faith, Strulovitch, an observant Orthodox Jew, brought that dispute to a beis din in Rockland County in 2022. App. 003, App. 017–018. In April 2024, that beis din issued a brief award stating that Strulovitch held a 22% interest in the nursing home entities. App. 090.

Respondent Moshe Bain, who holds a separate ownership interest in the same entities, was not a party to that proceeding. App. 003.

When Strulovitch then moved to confirm that award in Rockland County Supreme Court in August 2024, Bain responded by filing this action in Westchester Supreme Court in November 2024. App. 018 at ¶ 14. Bain seeks specifically to vacate the beis din award on the ground that he had been excluded from an arbitration that necessarily affected his own ownership interest. App. 018 at ¶ 14. It is that vacatur action, and Bain's later motions within it, that gave rise to the injunctions at issue here.

In December 2024, the trial court enjoined Strulovitch from taking any action to confirm or enforce the Rockland award while the civil action proceeded. App. 004. While that injunction also violated (and continues to violate) Strulovitch's constitutional rights in its own ways, it is not the subject of this appeal. Discovery in the underlying action proceeded over the following year.

In February 2026, as that discovery neared completion, Strulovitch—consistent with his religious conviction that a dispute between Jewish parties should be handled according to Jewish law—sought to resolve the parties' dispute before a beis din. App. 019 at ¶ 17; App. 156–57. Accordingly, Strulovitch caused a *hazmana* (a religious summons) to be issued to Bain before a different beis din, Rabbinical Court Beis Aaron. App. 130; App. 156–57. Bain declined to participate and instead moved the state court for a temporary restraining order ("TRO"), a preliminary injunction, and for sanctions against Strulovitch for purportedly violating the

December 2024 preliminary injunction. App. 019 at ¶ 18. The trial court entered a TRO on March 24, 2026, enjoining any proceedings in any other forum, including any beis din. App. 185–86. Strulovitch's representative notified the beis din of the TRO and confirmed that no further action would be taken by Strulovitch while it remained in force. App. 008.

The beis din nonetheless proceeded, of its own accord, to issue a "*seruv*" against Bain. App. 008; App. 019 at ¶ 21. A seruv is a religious finding under Jewish law that a person has been recalcitrant in refusing to submit to the religious authority of the beis din. App. 005. In the beis din's own words, it issued the seruv as a response to what it viewed as the "chutzpah of enjoining a litigant from pursuing his Halachic [Jewish legal] rights to a Din Torah [adjudication under Jewish law]." App. 008; App. 019 at ¶ 21. That is, the rabbinic judges, on their own initiative, censured Bain for seeking a TRO that infringed Strulovitch's right under Jewish law to pursue his case in Jewish court.

Following the seruv, Bain also sought sanctions against Strulovitch for allegedly violating the TRO. App. 008. The trial court, in an April 24, 2026, Order (the "Order"), expressly found that there was no evidence Strulovitch or any of his representatives, secular or religious, had violated the original preliminary injunction or the TRO and it denied Bain's motion for sanctions on that basis. App. 008–09. Nevertheless, the Order (1) preliminarily enjoined Strulovitch from furthering any proceeding before any tribunal, civil or religious, other than the New York Supreme Court, and (2) directed Strulovitch to "take all steps necessary to have the beis din

withdraw [the seruv], including withdrawing the entire proceeding," stating that this relief was necessary "[t]o rectify the potential damage to Bain's reputation in the religious community." App. 009. That Order is the subject of this Application.

The Order identified no New York statute or court rule as authorizing either of those two directives. Instead, the Order rested on the trial court's own belief that the subject matter of the underlying dispute Strulovitch raised with the beis din is "not religious." App. 007. The court reasoned that it could resolve the same commercial dispute by "apply[ing] neutral principles of secular law to the issues raised herein," and that "[t]here is, thus, no First Amendment reason" to allow Strulovitch to attempt to have the parties settle it before a rabbinical panel instead. App. 007–08.

The Order not only ignored the First Amendment implications of denying Strulovitch's right to even *attempt* a resolution to these matters under Jewish law—it also failed to account for the obvious religious harm in requiring him to ask the rabbinical panel to withdraw its seruv. As a religious matter, Strulovitch does not believe that the seruv was wrongly issued. The Order, therefore, requires him to appear before a religious court and argue the *opposite* of what he believes to his religious leaders, with no assurance they will listen, and every indication, given their own description of Bain's actions as "chutzpah," that they may not.

