

IN THE
Supreme Court of the United States

JANE DOE, *et al.*,

Applicants,

v.

HOWARD ZUCKER, M.D., *et al.*,

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 WRIT OF INJUNCTION

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QUESTIONS PRESENTED

New York law provides for a medical exemption to its childhood vaccine requirements “if any physician licensed to practice medicine in this state certifies that such immunization may be detrimental to a child’s health.” In August 2019, the New York State Department of Health (“DOH”) promulgated an administrative regulation narrowly pre-defining what “may be detrimental to a child’s health” in a manner that (1) undisputedly fails to include all the reasons a child may need a medical exemption; and (2) in the context of school admissions, permits non-medically trained school principals to reject the medical judgment of a child’s treating physician about whether the child is at risk of harm. As a result, hundreds of medically fragile children were removed from school after school principals overruled their treating physicians and revoked their exemptions. More are removed each month. In fall 2020, the DOH issued guidance directing schools to bar the excluded children from even being allowed to participate in entirely online educational programming and services.

The questions presented are:

1. Do families have a fundamental right to a medical exemption from a vaccine requirement that would likely place their child at risk of harm or death?
2. Do the challenged DOH regulation and implementing policies unconstitutionally infringe on the right to a medical exemption, facially or as applied? Specifically, is it unconstitutional for state actors to (a) narrowly predefine “what may cause harm” in a manner that removes clinical judgment from licensed treating physicians and disqualifies a substantial percentage of children at risk of serious harm from the exemption; (b) deputize school principals to overrule a treating physician’s determination that a child is at risk of harm; (c) deprive children of an education at any

New York public or private school – including 100% remote learning and home-based special education services – if the parents will not subject their child to risk of harm by vaccinating their child against medical advice?

3. Is an emergency injunction warranted to prevent the Respondents from excluding these children from distance learning pending resolution of the Impacted Children's appeal?

PARTIES AND RULE 29.6 STATEMENT

Applicants are (1) the captioned parents of medically fragile children jointly moving on behalf of themselves, their children and all others similarly situated (collectively “Applicants” or “the Impacted Children”)¹; and (2) Children’s Health Defense (“CHD”), a not-for-profit corporation whose mission is to safeguard children’s health through advocacy and education. CHD has no parent corporation and there is no publicly held corporation owning 10% or more of its stock. Applicants are the Plaintiffs in the United States District Court for the Northern District of New York and the Appellants in the United States Court of Appeals for the Second Circuit.

Respondent against whom primary relief is sought is Howard Zucker, M.D. (“Commissioner Zucker”), in his official capacity as the Commissioner of Health for the State of New York Department of Health (“DOH”). Additional parties in interest are the additional captioned Respondents excepting those from the Shenendehowa School District and the Penfield Central School District.² Respondents are Defendants in the Northern District of New York and Appellees in the Second Circuit.

¹ Excepting Jane Koe and Jane Goe. The Koe family withdrew from the suit without prejudice. Jane Goe is still a party to the suit but has graduated since filing so is not seeking the temporary injunctive relief for herself.

² Claims against the Shenendehowa School District, attended by the Koe family children, were withdrawn. Jane Goe attended the Penfield Central School District.

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DECISIONS BELOW

The short caption of this case is *Jane Doe, et al v. Howard Zucker, et al*. The docket number in the pending matter before the Northern District of New York is 1:20-cv-00840-BKS-CFH. The docket number in the pending interlocutory appeal in the Second Circuit is 20-3915.

The Second Circuit's order denying Applicants' motion for an injunction pending appeal, dated January 5, 2021, is attached as Exhibit A (the "Second Circuit Order"). The District Court's text order, dated November 20, 2020, declining to exercise jurisdiction over the Applicants' motion for an injunction pending appeal, is available at Docket 1:20-cv-00840-BKS-CFH [Doc. No. 128], and a highlighted copy of that text order is attached as Exhibit B. The District Court's order, dated October 22, 2020, denying Applicants' motion for a preliminary injunction, which is the order on appeal in the Second Circuit, is attached as Exhibit C (the "PI Order"). The District Court's text order denying Applicants' motion for a temporary restraining order, dated August 27, 2020, is available at Docket 1:20-cv-00840-BKS-CFH [Doc. No. 46], and highlighted in Exhibit B. Declarations submitted with the Applicants' Motion for a Preliminary Injunction filed in the District Court on August 25, 2020, are attached as Exhibits D-CC and incorporated by reference in this motion.

JURISDICTION

Applicants have a pending interlocutory appeal in the Second Circuit, pursuant to 28 U.S.C. § 1292. This Court has jurisdiction pursuant to 28 U.S.C. § 1651.

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

Pursuant to Rules 20, 22, and 23 of the Rules of this Court, and 28 U.S.C. §1651, Applicants respectfully request a writ of injunction prohibiting Respondents from excluding children from distance learning on the basis of vaccination status if a state-licensed physician has certified that compliance would place the child at risk of harm.

Each school district in the State already offers entirely online and remote education options for the 2020-21 school year (“distance learning”). However, after this suit was filed last summer, Commissioner Zucker issued guidance directing schools to exclude the Impacted Children even from distance learning. The Impacted Children are likely to succeed on the merits, as this Court’s prior decisions examining substantially similar burdens on medical exemptions establish that the challenged policies are unconstitutional. Moreover, excluding medically fragile children from distance learning because they are missing a vaccine that might harm or kill them serves no valid state interest and will cause irreparable harm, particularly to those vulnerable children whose families lack the resources to move out of state or pay for private tutors and services while their rights are litigated in the courts during the coming months or years.

The fundamental right to a medical exemption from vaccines that could harm or kill a child is indisputably clear, particularly where, as here, state-licensed physicians have certified that full compliance puts the child at risk of serious harm. This right requires the highest level of scrutiny. It is more strictly guarded even than well-protected fundamental liberty interests. To be sure, the infringement on the right to a medical exemption burdens many well-established fundamental liberty rights, such as informed consent, bodily autonomy, the right to refuse medical treatment, parental rights, fundamental physician/patient rights, and privacy rights, each of which independently requires strict scrutiny review. But at its core, the right to a medical exemption

derives from the inalienable right to protect one's life, which is the most universally guarded fundamental right - not just under our constitutional system, but in any civilized nation.

The right to self-preservation, enshrined in the Fourteenth Amendment of the United States Constitution as inalienable, is the primary natural right. It is antecedent to the social contract, and deeply rooted in our foundational concepts of law and justice. *See, e.g.,* A.J. ASHWORTH, SELF-DEFENCE AND THE RIGHT TO LIFE, 34 Cambridge L.J. 282, 282 (1975). In *Commentaries on the Laws of England*, William Blackstone described the right to protect one's "life and limb" from harm as "the primary law of nature," holding that it is an "absolute right" which cannot be infringed. *Id.* (citing 1 W. BLACKSTONE, COMMENTARIES 119). John Locke discussed the "Fundamental, sacred and inalterable law of self-preservation" as "antecedent and paramount to all positive Laws and constitutions." He saw the right as so fundamental to basic human nature that "no law can oblige a man to abandon it." *Id.* (citing JOHN LOCKE, SECOND TREATISE OF GOVERNMENT, Ch II, 6, 1690). Similar holdings are central to the writings of most of the political and legal philosophers that helped shape our constitutional democracy.

Unsurprisingly, this Court has consistently safeguarded the right to a medical exemption from regulation that places a person at risk of physical harm, applying the highest level of scrutiny. More than 100 years ago, this Court already held that requiring a person to submit to an immunization if he is at risk of harm from the vaccine is unconstitutional. *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 27, 36-39 (1905) (the state's interest in mandating vaccines to protect the public at large from communicable disease can override personal liberty interests *but cannot* supersede a person's right to a medical exemption if he is at risk of harm from the vaccine).

Since *Jacobson*, the Court has provided guidance on the limits of state involvement in determining whether a person needs a medical exemption. As demonstrated below, two doctrines have emerged: (1) strict harm avoidance, *see Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320 (2006) (holding that a medical exemption regulation is unconstitutional if it is narrow enough, facially or as applied, to exclude anyone at risk of harm); and (2) rigorous protection against infringement upon a chosen state-licensed provider’s “best medical judgment,” *see Doe v. Bolton*, 410 U.S. 179 (1973) (holding that the state cannot interfere in medical exemption decisions of state-licensed physicians by predefining “necessity” or subjecting their exemptions to corroboration requirements or third-party review).

In this case, the challenged regulation and policies violate both doctrines, and will likely be found unconstitutional.

Last August, the impacted families sought emergency preliminary injunctive relief, and later an injunction pending appeal, in the Northern District of New York to stay the challenged policies for the upcoming school year so that children with a medical exemption could attend school pending resolution of the case. The lower courts denied the applications and the subsequent emergency motion for a narrower injunction pending appeal in the Second Circuit, in which the children sought – as they do now - access at least to online education and services pending appeal.

While the District Court found the children would be irreparably harmed by the ongoing total deprivation of access to school (PI Order at 9), it concluded that they are unlikely to succeed on the merits. In so holding, the court (1) failed to recognize the right to a medical exemption as fundamental; (2) ignored the unconstitutional conditions doctrine, proposing that since there is no “fundamental right” to an education, any condition on access to school is subject only to rational basis review; and (3) misread *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), and Chief Justice

Roberts's concurrence in *South Bay Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1613-14 (2020), as establishing *carte blanche* authority for administrative agencies to impose unfettered restrictions on fundamental rights in the name of public health without strict scrutiny review or independent judicial analysis of the facts.

These foundational legal errors urgently need to be corrected as they carry great significance nationwide. Last year, New York and California became the first states to attempt to limit the medical exemption in such bold violation of this Court's direct, binding precedent. Other states are watching. If the lower courts' decisions are allowed to stand, medically fragile children across the nation could be put at serious risk and harmed as they are being harmed in New York and California.

Most importantly, these children are suffering urgent, ongoing, irreparable harm every day they are denied access to school and special education services. If denied any relief or guidance from the Court now, it could take years for this case to proceed through the lower courts. In the meantime, medically fragile children state-wide are in crisis. Each impacted child has a certification from one or more licensed physician stating the child cannot safely comply with the full vaccine schedule. The modest relief they seek -- to be allowed to participate in distance learning pending appeal -- does no harm to anyone. The damage already done to the children cannot be undone, but at least having some access to school and services might mitigate ongoing new damage. Each day the children are excluded from access to desperately needed educational services causes them to fall further behind. Hundreds of medically fragile children are falling through the cracks. They need this Court's urgent intervention.

STATEMENT OF THE CASE

A. New York Childhood Immunization Requirements and Exemptions.

New York Public Health Law (P.H.L.) § 2164 requires that all New York children receive an average of 50 doses of 16 different vaccines between birth and the age of eighteen. But the straightforward statutory medical exemption states that “if any physician licensed to practice medicine in this state certifies that such immunization may be detrimental to a child’s health, this section shall be inapplicable.” P.H.L. §2164(8).

Although the lower court wrongly assumed the requirements apply only as a condition to attend school, the plain language of the statute shows that the immunization and exemption requirements apply to *all* children, whether or not they attend school. *See, e.g.*, P.H.L. § 2164(2) (“Every person in parental relation to a child in this state shall have administered to such child an adequate dose or doses of an immunizing agent [on a schedule provided by the CDC]...”).

The statute further requires all public and private schools to exclude any child who does not submit proof of immunization or a medical exemption form within 14 days of the start of school each year. P.H.L. § 2164(7). But a family can face other consequences, such as loss of custody or injury to a child if a physician is unable to use her best medical judgment about an exemption.

In August 2019, without direction from the Legislature, the unelected administrators at the DOH promulgated new regulations and policies that eviscerate the Public Health Law’s medical exemption protection. They purportedly did so in reaction to the Legislature’s June 2019 decision to remove the religious exemption; however, in repealing the religious exemption, the Legislature not only left the medical exemption intact, but it had also justified the religious exemption repeal as necessary to protect children who had medical exemptions.

It is undisputed that children with medical exemptions make up a small portion of the public and that respecting their exemptions cannot impact herd immunity thresholds. This would be true even if their numbers were to triple after the removal of the religious exemption, as the DOH speculated could occur (currently, the number of applicants is 0.2% of children – even if that number tripled, it would still be less than 1% of all school children, far below the most aggressive estimates for herd immunity thresholds proposed by the state which require less than 10% exemption levels).

Moreover, the Public Health Law already offers multiple less restrictive methods to protect the public from harm should there be an outbreak of a vaccine-preventable disease. Under the PHL, during an outbreak, schools can exclude unvaccinated students from any school with a single case of a vaccine-preventable disease. The DOH can also impose quarantines of infected individuals and contacts. Also, all schools right now are implementing rigorous social distancing, daily temperature and symptom checks, and other virus prevention policies. The possibility that a child with a medical exemption could catch, leave aside catch and pass on, a vaccine-preventable disease is virtually zero.

Nonetheless, the DOH announced that it was adopting new regulations and aggressive policies to impose burdens on the availability of a medical exemption so that drastically fewer children could get one.

First, Respondents added a new subsection (l) to DOH regulation codified at 10 N.Y.C.R.R. §66.1, which predefines “what may be detrimental to a child’s health” so that physicians can no longer exercise independent clinical judgment but must now select from a narrow list of contraindications provided in the CDC’s Advisory Committee on Immunization Practices “General Best Practice Guidelines” (“ACIP” guidelines). Technically the regulation also allows

exemptions to be based on the undefined category of “other nationally recognized evidence-based standards of care.” However, Respondents admit that, in practice, the DOH and implementing school districts do not read this as meaningfully expanding the definition beyond ACIP and in practice only consider whether a medical exemption meets the narrow ACIP criteria without any consideration of whether it could meet “other nationally recognized evidence-based standards of care” than the narrow ACIP guidelines. *See, e.g., Affidavit of Dr. Howard R. Sussman*, consultant to Three Villages School District, Docket 1:20-cv-00840-BKS-CFH [Doc. No. 63-26] (“When the district provides me with a medical exemption request, I refer to the ACIPs General Best Practice Guidelines for Immunization to determine if the student’s purported illness constitutes a contraindication or precaution. Specially, I refer to Tables 4-1 and 4-2 of the ACIP guidelines...My reliance on the ACIP guidelines to determine if a student has a recognized contraindication or precaution to a particular vaccine is consistent with NYCRR 66-1.1(1).”).

The new regulation is not only arbitrary. It is dangerous. Respondents did not refute that the ACIP guidelines are not exhaustive and were never meant to define the limits of valid medical exemptions. The CDC itself acknowledges this. Dr. Andrew Kroger, a representative of the ACIP committee and author of the most recent guidelines confirmed this in writing to plaintiff Jane Doe: “The ACIP guidelines were never meant to be a population-based concept....The CDC does not determine medical exemptions. We define contraindications. It is the medical provider’s prerogative to determine whether this list of conditions can be broader to define medical exemptions.” Docket 1:20-cv-00840-BKS-CFH [Doc. No. 1 ¶265; Doc. 41-12 ¶27].

Inflexible adherence to ACIP necessarily eliminates hundreds of known adverse reactions and conditions that may give rise to the need for medical exemptions. The eliminated reasons are not fringe or speculative. Indeed, the ACIP list does not even include many of the presumptive

injuries routinely compensated by the U.S. government as acknowledged serious vaccine reactions, leave aside the hundreds of other medical reasons for precaution or contraindication articulated in evidence-based studies, Institutes of Medicine reports, and the manufacturers' own warnings.

In short, Respondents cannot dispute that narrowing the definition of "what may cause harm" as they have will inevitably result in denial of at least some valid medical exemptions to children who need one.

Second, as applied, the DOH regulations deputize school principals, with no medical training whatsoever, to substantively review and overrule treating physicians about what qualifies as a valid reason for exemption. Respondents admit that school principals are not qualified for this task. As a result, most of the schools hire consulting doctors or nurses to review the medical exemption forms and make recommendations to the principals. But, if the consultants disagree with the treating physician, the challenged regulation authorizes the lay school principal to make the final decision between the competing medical opinions.

Respondents admit that deputizing school principals to review and deny medical exemptions, even in consultation with non-treating medical professionals, has and will also result in denial of valid exemptions for children who need it. As Respondents acknowledge in their briefing below, successful individual litigation has already even established several cases where school principals expelled children whose exemptions fell squarely within the ACIP guidelines.

This policy endangers medically fragile children. School principals are no more qualified to decide between differences of medical opinion than they are to substantively review the treating physician in the first place. School principals have no understanding of the individual child's needs nor do they possess the medical training to decide which medical opinion will best safeguard the child. Respondents presented no evidence to rebut this assertion.

These are very vulnerable kids. Some of these families have already lost one or more child to an adverse vaccine reaction resulting in death. All these children have valid, evidence-based medical reasons for exemption as certified by one or often multiple state-licensed physicians. There is no allegation that any of their parents are unfit to make medical decisions in accordance with their trusted medical providers or that their medical providers have done anything other than provide their best good faith medical judgment.

B. As-Applied Challenges.

The District Court erred by characterizing this suit as “strictly facial” (over Applicants objection), thereby denying the children’s request for an evidentiary hearing and failing to consider the as-applied challenges at the heart of this case. The record does not support the District Court’s characterization. The complaint states that Impacted Children challenge the policies both facially and as-applied, *see, e.g.*, Docket 1:20-cv-00840-BKS-CFH [Doc. No. 1 ¶27](“The barriers and burdens placed on the medical exemption process in New York through the new regulations are unconstitutional both on their face *and as applied*.”(emphasis added)); *see also* Docket 1:20-cv-00840-BKS-CFH [Doc. No. 1 Prayer for Relief C, D, and E, at 72-74](seeking relief for facial *and as-applied* claims). The moving papers attached and incorporated dozens of affidavits and argued that the regulation and policies are applied in an unconstitutional manner as well as facially deficient. Exhibits D-CC. Despite Plaintiffs’ clear articulation, the District Court refused to consider the as-applied challenge in its ruling.

What has happened to these medically fragile children and their families cannot be ignored in determining whether to grant injunctive relief. A few of the many compelling individual stories are provided as a snapshot below. Applicants respectfully request the Court additionally review the declarations submitted with the preliminary injunction motion, attached hereto as Exhibit D

through CC, which share substantially similar stories and reveal a heartbreaking pattern of unconstitutional application across the state.

Jane Boe

Jane Boe is fifteen and has multiple serious diagnosed autoimmune syndromes and health challenges, including autoimmune encephalitis, which causes progressive neurological injury and attacks the brain. She is up to date on all immunizations aside from the meningococcal vaccine. The un rebutted evidence below establishes that the meningococcal vaccine can only provide personal protection and cannot prevent infection and asymptomatic transmission to others.

Jane's health began to seriously deteriorate after her last set of immunizations at age twelve. A few years later, her older brother died from complications caused by the meningococcal vaccine. He had the same diagnosed conditions and vulnerabilities as Jane, and he took the vaccine against medical advice as a freshman in college.

Jane's physicians determined that for Jane, the risk of injury and harm far outweighs any potential benefit from this vaccine. Her primary care physician submitted a certified exemption in the fall of 2019. Acting under the guidance of a consultant who never even met Jane, the three Villages School District denied the exemption and then denied two subsequently submitted exemptions from two other treating licensed physicians, each of whom certified that Jane is at risk of serious harm and cannot safely take the meningococcal vaccine.

After the denial of her second exemption, in December 2019, Jane was removed from school. In March 2020, the district official expelled her, despite guidance from Elizabeth Rausch-Phung, M.D., a non-practicing physician at the DOH, who recommended conditional acceptance of the third exemption. Dr. Rausch-Phung's letter indicated that death of a sibling was not listed as a covered reason for exemption under ACIP but acknowledged one of Jane's other bases for

exemption did meet the ACIP criteria and should be accepted. However, the letter advised that the school ask Jane for a fourth exemption certification in 30 days to ensure she still qualified. Despite Dr. Rausch-Phung's recommendation, the district did not issue a conditional acceptance. Instead, the district expelled Jane without giving her a chance to get a fourth exemption letter, perhaps rightly assuming that the requirement that her parents obtain a new medical exemptions every 30 days, leaving Jane with the constant uncertainty about whether she might suddenly be removed from school again at any moment, was unreasonable.

Jane has suffered greatly as a result of the school's callous treatment of her health needs. The District humiliated and ostracized her, ignoring, and ridiculing valid health concerns. Her parents had to obtain not one, but three different corroborating opinions from licensed physicians, requiring unnecessary medical appointments, tests, and financial and emotional stress. And still, even though all her doctors agreed that Jane cannot be safely vaccinated with the meningitis vaccine, the District still refused to honor her exemption. The family is still grieving Jane's brother, and the past year has been too much for Jane in her fragile state. As her classmates remain immersed in their lives at school, she feels abandoned, angry, and confused and struggles with serious depression and anxiety.

Jane and John Coe

Two children in the Coe family died from adverse vaccine reactions. After establishing causation in contested proceedings, the federal government compensated the family for a vaccine-caused death. Several other members of the Coe family have also suffered documented severe life-threatening adverse reactions to vaccines. The Coe children have the same genetic risk factors as their deceased and injured family members. They have multiple documented immune system vulnerabilities and have never been vaccinated, both for religious reasons and upon the advice of

medical providers.

In fall 2019, the Coe family submitted lengthy evidence-based certifications from their licensed physician accompanied by letters from their genetic counselor. The Lansing Central School District did not respond, and the family assumed the medical exemptions had been granted. Three months later, without warning, the District notified the family that it was denying their medical exemption and that the children had *one week* to get over a dozen immunizations, each against medical advice, or be expelled. The District attached a letter from Dr. Rausch-Phung, advising that adverse reactions of family members, including death, are not listed as reasons to avoid further vaccination under ACIP.

The Coe family hired an attorney who argued that the regulation also allows for “other nationally recognized evidence-based standards of care” and that the children’s doctor provided evidence-based reasons for exemption in his lengthy medical exemption letters. The school district replied that its principals had not relied on Dr. Rausch-Phung’s recommendation but rather “independently” decided to overrule the children’s doctor. The District refused to provide any additional information about the reasons for denial or give the family any time to obtain a corroborating opinion from a “pediatric genetic specialist,” as Dr. Rausch-Phung recommended. Instead, the District expelled the Coe children. Though the District offers an entirely remote online learning option to all students, its agents told the family this fall that they cannot participate. The children are suffering and desperately want to rejoin their classmates online. The Coes both work full time and urgently seek help so that their children do not fall further behind.

John Foe

John Foe, eleven, was born with Hirschsprung’s Disease, a rare genetic disease that prevents the formation of connections between the brain and gastrointestinal system. As an infant, surgeons removed a section of John’s intestine and reattached the system. He uses a prosthetic

colon system that must be inserted every night to keep him socially continent. The surgery profoundly affected John's immune system, more than 70% of which is in the gastrointestinal system. John also suffers from a long list of severe allergies. He is so sensitive to chemicals and metals that he cannot wear sunscreen or even drink tap water. When he drinks water that is not filtered correctly, he suffers cramping, diarrhea, and a bleeding rash around his rectum. When antibiotics are necessary, John requires in-patient hospitalization for several days to manage adverse symptoms of vomiting, diarrhea, and dehydration. He also requires concurrent administration of metronidazole to minimize reaction symptoms.

Another of John's known triggers is immunization, to which he had a severe reaction at age three. Due to this serious reaction, and considering his and his family's³ medical histories, John's pediatrician determined that he was at substantial risk of having even more severe reactions to subsequent immunization and recommended that he should not receive any more vaccines. Pursuant to this medical advice, and in consideration of his parents' religious beliefs, John has not received any immunizations since his serious adverse reaction at age three.

In August 2019, John submitted a medical exemption from his pediatrician. On September 22, 2019, the Albany City School District Transportation Center informed John's mother that the District had denied John's medical exemption and expelled him from school. The District based its decision on advice from a consulting physician who never met John or his family and is unfamiliar with John's medical history and particular conditions.

Since September 23, 2019, the Albany City School District has barred John from attending school. The expulsion has significantly impacted John. A very social child, John loved attending school and was beloved by his classmates. He was an honors student, an avid participant in

³ John's mother suffered paralysis after receiving the DTaP shot.

marching band, chorus, chess club and running club, and affectionately referred to as the “mayor” of his school. John also has special needs and qualified for and received critical services under a 504 plan at school. Following his expulsion, the District refused to provide John with these services at home, and he has been without them since September 2019.

John’s parents, both teachers in the District, worked full time, and John was alone most days trying to learn on his own in self-directed programming his family found online. The program did not work for him and John became angry and confused. He fell into a serious depression. In crisis, the family began making plans to disrupt their lives and careers and move to another state though his parents are only certified to teach in New York. They were so worried about their son they were ready to sacrifice everything – their home, their careers and all that they had built.

In desperation, the parents first submitted John’s medical exemption to several private schools in the area. Each one accepted John’s exemption after review without issue. In March 2019, he began attending a Catholic school and finished the spring semester there. It was better than no school, but his new school did not provide John with special education services, and John’s family suffered unsustainable financial stress from the tuition burden. This school year, John’s family cannot afford to send him to private school. John is once again unable to go to school. John wants desperately to return to his old class, where he felt at home and was beloved. Even participation in distance learning for now with other students and teachers would make an enormous difference to John and his family.

John Loe

John Loe is 15 and diagnosed with two forms of debilitating autoimmune encephalitis: Pediatric Acute-Onset Neuropsychiatric Syndrome (“P.A.N.S.”) and Hashimoto’s

Encephalopathy. Since he was seven years old, he has had a medical exemption to further immunizations.

For the first seven years of his life, John was vaccinated in strict accordance with ACIP guidelines, receiving all the influenza and H1N1 flu vaccines that were strongly recommended. Following a series of immunizations at age five, John's health increasingly began to deteriorate. His condition worsened after his age six immunizations and finally reached a crisis point after his immunizations the following year. John became so ill that he could tolerate only a sip of water and one saltine cracker a day. His neurological and physical symptoms became debilitating and alarming, including hallucinations, self-harm as he banged his head in reaction to the pain of his swelling brain, and suicidal ideation.

Desperate and scared, his parents found a pediatric neurologist, who diagnosed John's serious medical conditions and stabilized his health. Since age seven, the same trusted pediatric neurologist has treated John. Upon this neurologist's advice, John has not received any vaccines since age seven and, until last year, his schools accorded him a medical exemption without issue.

John is current on all his immunizations except for a final booster dose of the Tdap vaccine (tetanus, diphtheria, and pertussis) and two doses of meningococcal vaccine (meningitis). Respondents do not contest that each of these missing vaccines can provide only personal protection and cannot stop infection and transmission to others.

In 2018, in ninth grade, John began attending St. Anthony's High School ("St. Anthony's"), a private Catholic college preparatory school in the South Huntington School District. For 2018-19, St. Anthony's accepted his annual medical exemption for the Tdap and meningococcal vaccines. But in September 2019, the school refused to accept John's medical exemption. It based its decision on the advice of an osteopath who acts as consultant to the South

Huntington School District, and who St. Anthony's elected to use to assist with their review. This consultant never met John and has no expertise in John's serious health conditions. Based on his advice, St. Anthony's removed John from classes on September 20, 2019. To make matters worse, after receiving intimidating calls from the district's consultant, without explanation, John's long-relied upon and trusted pediatric neurologist dropped him as a patient.

For the remainder of the fall of 2019, the family's life revolved around the uphill battle of trying to return John back to school and to find a new specialist. There are few specialists with expertise to treat John's conditions and their waiting lists are long. John's health and academics declined dramatically. In November 2019, the Loes finally secured an appointment with a pediatric immunologist with expertise in autoimmune encephalopathy. The new specialist agreed that it is unsafe to immunize John and wrote a medical exemption immediately. St. Anthony's denied this request, wrongly asserting that the immunologist needed to fill out a separate medical exemption form for each vaccines, though this is not required by the regulations. John's mother missed substantial work time and essentially "camped out" at the immunologist's office to get another appointment and a third set of forms. By then, the immunologist was hesitant to sign the new forms because the DOH contacted him after he signed the first ones and, though nothing in the law supports this, told him that only pediatricians who administer the vaccine can write exemptions. After the Loes showed him the statute and regulatory guidance, the immunologist ultimately signed the forms.