Strulovitch has exhausted every avenue of relief from the Order the state courts provide. At a hearing the day the Order was entered, the trial court told Strulovitch's counsel directly that it would not issue a stay pending appeal. App. 213.

Strulovitch timely noticed an appeal from the Order. App. 042–43. Because a preliminary injunction is appealable as of right under New York Consolidated Laws, Civil Practice Law, and Rules ("CPLR") 5701(a)(2), Strulovitch separately sought a stay pending appeal and emergency interim relief from the Appellate Division, Second Department, by Order to Show Cause dated May 6, 2026. App. 014–30. The application for emergency interim relief was denied on May 7, 2026. App. 012–13. Applicants' motion for a stay pending appeal has been fully briefed before the Appellate Division since May 21, 2026. On July 21, 2026, counsel submitted a letter to the Clerk of the Second Department asking that the motion, by then two months old and long fully briefed, be decided. App. 242. That letter explained that the Order "compels Appellant Strulovitch to actively suppress his own religious practice . . . and to affirmatively petition a religious tribunal to withdraw its own religious pronouncement," a "continuous violation of Strulovitch's First Amendment rights" constituting irreparable harm "as a matter of law." App. 242 (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Tandon v. Newsom*, 593 U.S. 61, 64 (2021) (per curiam)). More than a month has passed since that letter without a ruling or any other action by the New York state courts.

There is no further state avenue available. Because the Appellate Division has not ruled on the application for a stay, there is no further ruling to appeal. Moreover, because the Order is interlocutory, no appeal lies as of right to the New York Court of Appeals in any event. Applicants have sought relief from the trial court, the Appellate Division on an emergency basis, the Appellate Division on the merits of the

stay motion, and a direct request to the Clerk for a decision. The only remaining avenue to protect Applicants' religious freedom is relief from this Court.

In the meantime, on July 17, 2026, while the stay motion remained undecided, Bain moved for summary judgment in the trial court. App. 220–40. That motion requests that court to vacate the Rockland award outright and permanently enjoin Strulovitch from taking any further action, civil or religious, to enforce it. App. 223. That relief would permanently entrench the unconstitutional restrictions challenged here.

REASONS FOR GRANTING THE APPLICATION

The Order below violates the First Amendment several times over and imposes ongoing harm that cannot be remedied after the fact. Without this Court's intervention, Strulovitch remains subject to a standing order that forbids him from practicing his faith in the manner he believes it requires. Worse yet, it affirmatively conscripts him to lobby leaders of his own religion to change their minds on a matter of religious law that he believes they got *right*. And it ultimately achieves those results by impermissibly interfering with the religious affairs of an ecclesiastical court—something civil courts have no power to do. Urgent correction is needed, particularly as the underlying civil case proceeds apace while denying Strulovitch his religious right to seek religious resolution of this matter. And, indeed, as the civil case proceeds, the risk only grows that the injury will be compounded by further infringements to Strulovitch's liberty, such as through a permanent injunction or the imposition of sanctions if the beis din does not withdraw the seruv.

This Court should stay the Order pending appeal or, in the alternative, treat this application as a petition for Certiorari and grant it now.

I. A Stay Should be Granted Under 28 U.S.C. § 1651 or 28 U.S.C. § 2101.

There are two separate grounds on which this Court can and should stay the Order pending appeal.

First, under 28 U.S.C. § 1651(a), a justice may issue "all writs necessary or appropriate in aid of" the Court's jurisdiction. To obtain relief under § 1651, an applicant must make a "strong showing" that it is "likely to succeed on the merits," that it will be "irreparably injured absent a stay," that the balance of the equities favors it, and that a stay is consistent with the public interest. *Nken v. Holder*, 556 U.S. 418, 434 (2009)*; Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 16–21 (2020). Section 1651 relief is proper where "there is an unacceptably strong possibility that the applicants' appeal in the state court system will not conclude until it is too late for us to review the ultimate decision by means of a writ of certiorari, even if it appears that the decision is based on a seriously mistaken understanding of the Constitution." *Malliotakis v. Williams*, 146 S. Ct. 809, 811 (2026) (Alito, J., concurring). And, in those circumstances, newfound reliance interests or facts on the ground may create new equitable considerations that "may counsel against the issuance of an injunction." *Id.*