Months of bureaucratic delay followed the submission of the third set of forms. In the meantime, John was not able to attend school, though he was still technically a student on home instruction. In spring 2020, St. Anthony's denied John's third medical exemption because the consulting osteopath asserted that the immunologist could not "sufficiently defend" the

exemptions in his phone conversation with him. Thus, St. Anthony's immediately and permanently expelled John.

John's school expulsion has been traumatic. A hallmark of his condition is severe social anxiety. Before his expulsion, John was just at a point of recovering enough health to start developing confidence. He was proud to have been accepted to St. Anthony's, which had been his dream since he was little. He was doing well in school, getting recognition for his music and was excited to be in several school bands. He was finally overcoming some of his social anxiety and making friends. John's confidence has now been shattered. He is severely depressed and is not able to keep up with his home studies.

School expulsion has dashed John's college prospects and substantially altered the course of his life for the worse. His parents work full time and home instruction has not been successful. Additionally, because of his vaccine status, John was excluded from the P.S.A.T. course and has not performed well. He feels hopelessly lost and his depression and anxiety have become debilitating. His mother reached out to psychologists who can provide counseling about his situation, feelings, and homeschooling encouragement, but John refuses to engage and has shut down to an alarming degree.

REASONS FOR GRANTING THE APPLICATION

The All Writs Act, 28 U.S.C. § 1651(a), authorizes an individual Justice or the Court to issue an injunction in "exigent circumstances" when the "legal rights at issue are indisputably clear" and injunctive relief is "necessary or appropriate in aid of the Court's jurisdiction." *Ohio Citizens for Responsible Energy, Inc. v. Nuclear Regul. Comm'n*, 479 U.S. 1312, 1312 (1986) (Scalia, J., in chambers) (internal quotation marks and brackets omitted). This Court's discretion is broad: it may issue an injunction pending appellate review "based on all the circumstances of

the case . . . [without] express[ing] . . . the Court’s views on the merits.” *Little Sisters of the Poor Home for the Aged, Denver v. Sebelius*, 571 U.S. 1171 (2014). A Circuit Justice or the full Court may also grant injunctive relief “[i]f there is a ‘significant possibility’ that the Court would” grant certiorari “and if there is a likelihood that irreparable injury will result if relief is not granted.” *Am. Trucking Ass’n, Inc. v. Gray*, 483 U.S. 1306, 1308 (1987) (Blackmun, J). Here, the factors favor granting the application for an injunction pending appeal.

I. The Right to a Medical Exemption if a Child is at Risk of Harm or Death is Indisputably Clear.

The rights at issue in this case are indisputably clear. For more than one hundred and fifteen years, a sufficient medical exemption has remained an explicit constitutional prerequisite to any vaccine mandate. *Jacobson*, 197 U.S. at 27, 36-39 (holding the state’s interest in mandating vaccines to protect the public at large from communicable disease can override personal liberty interests *but cannot* supersede a person’s right to a medical exemption if she is at risk of harm). It is as close to an absolute right as we possess, and indeed, has been described as “absolute” by legal and political foundational philosophers since at least the 1600s. *See*, BLACKSTONE, *supra*.

This Court strictly guards the right to a medical exemption from otherwise permissible health regulations as an independent fundamental right in modern jurisprudence. *See, e.g., Ayotte*, 546 U.S. at 325 (recognizing an independent fundamental right to a medical exemption from otherwise permissible health regulations and holding that a medical exemption is unconstitutional if it might exclude even a few children who are at risk of harm).

Medical exemption cases demand the highest level of scrutiny. As discussed above, not only are there numerous fundamental liberty rights at stake – including but not limited to informed consent, bodily autonomy, privacy, medical rights, and in the case of children, parental rights to make important medical decisions for their children. But the right to a medical exemption is more

than that. It is not just a liberty interest; it derives primarily from our inalienable right to protect life, which is the most fundamental of the natural rights.

Unsurprisingly, *Jacobson*, which generally counseled deference to public health calculations and predates modern fundamental rights analysis, expressly carved out medical exemptions as an area requiring courts to engage in vigorous independent judicial review. 197 U.S. 11 at 36-39. *Jacobson* held that it would not only be unconstitutional to force a person to be vaccinated in a case where she would be at risk of harm, it would be “cruel and inhuman in the last degree.” *Id.* *Jacobson* directed that, where a person alleges that he is “not at the time a fit subject of vaccination, or [for whom] vaccination by reason of his then condition would seriously impair his health,” the judiciary is not only competent to strictly review the appropriate tailoring of the medical exemption, but *must do so*:

We are not to be understood as holding that . . . the judiciary would not be *competent to interfere and protect the health and life of the individual concerned.* *Id.* at 39 (emphasis added).

Jacobson substantially predates the application of the Bill of Rights and substantive due process liberty interest analysis to review of state action. Nonetheless, even in 1905, the Court *de facto* recognized the Fourteenth Amendment’s protection of the right to life – and to be free from government vaccine mandates that might jeopardize one’s life -- as requiring the strictest judicial scrutiny. Indeed, to hold otherwise would be barbaric. A person may sometimes be asked to live with the infringement of certain liberty interests in the service of the collective benefits derived from the social contract, but no just government can force parents to sacrifice their innocent children’s health or life for the benefit of others, leave aside hope to do so without strict scrutiny.

Since *Jacobson*, this Court continues to strictly guard against infringements on medical exemptions, affording them significantly higher protection than given to infringements of

fundamental rights derived only from liberty interests. Even where the state establishes a compelling interest, this Court has drawn a bright line against infringements on the right to a medical exemption for those who are at risk of harm.

In determining the sufficiency of a law's medical exemption protection, two clear doctrines have emerged: (1) strict harm avoidance, and (2) a bar against infringement on the licensed provider's independent "best medical judgment" about the necessity of an exemption. The challenged regulations and policies violate both doctrines and are likely unconstitutional.

a. The challenged policies violate the harm avoidance doctrine.

Jacobson's harm avoidance principle – that a state cannot compel a person to submit to an otherwise permissible health regulation that puts him at risk of harm – continues to be strictly observed today. Public health law scholars acknowledge this principle of harm avoidance as part of the foundational holding of *Jacobson*. See, e.g., LAWRENCE O. GOSTIN, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT 126-28 (2d ed. 2008)(per *Jacobson*, public health regulations require five elements to be constitutional: (1) public health necessity, (2) reasonable means, (3) proportionality, (4) harm avoidance, and (5) fairness).

Since *Jacobson*, this Court has repeatedly upheld the harm avoidance principle, finding that if a medical exemption is narrow enough to exclude even a few who might need it, it is unconstitutional on its face. For instance, in *Stenberg v. Carhart*, this Court held that the hypothetical possibility that a woman in need could be excluded by the challenged statute's narrow medical exemption rendered an otherwise permissible partial-birth abortion law unconstitutional. 530 U.S. 914, 937 (2000). In *Stenberg*, it was not clear that the narrow exemption afforded by the statute – which protected a woman's life, but not necessarily her health -- was insufficient to protect all at risk women. Many other arguably safer methods of post-viability abortion were still available if the woman's health were at risk from the continued

pregnancy, and even the plaintiff's experts could not point to a specific instance where a woman would certainly need this type of abortion to protect health but not life. The Court's analysis for determining necessity is instructive:

The word "necessary" in *Casey's* phrase "necessary, in appropriate medical judgment, for the preservation of the life or health of the mother," . . . cannot refer to an absolute necessity or to absolute proof . . . *Casey's* words "appropriate medical judgment" must embody the judicial need to tolerate responsible differences of medical opinion."

Id. at 937 (citing *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992)).

Similarly, in *Ayotte*, the Supreme Court addressed another hypothetical facial challenge to an abortion regulation's medical exemption, again striking it down as unconstitutionally narrow because it allowed for the possibility that an at-risk young woman might not be covered. *See* 546 U.S. at 320. The challenged law required that a provider notify a minor's parents 48 hours before performing an abortion unless her life was in danger. This Court's unanimous decision held that the restriction on abortion was permissible under strict scrutiny – parents have a liberty interest in notification 48 hours before their child has an abortion, and the state's compelling interest in safeguarding that right was sufficient to infringe upon a young woman's liberty interest in abortion. Yet, the Court held that the infringement on the separate right to a medical exemption was unconstitutional because "in some very small percentage of cases" a young woman's health, but not life, might be endangered by waiting 48 hours to perform an abortion. Again, the statute only provided an exemption where a woman's life was threatened and did not provide a clear exemption for situations in which a woman's health, but not her life, were at risk; therefore, some women might not be covered because their physician would not wish to subject themselves to liability by operating in a grey area. There was a "bypass" option available for immediate and

deferential judicial review in cases where a woman's health was in jeopardy, but the Court deemed this insufficient to ensure all at risk young women could avail themselves of the exemption in practice. Since the medical exemption was narrow enough to permit the possibility that some women who might need it to protect their health would not receive an exemption, the Court held that the law's medical exemption was unconstitutional.

Ayotte illustrates how much stricter the scrutiny is for medical exemptions compared to other fundamental rights, even well protected rights such as abortion. A plaintiff alleging a facial challenge to a regulation impacting abortion has to establish that "in a large fraction of cases in which [the law] is relevant, it will operate as a substantial obstacle to a woman's choice to undergo an abortion." *Casey*, 505 U.S. at 895. However, in analyzing a facial challenge to a medical exemption, this Court held that, even where the risk of harm might occur only in "some very small percentage" of cases potentially not covered by the exemption, it was too narrow and therefore unconstitutional. *Ayotte*, 546 U.S. at 328.

In the above cases, even the hypothetical possibility of denial of a medical exemption if a woman's health might be at risk was enough to render the statutory exemption facially unconstitutional. Here, the state's constricted regulation on medical exemptions cannot survive where the risks are not just hypothetical but have occurred -- hundreds of children *certified by their treating doctors as at risk of serious harm* are actively being denied medical exemptions in New York.

In this case, like in *Ayotte*, it is not refuted that the challenged policies will result in at least some children being denied necessary medical exemption protection. The complaint and moving papers provide evidence of hundreds of additional evidence-based reasons that exist beyond the narrow ACIP guideposts that put some children at substantial risk of harm or death. Manufacturers,

the United States government, and the Institutes of Medicine, among others, have acknowledged these risks. The unrefuted evidence shows that even the CDC acknowledges the ACIP guidelines cannot be used safely as the sole basis for granting or denying medical exemptions because they do not provide an exhaustive list of valid reasons for exemption, are not population based, and cannot supersede the clinical judgment of the treating physician. In short, Respondents' limiting definition is irrational and reckless.

The District Court erred by refusing to assess the unrefuted as-applied challenges. The Impacted Children assert that, in practice, Respondents only consider whether the asserted reasons for exemptions fall under a narrow list of ACIP contraindications. Not only did Respondents fail to refute this, but many districts submitted affidavits *admitting* it. Nonetheless, the District Court held that, since the language of the new regulation technically allows for an undefined category of "other nationally recognized evidence-based standards of care" in addition to ACIP, it was possible that would be read to cover all at-risk children. No evidence was submitted to support this conclusion, which was contradicted by the Applicants factual assertions and even Respondents' own admissions, and the Court denied the request for an evidentiary hearing. The District Court further refused to examine or consider the affidavits from the named class members and dozens of additional impacted families to determine if the definition was being applied narrowly, and thus resulting in the risk of denial of exemptions to children at risk of harm, as the evidence proved.

Moreover, the Court applied the wrong standard for facial review, adopting Respondents' shocking proposal that if just one school principal got her medical exemption review right, the lawsuit should fail, even if hundreds of medically fragile children are denied valid and necessary

exemptions. This is an error of law. Pursuant to *Ayotte*, a medical exemption is facially invalid if it could possibly exclude *even a very few* who need its protection. *Ayotte*, 546 U.S. at 328.

Since the uncontested facts in this case establish that at least some children will risk improper denial of an exemption either by the narrow definition of “what may cause harm” or by the reckless policies allowing school principals to overrule doctors, Applicants are likely to succeed on the merits both facially and as applied.

b. The challenged policies impermissibly infringe on the physician’s independent medical judgment.

In addition to violating the harm avoidance principle, the challenged actions also violate this Court’s instructions on the limits of state interference in medical necessity determinations.

Fifty years ago, this Court examined nearly identical state interference in medical exemption determinations declared the policies unconstitutional. *Doe*, 410 U.S. 199-200. *Doe* is a seminal case in medical exemption jurisprudence because it lays out how to balance compelling interests of the state while safeguarding the fundamental right to a robust and inclusive medical exemption. The ultimate compromise the Court struck is that so long as a person submits certification from a state-licensed physician, the state cannot further encroach on the doctor/patient relationship. *See Doe*, 410 U.S. at 200 (holding that if a physician is licensed by the State, he is recognized by the State as capable of exercising acceptable clinical judgment).

In *Doe*, this Court examined three aspects of further state interference in the medical exemption decision almost identical to the challenged state interference here and held each unconstitutional.

First, the Court affirmed that the state cannot predefine “what may cause harm” as it has done here. Rather, a physician must be able to consider a broad range of factors to clinically determine whether a medical exemption is “necessary.” “We agree with the District Court that

the medical judgment may be exercised in the light of all factors—physical, emotional, psychological, familial, and the woman's age—relevant to the well-being of the patient. All these factors may relate to health. This allows the attending physician the room he needs to make his best medical judgment.” *Id.*

Several subsequent Supreme Court cases cite *Doe*’s warning and hold that it is unconstitutional for the state to predefine the criteria a physician can rely upon in making medical determinations generally. *See, e.g., Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52 (1976) (citing *Doe* to reject state attempt to predefine viability and holding that the point of viability, a medical determination, must be reserved to the unconstrained judgment of the responsible attending physician); *Colautti v. Franklin*, 439 U.S. 379, 396-97 (1979) (affirming *Doe*’s holding that the state must allow physician the “room he needs to make his best medical judgment” and stressing that *Doe* “underscored the importance of affording the physician adequate discretion in the exercise of his medical judgment in light of all attendant circumstances”).

Pursuant to this clear line of precedent, the DOH requirement that a physician limit her determination of “what may cause harm” to a narrow list provided in the ACIP best practices guidelines or even any other predefined criteria beyond best medical judgment is likely unlawful. Physicians are already duty-bound to make medical decisions based on the best available evidence in accordance with their clinical judgment about how best to protect the patient’s safety. For the safety of the patient, they must not be further constrained, particularly by a definition that is too narrow to protect all children at risk of harm. As the author of the current ACIP guidelines explained to plaintiff Jane Doe, the ACIP guidelines are neither a population-based concept nor an exhaustive list. They are a guide for the practitioner to use as a starting point as she considers

what is best for the individual child in light of all the circumstances, including that child's medical history and the physician's clinical judgment. Removing clinical judgment and using the ACIP guidelines in this improper and unconstitutional manner seriously endangers children lives as well as the associated fundamental liberty interests involved in family medical decision-making.

Second, the Court held it unconstitutional to allow third parties to substantively review a treating physician's medical exemption determination. In so holding, the Court first acknowledged that the admitting hospitals had good reasons to want to independently verify the medical exemption determination before allowing the abortion to proceed at their hospital. However, even these valid interests were deemed insufficient to allow third-party review:

Saying all this, however, does not settle the issue of the constitutional propriety of the committee [medical exemption review] requirement...*The woman's right to receive medical care in accordance with her licensed physician's best judgment and the physician's right to administer it are substantially limited by this statutorily imposed overview.*"

Id. at 192 (emphasis added).

The same reasoning applies with greater force to the challenged policies here, which allow (and encourage) non-medically trained school principals to substantively review and deny treating physicians' medical exemption determinations. There is not even a rational basis for such a policy. Respondents admit that school principals are not qualified for this task. It does not solve the problem that schools often hire non-treating consultants to help the unqualified school principals make medical decisions for these vulnerable children. The consultants are not qualified to make medical decisions for the children either – they have never met the children or spoken to their parents and they do not have all of the information necessary to understand the children's health needs. Moreover, when these consultants present different opinions than the treating physicians, the school principals are then once more placed in the role of making medical determinations for

vulnerable children. School principals are no more qualified to decide between differences of medical opinion than they are to second guess the treating physician in the first place.

Nor do school principals have the *right* to decide between competing medical opinions. Rather, that right lies with the children's parents, who alone possess the fundamental right to direct the care and upbringing of their children, including medical decisions, which fall squarely within that liberty interest. *See Troxel v. Granville*, 530 U.S. 57, 58 (2000) ("There is a presumption that fit parents act in their children's best interests" and thus "there is normally no reason for the State to inject itself into the private realm of the family to further question fit parents' ability to make the best decisions regarding their children."); *Parham v. J.R.*, 442 U.S. 584, 604 (1979) ("Simply because the decision of the parent ... involves risks does not automatically transfer the power to make that decision from the parents to some agency or officer of the state. The same characterizations can be made for a tonsillectomy, appendectomy, or other medical procedure ... Parents can and must make those judgments").

It is constitutionally impermissible for the state to usurp these decisions because of a difference of medical opinion between the treating physician and the random school district consultant, a person who has never examined the child and who is, thus, inherently less qualified to make critical health decisions. Such a regime is also against the child's best interest. Advised by their physicians, parents are in the best position to determine a course of action to protect their medically fragile child's health, particularly where there are differing medical opinions. Parents of medically fragile children typically spend years working with providers, diving deep into the medical literature, and gaining first-hand experience with their child's reactions to various medical interventions and triggers. They love their children and are best equipped to ask the appropriate questions, evaluate, and make the final determination in the child's best interests.

These rights adhere not only to the parent but to the child as well. “The right to family association includes the right of parents to make important medical decisions for their children, and of children to have those decisions made by their parents rather than the state.” *Wallis v. Spencer*, 202 F.3d 1126, 1141 (9th Cir. 2000).

New York State’s highest court cited *Doe* and held that notions of *parens patriae* do not allow the state to usurp parental rights to make medical decisions, even controversial ones, as long as the decision is supported by a state-licensed physician. *Matter of Hofbauer*, 47 N.Y.2d 648, 655–56, (1979) (holding that parents and children have protected constitutional rights to choose a trusted physician and follow the advice of the state-licensed physician; pursuant to *Doe v. Bolton*, the state cannot substitute its judgment based on a difference of medical opinion about what is best for the child).

Doe’s holding is clear and prescient: medical exemptions are between a patient and her state licensed doctor, and it is unconstitutional (and generally unsafe) for the state to deputize third parties to second guess that determination. As this Court recognized in *Doe* and citing cases, “the State does not have the constitutional authority to give a third party an absolute, and possibly arbitrary, veto over the decision of the physician and his patient.” *Danforth*, 428 U.S. at 74.

Finally, *Doe* held that it is unconstitutional to require the treating state-licensed physician to establish that other physicians corroborate his determination. The Court’s discussion of corroborating opinions in *Doe* is particularly apposite to our case:

The reasons for the presence of the confirmation step in the statute are perhaps apparent, but they are insufficient to withstand constitutional challenge ... *If a physician is licensed by the State, he is recognized by the State as capable of exercising acceptable clinical judgment...It is still true today that ‘(r)eliance must be placed upon the assurance given by his license, issued by an authority competent to judge in that respect, that he possesses the requisite qualifications.’*

Id. (emphasis added).

If it is unconstitutional to require a doctor to show that other physicians will corroborate his opinion, it is certainly unconstitutional to overrule the treating physician when a random consultant does not agree with a child's doctor. This Court's precedent repeatedly cautions that unanimity of medical opinion cannot be required in the context of medical exemptions. *Stenberg* 530 U.S. at 937.

By enacting Public Health Law § 2164(8), which provides a medical exemption if “any physician” licensed in the state certifies need, the New York State Legislature reached the constitutional limit of permissible restriction on medical exemptions. Under *Doe*, further regulation is unconstitutional. The challenged DOH regulation and policy, and the defendant School Districts' applications thereof, violate both the plain language of the statute and this Court's binding precedent by limiting medical exemptions to those with which only Respondents' hand picked physicians, not *any* state licensed physician, agree.

c. The challenged policies are not narrowly tailored to uphold a compelling state interest sufficient to outweigh a child's right to a medical exemption.

Respondents have not justified their medical exemption restrictions as necessary to achieve a compelling state interest, making the risks they impose all the more unconscionable. To the extent Respondents assert the need to protect the community from contagious disease, the challenged policies are not narrowly tailored to that end or even rationally related.

In *Roman Catholic Diocese*, this Court granted injunctive relief pending appeal where the state failed to show that the applicants had contributed to the spread of COVID-19 or that there were no less restrictive rules that could be adopted to minimize risk. 141 S. Ct. at 67. Here, the state has failed to meet similar burdens.

Respondents did not submit evidence sufficient to establish that: (a) children with medical exemptions are contributing to the spread of contagious disease; (b) there is widespread medical fraud by state-licensed doctors requiring aggressive state interference in medical decisions; (c) state infringements on the medical exemption are narrowly tailored enough to ensure that all children at risk of harm will receive an exemption; or (d) that the less restrictive options available to the state are insufficient to meet the state’s interest in limiting the spread of contagious disease in schools.

First, Respondents failed to establish that the medical exemption as written by the State legislature is insufficient to protect the public from the imminent spread of contagious deadly disease.

Half the vaccines on the schedule are unrelated to herd immunity and cannot offer protection to anyone but the recipient. Science supports this fact, which is unrefuted in the record. Some types of vaccines, like the measles vaccine, can produce “sterilizing” immunity, which prevents infection and transmission, but others, like the meningococcal (meningitis), Tdap (tetanus, diphtheria, and pertussis) and IPV (inactivated polio) vaccines, can only mitigate symptoms (“non-sterilizing immunity”). Non-sterilizing vaccines still allow for infection and asymptomatic transmission.⁴ Many children are only missing vaccines in this latter category. In this context, Respondents offered no argument or evidence for why the state should compel these vulnerable children to risk their lives by receiving a non-sterilizing vaccine against medical advice since these vaccines cannot protect the public, only the individual.

For those categories of vaccines that can provide protection from transmission as well as symptoms, Respondents concede the number of children seeking a medical exemption is far too

⁴ Other than tetanus, which is not communicable person to person.

low to impact herd immunity, as recognized by the Legislature when it declined to remove or amend the medical exemption despite the measles outbreak last year.

Even if the number of children seeking exemption increased threefold with the removal of the religious exemption (rising from 0.2% to 0.6% of school children), that number is still too small a percentage to realistically impact herd immunity thresholds, which Respondents assert require 80-95% coverage for sterilizing vaccines (non-sterilizing vaccine coverage cannot create herd immunity).

Second, Respondents did not submit any evidence establishing that there is a widespread problem of state-licensed physicians fraudulently writing medical exemptions in violation of their ethical duties of care. Physicians are already duty-bound to make medical decisions in their best medical judgment, based on clinical evaluation of the patient and in light of the evidence-based data relevant to protecting the patient's health and life. There is no reason to take clinical judgment away from physicians and impose a narrow regulatory definition of what "may cause harm," particularly not one that is insufficient to cover all the reasons a child may be at risk of harm. Furthermore, as the Court found concerning in *Ayotte*, physicians may not certify needed medical exemptions if unsure that their determinations of medical necessity fit within the arbitrary new definition, even in cases where the child is at risk of serious harm. Differences of opinion about what qualifies under ACIP are common among licensed medical practitioners, as evidenced by the as-applied challenges in this case.

Third, the DOH did not submit evidence proving why available statutory options will not suffice to meet their goal of limiting the spread of contagious disease in schools. If there were an outbreak of a vaccine preventable disease (currently there are none in the state), the DOH has less restrictive means of mitigating risk. The agency can require any unvaccinated child to stay on

home instruction until the outbreak subsides at her school. The agency can also employ quarantine, and temperature and symptom checks.

Most relevant to this motion, Respondents have not advanced any permissible reason to exclude the Impacted Children from online education. The children cannot pose a health threat to their classmates through the computer. The state's only apparent justification is they hope to coerce parents into waiving their fundamental rights by conditioning access to vital benefits on the parents agreement to contravene medical advice and subject their children to risk of harm or death. This is a violation of the unconstitutional conditions doctrine and is not a valid purpose, let alone a compelling state interest.⁵

Even if the State had provided evidence that the burdensome measures implemented are necessary and narrowly tailored to support compelling state interests, it is doubtful that such interests could override the children's interest in protecting their life and health.

In the abortion context, courts acknowledge that the state has a compelling interest in protecting the life of the unborn child, and that the state's interest outweighs the woman's liberty interests in ending the pregnancy post-viability – if a woman proceeds with an abortion at that point, the fetus, who otherwise has a chance to survive, will die. However, even in the abortion context, where it is certain a child will die if the woman has a post-viability abortion, the state's compelling interest cannot outweigh a woman's right to protect her health or life where continuing

⁵ In addition to the failures of the state to narrowly tailor its infringements on the fundamental right to a medical exemption, these children all meet the definition of disabled children pursuant to Section 504 of the Rehabilitation Act of 1973, and their complaint alleges violations of Section 504 as well as violations of Constitutional rights. Under the standards governing exclusion of children with disabilities from school, the state must establish that the excluded children pose a "direct threat" to their classmates sufficient to be denied reasonable accommodations. As noted above, there is no basis to claim these children pose a direct threat to classmates if they are able to join their classes online, and such a reasonable accommodation should not be denied while the Impacted Children litigate the constitutional sufficiency of the medical exemption provided in New York.

the pregnancy might place her at risk of physical harm, full stop.

Here, the state cannot argue, as it can in the abortion context, that allowing a child to opt-out of a vaccine requirement will necessarily (or even likely) result in death or harm to another.

The DOH appeared to justify the restrictions by pointing to a measles outbreak in 2018-19 which infected approximately 1,000 people over the course of a year. Every infected person recovered. No evidence was presented, or in fact exists, that a single child with a medical exemption caught measles or contributed in any way to the spread during the outbreak.

Moreover, without diminishing valid societal reasons to encourage widespread measles vaccination, the basic facts establish that the rate of death is relatively low for this disease and there are no current outbreaks to justify placing medically fragile children's lives at risk. It is undisputed that the measles outbreak ended more than a year ago and that there were no casualties during that outbreak. In fact, there have been no confirmed casualties from measles in New York for decades, despite much greater numbers of exempt children in the past due to the prior availability of the religious exemption as well as the medical exemption.

Even before a vaccine existed, the risk of death from measles in this country was very low. According to the CDC, "[i]n the decade before 1963 when a vaccine became available, nearly all children got measles by the time they were 15 years of age. It is estimated 3 to 4 million people in the United States were infected each year. Also each year, among reported cases, an estimated 400 to 500 people died."⁶ Pursuant to these estimates, the fatality rate of measles is about 0.01%.

Assuming, *arguendo*, that the State had presented evidence showing that the children pose a direct threat (which has not been established), at best, the argument would be that there is some unspecified chance that the child's exemption could lead to another person catching and possibly

⁶ <https://www.cdc.gov/measles/about/history.html>

being harmed by a disease that might have been prevented had the child taken the vaccine. Though this may be enough of a compelling reason to allow the state to infringe on liberty interests, like the right to refuse vaccination for philosophical reasons, it is not a sufficient reason to ask the child to risk her own health or life.

This was a central holding of *Jacobson*, which cautioned that it is unconstitutional to demand someone sacrifice her health or life in service of public health goals. 197 U.S. 11 at 36-39. As this Court recognized in *Ayotte*, if a medical exemption can exclude even one child who needs it, it is unconstitutional. 546 U.S. at 328. Even where the state has shown a compelling interest supporting its desire to limit unnecessary medical exemptions, the requirement that a state-licensed physician has to approve the exemption is sufficient to meet that need and is the limit of allowable state infringement on the process. *Doe*, 410 U.S. 199-200.