Second, under 28 U.S.C. § 2101(f), a justice of this Court may stay the enforcement of "the final judgment or decree of any court" that is "subject to review by the Supreme Court on writ of certiorari." A stay is appropriate under § 2101 where there is (1) "a reasonable probability that certiorari will be granted"; (2) "a significant

possibility that the judgment below will be reversed"; and (3) "a likelihood of irreparable harm . . . if the judgment is not stayed." *Barnes v. E-Systems, Inc. Grp. Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1302 (1991) (Scalia, J., in chambers).

Either path independently supports a stay pending appeal of the Order. Because the considerations relevant to a stay under sections 1651 and 2101 largely overlap and point to the same outcome, they are discussed together below.

A. The Issues in this Case Are Worthy of Certiorari.

It is at least reasonably probable that this Court will grant certiorari. This application presents two independent constitutional questions of first impression and profound importance: (1) whether a court may bar a person from even attempting to resolve a private dispute within a religious tribunal of his own faith, and (2) whether it may *compel* him to argue against the religious judgments of his own faith leaders contrary to his own sincere beliefs on matters of religious law. Each of these questions independently warrants this Court's review.

1. The Order Contradicts Basic Constitutional Principles and Conflicts with this Court's Precedents on Important Federal Questions.

Certiorari is warranted where "a state court…has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. R. 10(c). This is that case. Not only does the Order below directly violate Strulovitch's well-established constitutional right to exercise his religion, *see Employment Div. v. Smith*, 494 U.S. 872, 876–77 (1990), it also impermissibly intrudes into the ecclesiastical affairs of a religious tribunal, *see*

Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 713–22 (1976), and flies in the face of decades of Supreme Court precedent that bars government officials from compelling citizens to express views on religious matters that they disagree with. *See, e.g.*, *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943); *Janus v. AFSCME*, 585 U.S. 878, 892 (2018); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 536–37 (2022). *See infra* Part I.B.

By contrast, at no point in the litigation of this case have Respondents or any court below identified any precedent that would permit a court to order a private citizen to appear before a religious tribunal to advocate against that tribunal's religious determinations. Certainly, they have found no case in which a court has ordered him to do so against his own sincerely held agreement with that judgment as a matter of religious law. Indeed, that command squarely violates this Court's precedents in a number of areas, including the First Amendment's core protections for religious exercise, church autonomy, and the freedoms of association and speech. In any event, to the extent this Court's precedent leaves open the questions of whether a state official may bar a citizen from seeking a religious opinion regarding a monetary dispute or compelling an individual to speak against his sincerely held religious beliefs (and it does not), those are surely "important question[s] of federal law" that "should be[] settled by this Court." Sup. Ct. R. 10(c). Nor should the Second Department's continued silence on the fully briefed stay motion prevent review now. The First Amendment harms caused by the Order below are happening now and cannot be rectified after the fact. Worse still, further delay threatens to compound

these harms by further entrenching them as the civil case proceeds and denying Strulovitch the prospect of even attempting to convince all sides to agree to handle it (as he believes they must) in a beis din. This Court recently granted certiorari in a case presenting an analogous concern: addressing whether procedural delay should shield the government against review of an ongoing constitutional injury that it has caused. *See Grand v. City of Univ. Heights*, No. 25-965 (cert. granted June 30, 2026); *see also First Choice Women's Res. Ctrs., Inc. v. Davenport*, 146 S. Ct. 1114, 1127 (2026) ("[t]he value of a sword of Damocles is that it hangs—not that it drops").

The underlying principle here is the same. Strulovitch has exhausted every state court mechanism available. The Second Department's failure to decide a fully submitted stay motion for more than three months cannot be used, in effect, to insulate the Order from this Court's review while the injury continues unabated.

2. The Question Matters Far Beyond These Parties.

Beis din adjudication is an ancient structural feature of Orthodox Jewish communal life. *See, e.g.*, *Zeiler v. Deitsch*, 500 F.3d 157, 168 (2d Cir. 2007) (discussing the role of the beis din in adjudicating disputes under "Torah law" using "an intricate set of norms culled from written and oral tradition and custom, as prescribed by widely accepted rabbinic authorities"); *Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 348 (D.C. 2005) (citing amicus briefs by Jewish religious groups explaining the communal and religious role of the beis din "because under Jewish law disputes between Jews are, to the extent possible, to be decided by other Jews through the mechanism of a Be[is] Din"); Ginnine Fried, *The Collision of Church and State: A Primer to Beth Din Arbitration and the New York Secular Courts*, 31 FORDHAM URB.

L.J. 633, 634, 637 (2004) (describing beth din adjudication of monetary disputes as continuing a four-thousand-year tradition and noting that "[a] central principle of [Jewish law] is that disputes between Jews should be adjudicated in duly-constituted rabbinical courts"); Randy Linda Sturman, *House of Judgment: Alternate Dispute Resolution in the Orthodox Jewish Community*, 36 CAL. W. L. REV. 417, 435–36 (2000) (concluding, based on ethnographic interviews with Orthodox litigants, lawyers, and rabbis, that "[t]heir need to follow their laws and traditions, their sense of religious obligation, is the primary reason why many individuals use the Bet Din to resolve disputes between each other," and that "extensive religious laws requir[e] Orthodox Jews to use their own courts to resolve disputes among themselves"); Michael J. Broyde, *Multicultural ADR and Family Law: A Brief Introduction to the Complexities of Religious Arbitration*, 17 CARDOZO J. CONFLICT RESOL. 793, 803–05 (2016); Michael J. Broyde, *The Rise of Religious Arbitration in America: American Arbitration Law, Jewish Batai Din, Protestant Peacemaker Panels, and Islamic Sharia Court Reviewed*, 2 STUD. JUDAISM, HUMAN., & SOC. SCI. 1 (2018), https://www.broydeblog.net/uploads/8/0/4/0/80408218/the_rise_of_religious_arbitration_in_america_sjhss.pdf.

Accordingly, it is unsurprising that Jewish litigants routinely seek rabbinical guidance in monetary and other disputes, as described by the sources in the previous paragraph. Indeed, beis din disputes generally, and issues involving the seruv mechanism specifically, recur across decades of reported decisions in multiple jurisdictions. *See, e.g.*, *Neiman Ginsburg & Mairanz, P.C. v. Goldburd*, 684 N.Y.S.2d

405 (Sup. Ct. N.Y. Cnty. 1998); *Kovacs v. Kovacs*, 633 A.2d 425 (Md. Ct. Spec. App. 1993); *S.I. v. M.I.*, 2024 WL 1231639 (N.J. Super. Ct. App. Div. Mar. 22, 2024).

If the Order below is allowed to stand, it would encourage other litigants and courts to intrude on those religious proceedings. Rather than allow that to occur, this Court should instead provide necessary guidance to lower courts on the constitutional bounds between secular court authority and these time-honored religious proceedings.

3. This Case Presents a Clean Vehicle to Address These Important Questions.

This Application involves a single Order that, on its face, violates Applicants' religious freedom twice over. It is undisputed that Strulovitch has a sincere religious belief that he is obligated to attempt to have the parties resolve their dispute in the beis din. The Order prohibits him from doing so. It is also undisputed, as the trial court found below, that the seruv reflects the sincere and independent judgment of the religious tribunal on a matter of Jewish law. App. 006–08. And it is undisputed that the Order compels Strulovitch to attempt to overturn the religious tribunal's judgment contrary to his own beliefs.

The constitutional problems with this Order were squarely raised and squarely decided below on reasoned grounds. They are thus squarely presented and preserved. As a result, this case is a clean, decision-ready vehicle for two independently important constitutional questions of first impression. And, as set forth below, all of the stay factors—including likelihood of success on the merits—cut strongly in Applicants' favor.

B. Applicants Are Likely to Succeed on the Merits.

1. The Order Directly Forbids Strulovitch from Exercising His Faith in the Manner He Believes It Requires.

The Order below infringes Applicants' core First Amendment rights. The free exercise of religion "means, first and foremost, the right to believe and profess whatever religious doctrine one desires," and it necessarily encompasses "the performance of (or abstention from) physical acts: assembling with others for a worship service, participating in sacramental use of bread and wine, proselytizing, abstaining from certain foods or certain modes of transportation." *Smith*, 494 U.S. at 877. The Order below squarely and indisputably intrudes on that right.