II. The Lower Courts' Decisions Exacerbate Confusion on Constitutional Issues of Nationwide Importance.

As this Court's precedent shows, and justice demands, the right to a medical exemption where a child is at risk of harm or death is a fundamental constitutional right requiring the highest level of judicial scrutiny. Respondents are impermissibly burdening this right by violating the limits of incursion set forth in *Jacobson*, *Doe*, and *Ayotte*, among other Supreme Court decisions cautioning against state infringements on the right to a medical exemption. Yet the courts below denied injunctive relief without applying strict scrutiny. They justified this with three fundamental legal errors, each of which implicates issues of critical national importance.

First, the lower courts failed to apply this Court's precedent on medical exemptions, improperly conflating the right to abortion with the right to a medical exemption and suggesting that the Court's precedent only applies to abortion cases. Second, the lower court misread *Jacobson* as requiring blanket judicial deference to any law or policy that implicates vaccines,

even where such policies substantially burden a child’s right to a medical exemption to protect her life or health. Third, the District Court ignored the “unconstitutional conditions” doctrines and held that any requirements related to school access, even those that burden fundamental rights, are absolved from strict scrutiny since there is no “fundamental right” to an education.

a. *Doe* and *Ayotte* apply to all medical exemption cases, not just abortion cases.

The District Court failed to recognize that the inalienable right to life includes the right to refuse state mandated vaccines that a licensed physician has certified may kill or seriously harm. Instead, the District Court conflated the right to a medical exemption with the separate right to an abortion, failing to apply this Court’s clear guidance on the limits of state infringement on medical exemptions by asserting that *Doe* and *Ayotte* only apply to medical exemptions from abortion regulations.

Nothing in the case law supports this theory. In fact, this Court already confirmed that *Doe* applies outside the abortion context. In *Whalen v. Roe*, the Supreme Court examined a legal challenge to New York State regulations requiring the collection of data on controlled substance prescriptions across the state. 429 U.S. 589, 603 (1977). The Court ultimately held that the anonymous collection of data was permissible, but specifically cautioned that, pursuant to *Doe*, it would be unconstitutional if patient access to controlled medications were to be “conditioned on the consent of any state official or third party” other than a person’s chosen state-licensed physician. *Id. Whalen*, which has no relation to abortion, expressly clarifies that *Doe* applies to all medical decision-making, not just abortions.

Moreover, as discussed above, *Ayotte* defines the right to a medical exemption as a separate right from the liberty interest in an abortion. *Ayotte*, 546 U.S. at 325. There, though the state’s compelling interest was deemed sufficient to override the liberty interests at stake, the Court held

this separate right to a medical exemption could not be infringed, no matter how compelling the state's interest. Even the possibility that a medical exemption was narrow enough to exclude the very small percentage who might need it rendered the exemption unconstitutionally narrow. *Id* at 328. Therefore, the Court remanded the case to the lower court to determine if any part of the remaining statute other than the medical exemption could be saved through declaratory or injunctive relief or severance, or if the entire parental notification statute needed to be struck down.

In failing to apply strict scrutiny to medical exemption review, the District Court also failed to follow the clear guidance in *Jacobson*, which addressed immunizations not abortion. *Jacobson* was the first case to articulate the right to a medical exemption and prepared a framework later followed in the abortion context. *Jacobson* held that the state has a right to defend the community from contagious disease, which can override personal liberty interests in certain emergency circumstances (essentially a prequel to compelling state interest analysis). But it recognized that even the most compelling state interest was insufficient to override a person's right to defend his own life through a medical exemption if he was personally at risk of serious harm or death from the vaccine. *Jacobson* stressed that the determination of whether a medical exemption was too narrow to protect such persons is a matter for rigorous independent judicial review, without the deference given to general public health decisions.

As recognized in the *Roman Catholic Diocese* case, *Jacobson* essentially set up tiers of scrutiny decades before this Court formally adopted modern substantive due process analysis. Even in 1905, this Court properly recognized that the right to a medical exemption requires the highest level of scrutiny and independent judicial review.

b. The Unconstitutional Conditions Doctrine Requires Strict Scrutiny Review.

The District Court’s reasoning for denying injunctive relief, and failing to apply strict scrutiny, violates the unconstitutional conditions doctrine and misapplies the incidental burdens doctrine.

Though failing to recognize that a medical exemption is an independent fundamental right, the District Court did acknowledge that other fundamental rights are at stake in this case, such as the well-established right to refuse medical treatment and the parental right to make medical decisions for their children. The lower court even acknowledged that *Whalen v. Roe* requires that *Doe* be applied to all medical decision-making, not just abortion related exemptions, and that strict scrutiny is required for assessment of state interference in medical decision-making.

Nonetheless, the District Court sidestepped strict scrutiny analysis, reasoning that the Impacted Children “are unlikely to succeed in showing that the medical exemption regulations directly infringe on these fundamental rights, as they do not force parents to consent to vaccination. Thus, the right being burdened is the right to attend school at a public or private institution...And, the Second Circuit has made clear, ‘the right to public education is not fundamental.’”

As a threshold matter, the District Court made a clear error of fact. The childhood vaccine requirements apply to all children and are not merely a condition precedent to attend school. The plain language of P.H.L. § 2164, and the challenged regulation defining “what may cause harm,” require that *every child under the age of 18* must be in compliance with the childhood vaccine schedule, not just children who wish to attend school. Though expulsion from school is one consequence that can arise if a needed medical exemption is denied due to the narrow new regulatory definition, other serious consequences include interference with the right to make

medical decisions based on a physician's best medical judgment and loss of custody. The direct burden here is on the right to a medical exemption, and loss of access to school is merely one of several consequences that may ensue.

Even if the policies only applied as a condition to be allowed to attend any public, private or online school in New York, the burdens the condition places on fundamental rights would still require strict scrutiny review. The government cannot condition receipt of a benefit, fundamental or not, on the waiver of a constitutional protection. "[E]ven though a person has no 'right' to a valuable governmental benefit and even though the government may deny him the benefit for any number of reasons, there are some reasons upon which the government may not rely. It may not deny a benefit to a person on a basis that infringes his constitutionally protected interests." *Perry v. Sinderman*, 408 U.S. 593, 597 (1972).

The unconstitutional conditions doctrine "vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up." *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013). In *Agency for International Development*, for example, the plaintiffs brought a successful facial challenge to the application of a 2003 law that required a statement against prostitution as a condition of eligibility for a discretionary grant to help stop the spread of HIV. 570 U.S. 205 (2013). The government argued that since NGOs are not entitled to such grants, this was a proper condition designed to advance compelling government interests that only incidentally burdened free speech rights. This Court disagreed, recognizing that the government is not allowed to do indirectly what it cannot do directly in conditioning a government benefit. After finding the condition's infringement on fundamental speech rights was not likely to meet strict scrutiny review, preliminary injunctive relief against the coercive condition was upheld.

Here, it is well established that the state cannot subject medical exemption decisions written by state-licensed physicians to burdensome review or demand that parents vaccinate their children against the advice of licensed physicians. The state cannot get around this by conditioning a benefit, particularly a benefit as vital as access to an education at any school in the state, on waiver of these rights. Respondents openly admit that their reason for denying the children access to online education is to coerce parents into waiving their medical exemption even though a licensed physician has certified that doing so places their child at risk of harm or death. This argument is as abhorrent as it is boldly unconstitutional. The District Court's reasoning that substantial burdens on fundamental rights are excused from strict scrutiny if they implicate access to school, carries grave connotations and if left uncorrected, will lead to widespread danger and injustice to medically fragile members of our society.

III. The Circumstances are Exigent – Each Day of Exclusion from School and Special Education Services Causes Further Irreparable Harm.

Relief is desperately needed to prevent ongoing irreparable harm to the Impacted Children. Each day that they are excluded from accessing education and services causes further irreparable harm.

A showing of irreparable harm is “the single most important prerequisite for the issuance of a preliminary injunction.” *Faively Transp. Malmo AB v. Wabtec Corp.*, 559 F.3d 110,118 (2d Cir. 2009). Here the District Court properly held that Applicants met this burden, holding that irreparable harm is a presumption where children are excluded from school. *See* PI Order (P. 9). (“Courts considering this issue routinely assume that a child prevented from attending school would suffer irreparable harm.”).

There is no serious question that the complete deprivation of access to school will cause ongoing irreparable harm to the Impacted Children. As this Court recognized in *Brown v. Board*

of Education, “In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.” 347 U.S. 483, 493 (1954).

The District Court acknowledged that the deprivation of an education is so widely considered harmful that even short periods of exclusion establish a presumption of irreparable harm. Some of these children have been excluded from school for over a year and there is no indication that absent intervention they will ever be allowed to return⁷.

The harm is even greater for medically fragile children, many of whom require special education services that their parents cannot typically provide at home. Their humiliating exclusion from school psychologically scarred these children, who feel ostracized for a condition completely beyond their control. Excluding them even from online access to school and remote special education services is cruel, inhuman and can serve only punitive purposes. As the irreparable harm to the Impacted Children continues to compound with each passing day, the need for relief here is critical and exigent.

The District Court properly recognized that, “the exclusion of Plaintiffs’ minor children from school supports a strong showing of irreparable harm.” PI Order (9).

IV. The Balance of Hardships and Public Interest Likewise Favor Injunctive Relief.

The balance of equities also favors keeping children in online school pending the outcome of this appeal. When compared with the seriousness of the constitutional harm being done to these impacted families, and the irreparable harm to the impacted children each day that they are deprived of an education, the Respondents’ interests pale in comparison.

⁷ Though some of the Impacted Children have been excluded from access to any New York school for over a year, some were excluded more recently, and others were accepted at other schools, or were conditionally admitted to online programs and face imminent removal.

The government simply “does not have an interest in the enforcement of an unconstitutional law.” *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2010) (quotation marks omitted). And although the state has a valid interest in preventing the spread of contagious disease to protect the public, it has not established that excluding children from online education serves any purpose other than punishment or coercion.

At stake here are children’s lives. The state cannot justify its callous treatment of these children’s safety and health by vague and unproven invocations of “public health.” The state has no right to demand that children’s lives be put at stake to protect others, particularly where it has not even bothered to prove that such sacrifice is necessary or that the children pose any direct threat in the first place. Indeed, there is no conceivable threat any of these children could pose while attending class remotely.

Moreover, each day that these children are deprived of access to education and special services causes further irreparable harm. Each day of exclusion, their prospects and chances of success deteriorate. Allowing this to continue harms us all.

The Impacted Children do not seek to open the floodgates. They merely ask that they and other children who have submitted a medical exemption from a state-licensed physician be able to access online education while the courts review the constitutionality of the challenged regulation and policies burdening the medical exemption process.

CONCLUSION

Simply going to school should not mean risking one’s life. For these Impacted Children, with their litany of serious medical conditions, life is hard enough. But the challenged DOH regulations, and Respondent School Districts’ applications thereof, have forced them into the Hobson’s choice of attending school at risk of injury or death or becoming a pariah, so tainted as

to be unworthy of participation even in remote learning. To deny them access to online education, where the justification for vaccinations is undisputedly absent, only rubs salt in already deep and festering wounds.

Since (1) the Constitution clearly protects these children's medical exemptions under the circumstances here presented, (2) these children will continue to be irreparably harmed each day they continue to be excluded from school, and (3) there is clearly no harm in allowing them to learn remotely, the Circuit Justice or the full Court should enjoin the DOH and school districts, pending appeal, from excluding children from distance learning and services on the basis of vaccination status if a state-licensed physician has certified the child is at risk of harm or death. Applicants further ask this Court for any other relief deemed just and proper.

Respectfully submitted,

/s/Sujata S. Gibson

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APPENDIX A

N.D.N.Y.
20-cv-840
Sannes, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 5th day of January, two thousand twenty-one.

Present:

Guido Calabresi,
Reena Raggi,
Denny Chin,
Circuit Judges.

Jane Doe, on behalf of herself and her minor child, et al.,

Plaintiffs-Appellants,

Jane Goe, Sr.,

Plaintiff,

v.

20-3915

Howard Zucker, in his official capacity as Commissioner of Health for the State of New York, M.D., et al.,


Defendants-Appellees,

Shenendehowa Central School District, et al.,

Defendants.

Appellants move for an emergency injunction pending appeal. Upon due consideration, it is hereby ORDERED that the motion is DENIED because Appellants have not met the requisite standard. *See In re World Trade Ctr. Disaster Site Litig.*, 503 F.3d 167, 170 (2d Cir. 2007); *see also Respect Maine PAC v. McKee*, 562 U.S. 996, 996 (2010).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court


Catherine O'Hagan Wolfe



APPENDIX B

U.S. District Court
Northern District of New York - Main Office (Syracuse) [NextGen CM/ECF Release 1.5
(Revision 1.5.3)] (Albany)
CIVIL DOCKET FOR CASE #: 1:20-cv-00840-BKS-CFH

Jane Doe et al v. Zucker et al
Assigned to: Judge Brenda K. Sannes
Referred to: Magistrate Judge Christian F. Hummel
Cause: 42:1983 Civil Rights Act

Date Filed: 07/23/2020
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

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on behalf of herself and her minor child

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Gregg T. Johnson
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Chelsea Weisbord
(See above for address)
ATTORNEY TO BE NOTICED

Loraine Clare Jelinek
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Lansing Central School District

represented by **James G. Ryan**
Cullen, Dykman Law Firm - Garden City
Office
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ATTORNEY TO BE NOTICED

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Cullen and Dykman LLP
100 Quentin Roosevelt Boulevard
Garden City, NY 11530
516-357-3704
Fax: 516-357-3792
Email: rtashjian@cullenllp.com
ATTORNEY TO BE NOTICED

Defendant

Chris Pettograsso
*acting in her official capacity as
Superintendent, Lansing Central School
District*

represented by **James G. Ryan**
(See above for address)
ATTORNEY TO BE NOTICED

Roxanne Lorig Tashjian
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Christine Rebera
*acting in her official capacity as Principal,
Lansing Middle School, Lansing Central
School District*

represented by **James G. Ryan**
(See above for address)
ATTORNEY TO BE NOTICED

Roxanne Lorig Tashjian
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Lorri Whiteman
*acting in her official capacity as Principal,
Lansing Elementary School, Lansing
Central School District*

represented by **James G. Ryan**
(See above for address)
ATTORNEY TO BE NOTICED

Roxanne Lorig Tashjian
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Penfield Central School District

represented by **James G. Ryan**
(See above for address)
ATTORNEY TO BE NOTICED

Roxanne Lorig Tashjian
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Dr. Thomas Putnam
*acting in his official capacity as
Superintendent, Penfield Central School
District*

represented by **James G. Ryan**
(See above for address)
ATTORNEY TO BE NOTICED

Roxanne Lorig Tashjian
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

South Huntington School District

represented by **Adam I. Kleinberg**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Gregg T. Johnson
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Chelsea Weisbord
(See above for address)

ATTORNEY TO BE NOTICED

Loraine Clare Jelinek

(See above for address)

ATTORNEY TO BE NOTICED

Defendant

David P. Bennardo

*Dr., acting in his official capacity as
Superintendent, South Huntington School
District*

represented by **Adam I. Kleinberg**

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Gregg T. Johnson

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Chelsea Weisbord

(See above for address)

ATTORNEY TO BE NOTICED

Loraine Clare Jelinek

(See above for address)

ATTORNEY TO BE NOTICED

Defendant

BR. David Migliorino

*acting in his official capacity as Principal,
St. Anthony's High School, South
Huntington School District*

represented by **Elaine Nancy Chou**

Biedermann Hoenig Semprevivo

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646-218-7560
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Email:
PHILIP.SEMPREVIVO@LAWBHS.COM
ATTORNEY TO BE NOTICED

Defendant

Ithaca City School District

represented by **Gregg T. Johnson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Adam I. Kleinberg
(See above for address)
ATTORNEY TO BE NOTICED

Chelsea Weisbord
(See above for address)
ATTORNEY TO BE NOTICED

Loraine Clare Jelinek
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

DR. Luvelle Brown
acting in his official capacity as
Superintendent, Ithaca City School District

represented by **Gregg T. Johnson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Adam I. Kleinberg
(See above for address)
ATTORNEY TO BE NOTICED

Chelsea Weisbord
(See above for address)
ATTORNEY TO BE NOTICED

Loraine Clare Jelinek
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Susan Eschbach
acting in her official capacity as Principal,
Beverly J. Martin Elementary School,
Ithaca City School District

represented by **Gregg T. Johnson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Adam I. Kleinberg
(See above for address)
ATTORNEY TO BE NOTICED

Chelsea Weisbord
(See above for address)
ATTORNEY TO BE NOTICED

Loraine Clare Jelinek
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Shenendehowa Central School District
TERMINATED: 11/02/2020

represented by **James G. Ryan**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

DR. L. Oliver Robinson
*acting in his official capacity as
Superintendent, Shenendehowa Central
School District
TERMINATED: 11/02/2020*

represented by **James G. Ryan**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Sean Gnat
*acting in his official capacity as Principal,
Koda Middle School, Shenendehowa
Central School District
TERMINATED: 11/02/2020*

represented by **James G. Ryan**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Andrew Hills
*acting in his official capacity as Principal,
Arongen Elementary School, Shenendehowa
Central School District
TERMINATED: 11/02/2020*

represented by **James G. Ryan**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Coxsackie-Athens School District

represented by **James G. Ryan**
(See above for address)
ATTORNEY TO BE NOTICED

Roxanne Lorig Tashjian
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Randall Squier
*Superintendent, acting in his official
capacity as Superintendent, Coxsackie-
Athens School District*

represented by **James G. Ryan**
(See above for address)
ATTORNEY TO BE NOTICED

Roxanne Lorig Tashjian

(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Freya Mercer
*acting in her official capacity as Principal,
Coxsackie-Athens School District*

represented by **James G. Ryan**
(See above for address)
ATTORNEY TO BE NOTICED

Roxanne Lorig Tashjian
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Albany City School District

represented by **Gregg T. Johnson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Adam I. Kleinberg
(See above for address)
ATTORNEY TO BE NOTICED

Chelsea Weisbord
(See above for address)
ATTORNEY TO BE NOTICED

Loraine Clare Jelinek
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Kaweeda G. Adams
*acting in her official capacity as
Superintendent, Albany City School District*

represented by **Gregg T. Johnson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Adam I. Kleinberg
(See above for address)
ATTORNEY TO BE NOTICED

Chelsea Weisbord
(See above for address)
ATTORNEY TO BE NOTICED

Loraine Clare Jelinek
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Michael Paolino
*acting in his official capacity as Principal,
William S. Hackett Middle School, Albany*

represented by **Gregg T. Johnson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

City School District; and all others
similarly situated

Adam I. Kleinberg
(See above for address)
ATTORNEY TO BE NOTICED

Chelsea Weisbord
(See above for address)
ATTORNEY TO BE NOTICED

Loraine Clare Jelinek
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
07/23/2020	<u>1</u>	CLASS ACTION COMPLAINT: against Howard Zucker, Kaweeda G. Adams, Albany City School District, David P. Bennardo, Luvelle Brown, Cossackie-Athens School District, Susan Eschbach, Sean Gnat, Andrew Hills, Ithaca City School District, Corinne Keane, Lansing Central School District, Freya Mercer, David Migliorino, New York State Department of Health, Michael Paolino, Cheryl Pedisich, Penfield Central School District, Chris Pettograsso, Thomas Putnam, Elizabeth Rausch-Phung, Christine Rebera, L. Oliver Robinson, Shenendehowa Central School District, South Huntington School District, Randall Squier, Three Village Central School District, Lorri Whiteman, (Filing fee \$400 receipt number ANYNDC-5182902) filed by John Coe, Sr, Jane Doe, Jane Goe, Sr, Childrens Health Defense, Jane Coe, Sr, Jane Joe, John Foe, Sr, Jane Boe, Sr, Jane Loe. (Attachments: # <u>1</u> Civil Cover Sheet) (jmb) (Entered: 07/29/2020)
07/23/2020	<u>2</u>	MOTION to Proceed by Pseudonym regarding the # <u>1</u> Complaint and MOTION for Protective Order, filed by Plaintiffs' Jane Doe, Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr and John Foe, Sr. (Attachments: # <u>1</u> Affirmation, # <u>2</u> Memorandum of Law) Motions referred to Christian F. Hummel. (jmb) (Entered: 07/29/2020)
07/27/2020	<u>3</u>	Summons Issued as to Howard Zucker. (Attachments: # <u>1</u> Summons issued for Elizabeth Rausch-Phung, # <u>2</u> Summons issued for New York State Department of Health, # <u>3</u> Summons issued for Three Village Central School District, # <u>4</u> Summons issued for Cheryl Pedisich, # <u>5</u> Summons issued for Corinne Keane, # <u>6</u> Summons issued for Lansing Central School District, # <u>7</u> Summons issued for Chris Pettograsso, # <u>8</u> Summons issued for Christine Rebera, # <u>9</u> Summons issued for Lorri Whiteman, # <u>10</u> Summons issued for Penfield Central School District, # <u>11</u> Summons issued for Thomas Putnam, # <u>12</u> Summons issued for South Huntington School District, # <u>13</u> Summons issued for David Bennardo, # <u>14</u> Summons issued for BR. David Migliorino, # <u>15</u> Summons issued for Ithaca City School District, # <u>16</u> Summons issued for Luvelle Brown, # <u>17</u> Summons issued for Susan Eschbach, # <u>18</u> Summons issued for Shenendehowa Central School District, # <u>19</u> Summons issued for Oliver Robinson, # <u>20</u> Summons issued Sean Gnat, # <u>21</u> Summons issued for Andrew Hills, # <u>22</u> Summons issued Cossackie-Athens School District, # <u>23</u> Summons issued for Randall Squier, # <u>24</u> Summons issued for Freya Mercer, # <u>25</u> Summons issued for Albany City School District, # <u>26</u> Summons issued for Kaweeda G. Adams, # <u>27</u> Summons issued for Michael Paolino) (jmb) (Entered: 07/29/2020)
07/27/2020	<u>4</u>	G.O. 25 FILING ORDER ISSUED: Initial In-Person Rule 16 Conference set for 11/16/2020 at 9:00 AM in Albany before Magistrate Judge Christian F. Hummel. Civil Case Management Plan must be filed and Mandatory Disclosures are to be exchanged by

		the parties on or before 11/9/2020. (Pursuant to Local Rule 26.2, mandatory disclosures are to be exchanged among the parties but are NOT to be filed with the Court.) (jmb) (Entered: 07/29/2020)
07/27/2020	5	NOTICE OF ADMISSION REQUIREMENT: as to Party Plaintiffs'; Attorneys' Robert F. Kennedy, Jr., Esq. and Mary Holland, Esq. Email address for Mary Holland is mary.holland@childrenshealthdefense.org. Admissions due by 8/10/2020. {Clerk Emailed notice and a courtesy copy of the GO #25 to Attorney Holland on 7/27/2020 and Mailed via regular a copy of the notice and a courtesy copy of the GO #25 to Attorney Kennedy on 7/27/2020} (jmb) (Entered: 07/29/2020)
08/10/2020	6	AFFIDAVIT of Service for Summons and Complaint served on Kaweeda G. Adams, Superintendent, Albany City School District on August 4, 2020, filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Sussman, Michael) (Entered: 08/10/2020)
08/10/2020	7	AFFIDAVIT of Service for Summons and Complaint served on Albany City School District on August 4, 2020, filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Sussman, Michael) (Entered: 08/10/2020)
08/10/2020	8	AFFIDAVIT of Service for Summons and Complaint served on New York State Department of Health, c/o Attorney General on August 4, 2020, filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Sussman, Michael) (Entered: 08/10/2020)
08/10/2020	9	AFFIDAVIT of Service for Summons and Complaint served on New York State Department of Health on August 4, 2020, filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Sussman, Michael) (Entered: 08/10/2020)
08/10/2020	10	AFFIDAVIT of Service for Summons and Complaint served on Elizabeth Rausch-Phung, Director of Bureau of Immunizations, NYS Department of Health on August 4, 2020, filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Sussman, Michael) (Entered: 08/10/2020)
08/10/2020	11	AFFIDAVIT of Service for Summons and Complaint served on Howard Zucker, Commissioner of Health, NYS Department of Health on August 4, 2020, filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Sussman, Michael) (Entered: 08/10/2020)
08/11/2020	12	AFFIDAVIT of Service for Summons and Complaint served on Michael Paolino, Principal of William S. Hackett Middle School on August 4, 2020, filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Sussman, Michael) (Entered: 08/11/2020)
08/12/2020		***Answer deadline set for Kaweeda G. Adams; Albany City School District; New York State Department of Health; Michael Paolino; Elizabeth Rausch-Phung and Howard Zucker to 8/25/2020. (jmb) (Entered: 08/12/2020)
08/13/2020	13	AFFIDAVIT of Service for Summons and Complaint served on Dr. Thomas Putnam, Superintendent, Penfield Public School District on August 6, 2020, filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Sussman, Michael) (Entered: 08/13/2020)
08/14/2020		***Answer due date set for Dr. Thomas Putnam answer due 8/27/2020. (kmp) (Entered: 08/14/2020)

08/18/2020	<u>14</u>	AFFIDAVIT of Service for Summons and Complaint served on Lansing Central School District on August 11, 2020, filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Sussman, Michael) (Entered: 08/18/2020)
08/18/2020	<u>15</u>	AFFIDAVIT of Service for Summons and Complaint served on Chris Pettrograsso, Superintendent, Lansing Central School District on August 11, 2020, filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Sussman, Michael) (Entered: 08/18/2020)
08/18/2020	<u>16</u>	AFFIDAVIT of Service for Summons and Complaint served on Christine Rebera, Principal, Lansing Middle School on August 11, 2020, filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Sussman, Michael) (Entered: 08/18/2020)
08/18/2020	<u>17</u>	AFFIDAVIT of Service for Summons and Complaint served on Lorri Whiteman, Principal, Lansing Elementary School on August 11, 2020, filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Sussman, Michael) (Entered: 08/18/2020)
08/18/2020	<u>18</u>	AFFIDAVIT of Service for Summons and Complaint served on Ithaca City School District on August 13, 2020, filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Sussman, Michael) (Entered: 08/18/2020)
08/18/2020	<u>19</u>	AFFIDAVIT of Service for Summons and Complaint served on Luvelle Brown, Superintendent, Ithaca City School District on August 13, 2020, filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Sussman, Michael) (Entered: 08/18/2020)
08/18/2020	<u>20</u>	AFFIDAVIT of Service for Summons and Complaint served on Susan Eschbach, Principal, Beverly J Martin Elementary School on August 11, 2020, filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Sussman, Michael) (Entered: 08/18/2020)
08/18/2020		***Answer due date updated for Susan Eschbach, Lansing Central School District, Chris Pettograsso, Christine Rebera, and Lorri Whiteman answers due 9/1/2020. (pjh,) (Entered: 08/18/2020)
08/18/2020		***Answer due date updated for Luvelle Brown and Ithaca City School District answers due 9/3/2020. (pjh,) (Entered: 08/18/2020)
08/20/2020	<u>21</u>	NOTICE of Appearance by Gregg T. Johnson on behalf of Kaweeda G. Adams, Albany City School District, David P. Bennardo, Corinne Keane, Lansing Central School District, Michael Paolino, Cheryl Pedisich, Chris Pettograsso, Christine Rebera, South Huntington School District, Three Village Central School District, Lorri Whiteman (Johnson, Gregg) (Entered: 08/20/2020)
08/20/2020	<u>22</u>	STIPULATION <i>Extending Time to Answer</i> by Kaweeda G. Adams, Albany City School District, David P. Bennardo, Corinne Keane, Lansing Central School District, Michael Paolino, Cheryl Pedisich, Chris Pettograsso, Christine Rebera, South Huntington School District, Three Village Central School District, Lorri Whiteman submitted to Judge Hon. Christian J. Hummel, USMJ. (Johnson, Gregg) (Entered: 08/20/2020)
08/21/2020	<u>23</u>	AFFIDAVIT of Service for Summons and Complaint served on Randall Squier, Superintendent, Coxsackie-Athens School District on August 11, 2020, filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Sussman, Michael) (Entered: 08/21/2020)