The Order bars Strulovitch from exercising his religious belief that his disputes with Respondents should be resolved in rabbinical court. That intrusion cuts to the core of Strulovitch's free exercise rights. The requirement that Jews resolve monetary disputes in Jewish courts according to Torah principles is one of the oldest and most central obligations in Jewish law. Indeed, in the Hebrew Bible, the Jewish court system precedes the Ten Commandments. *See* Exodus 18:13–26. Reflecting thousands of years of tradition, the authoritative Code of Jewish Law (Shulchan Arukh) states that one who brings a case in a secular court is "an evildoer, as if he has blasphemed, and as if he has raised a hand against the Torah of Moses." *See* Rabbi Yaacov Feit, *The Prohibition Against Going to Secular Courts*, J. OF THE BETH DIN OF AM. (2019), https://bethdin.sfo3.digitaloceanspaces.com/2019/07/The-Prohibition-Against-Going-to-Secular-Courts-by-Rabbi-Yaacov-Feit.pdf (citing

Shulchan Aruch Choshen Mishpat 26:1).[1] An order that forbids Strulovitch from even attempting to have his disputes resolved in that forum is not merely inconveniencing him; it is commanding him to violate what Jewish law treats as one of its most serious prohibitions, in favor of the very forum his faith instructs him to avoid.

The Order is not subject to the framework set out in *Smith*, 494 U.S. at 879. That framework applies only where religious practice is incidentally burdened through a "valid and neutral law of general applicability." *Id.* at 879. Here, the Order is not based on any New York statute, CPLR provision, or other source of neutral, generally applicable law. Instead, it is an *ad hoc* "rule of one" that was crafted by the court below for the purposes of managing this case and these parties alone. It is, by its very nature, directed solely at Strulovitch's own circumstances and his particular religious practice. Indeed, the Order below was explicitly designed to address the *religious* effects of the beis din proceeding (and the resulting seruv) within the parties' Jewish community. Where a government action does not flow from a general rule but is tailored for an individual's unique circumstances and particular religious exercise,

[1] *See also* Rabbi Chaim (Howard) Jachter, *Civil Courts and Jewish Law – Part I*, KOL TORAH (1997), https://www.koltorah.org/halachah/civil-courts-and-jewish-law-part-i-by-rabbi-howard-jachter; Rabbi Yirmiyohu Kaganoff, *Practical Halachos of Civil Litigation*, RabbiKaganoff.com, https://rabbikaganoff.com/practical-halachos-of-civil-litigation/ (explaining that the prohibition on litigating in secular court exists "even if both parties agree" and constitutes a desecration of God); Rabbi Yona Reiss, *Jewish Law, Civil Procedure: A Comparative Study*, J. OF THE BETH DIN OF AM., at 19, 22 (2012), https://bethdin.sfo3.digitaloceanspaces.com/2019/07/Jewish-Law-Civil-Procedure-A-Comparative-Study-by-Rabbi-Yona-Reiss.pdf. (stating that "Jewish law requires a Jewish person to submit to the jurisdiction of a beit din with respect to the adjudication of all monetary disputes between Jewish parties" and that "Jewish law requires that parties not bring their litigation before a civil court").

strict scrutiny—and not *Smith*—applies. *See Smith*, 494 U.S. at 884 (distinguishing generally applicable laws from those that apply only based on "criteria [that] invite consideration of the particular circumstances" at issue); *Fulton v. Philadelphia*, 593 U.S. 522, 532–41 (2021) (laws whose application relies on system of individualized determinations not generally applicable under *Smith*); *Roman Cath. Diocese of Brooklyn*, 592 U.S. at 17 (government actions that "single out" religious activity not neutral under *Smith*).[2]

The Order could not possibly withstand strict scrutiny. Indeed, its restriction of Applicants' free exercise is entirely unnecessary to any possible interest the lower court might have in managing this case. Strulovitch's efforts to have the parties agree to resolve this matter—voluntarily—in beis din do not disrupt the civil proceedings below. Indeed, Applicants have not suggested that Bain can be compelled to agree to participate in beis din or that the court below must alter its adjudication of this case if Bain does not. What's more, if a civil court believed any award by the beis din was unenforceable, a more narrowly tailored remedy is straightforward: don't enforce it. Even without the Order, the case could have continued to play out in secular court, and the state court could have ignored any beis din rulings if it found them to be a legal nullity under New York law. But the Order does not merely decline to enforce