08/21/2020	24	AFFIDAVIT of Service for Summons and Complaint served on Freya Mercer, Principal, Cocksackie-Athens High School on August 11, 2020, filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Sussman, Michael) (Entered: 08/21/2020)
08/21/2020	25	AFFIDAVIT of Service for Summons and Complaint served on Cocksackie-Athens School District on August 11, 2020, filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Sussman, Michael) (Entered: 08/21/2020)
08/21/2020		***Answer deadline set for Cocksackie-Athens School District, Freya Mercer and Randall Squier to 9/1/2020. (jmb) (Entered: 08/21/2020)
08/21/2020	26	TEXT ORDER approving 22 Stipulation, filed by Three Village Central School District, Chris Pettograsso, Michael Paolino, Kaweeda G. Adams, Lorri Whiteman, Albany City School District, Lansing Central School District, Christine Rebera, South Huntington School District, Corinne Keane, David P. Bennardo, Cheryl Pedisich, Answer due date updated for Kaweeda G. Adams answer due 9/21/2020; Albany City School District answer due 9/21/2020; David P. Bennardo answer due 9/21/2020; Corinne Keane answer due 9/21/2020; Lansing Central School District answer due 9/21/2020; Michael Paolino answer due 9/21/2020; Cheryl Pedisich answer due 9/21/2020; Chris Pettograsso answer due 9/21/2020; Christine Rebera answer due 9/21/2020; South Huntington School District answer due 9/21/2020; Three Village Central School District answer due 9/21/2020; Lorri Whiteman answer due 9/21/2020. Authorized by Magistrate Judge Christian F. Hummel on 8/21/2020. (tab) (Entered: 08/21/2020)
08/24/2020	27	NOTICE of Appearance by Michael G. McCartin on behalf of New York State Department of Health, Elizabeth Rausch-Phung, Howard Zucker (McCartin, Michael) (Entered: 08/24/2020)
08/24/2020	28	MOTION to Dismiss for Failure to State a Claim Motion Hearing set for 10/1/2020 10:00 AM in Syracuse before Judge Brenda K. Sannes Response to Motion due by 9/14/2020 Reply to Response to Motion due by 9/21/2020. filed by New York State Department of Health, Elizabeth Rausch-Phung, Howard Zucker. (Attachments: # 1 Memorandum of Law, # 2 Declaration of Michael G. McCartin, # 3 Exhibit(s) 1 (Bill No. S2994A), # 4 Exhibit(s) 2 (N.Y. Reg.), # 5 Exhibit(s) 3 (N.Y. Reg.), # 6 Exhibit(s) 4 (Emerg. Regs.), # 7 Exhibit(s) 5 (CDC ACIP), # 8 Exhibit(s) 6 (Final Regs.), # 9 Exhibit(s) 7 (ISDA Recom.), # 10 Exhibit(s) 8 (AAP Recom.), # 11 Exhibit(s) 9 (AAFP Recom.)) (McCartin, Michael) (Entered: 08/24/2020)
08/24/2020	29	AFFIDAVIT of Service for Summons and Complaint served on South Huntington School District on August 11, 2020, filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Sussman, Michael) (Entered: 08/24/2020)
08/24/2020	30	AFFIDAVIT of Service for Summons and Complaint served on Dr. David Bennardo on August 11, 2020, filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Sussman, Michael) (Entered: 08/24/2020)
08/24/2020	31	AFFIDAVIT of Service for Summons and Complaint served on Three Village Central School District on August 11, 2020, filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Sussman, Michael) (Entered: 08/24/2020)
08/24/2020	32	AFFIDAVIT of Service for Summons and Complaint served on Cheyrl Pedisich on August 11, 2020, filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane

		Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Sussman, Michael) (Entered: 08/24/2020)
08/24/2020	33	AFFIDAVIT of Service for Summons and Complaint served on Corinne Keane on August 13, 2020, filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Sussman, Michael) (Entered: 08/24/2020)
08/24/2020	34	AFFIDAVIT of Service for Summons and Complaint served on Dr. Thomas Putnam on August 6, 2020, filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Sussman, Michael) (Entered: 08/24/2020)
08/24/2020	35	CERTIFICATE OF SERVICE by New York State Department of Health, Elizabeth Rausch-Phung, Howard Zucker re 28 MOTION to Dismiss for Failure to State a Claim (McCartin, Michael) (Entered: 08/24/2020)
08/25/2020	36	NOTICE of Appearance by Andrew W. Koster on behalf of New York State Department of Health, Elizabeth Rausch-Phung, Howard Zucker (Koster, Andrew) (Entered: 08/25/2020)
08/25/2020	37	STIPULATION <i>Extending Time to Answer</i> by Cocksackie-Athens School District, Sean Gnat, Andrew Hills, Freya Mercer, Penfield Central School District, Chris Pettograsso, Thomas Putnam, Christine Rebera, L. Oliver Robinson, Shenendehowa Central School District, Randall Squier, Lorri Whiteman. (Ryan, James) (Entered: 08/25/2020)
08/25/2020	38	NOTICE of Appearance by Gregg T. Johnson on behalf of Kaweeda G. Adams, Albany City School District, David P. Bennardo, Luvelle Brown, Susan Eschbach, Ithaca City School District, Corinne Keane, Michael Paolino, Cheryl Pedisich, South Huntington School District, Three Village Central School District (Johnson, Gregg) (Entered: 08/25/2020)
08/25/2020	39	Letter Motion from Gregg T. Johnson, Esq. for Kaweeda G. Adams, Albany City School District, David P. Bennardo, Luvelle Brown, Susan Eschbach, Ithaca City School District, Corinne Keane, Michael Paolino, Cheryl Pedisich, South Huntington School District, Three Village Central School District requesting acceptance of Amended Notice of Appearance submitted to Judge Hon. Brenda K. Sannes, USDJ . (Johnson, Gregg) (Entered: 08/25/2020)
08/25/2020	40	NOTICE of Appearance by James G. Ryan on behalf of Cocksackie-Athens School District, Sean Gnat, Andrew Hills, Lansing Central School District, Freya Mercer, Penfield Central School District, Chris Pettograsso, Thomas Putnam, Christine Rebera, L. Oliver Robinson, Shenendehowa Central School District, Randall Squier, Lorri Whiteman (Ryan, James) (Entered: 08/25/2020)
08/25/2020	41	MOTION for Temporary Restraining Order , MOTION for Preliminary Injunction by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Attachments: # 1 Memorandum of Law MOL In Support, # 2 Proposed Order/Judgment Proposed Order, # 3 Declaration Gibson Declaration in Support, # 4 Exhibit(s) Gibson Exh 1- 2020-2021 NYS Immunizations Requirements, # 5 Exhibit(s) Emergency Regulation, # 6 Exhibit(s) Vaccine Package Inserts, # 7 Exhibit(s) Vaccine 2017, # 8 Exhibit(s) Dr. Obukhanych open letter to legislators California, # 9 Exhibit(s) NYS School Boards Association, # 10 Exhibit(s) School Reopening FAQs, # 11 Exhibit(s) NYS P12 School Reopening Guidelines, # 12 Declaration Doe Dec, # 13 Declaration Boe Dec, # 14 Declaration Coe Dec, # 15 Declaration Foe Dec, # 16 Declaration Joe Dec, # 17 Declaration Loe Dec, # 18 Declaration Pavelsky Dec, # 19 Declaration Rodriguez Dec, # 20 Declaration AM 2 Dec,

		# 21 Declaration EC Dec, # 22 Declaration JS Dec, # 23 Declaration NC Dec, # 24 Declaration BB Dec, # 25 Declaration AM3 Dec, # 26 Declaration KW Dec, # 27 Declaration CM Dec, # 28 Declaration NF Dec, # 29 Declaration CB Dec, # 30 Declaration AM Dec, # 31 Declaration RB Dec, # 32 Declaration MD Dec, # 33 Declaration BP Dec, # 34 Declaration RF Dec, # 35 Declaration MN Dec, # 36 Declaration SP Dec, # 37 Declaration JH Dec, # 38 Declaration HD Dec, # 39 Affidavit Certificate of Service, # 40 Affidavit Certificate of Service)(Sussman, Michael) (Entered: 08/25/2020)
08/25/2020	42	NOTICE of Appearance by Adam I. Kleinberg on behalf of Kaweeda G. Adams, Albany City School District, David P. Bennardo, Luvelle Brown, Susan Eschbach, Ithaca City School District, Corinne Keane, Michael Paolino, Cheryl Pedisich, South Huntington School District, Three Village Central School District (Kleinberg, Adam) (Entered: 08/25/2020)
08/26/2020	43	Letter Motion from Gregg T. Johnson, Esq. for Kaweeda G. Adams, Albany City School District, David P. Bennardo, Luvelle Brown, Susan Eschbach, Ithaca City School District, Corinne Keane, Michael Paolino, Cheryl Pedisich, South Huntington School District, Three Village Central School District requesting Conference to set deadlines submitted to Judge Hon. Brenda K. Sannes, USDJ . (Johnson, Gregg) (Entered: 08/26/2020)
08/26/2020	44	TEXT ORDER granting 39 Letter Request to remove the appearance for Lansing CSD and its administrators. SO ORDERED by Judge Brenda K. Sannes on 8/26/2020. (rjb,) (Entered: 08/26/2020)
08/26/2020	45	TEXT ORDER: Telephone Conference set for 8/26/2020 at 02:00 PM before Judge Brenda K. Sannes. Separate call in instructions for the conference will be issued. SO ORDERED by Judge Brenda K. Sannes on 8/26/2020. (rjb,) (Entered: 08/26/2020)
08/26/2020		TEXT NOTICE of Teleconference: Telephone Conference set for 8/26/2020 at 02:00 PM before Judge Brenda K. Sannes. The parties are directed to dial in at 877-336-1280, Access code 8447002, Security code 8590.(rjb,) (Entered: 08/26/2020)
08/26/2020		TEXT Minute Entry for proceedings held before Judge Brenda K. Sannes: Telephone Conference held on 8/26/2020. Appearances: Sujata Gibson, Esq. and Mary Holland, Esq. for Plaintiffs; Michael McCartin, AAG, Andrew Koster, AAG, Gregg Johnson, Esq., Adam Kleinberg, Esq., James Ryan, Esq. and Roxanne Tshjin, Esq. for Defendants. Judge Sannes hears from counsel on Plaintiffs' 41 motion and denies the request for a temporary restraining order. An order to show cause with an expedited briefing schedule is granted regarding the motion for preliminary injunction. Defendants' opposition to the 41 motion is due by 9/4/2020 and Plaintiffs' reply is due by 9/9/2020. (Court Reporter Eileen McDonough; 2:00PM-2:27PM) (rjb,) (Entered: 08/26/2020)
08/27/2020	46	ORDER TO SHOW CAUSE: Plaintiffs' motion for a Temporary Restraining Order is DENIED; Plaintiffs' request for expedited briefing on their motion for a preliminary injunction is GRANTED. Defendants shall file their opposition to Plaintiffs' motion by September 4, 2020, and Plaintiffs shall file their reply by September 9, 2020. It does not appear Plaintiffs have served the Summons and Complaint or the Motion for Temporary Restraining Order and Preliminary Injunction on Defendant Brother David Migliorino, they are directed to file proof of service of the Complaint, Motion, and this Order on Defendant Brother David Migliorino by August 31, 2020. Signed by Judge Brenda K. Sannes on 8/27/2020. (rjb,) (Entered: 08/27/2020)
08/27/2020	47	TEXT ORDER Approving 37 Stipulation, filed by Shenendehowa Central School District, Chris Pettograsso, Freya Mercer, Sean Gnat, Andrew Hills, Lorri Whiteman, Cossackie-Athens School District, Christine Rebera, Thomas Putnam, Randall Squier, Penfield Central School District, L. Oliver Robinson, Answer due date updated for

		Coxsackie-Athens School District answer due 9/24/2020; Sean Gnat answer due 9/24/2020; Andrew Hills answer due 9/24/2020; Freya Mercer answer due 9/24/2020; Penfield Central School District answer due 9/24/2020; Chris Pettogrosso answer due 9/24/2020; Thomas Putnam answer due 9/24/2020; Christine Rebera answer due 9/24/2020; L. Oliver Robinson answer due 9/24/2020; Shenendehowa Central School District answer due 9/24/2020; Randall Squier answer due 9/24/2020; Lorri Whiteman answer due 9/24/2020. Authorized by Magistrate Judge Christian F. Hummel on 8/27/2020. (tab) (Entered: 08/27/2020)
08/28/2020	48	STIPULATION <i>Extending Time to Answer</i> by Kaweeda G. Adams, Albany City School District, David P. Bennardo, Luvelle Brown, Susan Eschbach, Ithaca City School District, Corinne Keane, Michael Paolino, Cheryl Pedisich, South Huntington School District, Three Village Central School District submitted to Judge Hon. Christian J. Hummel, USMJ. (Johnson, Gregg) (Entered: 08/28/2020)
08/28/2020	49	AFFIDAVIT of Service for Summons and Complaint, Order to Show Cause, Court Order served on Br. Migliorino by service through Patrick F. Adams, PC on August 28, 2020, filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Sussman, Michael) (Entered: 08/28/2020)
08/31/2020	50	TEXT ORDER approving 48 Stipulation, filed by Three Village Central School District, Michael Paolino, Kaweeda G. Adams, Luvelle Brown, Albany City School District, Corinne Keane, South Huntington School District, Susan Eschbach, Ithaca City School District, David P. Bennardo, Cheryl Pedisich, Answer due date updated for Luvelle Brown answer due 9/21/2020; Susan Eschbach answer due 9/21/2020; Ithaca City School District answer due 9/21/2020. Authorized by Magistrate Judge Christian F. Hummel on 8/31/2020. (tab) (Entered: 08/31/2020)
08/31/2020	51	NOTICE of Appearance by Loraine Clare Jelinek on behalf of Kaweeda G. Adams, Albany City School District, David P. Bennardo, Luvelle Brown, Susan Eschbach, Ithaca City School District, Corinne Keane, Michael Paolino, Cheryl Pedisich, South Huntington School District, Three Village Central School District (Jelinek, Loraine) (Entered: 08/31/2020)
09/02/2020	52	Letter Motion from Adam I. Kleinberg for Kaweeda G. Adams, Albany City School District, David P. Bennardo, Luvelle Brown, Susan Eschbach, Ithaca City School District, Corinne Keane, Michael Paolino, Cheryl Pedisich, South Huntington School District, Three Village Central School District requesting Permission to File One 40-Page Combined Memorandum of Law submitted to Judge Honorable Brenda K. Sannes . (Kleinberg, Adam) (Entered: 09/02/2020)
09/02/2020	53	TEXT ORDER granting 52 Letter Request to file a combined 40 page memorandum of law. SO ORDERED by Judge Brenda K. Sannes on 9/2/2020. (rjb,) (Entered: 09/02/2020)
09/03/2020	54	MOTION to Dismiss for Failure to State a Claim filed by Kaweeda G. Adams, Albany City School District, David P. Bennardo, Luvelle Brown, Susan Eschbach, Ithaca City School District, Corinne Keane, Michael Paolino, Cheryl Pedisich, South Huntington School District, Three Village Central School District. (Attachments: # 1 Declaration, # 2 Exhibit(s) A, # 3 Exhibit(s) B, # 4 Exhibit(s) C, # 5 Exhibit(s) D, # 6 Exhibit(s) E, # 7 Exhibit(s) F, # 8 Exhibit(s) G, # 9 Exhibit(s) H, # 10 Exhibit(s) I, # 11 Exhibit(s) J, # 12 Exhibit(s) K, # 13 Exhibit(s) L, # 14 Memorandum of Law) (Kleinberg, Adam) (Entered: 09/03/2020)
09/04/2020	55	STIPULATION re 46 Order,, <i>extending Br. Migliorino's opposition to September 14, 2020, Plaintiff's response to September 19, 2020</i> by Childrens Health Defense, Jane Boe,

		Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr submitted to Judge Brenda K. Sannes. (Sussman, Michael) (Entered: 09/04/2020)
09/04/2020	56	AFFIDAVIT in Opposition re 41 MOTION for Temporary Restraining Order MOTION for Preliminary Injunction filed by Cocksackie-Athens School District, Sean Gnat, Andrew Hills, Lansing Central School District, Freya Mercer, Penfield Central School District, Chris Pettograsso, Thomas Putnam, Christine Rebera, L. Oliver Robinson, Shenendehowa Central School District, Randall Squier, Lorri Whiteman. (Attachments: # 1 Exhibit(s) A, # 2 Exhibit(s) B, # 3 Exhibit(s) C, # 4 Exhibit(s) D, # 5 Exhibit(s) E, # 6 Exhibit(s) F)(Ryan, James) (Entered: 09/04/2020)
09/04/2020	57	AFFIDAVIT in Opposition re 41 MOTION for Temporary Restraining Order MOTION for Preliminary Injunction filed by Cocksackie-Athens School District, Sean Gnat, Andrew Hills, Lansing Central School District, Freya Mercer, Penfield Central School District, Chris Pettograsso, Thomas Putnam, Christine Rebera, L. Oliver Robinson, Shenendehowa Central School District, Randall Squier, Lorri Whiteman. (Attachments: # 1 Exhibit(s) A, # 2 Exhibit(s) B, # 3 Exhibit(s) C, # 4 Exhibit(s) D)(Ryan, James) (Entered: 09/04/2020)
09/04/2020	58	AFFIDAVIT in Opposition re 41 MOTION for Temporary Restraining Order MOTION for Preliminary Injunction filed by Cocksackie-Athens School District, Sean Gnat, Andrew Hills, Lansing Central School District, Freya Mercer, Penfield Central School District, Chris Pettograsso, Thomas Putnam, Christine Rebera, L. Oliver Robinson, Shenendehowa Central School District, Randall Squier, Lorri Whiteman. (Attachments: # 1 Exhibit(s) A)(Ryan, James) (Entered: 09/04/2020)
09/04/2020	59	AFFIDAVIT in Opposition re 41 MOTION for Temporary Restraining Order MOTION for Preliminary Injunction filed by Cocksackie-Athens School District, Sean Gnat, Andrew Hills, Lansing Central School District, Freya Mercer, Penfield Central School District, Chris Pettograsso, Thomas Putnam, Christine Rebera, L. Oliver Robinson, Shenendehowa Central School District, Randall Squier, Lorri Whiteman. (Ryan, James) (Entered: 09/04/2020)
09/04/2020	60	MEMORANDUM OF LAW <i>IN OPPOSITION</i> filed by Cocksackie-Athens School District, Sean Gnat, Andrew Hills, Lansing Central School District, Freya Mercer, Penfield Central School District, Chris Pettograsso, Thomas Putnam, Christine Rebera, L. Oliver Robinson, Shenendehowa Central School District, Randall Squier, Lorri Whiteman. (Ryan, James) (Entered: 09/04/2020)
09/04/2020	61	AFFIDAVIT in Opposition re 41 MOTION for Temporary Restraining Order MOTION for Preliminary Injunction filed by New York State Department of Health, Elizabeth Rausch-Phung, Howard Zucker. (Attachments: # 1 Exhibit(s) A (8/16/19 Emergency Regs), # 2 Exhibit(s) B (Regs), # 3 Exhibit(s) C (DOH 5077), # 4 Exhibit(s) D (Contraindications), # 5 Exhibit(s) E (CDC Website), # 6 Exhibit(s) F (Schedule), # 7 Exhibit(s) G (Screening Checklist), # 8 Exhibit(s) H (IDSC), # 9 Exhibit(s) I (Press Release), # 10 Exhibit(s) J (Non-med exemption), # 11 Exhibit(s) K (CDC Website), # 12 Exhibit(s) L (Imm. Action Coalition), # 13 Exhibit(s) M (Infact Imm. FAQs, # 14 Exhibit(s) N (CDC Data), # 15 Exhibit(s) O (Measles Stats), # 16 Exhibit(s) P (Measles Info), # 17 Exhibit(s) Q (Press Release), # 18 Exhibit(s) R (COVID CDC Data), # 19 Exhibit(s) S (COVID Stats), # 20 Exhibit(s) T (COVID Stats), # 21 Exhibit(s) U (Exec. Order), # 22 Exhibit(s) V (NYSED Guidance), # 23 Exhibit(s) W (NYSED Guidance), # 24 Memorandum of Law)(McCartin, Michael) (Entered: 09/04/2020)
09/04/2020	62	RESPONSE in Opposition re 41 MOTION for Temporary Restraining Order MOTION for Preliminary Injunction filed by Kaweeda G. Adams, Albany City School District, David P. Bennardo, Luvelle Brown, Susan Eschbach, Ithaca City School District, Corinne Keane, Michael Paolino, Cheryl Pedisich, South Huntington School District, Three

		Village Central School District. (Attachments: # 1 Exhibit(s) A, # 2 Exhibit(s) B) (Johnson, Gregg) (Attachment 1 replaced on 12/1/2020) (jmb,). (Entered: 09/04/2020)
09/04/2020	63	RESPONSE in Opposition re 41 MOTION for Temporary Restraining Order MOTION for Preliminary Injunction filed by Kaweeda G. Adams, Albany City School District, David P. Bennardo, Luvelle Brown, Susan Eschbach, Ithaca City School District, Corinne Keane, Michael Paolino, Cheryl Pedisich, South Huntington School District, Three Village Central School District. (Attachments: # 1 Exhibit(s) EX A, # 2 Exhibit(s) EX B, # 3 Exhibit(s) EX C, # 4 Exhibit(s) EX D, # 5 Exhibit(s) EX E, # 6 Exhibit(s) EX F, # 7 Exhibit(s) EX G, # 8 Exhibit(s) EX H, # 9 Exhibit(s) EX I, # 10 Exhibit(s) EX J, # 11 Exhibit(s) EX K, # 12 Exhibit(s) EX L, # 13 Exhibit(s) EX M, # 14 Exhibit(s) EX N, # 15 Exhibit(s) EX O, # 16 Exhibit(s) EX P, # 17 Exhibit(s) EX Q, # 18 Exhibit(s) EX R, # 19 Exhibit(s) EX S, # 20 Exhibit(s) EX T, # 21 Exhibit(s) EX U, # 22 Exhibit(s) EX V, # 23 Exhibit(s) EX W, # 24 Exhibit(s) EX X, # 25 Exhibit(s) EX Y, # 26 Affidavit Dr. Sussman)(Johnson, Gregg) (Attachment 5 replaced on 12/1/2020) (jmb,). (Attachment 6 replaced on 12/1/2020) (jmb,). (Attachment 8 replaced on 12/1/2020) (jmb,). (Entered: 09/04/2020)
09/04/2020	64	RESPONSE in Opposition re 41 MOTION for Temporary Restraining Order MOTION for Preliminary Injunction filed by Kaweeda G. Adams, Albany City School District, David P. Bennardo, Luvelle Brown, Susan Eschbach, Ithaca City School District, Corinne Keane, Michael Paolino, Cheryl Pedisich, South Huntington School District, Three Village Central School District. (Attachments: # 1 Exhibit(s) EX A, # 2 Exhibit(s) EX B, # 3 Exhibit(s) EX C, # 4 Exhibit(s) EX D, # 5 Exhibit(s) EX E, # 6 Exhibit(s) EX F, # 7 Exhibit(s) EX G, # 8 Exhibit(s) EX H, # 9 Exhibit(s) EX I, # 10 Exhibit(s) EX J, # 11 Affidavit AFF A Poprilo)(Johnson, Gregg) (Entered: 09/04/2020)
09/04/2020	65	RESPONSE in Opposition re 41 MOTION for Temporary Restraining Order MOTION for Preliminary Injunction filed by Kaweeda G. Adams, Albany City School District, David P. Bennardo, Luvelle Brown, Susan Eschbach, Ithaca City School District, Corinne Keane, Michael Paolino, Cheryl Pedisich, South Huntington School District, Three Village Central School District. (Attachments: # 1 Exhibit(s) EX A, # 2 Exhibit(s) EX B, # 3 Exhibit(s) EX C, # 4 Exhibit(s) EX D)(Johnson, Gregg) (Entered: 09/04/2020)
09/04/2020	66	MEMORANDUM OF LAW re 41 Motion for TRO,,,,,, Motion for Preliminary Injunction,,,,,, filed by Kaweeda G. Adams, Albany City School District, David P. Bennardo, Luvelle Brown, Susan Eschbach, Ithaca City School District, Corinne Keane, Michael Paolino, Cheryl Pedisich, South Huntington School District, Three Village Central School District. (Johnson, Gregg) (Entered: 09/04/2020)
09/08/2020	67	ORDER extending time for Defendant David Migliorino to respond to the 41 motion until 9/14/2020; Plaintiffs' reply due 9/19/2020. Signed by Judge Brenda K. Sannes on 9/8/2020. (rjb,) (Entered: 09/08/2020)
09/09/2020	68	REPLY to Response to Motion re 41 MOTION for Temporary Restraining Order MOTION for Preliminary Injunction filed by Jane Doe. (Gibson, Sujata) (Entered: 09/09/2020)
09/11/2020	69	STIPULATION re 41 MOTION for Temporary Restraining Order MOTION for Preliminary Injunction , 67 Order, 55 Stipulation, <i>extending Br. Migliorino's time to file opposition to October 5, 2020</i> by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr submitted to Judge Brenda K. Sannes. (Sussman, Michael) (Entered: 09/11/2020)
09/11/2020	70	ORDER extending time for Defendant David Migliorino to respond to the 41 motion until 9/28/2020; Plaintiffs' reply due 10/5/2020. Signed by Judge Brenda K. Sannes on 9/11/2020. (rjb,) (Entered: 09/11/2020)

09/11/2020	71	TEXT ORDER: Telephonic Oral Argument on Plaintiffs' 41 Motion is hereby scheduled for 10/9/2020 at 10:00 AM. Separate call in instructions will be provided. SO ORDERED by Judge Brenda K. Sannes on 9/11/2020. (rjb,) (Entered: 09/11/2020)
09/11/2020		TEXT NOTICE of Teleconference: Telephonic Oral Argument set for 10/9/2020 at 10:00 AM before Judge Brenda K. Sannes. The parties are directed to dial in at 877-336-1280, Access code 8447002, Security code 8590. (rjb,) (Entered: 09/11/2020)
09/15/2020	72	AMENDED DOCUMENT - MEMORANDUM OF LAW by Kaweeda G. Adams, Albany City School District, David P. Bennardo, Luvelle Brown, Susan Eschbach, Ithaca City School District, Corinne Keane, Michael Paolino, Cheryl Pedisich, South Huntington School District, Three Village Central School District. Amendment to 66 Memorandum of Law, <i>Only change - cover page amended to add attorney.</i> (Johnson, Gregg) Modified on 9/16/2020 to add memo wording. (jmb) (Entered: 09/15/2020)
09/21/2020	73	LETTER BRIEF by New York State Department of Health, Elizabeth Rausch-Phung, Howard Zucker. (Koster, Andrew) (Entered: 09/21/2020)
09/21/2020	74	MEMORANDUM OF LAW re 28 Motion to Dismiss for Failure to State a Claim,, <i>In Opposition</i> , filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Gibson, Sujata) (Entered: 09/21/2020)
09/22/2020	75	RESPONSE in Opposition re 28 MOTION to Dismiss for Failure to State a Claim <i>Letter Accompanying Memo of Law Dkt 74</i> filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Gibson, Sujata) (Entered: 09/22/2020)
09/22/2020	76	Letter Motion from Michael G. McCartin for New York State Department of Health, Elizabeth Rausch-Phung, Howard Zucker requesting to re-set the Return Date for Dkt. No. 28 to 10/15/20 and the Reply date to 10/6/20 submitted to Judge Sannes . (McCartin, Michael) (Entered: 09/22/2020)
09/23/2020		TEXT NOTICE: The 54 motion to dismiss will be heard by the Court on submission of the papers. Once the papers have been fully reviewed, counsel will be notified if the Court deems oral argument necessary. (rjb,) (Entered: 09/23/2020)
09/24/2020	77	TEXT ORDER granting 76 Letter Request - reply due 10/6/2020. SO ORDERED by Judge Brenda K. Sannes on 9/24/2020. (rjb,) (Entered: 09/24/2020)
09/24/2020	78	MOTION to Dismiss Motion Hearing set for 11/5/2020 10:00 AM in Syracuse before Judge Brenda K. Sannes Response to Motion due by 10/19/2020 Reply to Response to Motion due by 10/26/2020. filed by Cocksackie-Athens School District, Sean Gnat, Andrew Hills, Lansing Central School District, Freya Mercer, Penfield Central School District, Chris Pettograsso, Thomas Putnam, Christine Rebera, L. Oliver Robinson, Shenendehowa Central School District, Randall Squier, Lorri Whiteman. (Attachments: # 1 Affirmation, # 2 Exhibit(s) 1, # 3 Exhibit(s) 2, # 4 Memorandum of Law, # 5 Declaration) (Ryan, James) (Entered: 09/24/2020)
09/25/2020	79	NOTICE of Appearance by Chelsea Weisbord on behalf of Kaweeda G. Adams, Albany City School District, David P. Bennardo, Luvelle Brown, Susan Eschbach, Ithaca City School District, Corinne Keane, Michael Paolino, Cheryl Pedisich, South Huntington School District, Three Village Central School District (Weisbord, Chelsea) (Entered: 09/25/2020)
09/28/2020	80	NOTICE of Appearance by Joseph Kim on behalf of David Migliorino (Kim, Joseph) (Entered: 09/28/2020)
09/28/2020	81	RESPONSE in Opposition re 41 MOTION for Temporary Restraining Order MOTION

		for Preliminary Injunction filed by David Migliorino. (Kim, Joseph) (Entered: 09/28/2020)
09/28/2020	82	MEMORANDUM OF LAW re 41 Motion for TRO,,,,,, Motion for Preliminary Injunction,,,,, <i>in Opposition</i> filed by David Migliorino. (Kim, Joseph) (Entered: 09/28/2020)
09/28/2020	83	RESPONSE in Opposition re 54 MOTION to Dismiss for Failure to State a Claim <i>Memorandum of Law</i> filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Gibson, Sujata) (Entered: 09/28/2020)
10/02/2020	84	NOTICE of Appearance by Meishin Riccardulli on behalf of David Migliorino (Riccardulli, Meishin) (Entered: 10/02/2020)
10/02/2020	85	MEMORANDUM OF LAW re 54 Motion to Dismiss for Failure to State a Claim,, <i>Reply in Further Support</i> filed by Kaweeda G. Adams, Albany City School District, David P. Bennardo, Luvelle Brown, Susan Eschbach, Ithaca City School District, Corinne Keane, Michael Paolino, Cheryl Pedisich, South Huntington School District, Three Village Central School District. (Kleinberg, Adam) (Entered: 10/02/2020)
10/05/2020	86	NOTICE of Appearance by Philip Semprevivo on behalf of David Migliorino (Semprevivo, Philip) (Entered: 10/05/2020)
10/05/2020	87	REPLY to Response to Motion re 28 MOTION to Dismiss for Failure to State a Claim filed by New York State Department of Health, Elizabeth Rausch-Phung, Howard Zucker. (McCartin, Michael) (Entered: 10/05/2020)
10/05/2020	88	NOTICE of Appearance by Elaine Nancy Chou on behalf of David Migliorino (Chou, Elaine) (Entered: 10/05/2020)
10/05/2020	89	REPLY to Response to Motion re 41 MOTION for Temporary Restraining Order MOTION for Preliminary Injunction <i>reply to Migliorino opposition</i> filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Gibson, Sujata) (Entered: 10/05/2020)
10/07/2020	90	TEXT ORDER granting 2 Motion to Proceed under Pseudonym; granting 2 Motion for Protective Order: Plaintiffs commenced this action on July 23, 2020 with the filing of a complaint. Dkt. No. 1. Also on July 23, plaintiffs filed a Motion to Proceed under a Pseudonym and for a Protective Order. Dkt. No. 2. Defendants have not opposed the motion. Following review of plaintiffs arguments in support of proceeding under pseudonyms and for a protective order, the Court finds that such measures are warranted at this time. The plaintiffs' request to proceed under pseudonyms and for a protective order is GRANTED. The Court grants leave to defendants to raise objections to proceeding under pseudonyms and to the protective order in the future should there be a change in circumstances which warrant such objections. The parties will be subject to the attached protective order. SO ORDERED. Authorized by Magistrate Judge Christian F. Hummel on 10/7/20. (Entered: 10/07/2020)
10/09/2020		TEXT Minute Entry for proceedings held before Judge Brenda K. Sannes: Telephone Conference held on 10/9/2020. Appearances: Michael Sussman, Esq. and Sujata Gibson, Esq. for Plaintiffs; Michael McCartin, AAG, Andrew Koster, AAG, Gregg Johnson, Esq., Adam Kleinberg, Esq., Chelsea Weisbord, Esq., James Ryan, Esq., Roxanne Tashjian, Esq., Meishin Riccardulli, Esq. and Elaine Chou, Esq. for Defendants. Motion hearing was adjourned and will be rescheduled as the Court was unable to proceed due to the amount of participants/background noise on the call. (Court Reporter Jodi Hibbard; 10:08AM-10:18AM) (rjb,) (Entered: 10/09/2020)

10/15/2020		TEXT NOTICE of Hearing on Plaintiff's 41 Motion for Preliminary Injunction: Motion Hearing scheduled for 10/15/2020 at 04:30 PM before Judge Brenda K. Sannes. Any members of the public who would like to hear the oral argument may dial in at 888-363-4734, Access Code 8285666, Security Code 1015. Separate call in instructions will be issued for counsel and any parties who wish to be on the call.(rjb,) (Entered: 10/15/2020)
10/15/2020		TEXT NOTICE of Teleconference: Telephonic Oral Argument set for 10/15/2020 at 04:30 AM before Judge Brenda K. Sannes. Counsel and any parties are directed to dial in at 888-278-0296, Access code 3646986, Security code 1015. (rjb,) (Entered: 10/15/2020)
10/15/2020		TEXT Minute Entry for proceedings held before Judge Brenda K. Sannes: Telephone Conference held on 10/15/2020. Appearances: Michael Sussman, Esq. and Sujata Gibson, Esq. for Plaintiffs; Michael McCartin, AAG, Andrew Koster, AAG, Gregg Johnson, Esq., Loraine Jelinek, Esq., Adam Kleinberg, Esq., Chelsea Weisbord, Esq., James Ryan, Esq., Roxanne Tashjian, Esq., Meishin Riccardulli, Esq. and Elaine Chou, Esq. for Defendants. Judge Sannes hears from Attorneys Gibson, McCartin, Johnson, Ryan and Chou on Plaintiffs' 41 Motion for Preliminary Injunction. A written decision will be issued. Plaintiffs' counsel is granted leave to file a letter request detailing what they are seeking to amend in the complaint by 10/22/2020. Plaintiffs granted an extension of time until 10/26/2020 to respond to the 78 Motion to Dismiss, reply will be due by 11/2/2020. Defendant Migliorino intends to file a Motion to Dismiss as well. (Court Reporter Jodi Hibbard; 4:30PM-5:55PM) (rjb,) (Entered: 10/15/2020)
10/16/2020	91	MOTION to Dismiss for Failure to State a Claim Motion Hearing set for 11/19/2020 10:00 AM in Syracuse before Judge Brenda K. Sannes Response to Motion due by 11/2/2020 Reply to Response to Motion due by 11/9/2020. filed by David Migliorino. (Attachments: # 1 Memorandum of Law in Support of Migliorino Motion to Dismiss, # 2 Declaration of Br. David Anthony Migliorino, OSF) (Chou, Elaine) (Entered: 10/16/2020)
10/22/2020	92	ORDER denying Plaintiffs' 41 Motion for Preliminary Injunction. Signed by Judge Brenda K. Sannes on 10/22/2020. (rjb,) (Entered: 10/22/2020)
10/22/2020	93	First MOTION to Amend/Correct <i>Complaint - Letter Motion</i> filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Attachments: # 1 Proposed Amended Pleading With Track Changes, # 2 Proposed Amended Pleading Without Track Changes) Motions referred to Christian F. Hummel. (Gibson, Sujata) (Entered: 10/22/2020)
10/23/2020	94	TEXT ORDER: The Court has reviewed Plaintiffs' letter motion seeking to file an Amended Complaint 93 . Defendants are directed to file a letter response not to exceed five (5) pages by November 9, 2020. Plaintiff may file a reply letter brief not to exceed five (5) pages by November 23, 2020. The Court will hold a telephone conference on December 7, 2020 at 10 a.m. to consider, inter alia, whether, in light of the pending motions to dismiss and Plaintiffs' letter motion, there are issues that can be resolved at this stage of the proceedings. SO ORDERED by Judge Brenda K. Sannes on 10/23/2020. (rjb,) (Entered: 10/23/2020)
10/23/2020		TEXT NOTICE of Teleconference: Telephone Conference set for 12/7/2020 at 10:00 AM before Judge Brenda K. Sannes. The parties are directed to dial in at 888-363-4734, Access code 8285666, Security code 1207. (rjb,) (Entered: 10/23/2020)
10/26/2020	95	MOTION for Leave to File <i>Combined 45 page Memorandum of Law</i> filed by Jane Coe, Sr, Jane Doe, Jane Goe, Sr. Motions referred to Christian F. Hummel. (Gibson, Sujata) (Entered: 10/26/2020)
10/26/2020	96	TEXT ORDER granting 95 Motion for Leave to File Combined 45 page Memorandum of

		Law. SO ORDERED by Judge Brenda K. Sannes on 10/26/2020. (rjb,) (Entered: 10/26/2020)
10/26/2020	97	Letter Motion from Michael G. McCartin for New York State Department of Health, Elizabeth Rausch-Phung, Howard Zucker requesting that the Court take the 11/16/20 Rule 16 Conference off calendar submitted to Judge Hummel . (McCartin, Michael) (Entered: 10/26/2020)
10/26/2020	98	RESPONSE in Support re 97 Letter Motion from Michael G. McCartin for New York State Department of Health, Elizabeth Rausch-Phung, Howard Zucker requesting that the Court take the 11/16/20 Rule 16 Conference off calendar submitted to Judge Hummel filed by Cossackie-Athens School District, Sean Gnat, Andrew Hills, Lansing Central School District, Freya Mercer, Penfield Central School District, Chris Pettograsso, Thomas Putnam, Christine Rebera, L. Oliver Robinson, Shenendehowa Central School District, Randall Squier, Lorri Whiteman. (Ryan, James) (Entered: 10/26/2020)
10/26/2020	99	NOTICE of Voluntary Dismissal <i>Koe family claims</i> by Childrens Health Defense (Attachments: # 1 Supplement Letter, # 2 Proposed Amended Pleading)(Gibson, Sujata) (Entered: 10/26/2020)
10/26/2020	100	RESPONSE in Opposition re 78 MOTION to Dismiss <i>Memorandum of Law in Opposition</i> filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Gibson, Sujata) (Entered: 10/26/2020)
10/27/2020	101	TEXT ORDER granting 97 Letter Request: The Rule 16 Initial Conference scheduled for 11/16/2020 at 9:00 AM and the deadline to submit a proposed Civil Case Management Plan and exchange Mandatory Disclosures are ADJOURNED without date pending a decision on the dispositive motions. Authorized by Magistrate Judge Christian F. Hummel on 10/27/2020. (tab) (Entered: 10/27/2020)
10/29/2020	102	STIPULATION re 91 MOTION to Dismiss for Failure to State a Claim <i>Stipulation re Briefing Schedule</i> by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr submitted to Judge Sannes. (Gibson, Sujata) (Entered: 10/29/2020)
10/29/2020	103	TEXT ORDER approving 102 Stipulation to extend deadlines for the 91 Motion to Dismiss for Failure to State a Claim : Response to Motion due by 11/10/2020; Reply to Response to Motion due by 11/17/2020. SO ORDERED by Judge Brenda K. Sannes on 10/29/2020. (rjb,) (Entered: 10/29/2020)
11/02/2020	104	TEXT ORDER: The Court has reviewed the Notice 99 by Plaintiff Jane Koe, on behalf of herself and her minor children, of "their voluntary withdrawal as a named representative of this putative class action" and Plaintiffs' voluntary dismissal without prejudice under Fed. R. Civ. P. 41(a)(1)(A)(i) of "[a]ll claims against the Shenendehowa School District defendants and any claims specific to [Plaintiff Koe] against the state level officials." (Dkt. No. 99 , at 1). Accordingly, the Clerk is directed to terminate Defendants Shenendehowa Central School District, Dr. L. Oliver Robinson, Sean Gnat, and Andrew Hills. The revised Proposed Amended Complaint Plaintiffs submitted reflecting these changes, (Dkt. No. 99-2), shall replace the Proposed Amended Pleading attached to Plaintiffs' Motion to Amend/Correct Complaint, (Dkt. Nos. 93-1, 93-2). SO ORDERED by Judge Brenda K. Sannes on 11/2/2020. (rjb,) (Entered: 11/02/2020)
11/02/2020	105	Letter Motion from James G. Ryan for Cossackie-Athens School District, Sean Gnat, Andrew Hills, Lansing Central School District, Freya Mercer, Penfield Central School District, Chris Pettograsso, Thomas Putnam, Christine Rebera, L. Oliver Robinson, Shenendehowa Central School District, Randall Squier, Lorri Whiteman requesting

		Permission to file one 15 page reply to Plaintiffs' response to Defendants' Motion to Dismiss submitted to Judge Honorable Brenda K. Sannes . (Ryan, James) (Entered: 11/02/2020)
11/02/2020	106	TEXT ORDER granting 105 Letter Request to file a 15 page reply. SO ORDERED by Judge Brenda K. Sannes on 11/2/2020. (rjb,) (Entered: 11/02/2020)
11/02/2020	107	RESPONSE in Support re 78 MOTION to Dismiss filed by Cocksackie-Athens School District, Sean Gnat, Andrew Hills, Lansing Central School District, Freya Mercer, Penfield Central School District, Chris Pettograsso, Thomas Putnam, Christine Rebera, L. Oliver Robinson, Shenendehowa Central School District, Randall Squier, Lorri Whiteman. (Ryan, James) (Entered: 11/02/2020)
11/06/2020	108	RESPONSE in Opposition re 93 First MOTION to Amend/Correct <i>Complaint - Letter Motion</i> filed by Kaweeda G. Adams, Albany City School District, David P. Bennardo, Luvelle Brown, Susan Eschbach, Ithaca City School District, Corinne Keane, Michael Paolino, Cheryl Pedisich, South Huntington School District, Three Village Central School District. (Johnson, Gregg) (Entered: 11/06/2020)
11/09/2020	109	RESPONSE in Opposition re 93 First MOTION to Amend/Correct <i>Complaint - Letter Motion</i> filed by New York State Department of Health, Elizabeth Rausch-Phung, Howard Zucker. (McCartin, Michael) (Entered: 11/09/2020)
11/09/2020	110	RESPONSE in Opposition re 93 First MOTION to Amend/Correct <i>Complaint - Letter Motion</i> filed by David Migliorino. (Riccardulli, Meishin) (Entered: 11/09/2020)
11/09/2020	111	RESPONSE in Opposition re 93 First MOTION to Amend/Correct <i>Complaint - Letter Motion</i> filed by Cocksackie-Athens School District, Lansing Central School District, Freya Mercer, Penfield Central School District, Chris Pettograsso, Thomas Putnam, Christine Rebera, Randall Squier, Lorri Whiteman. (Ryan, James) (Entered: 11/09/2020)
11/10/2020	112	RESPONSE in Opposition re 91 MOTION to Dismiss for Failure to State a Claim <i>Plaintiffs Memorandum of Law Opposing</i> filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Gibson, Sujata) (Entered: 11/10/2020)
11/13/2020	113	NOTICE OF APPEAL as to 92 Order on Motion for TRO, Order on Motion for Preliminary Injunction by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. Filing fee \$ 505, receipt number ANYNDC-5316654. (Sussman, Michael) (Entered: 11/13/2020)
11/17/2020	114	ELECTRONIC NOTICE AND CERTIFICATION sent to US Court of Appeals regarding the # 113 Notice of Interlocutory Appeal. (jmb) (Entered: 11/17/2020)
11/17/2020	115	MEMORANDUM OF LAW re 91 Motion to Dismiss for Failure to State a Claim, <i>Reply Memorandum Of Law In Further Support Of Defendant Br. David Anthony Migliorinos Motion To Dismiss</i> filed by David Migliorino. (Riccardulli, Meishin) (Entered: 11/17/2020)
11/17/2020	116	Emergency MOTION for Preliminary Injunction <i>pending appeal and TRO pending decision on motion</i> filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Attachments: # 1 Memorandum of Law, # 2 Declaration, # 3 Supplement Notice of Appeal and Decision and Order, # 4 Declaration Certificate of Service) (Gibson, Sujata) (Entered: 11/17/2020)
11/18/2020	117	LETTER BRIEF <i>requesting that the Court determine that it lacks jurisdiction to address Plaintiffs' Second Motion for a TRO and PI</i> by New York State Department of Health, Elizabeth Rausch-Phung, Howard Zucker. (McCartin, Michael) (Entered: 11/18/2020)

11/18/2020	118	LETTER BRIEF <i>re jurisdiction on second motion for TRO and PI</i> by Kaweeda G. Adams, Albany City School District, David P. Bennardo, Luvelle Brown, Susan Eschbach, Ithaca City School District, Corinne Keane, Michael Paolino, Cheryl Pedisich, South Huntington School District, Three Village Central School District. (Kleinberg, Adam) (Entered: 11/18/2020)
11/18/2020	119	LETTER BRIEF <i>joining in co-defendants' arguments re: lack of jurisdiction</i> by David Migliorino. (Semprevivo, Philip) (Entered: 11/18/2020)
11/18/2020	120	TEXT ORDER: The Court has reviewed Plaintiffs' motion for emergency injunctive relief 116 and the Defendants' letter responses 117 , 118 . The Defendants argue that Plaintiffs' notice of appeal 113 divested this Court of jurisdiction to grant Plaintiffs' motion. Plaintiffs are directed to submit a letter brief of no more than ten pages by November 25, 2020 addressing the issue of whether this Court has jurisdiction to grant the preliminary injunctive relief sought. <i>See, e.g., New York v. United States Department of Homeland Security</i> , 974 F.3d 210, 215-16 (2d Cir. 2020) (noting that the Rule that authorizes a district court to grant injunctive relief pending appeal, Fed. R. Civ. P. 62(d), should be "narrowly interpreted to allow district courts to grant only such relief as may be necessary to preserve the status quo"). SO ORDERED by Judge Brenda K. Sannes on 11/18/2020. (rjb,) (Entered: 11/18/2020)
11/18/2020	121	Letter in response to Jurisdictional Question re OSC filed 11/17/20 by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr.(Gibson, Sujata) Modified on 11/18/2020 (rjb,). (Entered: 11/18/2020)
11/18/2020		CLERK'S CORRECTION OF DOCKET ENTRY. Clerk edited text for Dkt. No. 121 to reflect that is is a letter, not another emergency motion as filed. (rjb,) (Entered: 11/18/2020)
11/18/2020	122	RESPONSE in Opposition re 116 Emergency MOTION for Preliminary Injunction <i>pending appeal and TRO pending decision on motion</i> filed by Coxsackie-Athens School District, Lansing Central School District, Freya Mercer, Penfield Central School District, Chris Pettograsso, Thomas Putnam, Christine Rebera, Randall Squier, Lorri Whiteman. (Ryan, James) (Entered: 11/18/2020)
11/18/2020	123	RESPONSE in Support re 116 Emergency MOTION for Preliminary Injunction <i>pending appeal and TRO pending decision on motion</i> Letter in response to Jurisdictional Question filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Gibson, Sujata) (Entered: 11/18/2020)
11/19/2020	124	TEXT ORDER: The Court has reviewed the parties' submissions 117 , 118 , 119 , 121 , 122 , 123 on the issue of whether this Court has jurisdiction to grant the preliminary injunctive relief sought by Plaintiffs 116 . Under governing Second Circuit law, It does not appear that this Court has jurisdiction to grant the preliminary relief sought. "[O]nce a notice of appeal has been filed, a district court may take actions only "in aid of the appeal... and may not 'adjudicate substantial rights directly involved in the appeal.'" <i>International Ass'n of Machinists and Aerospace Workers, AFL-CIO v. Eastern Air Lines, Inc.</i> , 847 F.2d 1014, 1017 (2d Cir. 1988) (citations omitted). The rule that applies to injunctions pending appeal, Fed. R. Civ. P. 62(d) "has been narrowly interpreted to allow district courts to grant only such relief as may be necessary to preserve the status quo pending an appeal where the consent of the court of appeals has not been obtained." <i>Id.</i> at 1018. When the relief sought does "more than maintain the status quo pending th[e] appeal, a request for leave of [the Second Circuit Court of Appeals] to make the motion in the district court [i]s necessary." <i>Id.</i> (The caselaw Plaintiffs cited regarding proceeding first in the district court under Fed. R. App. P. 8 involved applications for a stay pending appeal.) Plaintiffs argue, without support, that the injunctive relief sought does not alter

		the status quo. [121, at 2]. The record, however, reflects that the Plaintiff children have been excluded from school since the 2019-2020 school year, and their pending motion seeks an order compelling the defendants to provide "access to online or other remote educational opportunities." [116, at 1]. See <i>Doe v. Zucker</i> , No. 20-cv-840, 2020 WL 6196148, at *3 (N.D.N.Y. October 22, 2020). To allow the parties to address the applicable standard, the Court will permit letter briefs, no longer than 10 pages, by November 30, 2020, on the question of whether this Court has jurisdiction to grant the relief requested. SO ORDERED by Judge Brenda K. Sannes on 11/19/2020. (rjb,) (Entered: 11/19/2020)
11/19/2020	125	RESPONSE to Motion re 116 Emergency MOTION for Preliminary Injunction <i>pending appeal and TRO pending decision on motion Letter waiving further briefing on Jurisdiction</i> filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Gibson, Sujata) (Entered: 11/19/2020)
11/20/2020	126	Letter Motion from Sujata Gibson for Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr requesting Extension to file response re Amendment of Complaint submitted to Judge Sannes . (Gibson, Sujata) (Entered: 11/20/2020)
11/20/2020	127	TEXT ORDER granting 126 Letter Request - replies to the 93 motion to amend due by 11/25/2020. SO ORDERED by Judge Brenda K. Sannes on 11/20/2020. (rjb,) (Entered: 11/20/2020)
11/20/2020	128	TEXT ORDER: The Court has reviewed Plaintiffs' letter response 125 , waiving any further briefing on the issue of whether this Court has jurisdiction to grant their second motion for injunctive relief 116 , and stating that they intend to make a motion in the Court of Appeals under Fed. R. App. P. 8. The Court finds that it does not have jurisdiction to grant Plaintiffs' second motion for injunctive relief. In this action Plaintiffs are challenging the constitutionality of New York's allegedly burdensome medical exemptions to New York's mandatory school immunization requirements. The Court denied Plaintiffs' first motion for injunctive relief, which sought to restrain the implementation and enforcement of the medical exemption regulations, and Plaintiffs have appealed from that order. <i>Doe v. Zucker</i> , No. 20-cv-840, 2020 WL 6196148, at *3-5 (N.D.N.Y. October 22, 2020) (noting that Plaintiffs sought to stay regulations codified in 10 N.Y.C.R.R. § 66-1; "an injunction prohibiting Defendants from 'excluding children from school due to a lack of immunization if that child has presented a certification from a licensed physician advising against such immunization'; and an order directing Defendants 'to provide notice to schools, districts, and families that Plaintiffs and similarly situated children may attend school'"). The rule that applies to injunctions pending appeal, Fed. R. Civ. P. 62(d) "has been narrowly interpreted to allow district courts to grant only such relief as may be necessary to preserve the status quo pending an appeal where the consent of the court of appeals has not been obtained." <i>International Ass'n of Machinists and Aerospace Workers, AFL-CIO v. Eastern Air Lines, Inc.</i> , 847 F.2d 1014, 1018 (2d Cir. 1988). Plaintiffs' second motion for injunctive relief seeks to compel the defendants to provide "access to online or other remote educational opportunities." [116, at 1]. This request does not seek to preserve the status quo; the record reflects that the regulations at issue were implemented as emergency regulations in August 2019 and made permanent in December 2019, <i>see Doe</i> , 2020 WL 6196148, at *2, and that the Plaintiff children have been excluded from school since the 2019-2020 school year. <i>Doe v. Zucker</i> , 2020 WL 6196148, at *3. Granting Plaintiffs' second motion for injunctive relief would thus change the status quo. Plaintiffs' second request for injunctive relief raises the same "likelihood of success on the merits" argument that this Court ruled on in its order, which is currently on appeal, denying Plaintiffs' motion to

		enjoin enforcement of the state regulations. Accordingly, the Court finds that it is without jurisdiction to decide Plaintiffs' second motion for injunctive relief. 116 . The Clerk is directed to terminate the motion 116 ; Plaintiffs may renew the motion upon filing a letter indicating they have received consent from the Second Circuit. SO ORDERED by Judge Brenda K. Sannes on 11/20/2020. (rjb,) (Entered: 11/20/2020)
11/25/2020	129	TEXT ORDER: The Telephone Conference currently set for 12/7/2020 is hearby rescheduled for 1/6/2021 at 10:00 AM before Judge Brenda K. Sannes. Separate call in instructions will be provided. SO ORDERED by Judge Brenda K. Sannes on 11/25/2020. (rjb,) (Entered: 11/25/2020)
11/25/2020		TEXT NOTICE of Teleconference: Telephone Conference set for 1/6/2021 at 10:00 AM before Judge Brenda K. Sannes. The parties are directed to dial in at 888-363-4734, Access code 8285666, Security code 0106.(rjb,) (Entered: 11/25/2020)
11/25/2020	130	REPLY to Response to Motion re 93 First MOTION to Amend/Correct <i>Complaint - Letter Motion in response to defendants opposition to amended complaint</i> filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Gibson, Sujata) (Entered: 11/25/2020)
12/01/2020		CLERK'S CORRECTION OF DOCKET ENTRY: At the request of Attorney Gregg Johnson's office the clerk has replaced the following pdf images: regarding the # 62 Response in Opposition to Motion, Attachment 1 was replaced; and regarding the # 63 Response in Opposition to Motion, Attachments 5, 6 and 8 were replaced, all 4 attachments were replaced with the same amount of pages but with more complete redactions. (jmb) (Entered: 12/01/2020)
12/04/2020	131	NOTICE of Appearance by Roxanne Lorig Tashjian on behalf of Cocksackie-Athens School District, Lansing Central School District, Freya Mercer, Penfield Central School District, Chris Pettograsso, Thomas Putnam, Christine Rebera, Randall Squier, Lorri Whiteman (Tashjian, Roxanne) (Entered: 12/04/2020)
12/08/2020	132	TEXT ORDER: The Court has reviewed Plaintiffs' motion to amend the complaint 93 and the related briefing [108-111, 130]. Plaintiffs are directed to file a letter brief by January 4, 2021 in response to the Defendants' argument (see Dkt. Nos. 108, at 4, 111, at 2-4), that amending the complaint to name individual defendants would be futile because the individual defendants would be entitled to qualified immunity. SO ORDERED by Judge Brenda K. Sannes on 12/8/2020. (rjb,) (Entered: 12/08/2020)
12/14/2020	133	TEXT ORDER: At the upcoming telephone conference on January 6, 2021, counsel should be prepared for oral argument on the pending motions to dismiss 28 , 54 , 78 , 91 and the pending motion to amend the complaint 93 . SO ORDERED by Judge Brenda K. Sannes on 12/14/2020. (rjb,) (Entered: 12/14/2020)
12/14/2020		TEXT NOTICE of Hearing on the pending motions to dismiss 28 , 54 , 78 , 91 and the pending motion to amend the complaint 93 . Any members of the public who would like to hear the oral argument may dial in at 888-363-4734, Access Code 8285666, Security Code 0106. Updated call in instructions will be issued for counsel and any parties who wish to be on the call. (rjb,) (Entered: 12/14/2020)
12/14/2020		TEXT NOTICE of Teleconference: Telephone Conference set for 1/6/2021 at 10:00 AM before Judge Brenda K. Sannes. Counsel and any parties are directed to dial in at 877-336-1274, Access code 7605766, Security code 0120. (rjb,) (Entered: 12/14/2020)
01/04/2021	134	MEMORANDUM OF LAW re 132 Order, <i>Letter Briefre Qualified Immunity</i> filed by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr. (Gibson, Sujata) (Entered: 01/04/2021)

01/06/2021		TEXT Minute Entry for proceedings held before Judge Brenda K. Sannes: Telephonic Motion Hearing held on 1/6/2021. Appearances: Sujata Gibson, Esq. and Mary Holland, Esq. for Plaintiffs; Michael McCartin, AAG, Andrew Koster, AAG, Gregg Johnson, Esq., Loraine Jelinek, Esq., Adam Kleinberg, Esq., Chelsea Weisbord, Esq., James Ryan, Esq., Roxanne Tashjian, Esq. and Meishin Riccardulli, Esq. for Defendants. Judge Sannes hears from counsel on Defendants' pending motions to dismiss and Plaintiffs' pending motion to amend. The Court reserves, a written decision will be issued. (Court Reporter Jodi Hibbard; 10:00AM-10:47AM) (rjb,) (Entered: 01/06/2021)
01/06/2021	135	ORDER of USCA {Certified Copy Issued on 1/6/2021} as to the # 113 Notice of Appeal. Appellants move for an emergency injunction pending appeal. Upon due consideration, it is hereby ORDERED that the motion is DENIED because Appellants have not met the requisite standard. (pjh,) (Entered: 01/06/2021)
01/07/2021	136	TRANSCRIPT REQUEST <i>Telephonic Arguments re motion to dismiss</i> by Childrens Health Defense for proceedings held on 1/6/2021 before Judge Sannes.. (Gibson, Sujata) (Entered: 01/07/2021)
01/15/2021	137	TRANSCRIPT REQUEST by Childrens Health Defense, Jane Boe, Sr, Jane Coe, Sr, Jane Doe, Jane Goe, Sr, Jane Joe, Jane Loe, John Coe, Sr, John Foe, Sr for proceedings held on 10/15/2020 before Judge Sannes.. (Sussman, Michael) (Entered: 01/15/2021)

APPENDIX C

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JANE DOE on behalf of herself and her minor child; JANE BOE, Sr. on behalf of herself and her minor child; JOHN COE, Sr. and JANE COE, Sr. on behalf of themselves and their minor children; JOHN FOE, Sr. on behalf of himself and his minor child; JANE GOE, Sr. on behalf of herself and her minor child; JANE LOE on behalf of herself and her medically fragile child; JANE JOE on behalf of herself and her medically fragile child; CHILDRENS HEALTH DEFENSE, and all others similarly situated,

Plaintiffs,

v.