[2] Strict scrutiny also applies for another reason, recognized in *Smith* itself: because the Order burdens Strulovitch's First Amendment speech and associational rights—both by restricting his ability to confer with a rabbinical tribunal and by compelling speech with which he disagrees—and thus presents a "hybrid situation," implicating "the Free Exercise Clause in conjunction with other constitutional protections." *Smith*, 494 U.S. at 881–82.

whatever a beis din decides; it forbids Strulovitch from going to that religious tribunal at all. The availability of a less restrictive alternative makes this Application especially compelling, because the injunction was entirely unnecessary.

2. The Order Compels Strulovitch to Argue Against His Own Faith, His Own Rabbis, and His Own Conscience.

If the Order merely prohibited Strulovitch from participating in his religion, that would be bad enough. But the Order goes even further than that. It *compels* Strulovitch to stand before his own rabbis and tell them they were wrong to issue the seruv as their own independent judgment required and ask them to retract it—when Strulovitch himself believes they were *right* as a matter of Jewish law. That does not merely restrict his religious exercise; it forces him to express views on a religious matter that he disagrees with and to do so within his own house of worship.

If the First Amendment prohibits anything, it is this. That is true as a straightforward matter of free exercise—undoubtedly it is a severe burden on that right to be forced to lobby one's religious leaders against a religious determination that he sincerely believes is correct. It is true as a matter of the Establishment Clause, which squarely prohibits the civil authorities from coercing religious acts. *See Kennedy*, 597 U.S. at 536–37; *Barnette*, 319 U.S. at 642 (government may not "force citizens to confess by word or act" religious beliefs). It is true as a matter of free association, which protects the right "engage in group effort" and to "associate with others" of one's choosing in order to pursue "activities protected by the First Amendment," including for religious ends. *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984). And it is true as a matter of the freedom of speech. As this Court has

repeatedly held, compelled speech violates the First Amendment. In *Wooley v. Maynard*, the State could not force a private citizen to become "an instrument for fostering public adherence to an ideological point of view he finds unacceptable" on a state-issued license plate. 430 U.S. 705, 715 (1977). Most recently, in *Janus v. AFSCME*, this Court struck down compelled agency fees on the grounds that "compelling individuals to mouth support for views they find objectionable violates that cardinal constitutional command." *Janus*, 585 U.S. at 892.

Worse still, the Order would infringe these personal liberties through an action that impermissibly intrudes into the central religious affairs of an ecclesiastical court. Over 150 years ago, this Court explained in *Watson v. Jones* that it "would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed," because "[i]t is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding . . . subject only to such appeals as the organism itself provides for." 80 U.S. 679, 728–29 (1872). Consistent with those principles, this Court has long cautioned that civil courts have no business second-guessing religious tribunals on spiritual affairs that require no participation or enforcement by the secular authorities. *See, e.g.*, *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952) (the First Amendment protects the "power [of religious bodies] to decide for themselves, free from state interference, matters of church government as well as

those of faith and doctrine"); *Milivojevich*, 426 U.S. at 713 (court may not even ask whether religious tribunal adhered to its own rules).

3. The Decision Below is Wrong.

The trial court fundamentally misunderstood the First Amendment questions at issue in this case and the relationship between the beis din and the underlying civil litigation at issue here. It reasoned that the dispute Strulovitch brought to the beis din was "not religious" simply because it involved secular, commercial matters—that because the hazmana referenced the civil action's index number, it therefore involved only "neutral principles of secular law" that could be fully resolved in civil court. App. 008. That reasoning conflates two separate questions. The first is whether a civil court may resolve the underlying ownership dispute using neutral principles. It is not disputed here that a civil court may do so, and Strulovitch does not argue that the litigation here must yield to a beis din instead. The second question is whether that civil court may therefore *forbid* a litigant from also attempting to bring the same dispute to a religious tribunal, or to compel him to try to convince that tribunal to reverse its own religious determinations.