1:20-cv-840 (BKS/CFH)

HOWARD ZUCKER, in his official capacity as Commissioner of Health for the State of New York; ELIZABETH RAUSCH-PHUNG, M.D., in her official capacity as Director of the Bureau of Immunizations at the New York State Department of Health; the NEW YORK STATE DEPARTMENT OF HEALTH; THREE VILLAGE CENTRAL SCHOOL DISTRICT; CHERYL PEDISICH, acting in her official capacity as Superintendent, Three Village Central School District; CORINNE KEANE, acting in her official capacity as Principal Paul J. Gelinas Jr. High School, Three Village Central School District; LANSING CENTRAL SCHOOL DISTRICT; CHRIS PETTOGRASSO, acting in her official capacity as Superintendent, Lansing Central School District; CHRISTINE REBERA, acting in her official capacity as Principal, Lansing Middle School, Lansing Central School District; LORRI WHITEMAN, acting in her official capacity as Principal, Lansing Elementary School, Lansing Central School District; PENFIELD CENTRAL SCHOOL DISTRICT; DR. THOMAS PUTNAM, acting in his official capacity as Superintendent, Penfield Central School District; SOUTH HUNTINGTON SCHOOL DISTRICT; DR. DAVID P. BENNARDO, acting in his official capacity as Superintendent, South Huntington School District; BR. DAVID MIGLIORINO, acting in his official capacity as Principal, St. Anthony's High School, South Huntington School District; ITHACA CITY SCHOOL DISTRICT; DR. LUELLE BROWN, acting in his official capacity as Superintendent, Ithaca City School District; SUSAN ESCHBACH, acting in her official capacity as Principal, Beverly J. Martin Elementary School, Ithaca City School District; SHENENDEHOWA CENTRAL SCHOOL DISTRICT; DR. L. OLIVER ROBINSON, acting in his official capacity as Superintendent, Shenedehowa Central School District; SEAN GNAT, acting in his official capacity as Principal, Koda Middle School, Shenedehowa

Central School District; ANDREW HILLS, acting in his official capacity as Principal, Arongen Elementary School, Shenendehowa Central School District; COXSACKIE-ATHENS SCHOOL DISTRICT; RANDALL SQUIER, Superintendent, acting in his official capacity as Superintendent, Cocksackie-Athens School District; FREYA MERCER, acting in her official capacity as Principal, Cocksackie Athens High School, Cocksackie-Athens School District; ALBANY CITY SCHOOL DISTRICT; KAWEEEDA G. ADAMS, acting in her official capacity as Superintendent, Albany City School District; MICHAEL PAOLINO, acting in his official capacity as Principal, William S. Hackett Middle School, Albany City School District; and all others similarly situated,

Defendants.

Appearances:

For Plaintiffs:

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For Defendants New York State Department of Health, Zucker, and Rausch-Phung:

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For Defendants Albany City School District, Adams, Paolino; Three Village Central School District, Pedisich, Keane; South Huntington Central School District, Bernnardo; and Ithaca City School District, Brown and Eschbach:

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For Defendants Cossackie-Athens School District, Squire, Mercer; Shenendehowa Central School District, Robinson, Gnat, Hills; Penfield Central School District, Putnam; Lansing Central School District, Pettograsso, Rebera, and Whiteman:

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For Defendant Br. David Anthony Migliorino:

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Hon. Brenda K. Sannes, United States District Judge:

MEMORANDUM-DECISION AND ORDER

I. INTRODUCTION

On July 23, 2020, Plaintiffs, on behalf of their minor children, filed this proposed class action under 42 U.S.C. § 1983 challenging the constitutionality of New York’s allegedly burdensome medical exemptions to mandatory school immunization requirements. (Dkt. No. 1). Plaintiffs allege that Defendants, including the New York State Department of Health (“DOH”), New York Commissioner of Health Howard Zucker, DOH Director of the Bureau of Immunizations Elizabeth Rausch-Phung, M.D., eight school districts and their administrators, and Principal of St. Anthony’s High School Br. David Anthony Migliorino, have violated their Fourteenth Amendment substantive due process rights, liberty interest in parenting and informed consent, and right to free public education, as well as § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a). (*Id.*). On August 25, 2020, Plaintiffs filed a motion for a temporary restraining

order and preliminary injunction under Federal Rule of Civil Procedure 65, seeking an order restraining the implementation and enforcement of the applicable regulations.¹ (Dkt. No. 41). Defendants oppose Plaintiffs’ motion. (Dkt. Nos. 61–66, 81–82). The Court held oral argument on October 15, 2020. Having carefully considered the parties’ submissions and oral argument, the Court denies Plaintiffs’ motion. The following constitutes the Court’s findings of fact and conclusions of law in accordance with Rule 52(a)(2).

II. FINDINGS OF FACT²

A. New York School Vaccination Laws

New York Public Health Law § 2164 (the “school vaccination law”) requires children aged two months to eighteen years to be immunized from certain diseases before they can attend “any public, private or parochial . . . kindergarten, elementary, intermediate or secondary school.” N.Y. Pub. Health Law § 2164(1)(a). The school vaccination law requires children to be immunized against poliomyelitis, mumps, measles, diphtheria, rubella, varicella, hepatitis B, pertussis, tetanus, and where applicable, *Haemophilus influenzae* type b (Hib), meningococcal disease, and pneumococcal disease. N.Y. Pub. Health Law § 2164(7). A child may not attend school in excess of fourteen days without documentation showing that the child was immunized or in the process of complying with the immunization series. N.Y. Pub. Health Law § 2164(7); 10 N.Y.C.R.R. § 66-1.3(a), (b).

¹ Following a telephone conference on August 26, 2020, the Court issued an Order to Show Cause denying Plaintiffs’ motion for a temporary restraining order but directing expedited briefing on their motion for a preliminary injunction. (Dkt. No. 46).

² The facts are taken from the affidavits and attached exhibits submitted in support of, and opposition to, this motion. See *J.S.R. ex rel. J.S.G. v. Sessions*, 330 F. Supp. 3d 731, 738 (D. Conn. 2018) (“In deciding a motion for preliminary injunction, a court may consider the entire record including affidavits and other hearsay evidence.”); *Fisher v. Goord*, 981 F. Supp. 140, 173 n.38 (W.D.N.Y. 1997) (noting that a “court has discretion on a preliminary injunction motion to consider affidavits as well as live testimony, given the necessity of a prompt decision”). The “findings are provisional in the sense that they are not binding on a motion for summary judgment or at trial and are subject to change as the litigation progresses.” *trueEX, LLC v. MarkitSERV Ltd.*, 266 F. Supp. 3d 705, 721 (S.D.N.Y. 2017); *accord Fair Hous. in Huntington Comm. Inc. v. Town of Huntington*, 316 F.3d 357, 364 (2d Cir. 2003).

The school vaccination law initially contained two exemptions to the vaccination requirements: a medical exemption requiring a physician’s certification that the physician had determined that the vaccination may be detrimental to the child’s health, N.Y. Pub. Health Law § 2164(8), and a non-medical exemption that required a statement by the parent or guardian indicating that they objected to vaccination on religious grounds, N.Y. Pub. Health Law § 2164(9), *repealed by* L.2019, c. 35, § 1, eff. June 13, 2019. In 2019, the New York Legislature repealed the religious exemption after finding that “[o]utbreaks in New York have been the primary driver” of the United States’ “worst outbreak of measles since 1994,” with 810 of the 880 cases confirmed nationwide in 2019. (Dkt. No. 28-3, at 6 (Sponsor Memo, S2994A)). The Legislature further found that:

According to the Centers for Disease Control, sustaining a high vaccination rate among school children is vital to the prevention of disease outbreaks, including the reestablishment of diseases that have been largely eradicated in the United States, such as measles. According to State data from 2013-2014, there are at least 285 schools in New York with an immunization rate below 85%, including 170 schools below 70%, far below the CDC’s goal of at least a 95% vaccination rate to maintain herd immunity. This bill would repeal exemptions currently found in the law for children whose parents have non-medical objections to immunizations.

2019 New York Assembly Bill No. 2371, New York Two Hundred Forty-Second Legislative Session (May 22, 2019).

On August 16, 2019, following the repeal of the religious exemption, the New York Commissioner of Health issued “emergency regulations,” amending the regulations governing the school vaccination law “to conform to recent amendments to Section[] 2164” and to “make the regulations consistent with national immunization recommendations and guidelines.” (Dkt. No. 61, ¶ 6; Dkt. No. 61-1, at 1 (Summary of Express Terms of Emergency Regulations Aug. 16,

2019 (“Summary”)).³ The Summary noted that when California removed non-medical exemptions to school immunization requirements in 2015 “without taking steps to strengthen the rules governing medical exemptions,” the use of medical exemptions to school immunization requirements more than tripled. (Dkt. No. 61-1, at 16). The Summary further noted that “[b]y providing clear, evidence-based guidance to physicians, th[e] emergency regulation will help prevent medical exemptions being issued for non-medical reasons.” (*Id.* at 16–17).

These emergency regulations were renewed, effective November 14, 2019, and after a public comment period, permanently adopted as of December 31, 2019. (Dkt. No. 61, ¶ 7). Specifically, the Commissioner added a new subdivision defining “may be detrimental to the child’s health,” as used in § 2164 of the school vaccination law, to mean “that a physician has determined that a medical contraindication or precaution to a specific immunization consistent with ACIP [the CDC Advisory Committee on Immunization Practices] guidance or other nationally recognized evidence-based standard of care.” 10 N.Y.C.R.R. § 66-1.1(l); (Dkt. No. 61-1, at 2). The amendments also required “the use of exemption forms approved by the New York State Department of Health” and no longer allowed “a written statement from a physician.” (Dkt. No. 61-1, at 2); 10 N.Y.C.R.R. § 66-1.3(c). Subdivision (c) of 10 N.Y.C.R.R. § 66-1.3, was otherwise unchanged, however, and continued (i) to require that the “physician certifying that immunization may be detrimental to the child’s health, contain[] sufficient information to identify a medical contraindication to a specific immunization and specify the length of time the immunization is medically contraindicated,” (ii) to require that the medical exemption “be

³ The school vaccination law authorizes the Commissioner of Health to “adopt and amend rules and regulations to effectuate the provisions and purposes of [§ 2164].” N.Y. Pub. Health Law § 2164(10). The Commissioner is also required, under the Public Health Law, to “establish and operate such adult and child immunization programs as are necessary to prevent or minimize the spread of disease and to protect the public health,” and is authorized to “promulgate such regulations” governing vaccinations. N.Y. Pub. Health Law § 206(1)(l).

reissued annually,” and (iii) to provide that “[t]he principal or person in charge of the school may require additional information supporting the exemption.” *Compare* 10 N.Y.C.R.R. § 66-1.3(c), *with* 2014 N.Y. Reg. Text 336024 (NS) (Notices of Adoption 10 N.Y.C.R.R. § 66-1.3).

B. Plaintiffs

Plaintiffs include at least seven families⁴ with children who applied to the Defendant school districts for “medical exemptions” to vaccinations for the 2019–2020 school year. (Dkt. No. 41-12, ¶ 8; Dkt. No. 41-13, ¶ 9; Dkt. No. 41-14, ¶ 9; Dkt. No. 41-15, ¶ 8; Dkt. No. 62-1, at 34; Dkt. No. 41-17, ¶ 10; Dkt. No. 1, ¶ 187). Plaintiffs sought exemptions “from one or more mandatory immunization requirement for school attendance in New York State based on the advice of their treating physicians that such immunization poses unacceptable risks to their children’s health.” (Dkt. No. 11, ¶ 41). The medical exemptions were denied and the Plaintiff children have been excluded from school since the 2019–2020 school year—in some cases, since September 2019. (Dkt. No. 41-17, ¶ 13 (Loe last day of school in September 2019); Dkt. No. 41-12, ¶ 23 (Doe last day of school in October 2019); Dkt. No. 41-13, ¶ 8 (Boe last day of school in December 2019); Dkt. No. 57, ¶ 8 (Coe last day of school in January 2020); Dkt. No. 41-15, ¶ 12 (Foe last day of school in September 2019); Dkt. No. 58, at 3 (Goe graduated in 2020); Dkt. No. 41-16, ¶ 10 (Joe last day of school in November 2019)).

III. STANDARD OF REVIEW

Rule 65 of the Federal Rules of Civil Procedure governs preliminary injunctions. A party seeking a preliminary injunction must establish that: (1) it is likely to suffer irreparable harm in the absence of preliminary relief; (2) either (a) it is likely to succeed on the merits, or (b) there

⁴ The Complaint names seven families in the caption, but discusses an eighth family, the Koe family, in the body of the Complaint. (Dkt. No. 1, at 37).

are sufficiently serious questions going to the merits of its claims to make them fair ground for litigation; (3) the balance of hardships tips decidedly in its favor; and (4) a preliminary injunction is in the public interest. *Oneida Nation of N.Y. v. Cuomo*, 645 F.3d 154, 164 (2d Cir. 2011); *accord N. Am. Soccer League, LLC v. U.S. Soccer Fed’n, Inc.*, 883 F.3d 32, 37 (2d Cir. 2018). However, “[w]hen, as here, the moving party seeks a preliminary injunction that will affect government action taken in the public interest pursuant to a statutory or regulatory scheme, the injunction should be granted only if the moving party meets the more rigorous likelihood of success standard.” *Donohue v. Mangano*, 886 F. Supp. 2d 126, 149 (N.D.N.Y. 2012) (quoting *Metro. Taxicab Bd. of Trade v. City of New York*, 615 F.3d 152, 156 (2d Cir. 2010)); *see also Ass’n of Jewish Camp Operators v. Cuomo*, No. 20-cv-687, 2020 WL 3766496, at *6, 2020 U.S. Dist. LEXIS 117765, at *12 (N.D.N.Y. July 6, 2020).⁵

IV. ANALYSIS

A. Irreparable Harm

A showing of irreparable harm is “the single most important prerequisite for the issuance of a preliminary injunction.” *Faiveley Transp. Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009) (quoting *Rodriguez v. DeBuono*, 175 F.3d 227, 234 (2d Cir. 1999)). “Irreparable harm is ‘injury that is neither remote nor speculative, but actual and imminent and that cannot be remedied by an award of monetary damages.’” *New York ex rel. Schneiderman v. Actavis PLC*,

⁵ The parties dispute whether the injunction sought is a prohibitory injunction, which preserves the status quo, or a mandatory injunction, which changes the status quo and is subject to a heightened standard. *See N. Am. Soccer League, LLC*, 883 F.3d at 37. The “status quo . . . is, ‘the last actual, peaceable uncontested status which preceded the pending controversy.’” *Id.* (quoting *Mastrio v. Sebelius*, 768 F.3d 116, 120 (2d Cir. 2014)). Although Plaintiffs assert that they are seeking to preserve the status quo—“adherence to the plain language of N.Y. Public Health Law 2164(8), without the additional burdens the state defendants’ new regulations [contained in NYCRR § 66-1] imposed” in 2019, some of the regulatory provisions Plaintiffs seek to enjoin have been in effect since 2014 and Plaintiffs also seek an order directing the Defendants to provide notice that similarly situated children may attend school. (Dkt. No. 41-1, at 15, 31). In any event, since Plaintiffs fail to meet the likelihood of success standard, the Court need not decide whether a heightened standard applies.

787 F.3d 638, 660 (2d Cir. 2015) (quoting *Forest City Daly Hous., Inc. v. Town of North Hempstead*, 175 F.3d 144, 153 (2d Cir. 1999)). “The relevant harm is the harm that (a) occurs to the parties’ legal interests and (b) cannot be remedied after a final adjudication, whether by damages or a permanent injunction.” *Salinger v. Colting*, 607 F.3d 68, 81 (2d Cir. 2010) (internal footnote omitted).

“[C]ourts considering this issue routinely assume that a child prevented from attending school would suffer irreparable harm” and, accordingly, find that the child’s application “turns on [the] likelihood of success on the merits.” *Check ex rel. MC v. New York City Dep’t of Educ.*, No. 13-cv-791, 2013 WL 2181045, at *9, 2013 U.S. Dist. LEXIS 71223, at *16 (E.D.N.Y. Mar. 22, 2013) (citing *Lewis v. Sobol*, 710 F. Supp. 506, 507 (S.D.N.Y. 1989) (noting that “it was clear that [plaintiff’s daughter] would suffer irreparable harm if barred from attending school”), *report & recommendation adopted*, 2013 WL 2181045, 2013 U.S. Dist. LEXIS 71124 (E.D.N.Y. May 20, 2013); *Caviezel v. Great Neck Pub. Sch.*, 701 F. Supp. 2d 414, 426 (E.D.N.Y. 2010) (“[The Court] is satisfied that there would be irreparable harm to this child entering school after [the start of the school year].”), *aff’d* 500 F. App’x 16 (2d Cir. 2012). Thus, the exclusion of Plaintiffs’ minor children from school supports a strong showing of irreparable harm.⁶

⁶ Defendants argue that even assuming Plaintiffs can establish irreparable harm, their delay in seeking an injunction undermines any assertion of irreparable harm. (Dkt. No. 61-24). “Preliminary injunctions are generally granted under the theory that there is an urgent need for speedy action to protect the plaintiffs’ rights. Delay in seeking enforcement of those rights, however, tends to indicate at least a reduced need for such drastic, speedy action.” *Citibank N.A. v. Citytrust*, 756 F.2d 273, 276 (2d Cir. 1985). The Second Circuit has explained that a party’s “failure to act sooner ‘undercuts the sense of urgency that ordinarily accompanies a motion for preliminary relief and suggests that there is, in fact, no irreparable injury.’” *Id.* at 277 (quoting *Le Sportsac, Inc. v. Dockside Rsch., Inc.*, 478 F. Supp. 602, 609 (S.D.N.Y. 1979)). Here, the regulation providing the impetus for this action—10 N.Y.C.R.R. 66-1.1.1(l)—has been in effect since August 2019, (Dkt. No. 61-1), and the minor Plaintiffs had been excluded from school for at least six months, and many for longer, before filing this action. (*See, e.g.*, Dkt. No. 1 (Complaint filed July 23, 2020); Dkt. No. 41-13, ¶ 8 (Boe excluded since December 2019); Dkt. No. 41-12, ¶ 23 (Doe excluded since October 2019)). Plaintiffs argue that the delay in this case, which involves multiple plaintiffs and a proposed class action complaint, should not undercut a finding of irreparable injury. Because Plaintiffs fail to establish likelihood of success, the Court need not consider whether a delay in seeking relief would undermine Plaintiffs’ irreparable harm contention.

B. Likelihood of Success

Plaintiffs argue that the new regulations are “overbroad” and “unduly burden fundamental rights and the ability of medically fragile children to obtain a medical exemption.”⁷ (Dkt. No. 41-1, at 18). In their briefing on this motion Plaintiffs have not advanced any “as applied” arguments regarding the circumstances of the Defendant school district’s respective denials of their requests for a medical exemption. Plaintiffs advance a facial challenge to the regulations. (Dkt. No. 41-1, at 31). They seek a stay of the “new regulations,” codified in 10 N.Y.C.R.R. § 66-1, an injunction prohibiting Defendants from “excluding children from school due to a lack of immunization if that child has presented a certification from a licensed physician advising against such immunization,” and an order directing Defendants “to provide notice to schools, districts, and families that Plaintiffs and similarly situated children may attend school.” (Dkt. No. 41-1, at 31).

“[T]o succeed on a facial challenge, the challenger must establish that no set of circumstances exists under which the [regulation] would be valid.” *Jacoby & Meyers, LLP v. Presiding Justices of the First, Second, Third & Fourth Dep’ts, Appellate Div. of the Supreme Court of New York*, 852 F.3d 178, 184 (2d Cir. 2017) (quoting *N.Y.S. Rifle & Pistol Ass’n, Inc. v. Cuomo*, 804 F.3d 242, 265 (2d Cir. 2015)). “As a result, a facial challenge to a legislative enactment is the most difficult challenge to mount successfully.” *Id.* (quoting *N.Y.S. Rifle & Pistol Ass’n*, 849 F.3d at 265). Here, Plaintiffs claim that the regulations violate their Fourteenth

⁷ At oral argument, Plaintiffs argued that the medical exemption regulations posed an “unconstitutional condition” on the benefit of a public or private education. “[T]he unconstitutional conditions doctrine . . . vindicates the Constitution’s enumerated rights by preventing the government from coercing people into giving them up.” *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013). As Plaintiffs raised this argument at oral argument and have not provided any authority for considering this doctrine in the context of this case, the Court does not consider it.

Amendment substantive due process rights, liberty interest in parenting, liberty interest in informed consent, and right to a free public education.⁸ (Dkt. No. 1; Dkt. No. 41-1).

Plaintiffs are unlikely to succeed on their claim that the challenged regulations violate the Fourteenth Amendment. In *Jacobson v. Massachusetts*, the Supreme Court explained that “the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint.” 197 U.S. 11, 26 (1905). “There are manifold restraints to which every person is necessarily subject for the common good.” *Id.* “The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order, and morals of the community.” *Id.* (quoting *Crowley v. Christensen*, 137 U.S. 86, 89 (1890)).

It is well-settled, as Plaintiffs acknowledge, (Dkt. No. 41-1, at 18), that New York’s mandatory school vaccination law does not violate substantive due process. *See Phillips v. City of New York*, 775 F.3d 538, 542 (2d Cir. 2015) (rejecting the plaintiffs’ argument that “New York’s mandatory vaccination requirement” for school children violates substantive due process, explaining that “[t]his argument is foreclosed by the Supreme Court’s decision in *Jacobson v. Commonwealth of Massachusetts*”). In this case, Plaintiffs do not challenge the school vaccination law itself. Plaintiffs challenge the regulations defining “may be detrimental to a

⁸ To be clear about the grounds on which Plaintiffs seek injunctive relief, the Court notes the following: first, although Plaintiffs’ Complaint alleges a violation of the right to free public education, they also challenge the application of the regulations to private schools, (Dkt. No. 1, at 39–44, 69–70). *See* N.Y. Pub. Health Law § 2164(1)(a) (requiring enumerated vaccinations before a child can attend “any public, private or parochial . . . kindergarten, elementary, intermediate or secondary school”).

Second, Plaintiffs’ motion for preliminary injunctive relief is based upon their constitutional challenges, not the Rehabilitation Act claims alleged in the Complaint.

Third, while Plaintiffs argue in terms of “informed consent” in the Complaint, (Dkt. No. 1, at 69), in their motion papers they articulate this as the parental right “to make critical health decisions” (Dkt. No. 89, at 22), and to “exercise the right of informed consent on behalf of their minor children.” (Dkt. No. 41-1, at 20).

child's health" and giving school districts the authority to reject, or require additional documentation supporting, a doctor's medical exemption statement ("the medical exemption regulations") as violative of their Fourteenth Amendment rights. (Dkt. No. 41-1, at 16).

It is equally well-settled, however, that a state may establish regulations implementing mandatory vaccine laws and vesting local officials with enforcement authority. *Jacobson*, 197 U.S. at 25 (observing that "[i]t is equally true that the state may invest local bodies called into existence for purposes of local administration with authority in some appropriate way to safeguard the public health and the public safety"); *see also Zucht v. King*, 260 U.S. 174, 176 (1922) (explaining that *Jacobson* and other cases, have "settled that a state may, consistently with the federal Constitution, delegate to a municipality authority to determine under what conditions health regulations shall become operative" and that "the municipality may vest in its officials broad discretion in matters affecting the application and enforcement of a health law" (citing *Laurel Hill Cemetery v. San Francisco*, 216 U.S. 358 (1910); *Lieberman v. Van de Carr*, 199 U.S. 552 (1902))).

In *Jacobson*, the Supreme Court instructed that a court must not invalidate such a law or regulation unless it lacks a "real or substantial relation [to public health]" or is "beyond all question, a plain, palpable invasion of rights[.]" 197 U.S. at 31. The Supreme Court further observed that there may be incidences where "the police power of a state, whether exercised directly by the legislature, or by a local body acting under its authority, may be exerted in such circumstances, or by regulations so arbitrary and oppressive in particular cases, as to justify the interference of the courts to prevent wrong and oppression." *Id.* at 38. The Court noted that the judiciary could interfere, for example, in an "extreme case" of an individual who was not "a fit subject of vaccination" or for whom "vaccination by reason of his then condition, would

seriously impair him health, or probably cause his death,” “to protect the health and life of the individual concerned.” *Id.* at 38–39.

The parties dispute how *Jacobson* applies here. Plaintiffs argue that strict scrutiny is warranted because the medical exemption regulations burden their fundamental rights, including their right to substantive due process, their liberty interest in parenting, their right to refuse unwanted medical procedures, and their right to a public education. (Dkt. No. 41-1, at 16).⁹ Defendants respond that “the correct test to apply is undeniably” the “test of *Jacobson* and *Zucht*,” which Defendants characterize as a rational basis test. (Dkt. No. 61-24, at 14). The Court notes that the *Jacobson* framework has been “nearly uniformly relied on” to analyze constitutional challenges to “emergency public health measures put in place to curb the spread of coronavirus.” *Page v. Cuomo*, No. 20-cv-732, 2020 WL 4589329, at *8, 2020 U.S. Dist. LEXIS 183769, at *19 (N.D.N.Y. Aug. 11, 2020), and that Plaintiffs have not cited any support for the application of strict scrutiny to school immunization regulations. *See Phillips*, 775 F.3d at 542 n.5 (noting that “no court appears ever to have held” that “*Jacobson* requires that strict scrutiny be applied to immunization mandates”).

In any event, whether the Court applies the *Jacobson* framework or the traditional constitutional analysis for state action alleged to burden constitutional rights, Plaintiffs have not shown a likelihood of success. State action that infringes upon a fundamental right is ordinarily analyzed under the test of strict scrutiny. *See, e.g., Leebaert v. Harrington*, 332 F.3d 134, 140 (2d Cir. 2003) (observing that “[w]here the right infringed is fundamental, strict scrutiny is applied to the challenged governmental regulation”). Under that test, the challenged action

⁹ Plaintiffs have also argued that the regulations burden their fundamental constitutional right to a medical exemption, but have not cited any support for such a right. *See infra* note 11.

“must be narrowly tailored to promote a compelling Government interest,” and “must use the least restrictive means to achieve its ends.” *Evergreen Ass’n, Inc. v. City of New York*, 740 F.3d 233, 246 (2d Cir. 2014) (citation omitted). Under *Jacobson*, the Court considers whether the regulations lack a “real or substantial relation” to the public health and public safety, whether the regulations are “beyond all question, a plain palpable invasion of rights secured by fundamental law” and whether the regulations are so arbitrary and oppressive as to warrant judicial interference. 197 U.S. at 31–39.

The right and liberty interest in parenting and the right to refuse unwanted medical procedures are fundamental rights. *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (“[I]t cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.”); *Cruzan v. Dir., Missouri Dep’t of Health*, 497 U.S. 261, 278 (1990) (finding a “constitutionally protected liberty interest in refusing unwanted medical treatment”). Plaintiffs, however, are unlikely to succeed in showing that the medical exemption regulations directly infringe on either of these fundamental rights, as they do not force parents to consent to vaccination of their children. Rather, the regulations condition children’s right to attend school on vaccination. Thus, the right that is being burdened is the right to attend school at a public or private institution instead of being homeschooled. And, the Second Circuit has made clear, “[t]he right to public education is not fundamental.” *Bryant v. N.Y.S. Educ. Dep’t*, 692 F.3d 202, 217 (2d Cir. 2012).¹⁰

Thus, education regulations that have an incidental effect of burdening parental rights or right to refuse medical care, have been upheld following rational basis review. *See Immediato*,

¹⁰ For this reason, Plaintiffs’ claim that the regulations violate their Fourteenth Amendment right to a free public education, (Dkt. No. 1, at 69–70), is unlikely to succeed. *See Phillips*, 775 F.3d at 542 n. 5 (noting that “[b]ecause ‘there is no substantive due process right to a public education’ plaintiffs’ substantive due process claim fails even under” a strict scrutiny test (citing *Bryant*, 692 F.3d at 217)) (citation omitted).

73 F.3d at 462 (“[W]hile parents have definite rights over their children’s education, ‘they have no constitutional right to provide their children with . . . education unfettered by *reasonable* government regulation.” (emphasis in original) (quoting *Runyon v. McCrary*, 427 U.S. 160, 178 (1976))); *see, e.g., Phillips*, 775 F.3d at 543 (applying rational basis review to the plaintiffs’ argument that exclusion from school based on lack of vaccination burdened fundamental right of free exercise of religion and explaining that “a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice” (quoting *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993))). Accordingly, even if the minor Plaintiffs were unable to receive an education at a public or private institution because they cannot receive vaccinations, the school vaccination law and its implementing regulations “would still comport with due process if [they were] reasonably related to a legitimate government objective.” *Bryant*, 692 F.3d at 218.¹¹ Thus, to succeed, Plaintiffs must show that the medical exemption regulations lack a “real or substantial relation” to the public health and public safety or are arbitrary and oppressive. *Jacobson*, 197 U.S. at 38.

¹¹ Citing, *inter alia*, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 895 (1992), and *Stenberg v. Carhart*, 530 U.S. 914, 937 (2000), Plaintiffs argue that “[m]edical exemption cases in the abortion context are illustrative of how courts should scrutinize medical exemptions even more strictly than other important fundamental rights” and that under *Casey* and *Stenberg*, the regulation’s narrow definition of what is “detrimental” to a child’s health and reliance on ACIP guidance, 10 N.Y.C.R.R. § 66-1.1(l), instead of the “clinical judgment” of the child’s treating physician, is unconstitutional. (Dkt. No. 89, at 15–16 (citing *Stenberg*, 530 U.S. at 937 (“Doctors often differ in their estimation of comparative health risks and appropriate treatment. And *Casey*’s words ‘appropriate medical judgment’ must embody the judicial need to tolerate responsible differences of medical opinion.”))). Plaintiffs, however, fail to cite any caselaw applying the standards utilized in *Casey* and *Stenberg*, *inter alia*, concerning the right recognized in *Roe v. Wade*, 410 U.S. 113 (1973), to cases where, as here, the right being burdened is not a fundamental right. Further, unlike the medical exemption cases involving abortion, where the life or health of the mother is at stake, if the medical exemption at issue here is denied the parent may forgo vaccination and elect to homeschool their child.

Plaintiffs argue this medical exemption caselaw has been applied outside of the abortion context, citing to *Whalen v. Roe*, 429 U.S. 589 (1977). Specifically, Plaintiffs cite to the Supreme Court’s observation that the record-keeping law at issue in *Whalen* did not condition a patient’s access to drugs “on the consent of any state official or other third party.” 429 U.S. at 603. This passage does not support the Plaintiffs’ claim here, which is founded on an inability to pursue an education, not state interference in medical care.

Plaintiffs argue that the new definition of “detrimental to the child’s health” arbitrarily limits medical exemptions to children with medical contraindications or precautions that “fit[] within the narrow confines” of ACIP guidance, and removes discretion from treating physicians to determine whether or not their patient requires a medical exemption. (Dkt. No. 41-1, at 10 (citing 10 N.Y.C.R.R. § 66-1.1(l))). The regulations, however, are broader than Plaintiffs’ characterization; they allow exemptions for “medical contraindication or precaution to a specific vaccination *consistent with ACIP guidance or other nationally recognized evidence-based standard of care.*” 10 N.Y.C.R.R. § 66-1.1(l) (emphasis added). In an affidavit, Elizabeth Rausch-Phung, MD, MPH, the Director of the Bureau of Immunization for the New York State Department of Health, explains that the definition was added to “conform the regulations with current guidance from the U.S. Centers for Disease Control,” which “maintains immunization schedules and guidelines for when immunization may be detrimental to a child’s health due to a contraindication or a precaution to a specific immunization—a nationally recognized evidence-based standard of care.” (Dkt. No. 61, ¶ 12; Dkt. No. 61-4 (CDC contraindications and precautions)). According to Dr. Rausch-Phung, “[t]he ACIP includes medical and public health experts, including vaccine experts, scientists, doctors and public health professionals, who meet 3 times every year to discuss vaccine recommendations.” (Dkt. No. 61, ¶ 12). Further, during the public comment period for the regulations, the “NYS American Academy of Pediatrics, the NYS Academy of Family Physicians . . . the American Nurses’ Association, [and] the Medical Society of the State of New York,” among others, “expressed support of the regulations.” (Dkt. No. 28-5, at 31). Thus, the Court concludes that Plaintiffs are unlikely to succeed in showing that the regulation’s definition of “detrimental to the child’s health” and reference to ACIP guidance or “other nationally recognized evidence-based standard of care” as appropriate resources for a

determination of whether a medical exemption is warranted, lacks a “real or substantial relation” to the public health and public safety or is arbitrary and oppressive.

Next, Plaintiffs argue that the regulations improperly give school principals the authority to overrule the judgment of treating physicians and do not require the principals to consult medical professionals. (Dkt. No. 41-1, at 11 (citing 10 N.Y.C.R.R. § 66-1.3(c) (“The principal or person in charge of the school may require additional information supporting the exemption.”))).¹² Dr. Rausch-Phung acknowledged that while a principal or person in charge of the school has the responsibility for making the determination at the outset, “schools have the option of requesting that the Bureau of Immunization Medical Director consult on these requests.” (Dkt. No. 61, ¶ 18). The State’s Medical Exemption Review Procedures advise that “[i]n making a determination on a medical exemption request, the school should seek the appropriate medical consultation (e.g., the school’s medical director).” (Dkt. No. 54-13, at 2). As states may vest officials with broad discretion in matters of application of health laws, Plaintiffs are unlikely to succeed in showing that it is irrational or arbitrary to assign review, at the first level, to the principal of the school the child seeks to attend. *See Zucht*, 260 U.S. at 176 (explaining that “the municipality may vest in its officials broad discretion in matters affecting the application and enforcement of a health law” (citing *Lieberman*, 199 U.S. 552)).

Plaintiffs further assert that the required medical exemption forms are burdensome. (Dkt. No. 41-1, at 12 (citing 10 N.Y.C.R.R. § 66-1.3(c) (requiring submission of “[a] signed, completed medical exemption form approved by the NYSDOH or NYC Department of Education from a physician licensed to practice medicine in New York State certifying that

¹² This provision has been in effect since 2014. *Compare* 10 N.Y.C.R.R. § 66-1.3(c), *with* 2014 N.Y. Reg. Text 336024 (NS) (Notices of Adoption 10 N.Y.C.R.R. § 66-1.3).

immunization may be detrimental to the child’s health, containing sufficient information to identify a medical contraindication to a specific immunization and specifying the length of time the immunization is medically contraindicated”)). The form Plaintiffs refer to, however, is a “simple, one-page form,” that requires “the patient’s name, date of birth, address, school, . . . a description of the patient’s contraindications/precautions to a specific vaccination, . . . the date the medical exemption ends,” and a physician’s signature, medical license number, address, and telephone number.” (Dkt. No. 61, ¶ 9; *see, e.g.*, Dkt. No. 63-7, at 7). The information requested in the form clearly relates to the grounds on which a medical exemption may be granted, and is clearly intended to assist a school district determining whether a student should be granted such an exemption. Thus, Plaintiffs are unlikely to be able to show that the required form lacks a rational basis or is arbitrary.

Finally, Plaintiffs argue that the requirement that the medical exemption be “reissued” annually is also burdensome, (Dkt. No. 41-1, at 13 (citing 10 N.Y.C.R.R. § 66-1.3 (c))). Dr. Rausch-Phung explains that the regulatory amendments “did not change the pre-existing requirement that the medical exemption must be reissued annually.” (Dkt. No. 61, ¶ 14). Indeed, this provision has been in effect since 2014. *Compare* 10 N.Y.C.R.R. § 66-1.3(c), *with* 2014 N.Y. Reg. Text 336024 (NS) (Notices of Adoption 10 N.Y.C.R.R. § 66-1.3). Dr. Rausch-Phung further explains that permanent exemptions were never “an option” because, “as indicated by the CDC, ‘the majority of contraindications are temporary,’” and “may change over a child’s lifetime” and “vaccines can often be administered when the contraindication no longer exists.” (Dkt. No. 61, ¶ 14). Based on this explanation, Plaintiffs are unlikely to succeed in showing that the annual medical-exemption requirement is irrational or arbitrary.

Thus, the Court concludes that the public health concerns in maintaining high immunization rates for vaccine-preventable diseases and in avoiding outbreaks of communicable diseases provide ample basis for the newly enacted regulations.¹³ And the regulations are not “beyond all question a plain, palpable invasion of rights secured by the fundamental law,” or, on their face, arbitrary and oppressive. *Jacobson*, 197 U.S. at 31. The Court does not here consider whether Plaintiffs may be able to show that the regulations are “so arbitrary and oppressive” in a particular case, so as to justify judicial interference, *Jacobson*, 197 U.S. at 38; it concludes only that Plaintiffs failed to establish a likelihood of success on their facial challenge to the regulations.¹⁴

C. Balance of the Hardships

“[T]he balance of hardships inquiry asks which of the two parties would suffer most grievously if the preliminary injunction motion were wrongly decided.” *Goldman, Sachs & Co. v. Golden Empire Schs. Fin. Auth.*, 922 F. Supp. 2d 435, 444 (S.D.N.Y. 2013) (alteration in original) (quoting *Tradescape.com v. Shivaram*, 77 F. Supp. 2d 408, 411 (S.D.N.Y. 1999)). Even assuming that Plaintiffs, being unable to send their children to school, have shown that the

¹³ To the extent Plaintiffs take issue with the specific vaccines required for school admission, (*see, e.g.*, Dkt. No. 41-1 (arguing that “tetanus is not a contagious disease, meaning that vaccines offer only personal protection”), “that is a determination for the legislature, not the individual objectors.” *Phillips*, 775 F.3d at 542.

¹⁴ Plaintiffs request an evidentiary hearing “to clarify the underlying facts of this case,” (Dkt. No. 68, at 7), including to resolve particular factual disputes with respect to each named Plaintiff’s case, and to establish facts that show that, in practice, the defendants apply the regulations more narrowly than they are written. (*Id.* at 8). However, Plaintiffs seek to enjoin the regulations in toto. (Dkt. No. 41-1, at 7). Neither their briefing nor their requested relief contemplates any “as-applied” challenge to the regulations. Thus, as discussed *supra*, the Court’s review is limited to the constitutionality of the law and regulations, as written. As Plaintiffs have “not shown that an evidentiary hearing would resolve any material factual issues,” *Amaker v. Fischer*, 453 F. App’x 59, 64 (2d Cir. 2011), the Court, in its discretion, concludes that it may “dispose of the motion on the papers before it.” *Maryland Cas. Co. v. Realty Advisory Bd. on Labor Rels.*, 107 F.3d 979, 984 (2d Cir. 1997) (quoting *Consol. Gold Fields PLC v. Minorco, S.A.*, 871 F.2d 252, 256 (2d Cir. 1989)); *see Charette v. Town of Oyster Bay*, 159 F.3d 749, 755 (2d Cir. 1998) (“An evidentiary hearing is not required when the relevant facts either are not in dispute or have been clearly demonstrated at prior stages of the case, or when the disputed facts are amenable to complete resolution on a paper record.”) (internal citations omitted).

balance of the hardships tips in Plaintiffs' favor, without a showing of a likelihood of success on the merits, this factor, alone, is insufficient to warrant injunctive relief.¹⁵

V. CONCLUSION


For these reasons, it is hereby

ORDERED that Plaintiffs' motion for a preliminary injunction (Dkt. No. 41) is

DENIED.

IT IS SO ORDERED.

Dated: October 22, 2020
Syracuse, New York


Brenda K. Sannes
U.S. District Judge

¹⁵ Since a preliminary injunction shall not issue in this case, the Court need not consider whether the issuance of an injunction would harm the public interest. *U.S. S.E.C. v. Citigroup Glob. Mkts. Inc.*, 673 F.3d 158, 163 n.1 (2d Cir. 2012) (“[W]hen a court orders injunctive relief, it should ensure that injunction does not cause harm to the public interest.”).

APPENDIX D

1
2
3 **UNITED STATES DISTRICT COURT**
4 **FOR THE NORTHERN DISTRICT OF NEW YORK**

5 JANE DOE, et al.

6 Plaintiffs,

7 vs.

8 HOWARD ZUCKER, et al.

9 Defendants.
10

Civil Action No.: 1:20 – CV – 0840 (BKS/CFH)

DECLARATION OF JANE DOE IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION

11
12 1. I am the parent of a medically fragile child, John Doe, who was denied a medical
13 exemption last year despite submitting certifications from two licensed physicians that he is at
14 serious risk of harm.

15 2. I am one of the named Plaintiffs in this suit and write this declaration in support of our
16 motion for temporary relief.
17

18 3. My son's diagnoses include: mitochondrial disorder, hypoglycemia, genetic mutations,
19 environmentally induced porphyria, metabolic and hormonal imbalances, eczema, food and
20 environmental allergies, candida infection, amino acid disorder, heavy metal toxicity, and several
21 autoimmune disorders—including Pediatric Autoimmune Neurological Disorder Associated with
22 Streptococcus ("PANDAS"), Irritable Bowel Syndrome ("IBS"), thyroid disease, and Gluten-
23 Sensitive Enteropathy.
24

25 4. His conditions are chronic, incurable and at times debilitating.

26 DECLARATION OF JANE DOE IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY
27 INJUNCTION - 1
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1
2
3 5. When my child was four, we began seeing a specialist in Massachusetts known to help
4 children with PANDAS. Through years of hard work and vigilant routines, he has begun to
5 stabilize and regain some measure of health and normalcy.

6 6. Avoiding triggers, including certain foods, chemicals, and immunizations, has been
7 critical to prevent regression of one or more of John's autoimmune diseases and in managing his
8 disorders.

9
10 7. Following the advice of multiple treating physicians, John has not received any
11 immunizations.

12 8. On August 23, 2019, we submitted a medical exemption from our pediatrician, Dr. Peter
13 Forman ("**Dr. Forman**"), a licensed New York physician who has been John's primary care
14 physician for more than ten years. Dr. Forman included a supplemental letter from Dr.
15 Papanicolaou ("**Dr. Papanicolaou**"), John's treating physician at the Massachusetts clinic he has
16 attended for eleven years.

17
18 9. Both treating physicians have seen John regress into debilitating flare ups of his
19 underlying medical conditions when faced with immune triggers. Both doctors concurred that it
20 was unsafe for our son to receive any immunization given his multiple chronic and serious
21 conditions and the risk that immunization could trigger a regression.

22
23 10. On September 16, 2019, the school denied the medical exemption based on the opinion of
24 Dr. Stephen G. Hassett ("**Dr. Hassett**"), an emergency medicine physician who acts as a paid
25

26 DECLARATION OF JANE DOE IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY
27 INJUNCTION - 2
28

consultant to the Coxsackie-Athens Central School District and upon information and belief, who has no expertise in my son's conditions or even treating children.

11. Dr. Hassett recommended denying the exemption based on his opinion that the letters did not specify how the exemption request qualified under the ACIP contraindications or precautions.

12. Before overriding John's treating physicians' recommendations, Dr. Hassett never examined John, called either of his treating physicians, or reviewed any of his records other than the exemption form and accompanying letters. When I asked if he would please speak to John's treating providers, he said he would not call them.

13. After the denial, Dr. Forman called Dr. Hassett anyway to explain why my son needs a medical exemption. During this phone conversation, I am told Dr. Hassett indicated that he had no discretion to hear any supplemental information or support for the exemption and was obligated to follow the strict guidelines set forth by ACIP.

14. On Saturday, October 5, 2019, we submitted a second medical exemption letter in which Dr. Forman detailed for each vaccine how John's conditions qualified under the ACIP guidance as a precaution or contraindication.

15. Within twenty-four hours of receiving it, Dr. Hassett denied this second submission.

16. When I called regarding the second denial, Dr. Hassett conceded that the exemption letter submitted the second time followed the ACIP guidelines verbatim.

17. Nonetheless, he said he would not "debate" with me or provide me with any explanation about his denial and ended the call.

DECLARATION OF JANE DOE IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION - 3

18. To remain in school without a medical exemption, 10 NYCRR § 66-1.1(f)(1) required John to be vaccinated according to the ACIP Schedule for ages 18 years or younger.

19. ACIP's "catch-up guidance" requires John to receive twenty-four doses of vaccines for ten separate diseases within twelve months.

20. John would have to receive nineteen of the twenty-four doses within a four-week timeline.

21. No safety studies exist evidencing that injecting twenty-four doses of vaccine into the body of a fifteen-year-old child (much less a medically fragile child) within twelve months is safe.

22. We were not willing to risk our son's health and life this way so the school district expelled John.

23. John has been excluded from participation in classes, in person or online since October 7, 2019. Before his exclusion from school, John was a member of the varsity tennis team and was looking forward to trying out for the varsity volleyball team. He was an active member of several social clubs and was on track to earn a Regents diploma.

24. Now, in addition to being excluded from school, services and activities, John is not allowed to take any further Regents exams or earn a traditional diploma, leave aside a Regent's diploma.

25. The loss of school and related services and socialization has devastated John and harmed him irreparably.

26. It has also been devastating for us. We had to hire an attorney to file an appeal with the Commissioner of Education on or about November 5, 2019. A member of the State Senate sent
DECLARATION OF JANE DOE IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION - 4


1
2 correspondence to the Commissioner of Education supporting the appeal on or about December
3 20, 2019. This letter indicated that the New York State legislature did not intend for school
4 districts to have unilateral power to overrule treating physicians.
5

6 27. During this process, I was in communication with the Andrew Kroger, M.D. from the
7 communications and educations branch of CDC and ACIP. On March 24, 2020, he sent me an
8 emailing confirming that CDC's position is that ACIP is not meant to define the allowable
9 medical exemptions.
10

11 28. As of the date we filed this lawsuit, I still hadn't received a response from the
12 commissioner of education, and John remained unable to receive an education at any private or
13 public school or to participate in testing or activities.
14

15 29. Three days after filing the complaint, a cursory denial from the Commissioner of
16 Education was issued which failed to even consider anything outside of a narrow interpretation
17 of ACIP.

18 RESPECTFULLY SUBMITTED this 20th day of August 2020
19

20 
21

22 Jane Doe
23
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25

26 DECLARATION OF JANE DOE IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY
27 INJUNCTION - 5
28

APPENDIX E

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

JANE BOE, et al.

Plaintiffs,

vs.

HOWARD ZUCKER, et al.

Defendants.

Civil Action No.: 1:20 – CV – 0840 (BKS/CFH)

**DECLARATION OF JANE BOE IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION**

JANE BOE, pursuant to 28 U.S.C. § 1746 declares under penalty of perjury as follows:

1. I am the parent of a medically fragile child who has sought a medical exemption in the Three Village Central School District in New York since August, 2019.
2. I write this affidavit in support of the Plaintiffs' motion for a preliminary injunction and as a potential class member in this suit.
3. My child suffers from and is in current active treatment for autoimmune encephalitis, Postural Orthostatic Tachycardia Syndrome ("POTS"), dysautonomia, and chronic/severe Lyme disease and Bartonella..
4. These health issues cause a myriad of physical and neuropsychiatric symptoms including but not limited to neuro-inflammation, obsessive compulsive disorder, separation anxiety, depression, insomnia, neuro-visual processing disorder, brain fog, excessive fatigue, gas-

DECLARATION OF JANE BOE IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION - 1

1 tro intestinal issues, muscle tenderness, decrease in processing speed, and impaired
2 working memory. These symptoms must be managed carefully with all efforts made to
3 avoid exacerbations due to assaults to her immune systems.
4

- 5 5. Our family has been traumatized and severely impacted by this medical condition as all
6 of my children have suffered from it. My son, now age 20, was debilitated by neuro-psy-
7 chiatric symptoms and processing issues. Following his diagnosis he received several
8 years of intensive treatment to modulate his immune system and is now in remission.
9 Upon medical advise he DID NOT receive the meningococcal vaccination or booster in
10 secondary school as required by NYS. Unfortunately treatment was not as successful for
11 my oldest son. He died tragically in 2018 at the age of 20 after experiencing severe
12 symptoms related to autoimmune encephalitis triggered by the meningococcal vaccine
13 (given against medical advice before freshman year of college), the flu vaccine and other
14 immune assaults.
15

- 16 6. Our medical providers concluded that my daughter should avoid vaccination or any im-
17 mune assaults due to her medical condition, her history, which included prior adverse re-
18 actions to vaccines, and our family history, particularly my oldest son's reaction to the
19 vaccine and subsequent demise,
20

- 21 7. In accordance with medical advice, my daughter did not receive the meningococcal vac-
22 cine as require by the NYS vaccine schedule..
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- 1 8. In December, 2019, my 15 year old daughter was excluded from high school because she
2 was denied a medical exemption for the meningococcal vaccine, which is the only vac-
3 cine on the NYS schedule that she is missing. She is otherwise fully vaccinated.
- 4
- 5 9. At the start of the 2019 school year, we submitted a medical exemption ("ME") written
6 by my daughter's pediatrician, a licensed physician who has treated her since infancy.
7 Her pediatrician, in consultation with our out of state specialist who treats my daughter's
8 complex medical condition, determined that the meningococcal vaccine would be detri-
9 mental to her health and the risks outweighed the benefits of said vaccine. The ME was
10 completed by her pediatrician on the require NYS form.
- 11
- 12 10. The form was submitted prior to the beginning of the school year. Upon receipt, he dis-
13 trict physician who, after a brief discussion with the pediatrician, denied the ME. He in-
14 dicated that although he wouldn't give my daughter the vaccine either, the ME wording
15 was insufficient and he had to deny it. In response to this denial, her pediatrician sub-
16 mitted a more detailed ME with pertinent language related to the emergency regulations
17 that were issued by the DOH in August, 2019. The district physician quickly denied the
18 ME, but suggested it be sent to the Department of Health for their guidance before a for-
19 mal denial was issued by the district. The ME was submitted to the DOH and "pended"
20 for several weeks. Just prior to the Thanksgiving break, we were notified that the ME
21 was denied and my daughter would be excluded from school on December 21, 2019.
- 22
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1 11. Upon exclusion we submitted another ME from a third physician with the hopes that the
2 ME would be accepted during the holiday break and she could return to school in Jan-
3 uary, 2020. This ME was immediately “denied” by the district physician and sent to the
4 DOH by the district. A formal decision would not be made until the DOH’s opinion was
5 received. So the ME was left to “pend” for an unspecified amount of time.
6

7
8 12. I tried everything to expedite the DOH review of the ME so that my daughter could re-
9 turn to school. No one at the DOH would help facilitate a review. No one asked for ad-
10 ditional information or to speak with her treating physicians. There was no indication of
11 a timely review. We couldn’t have her attend school while the ME “pended” because the
12 uncertainty was taking a toll on her mental health. We also couldn’t risk her going back
13 to school in January, only to be excluded a few days or weeks later. She just couldn’t
14 handle that type of humiliation.
15

16
17
18 13. . My daughter had endured severe hardship and anxiety waiting an entire semester for a
19 determination to be made about her ME. She went to school every morning petrified that
20 the letter kicking her out of school would be hand delivered that afternoon. Her grades
21 started plummeting and she began withdrawing from activities and social functions. She
22 lived in a constant state of fear, grief, and disbelief. Things only got worse for her when
23 she found out over Thanksgiving break that she would be forced leave her beloved school
24 to homeschool for the remainder of the year.
25
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1 14. On that last day of school in December, 2020, my daughter's heart was broken. She be-
2 gan homeschooling in January and it was isolating and depressing for her. Her grief,
3 now compounded by the loss of her academic and social life, exacerbated her symptoms
4 and left her alone and ostracized. The school's refusal to accept the ME in December was
5 devastating. She felt rejected and betrayed by the school, wondering how they could
6 deny her a ME when her doctors believed she should be exempt. Since we were prohib-
7 ited from contacting or speaking with the district physician, we couldn't give her a good
8 reason as to why
9
10
11

12 15. This process has been an ordeal for our entire family. It has been coercive and exploitive.
13 We were forced to choose between our child's health and her right to a public education.
14 She was forced to homeschool, which has had a personal and financial toll on us. We
15 needed to supervise her all day, every day and needed to pay thousands of dollars for an
16 online high school program that would keep her academically on par.
17
18

19 16. My daughter belongs in her public high school. She belongs in an enriching academic
20 environment. She belongs in extra-curricular activities, socializing with her friends. She
21 belongs in a protected group of children who are medically exempt from getting a man-
22 dated vaccine that can cause major health consequences.
23
24

25 17. Wherefore, I respectfully ask this Court to grant the relief and let our children remain in
26 school pending the outcome of this case.
27
28

1 RESPECTFULLY SUBMITTED this 7th day of August, 2020
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11

A handwritten signature in black ink that reads "Jane Boe". The signature is written in a cursive style with a large initial "J" and "B".