It makes no difference whether beis din arbitration clauses are enforceable as ordinary arbitration agreements under CPLR Article 75, or whether civil courts may confirm, compel, or decline to enforce beis din awards using neutral principles of law. *See, e.g.*, *Meshel*, 869 A.2d at 358; *Meisels v. Uhr*, 79 N.Y.2d 526, 532–39 (N.Y. 1992); *Kingsbridge Ctr. of Israel v. Turk*, 98 A.D.2d 664, 665–66 (N.Y. App. Div. 1983). Those cases concern the treatment of an extant award *under civil law* once a beis din has rendered a decision. None holds, or even suggests, that a court may forbid a litigant

from bringing a dispute to a beis din in the first place, or that a court may compel a litigant to return to a beis din and demand reversal of a decision the beis din reached on its own authority. And, as outlined above, any contrary conclusion would flagrantly violate the First Amendment.

C. The Remaining Equitable Factors Overwhelmingly Favor a Stay.

Irreparable harm. The irreparable harm is significant here. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Tandon v. Newsom*, 593 U.S. 61, 64 (2021). That harm is compounded here because the underlying civil litigation is proceeding apace in state court, while Strulovitch remains blocked from even *attempting* to have the parties voluntarily proceed in parallel to seek religious resolution on these issues before a beis din. Indeed, now he is barred from even having his request for review of that order adjudicated by the New York appellate courts, lest he be held in contempt. Without an urgent stay, Strulovitch's ability to have these matters handled in the only way he believes religiously appropriate may be lost forever.

Balance of harms. The balance of harms plainly favors a stay. Granting the stay will have no impact at all on Bain's legal rights. He can continue to litigate his case in New York state court and ignore the beis din proceeding if he so chooses. By contrast, denying the stay imposes a real and severe burden on Strulovitch by denying him the right to associate with the beis din and practice his religion in the manner his beliefs require.

Bain may claim, as he did below, that granting the stay will allow the seruv to stand, which "entails a type of ostracism" and may, thereby, subject him to communal sanctions and societal pressures. *See Greenberg v. Greenberg*, 238 A.D.2d 420, 421 (N.Y. App. Div. 1997); App. 035. But the seruv does not expose him to any civil liability, nor does it impair his ability to continue litigating the underlying ownership dispute in the forum of his choice (i.e., New York state court). Bain is free to, and has continued to, flout the seruv by continuing to litigate in civil court. To the extent he experiences spiritual or communal consequences, those flow not from the stay but from the independent, constitutionally protected choices by his clergy and the private standards and beliefs of the religious community with whom he associates. *See Paul v. Watchtower Bible & Tract Soc'y of N.Y., Inc.*, 819 F.2d 875, 876, 883 (9th Cir. 1987) (holding that a congregation's decision to shun a former member is a "constitutionally protected privilege" no civil court may second-guess or undo). And his own desire to avoid the religious consequences of his actions cannot justify infringement of Strulovitch's own religious freedom.

Public interest. The public interest always favors protecting constitutional and religious rights. *Roman Cath. Diocese*, 592 U.S. at 19. The public loses nothing here: no member of the public is deprived of anything, no regulatory scheme goes unenforced, and no third party is exposed to risk while this application is resolved, because nothing the beis din says can civilly bind anyone without that party's consent. The public interest runs entirely in favor of a stay. A citizen should not be

forced to argue against his own faith's considered judgment, on the State's timetable, backed by the threat of continuing contempt.

II. Alternatively, the Court Should Treat This Application as a Petition for Certiorari and Grant It Now.

Should the Court conclude that the ordinary course of expedited state review will not resolve this controversy in time to prevent further irreparable harm—a conclusion amply supported by the Second Department's continued silence and Bain's motion for summary judgment—it should instead treat this application as a petition for a writ of certiorari, grant the writ, and stay the Order pending its decision, as it did in *National Socialist Party of Am. v. Vill. of Skokie*, 432 U.S. 43, 44 (1977).

CONCLUSION

The Court should stay the Order's provisions (1) enjoining Strulovitch from furthering any action before a beis din concerning the underlying dispute, and (2) compelling him to withdraw the proceeding and take all steps necessary to secure withdrawal of the seruv, pending disposition of Applicants' appeal in the New York courts and, if necessary, a timely petition for a writ of certiorari in this Court. In the alternative, the Court should treat this application as a petition for a writ of certiorari, grant the writ, and stay the Order pending its decision.

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Respectfully submitted,

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