12 _____
13 [Initials]
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DECLARATION OF JANE BOE IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION - 6

APPENDIX F

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

JANE DOE, et al.

Plaintiffs,

vs.

HOWARD ZUCKER, et al.

Defendants.

Civil Action No.: 1:20 – CV – 0840 (BKS/CFH)

DECLARATION OF JOHN COE IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION

1. I am one of the named Plaintiffs in this suit and write this declaration in support of our motion for temporary relief.

2. When I was a child, I suffered a severe vaccine reaction but recovered. My mother was a nurse and decided to keep vaccinating us.

3. My brother wasn't so lucky. He also suffered a severe reaction and died from the adverse reaction at two months of age.

4. My brother's death certificate shows that he died of a vaccine reaction. My parents were compensated through the vaccine court after proving that his death was caused by the vaccines.

5. Many other members of my family have also suffered serious reactions, including my sister, my mother, and my cousin, who also died as an infant after administration of vaccines.

6. After my brother died and then my sister got a reaction, I had a medical exemption for the rest of my childhood.

DECLARATION OF JOHN COE IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION - 1

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3 7. We've had genetic testing done and it shows our children carry gene mutations and other
4 genetic vulnerabilities that explain why there are so many serious vaccine reactions in our family.

5 8. My children also are medically fragile in other ways that show an increased likelihood of
6 injury. Given our family history, the children's medical histories and genetic testing results and
7 on the advice of medical professionals, among other reasons, we have never vaccinated our
8 children.

9
10 9. In August 2019, we submitted our medical exemption from a licensed physician to our
11 school district. Our children began attending school as always and we assumed it had been
12 accepted.

13 10. In addition to a family history of vaccine injury and death, there is a family history of
14 numerous autoimmune and other conditions consistent with the genetic profile of the children.

15
16 11. On January 21, 2020, without warning, we received an email attaching correspondence stating
17 that "the building principals" of our children's schools had rejected the medical exemptions
18 for both our children and that they would need to get fully up to date within a week or would
19 be removed from school.

20
21 12. The Superintendent noted that the school had received a recommendation from the NYSDOH
22 and by unspecified members of a "medical team" locally but asserted that the building
23 principals each ultimately made the decision to reject the medical exemptions
24 "independently."

25
26 DECLARATION OF JOHN COE IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY
27 INJUNCTION - 2
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3 13. Attached to the letter from the school was a letter dated December 5, 2019 written by
4 Defendant Elizabeth Rausch-Phung, M.D., M.P.H., the Director of the Bureau of
5 Immunizations at the New York State Department of Health.

6 14. Dr. Rausch-Phung stated that the adverse reactions of family members (including death) are
7 not contraindications for immunization under ACIP and concluded that “there is not sufficient
8 information included regarding the genetic testing performed to conclude that vaccines
9 required for school attendance would be contraindicated in a child with variations in the
10 reported SNPs. The specific source of the genetic tests, the results of these tests, and review
11 and recommendations of this child’s genetic findings by a medical genetics specialist would
12 be needed to determine if these results preclude this student from being vaccinated.”
13

14 15. Before rejecting the medical exemption, neither the school district nor Dr. Rausch-Phung
15 contacted us or our doctor seeking any further information or requested to consult with the
16 treating physician or geneticist.
17

18 16. On January 27, 2020, we submitted a letter from our attorney and the genetic counselor
19 explaining that the only pediatric genetic specialist in the region had a waiting list for new
20 patients of more than one year.
21

22 17. The attorney requested that the school district meet to discuss the denial or grant the family a
23 few months extension to try to expedite an appointment and satisfy Dr. Rausch-Phung’s
24 requirement that they provide a corroborating opinion written by a genetic specialist. She also
25 expressed concern with the legality of the process, stating,

26 DECLARATION OF JOHN COE IN SUPPORT OF PLAINTIFFS’ MOTION FOR A PRELIMINARY
27 INJUNCTION - 3
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1
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3 “I have serious concerns about the legality of this denial and process. Nothing in the
4 law suggests that the family must retain the services of a specialist to be considered
5 for an exemption. To the extent that the DOH isn’t sure about a medical precaution,
6 they should defer to the treating physician and the family. Moreover, there are
7 constitutional issues here involving the fundamental rights of the family to refuse
8 medical treatment especially where the treating physician and providers concur that it
9 could be dangerous to the children’s health. And particularly in a case like this, where
10 the family has already had to suffer the death of more than one child due to vaccine
11 reactions. To require such additional process is in my opinion unlawful and clear
12 overreach.”

13 18. On January 29, 2020, counsel for the school district emailed our attorney denying the requests
14 for a meeting or an extension, and stating:

15 “finally, you cite your ‘serious concerns’ about the legality of the denial
16 process”...[relating to the NYSDOH recommendations]...However, this statement
17 from a recommendation from the Department of Health was neither relied upon nor
18 cited by the district in its decision to deny the medical exemption request.” No
19 indication was given about an alternative reason for the denial other than that the
20 building principals had allegedly “made the decisions independently.”

21 19. I have been told that even after the denial, when there was no appeal pending and months
22 before this lawsuit was filed, our doctor received intimidating correspondence from the state
23 demanding all of our health records “even if we did not agree” to them being disclosed and
24 appearing to insinuate that our doctor would be investigated for writing a medical exemption
25 for our children.

26 20. This has been one of the most difficult years of our lives. The impact on the children and on
27 my wife and myself, financially, emotionally, and in every other way, has been devastating.

28 21. We just want to send our children to school and to keep them healthy.

RESPECTFULLY SUBMITTED this 20th day of August 2020

DECLARATION OF JOHN COE IN SUPPORT OF PLAINTIFFS’ MOTION FOR A PRELIMINARY
INJUNCTION - 4

John Coe Sr.

John Coe Sr.

DECLARATION OF JOHN COE IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION - 5

APPENDIX G

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

JANE DOE, et al.

Plaintiffs,

vs.

HOWARD ZUCKER, et al.

Defendants.

Civil Action No.: 1:20 - CV - 0840 (BKS/CFH)

DECLARATION OF JOHN FOE IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION

1. I am one of the named plaintiffs in this lawsuit and make this declaration in support of our application for emergency relief.
2. Our son, John Foe ("John"), age 11, was born with Hirschsprung's Disease, a rare genetic disease which prevents connections between the brain and gastrointestinal system from forming.
3. As an infant, John had to undergo major gastrointestinal surgery during which surgeons removed a section of his intestine and then reattached the system back together. He has to use a prosthetic colon system that needs to be inserted every night to keep him socially continent.
4. The surgery profoundly affected his immune system. More than 70% of the immune system

DECLARATION OF JOHN FOE IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

is in the gastrointestinal system.

5. John suffers from a long list of severe allergies. He is so sensitive to chemicals and metals that he cannot wear sunscreen or even drink tap water. When John drinks water that is not filtered correctly, he has cramping, diarrhea, and bleeding rash around his rectum. He has experienced the same type of reaction to dairy, fruit, and most antibiotics, among other triggers. When antibiotics are necessary, we have to check him in to a hospital first to manage his adverse symptoms of vomiting, diarrhea and dehydration which requires concurrent administration of metronidazole to minimize reaction symptoms.
6. Another of John's known triggers is immunization. John had a severe reaction to immunization at age 3.
7. John has not received any immunizations since the age of three on the advice of his pediatrician. Due to his serious reaction to immunization, and taking into consideration John's medical history and our family medical history (John's mother suffered paralysis after receiving the DTaP shot), John's doctor determined that he was at substantial risk of having even more severe reactions to subsequent immunization and recommended that he should not receive any more.
8. On or about August 23, 2019, we submitted a properly certified medical exemption from our pediatrician, a physician licensed to practice medicine in New York, detailing why John

DECLARATION OF JOHN FOE IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

should be exempt from further immunization requirements. My wife spoke to the school nurses and was told that all our paperwork was in order and there was no issue.

9. On September 23, 2019, my wife received a call from the Albany City School District Transportation Department letting her know that "since John's medical exemption was denied, he would not be able to take the bus the next day." We had received no notification that John's exemption was even being questioned.
10. We spent the whole afternoon on the phone. We spoke to the principal several school nurses and ultimately the Assistant Superintendent of our school district.
11. The Assistant Superintendent informed us that John could no longer attend school based on the recommendation of a consulting doctor who we had never spoken to and who has never met our son.
12. John has been unable to return to public school since September 23, 2019.
13. This has been devastating for him. John is a very social child and loved school. He was beloved by his classmates. He was an honors student, an avid participant in marching band, chorus, chess club and running club, and affectionately referred to as the "mayor" of his school.
14. John also has special needs and qualified for and received critical services under a 504 plan at school.

DECLARATION OF JOHN FOE IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

15. Following his expulsion from school, the district refused to provide John with these services at home.

16. After he was expelled, John developed serious depression. He was angry, confused and humiliated by his exclusion.

17. We hired an attorney and got extensive genetic testing for John. John carries the MTHFR gene mutation from his maternal side and has several other genetic vulnerabilities that reveal why immunization is particularly dangerous for him. John's pediatrician prepared a forty-page medical exemption, providing extensive detail about why John was at risk of harm from further immunization. The exemption was submitted shortly before Thanksgiving, 2019.

18. On January 3, 2020, we received a letter from the school indicating that they'd sent the exemption letter "to the CDC" for review and had determined that it did not meet the criteria laid out in the ACIP guidelines and was therefore again denied. No detail was provided about who reviewed the letter specifically or what their specific recommendations were based on.

19. My wife and I are both teachers at schools that badly need us and which we love teaching at. We are certified only in New York, and our careers are centered in New York.

Nonetheless, our son was in such bad shape and so severely depressed by being denied the

DECLARATION OF JOHN FOE IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

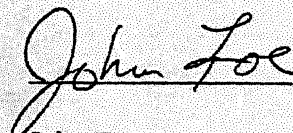
right to go to school that we started making plans to leave the state.

20. Before taking this dramatic step, we applied to a private school in our area. They accepted our medical exemption right away. However, the tuition was too high for us to handle, but this gave us hope. We sent the application to a Catholic school that was more affordable. The second school took a month to review the application and accepted it and John has been attending this private school since March 2020.

21. Though we are relieved to have a school option for John, we can't really afford private school tuition, even at the Catholic school, and our son is not getting the services he is entitled to and needs from the public school

22. John wants to return to his public school, where he was so at home and beloved.

RESPECTFULLY SUBMITTED this 20th day of August 2020


John Foe

DECLARATION OF JOHN FOE IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

APPENDIX H

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

JANE DOE, et al.

Plaintiffs,

vs.

HOWARD ZUCKER, et al.

Defendants.

Civil Action No.: 1:20 – CV – 0840 (BKS/CFH)

**DECLARATION OF JANE JOE IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION**

1. I am the mother of a medically fragile child and am plaintiff in this lawsuit. I make this declaration in support of the emergency relief requested.
2. My son, who is six years old, had a severe, life threatening anaphylactic reaction to his Hep B shot given at birth.
3. My son has special needs. He suffers from severe autism, obsessive compulsive disorder, and a range of neurological and other health issues.
4. We've worked really hard to try to help him function as best he can. We have to be very careful about environmental and dietary triggers, of which there are many. Nonetheless, his health is fragile, and we have a lot of setbacks.
5. On the advice of his treating physicians through the years, my son has had a medical exemption to all further immunization since the anaphylactic reaction at birth.

**DECLARATION OF JANE JOE IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION - 1**

- 1
- 2
- 3 6. My son has had a medical exemption in our current school district since we moved here in
- 4 2018 written by our treating pediatrician.
- 5
- 6 7. There was never an issue until one day, without warning, in November 2019, I received a
- 7 letter stating that my son's medical exemption was being overruled as to all vaccines other
- 8 than the Hep B, and he would need to get caught up on all the other vaccines within a week
- 9 or be removed from school.
- 10
- 11 8. I met with the Superintendent of our school district to beg him to reconsider. I explained how
- 12 we'd always had a medical exemption to all further vaccines, that my son's health was very
- 13 fragile and multiple physicians agreed he should not receive any more vaccines.
- 14
- 15 9. The Superintendent, who is not a medical professional and has no medical training, said that
- 16 his hands were tied, and that he sympathized but as far as he understood, my son would have
- 17 to have a near death anaphylactic reaction to each individual vaccine before he could be
- 18 exempt from that vaccine.
- 19
- 20 10. My child was expelled from school in November 2019 and has been denied an education but
- 21 also all educational services since. Our district has typically provided educational services to
- 22 homeschool children outside of school but decided not to provide them to us.
- 23
- 24 11. Before he was removed from school, my son had an Individualized Education Plan which
- 25 entitled him to extensive needed services including speech therapy five days a week,
- 26 occupational therapy three times a week, music therapy and play therapy.
- 27
- 28

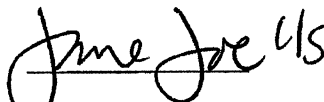
DECLARATION OF JANE JOE IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION - 2

1
2 12. I am a single mom without financial resources. When my son was removed from school, I had
3 to quit my job, go on social services and have been struggling and trying to somehow provide
4 my son an education and all of the services he needs by myself, without training or assistance.
5

6 13. The toll this has taken on my son's health, emotions, and progress and on myself has been
7 severe.
8

9 14. Wherefore, we respectfully ask that this Court grant our emergency relief.

10 RESPECTFULLY SUBMITTED this 20th day of August 2020

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13 Jane Joe
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26 DECLARATION OF JANE JOE IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY
27 INJUNCTION - 3
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APPENDIX I

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

JANE DOE, et al.

Plaintiffs,

vs.

HOWARD ZUCKER, et al.

Defendants.

Civil Action No.: 1:20 – CV – 0840 (BKS/CFH)

**DECLARATION OF JANE LOE IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION**

1. I am the mother of a medically fragile child and a plaintiff in this lawsuit. I make this declaration in support of the emergency relief requested.
2. Until last year, my 15-year-old son was under the care of the same pediatric neurologist since he was seven years old. My son suffers from multiple diagnosed severe autoimmune neurological conditions.
3. For the first seven years of his life, we vaccinated our son in strict adherence to the mandatory schedule and included additional vaccines, such as the influenza vaccine, whenever it was recommended.
4. Our child experienced adverse reactions after many of these vaccines, though at the time we did not put the pieces together to understand what was happening. However, each time, the reactions became progressively worse and lasted longer.

**DECLARATION OF JANE LOE IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION - 1**

- 1
- 2
- 3 5. After his last vaccine, my son became so ill with a barrage of symptoms that progressively
- 4 increased to the point of debilitation. These included, but were not limited to, having only a
- 5 bite of a cracker and a sip of water a day, fears that evolved into apparent hallucinations,
- 6 awaking in the middle of the night horror-stricken and raging for hours inconsolably, and
- 7 numerous other debilitating severe symptoms. We were losing our son before our very eyes.
- 8
- 9 6. We found a highly credentialed and respected pediatric neurologist with vast experience in
- 10 helping children with John's symptoms. He evaluated John extensively, diagnosed him and
- 11 treated him. He was able to stabilize certain of his neurological and autoimmune condition
- 12 symptoms rather immediately, and as to other of his symptoms, more slowly and
- 13 progressively, with medications, ongoing monitoring and testing, and avoidance of known
- 14 triggers, such as pathogen exposures, allergens, toxins, and vaccines, to the extent possible.
- 15
- 16 7. Under the care and management of this uniquely qualified pediatric neurologist, John fared
- 17 relatively well, compared to many with his diagnoses, as they are often homebound, unable
- 18 to attend school and social/extracurricular activities. As often happens with children with
- 19 John's condition, he never did make it back to "baseline" symptoms-wise and still suffers
- 20 setbacks, but has been mostly functional by outward appearances, despite struggles and
- 21 symptoms he strives to hide in public.
- 22
- 23 8. In August and September, 2012, when John first started seeing his pediatric neurologist, we
- 24 were advised that further vaccinating could cause him to decompensate significantly once
- 25 again. However, at that time and for the next several years he was not due for any further

26 DECLARATION OF JANE LOE IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY
27 INJUNCTION - 2
28

1
2 school-mandated vaccinations, already being fully “up to date.” However, we did avoid any
3 further annual flu shots from that point forward.
4

5 9. When John reached 6th grade (fall 2015), the school nurse advised that the Tdap was required
6 to remain in school. We consulted with John’s neurologist and were told he should not get
7 any further vaccines, and completed a medical exemption which was submitted and accepted
8 by the school nurse without issue. He also provided medical exemptions covering John for
9 6th, 7th, 8th and 9th grades, all of which were accepted without issue.
10

11 10. In August 2019, our doctor signed another exemption to cover John for the 10th grade, as the
12 school advised that a new exemption was needed each year. We submitted the signed
13 exemption in September 2019 along with his annual health form, as always.
14

15 11. Shortly thereafter, the school nurse advised us that the school district’s consulting physician
16 (a/k/a the school’s chief doctor) had spoken to our neurologist’s office, and was told that John
17 “was no longer a patient there.” The school nurse further advised that the chief doctor had
18 denied the medical exemption because it had to be issued by a “treating” doctor and John is
19 no longer treated there. Astounded, I explained that our son has been seeing this same
20 neurologist since he was seven years old, that he’s the same one that has written exemptions
21 every year, and that he was still a patient, having been seen and treated the preceding
22 March/April (2019). The school nurse and school doctor were unmoved and the exemption
23 remained rejected.
24
25

26 DECLARATION OF JANE LOE IN SUPPORT OF PLAINTIFFS’ MOTION FOR A PRELIMINARY
27 INJUNCTION - 3
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3 12. Subsequently, we reached out to our pediatric neurologist's office repeatedly, but did not get
4 anywhere and were virtually cut off. In email communications in reply, the response was odd
5 and indicative of fearfulness about signing the medical exemption and words to the effect that
6 he could not be of further assistance for John. On September 26, 2019, the neurologist
7 followed up with a stiff letter that made no sense, given his claim weeks prior that John "was
8 no longer a patient," stating he had just spoken with our school nurse who advised him that
9 John needed the Tdap and meningococcal, and (astonishingly) advising that John ought have
10 these vaccines. This was in profound contradiction with years of prior medical advice and
11 medical documentation written to our schools about the risks the vaccines pose to John
12 specifically.
13

14
15 13. John's last day of school was on or about September 17, 2019. We did not send him in after
16 that point, lest he suffer the humiliation of physical ejection before his peers. On or about
17 September 20, 2019 we received a certified letter that he was not allowed to return to the
18 school premises or activities for lack of vaccines for Tdap and meningitis. He is otherwise
19 fully vaccinated, including for measles.
20

21 14. For the remainder of fall 2019, our lives revolved around the uphill battle of trying to get John
22 back into school and to find a new specialist. I have a full time, demanding job. There are few
23 specialists with expertise sufficient to treat John's conditions and the waiting lists are long for
24 all of them. John's health and academics declined dramatically in all respects.
25

26 DECLARATION OF JANE LOE IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY
27 INJUNCTION - 4
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3 15. In November 2019, we got an appointment with a respected and well credentialed
4 immunologist licensed to practice in New York, who is experienced with John's conditions.

5 16. This doctor concurred that it would be unsafe for John to receive the Tdap or meningococcal
6 vaccines. Accordingly, on or about November 14, 2019, he provided two written medical
7 exemptions (the school adamantly insisted there had to be a separate form for each vaccine in
8 question, which misstates the requirement of setting forth the bases as to each vaccine).
9

10 17. Months of bureaucratic delay ensued during which my son was excluded from school.

11 18. First, the school advised that the district doctor declined the Medical Exemptions because it
12 was on the "wrong form." Our doctor's office had utilized the current New York City DOH
13 forms, believing that to be the most currently required New York form, and we had not been
14 able to suggest otherwise, as we were neither present while it was completed, nor aware of
15 more than one form version (NYC vs. State). Notably, the NYC form is *more comprehensive*
16 than the New York State form and includes all of the same information as the state form, plus
17 a release at that bottom, which we did complete without having been asked, despite that it
18 forces us to waive HIPAA rights.
19

20 19. Despite diligent efforts, I had trouble getting a response to my request for the immunologist
21 to sign a second set of forms. Eventually, the staff told me that the doctor had received a call
22 from someone from New York State, directing that he could not write any further New York
23 medical exemptions "unless he was the doctor who administered the vaccinations," and that
24
25

26 DECLARATION OF JANE LOE IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY
27 INJUNCTION - 5
28

1
2 therefore, he would not be signing any more. Nothing in the law or regulations supports this
3 limitation on physicians.
4

5 20. At our next medical appointment in early December 2019, the immunologist reiterated what
6 the staff had said about having been admonished by New York State not to sign any further
7 medical exemptions “unless he was the doctor who administered the vaccines.” We had come
8 prepared and showed him the text of the New York Public Health Law and verbiage from the
9 NYSDOH site reflecting that ACIP guidelines were not the only criteria, and that he was
10 within his rights to sign a medical exemption if he saw fit. We then asked him if, upon seeing
11 these materials, he would agree to transfer the information from the NYC forms to the NYS
12 forms.
13

14 21. Finally, he agreed to transfer what he had written on the NYC forms to the NYS forms to
15 overcome the school’s denial on a mere technicality and its request for submission on NYS
16 forms. Again, as directed, two separate NYS forms were completed “one for each vaccine.”
17 We promptly submitted these to the school. Further delays beyond our control ensued.
18

19 22. Finally, on January 7, 2020, we were advised by school staff that the school district doctor
20 denied the medical exemptions and we received written notice that John was officially
21 stricken from the rolls and that all departments had been notified.
22

23 23. My son was soundly kicked out of his school and his life. His new high school friends had
24 already long forgotten about him by now. His months in exile were extended in perpetuity
25 and despite having slipped into despair months ago, he had now lost all hope of being granted
26

27 DECLARATION OF JANE LOE IN SUPPORT OF PLAINTIFFS’ MOTION FOR A PRELIMINARY
28 INJUNCTION - 6

1
2 re-entry to his education and life. The impact of his school expulsion upon my son and on
3 our family has been severe. My son is highly intelligent and well perceives that he has been
4 forsaken, and when he tries to talk about to us as his parents or one of his doctors, in short
5 order he begins to cry piteously. He is much worse for the wear after an entire year spent
6 alone in his room, day after day... after day.
7

8 24. John's medical condition has made his life unbearable at times. A hallmark of his condition
9 is severe social anxiety and severe school anxiety. John was just at a point of recovering
10 enough health to make out the door each morning with minimal morning upset and was
11 beginning to develop confidence. He was doing well in school. He was getting recognition
12 for his music and was excited to be in several school bands. He was finally overcoming some
13 of his social anxiety and making friends. He had conquered his first year of high school, and
14 had a bright start to his sophomore year, and we all knew this meant he was going to make it
15 through.
16
17

18 25. Instead, he was divested of all he had fought for his entire life a mere two weeks into his
19 sophomore year. His confidence, progress, prospects and hope have all been gratuitously and
20 heartlessly shattered. He has become very depressed and is not able to keep up with his home
21 studies. While he had powered through his school struggles without an IEP or 504, the very
22 structure of his Catholic school and the humans who dwell there, were of therapeutic import
23 to his daily functioning. Likewise, his peers were also a source of structure and motivation,
24 as he felt compelled to stay on par with them (or try) and to comport himself as they did in
25

26 DECLARATION OF JANE LOE IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY
27 INJUNCTION - 7
28

1
2 this college preparatory Catholic school. Left to his own devices, with books and a computer
3 with a video teacher, he cannot overcome his symptoms, muster the discipline or find the
4 purpose. Our attempts to provide therapeutic counsel or to intervene and uplift – all fall flat
5 or worse, throw fuel on his symptomatic fire. What he wants – we cannot give him. He wants
6 his life back.
7

8 26. The devastating ejection from his college preparatory high school has altered the trajectory of
9 John's life. His college prospects are slipping away. We work full time of financial necessity
10 and home instruction has been largely unsuccessful. He needs school with real humans to
11 teach and care about him, and friends to draw strength and spirit from and to laugh with.
12 Additionally, John was forced to miss the P.S.A.T. preparation and test that 10th graders take
13 at school. He is currently in an S.A.T. prep course with his grade peers at a local private
14 tutoring center and he is floundering far behind them, whereas previously, he had always done
15 very well on standardized tests.
16
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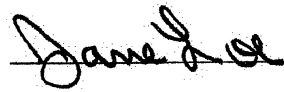
18 27. John feels hopelessly lost and his depression and anxiety have become debilitating. The stress
19 of the situation exacerbate his medical condition and symptoms. I have been in touch with a
20 few psychologists who can provide counseling about his situation, feelings, and
21 homeschooling encouragement, but he refuses to engage. He insists, through tear-filled eyes,
22 that he does not need a therapist -- he needs his life back.
23

24 28. He is now entering month 12 of his tragic and unjust exile. He continues to decompensate
25 educationally, emotionally and socially. He turns 16 in less than 2 months. This age, and a
26

27 DECLARATION OF JANE LOE IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY
28 INJUNCTION - 8

1
2 year gone by “on his own,” bring imminent risk of becoming ungovernable, unable to conform
3 and submit to the rules and rituals of school, or to perceive himself as even belonging there.
4 Occasionally, after choking on a sob that won’t let him speak, he still looks at me with
5 desperate, tearful eyes that seem to plead, “Mom, fix this,” but hardly ever any more. The
6 window is closing for him. I pray, Your Honor, *please save our son*.
7
8

9
10 RESPECTFULLY SUBMITTED this 21st day of August 2020

11
12 
13 Jane Loe

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26 DECLARATION OF JANE LOE IN SUPPORT OF PLAINTIFFS’ MOTION FOR A PRELIMINARY
27 INJUNCTION - 9
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APPENDIX J

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

JANE DOE, et al.

Plaintiffs,

vs.

HOWARD ZUCKER, et al.

Defendants.

Civil Action No.: 1:20 – CV – 0840 (BKS/CFH)

**DECLARATION OF LAWRENCE PALEVSKY,
M.D. IN SUPPORT OF PLAINTIFFS' MOTION
FOR A PRELIMINARY INJUNCTION**

Lawrence B. Palevsky, M.D., pursuant to 28 U.S.C. § 1746 declares under penalty of perjury as follows:

1. My name is Lawrence B Palevsky, MD. I am a NYS licensed pediatrician, a 1987 graduate of the NYU School of Medicine, a 1990 graduate of the Mount Sinai Hospital 3-year pediatric residency , and a 1991 graduate of a 1-year pediatric fellowship in the outpatient department at Bellevue Hospital in the NYU School of Medicine Department of Pediatrics. I was board certified in pediatrics in 1990, and board re-certified in 1997, 2004, and 2011.

2. I write this affidavit in support of the Plaintiffs' motion for a preliminary injunction in the above-named case.

**DECLARATION OF LAWRENCE PALEVSKY, M.D. IN SUPPORT OF PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION - 1**

1
2 3. In the last 30 years of my clinical pediatric practice, I have reviewed the medical
3 records, and have heard the stories of hundreds, if not thousands, of children who have
4 experienced legitimate vaccine injuries.
5

6 4. Vaccine injuries are real. They can be mild to severe. They can appear differently
7 in all children. And they are more widespread than publicly acknowledged.
8

9 5. The CDC and ACIP list of contraindications to vaccinations is but a mere fraction
10 of the known reasons children may be at a significant risk to serious harm from vaccines.
11

12 6. It is my medical opinion, based on my clinical experience, and on my extensive
13 reading of vaccine package inserts and the well-established medical and scientific
14 literature, that these vulnerable children are in dire need of NY State's support to protect
15 them from any added harm to their health and to their lives, from further vaccination.
16
17

18 7. This protection is best supported by a sound, legitimate, and science-based
19 medical exemption, written by treating NYS medically licensed physicians, who have
20 direct experience and relationships with their pediatric patients. These determinations are
21 clinical in nature and cannot be artificially narrowed to a few of the many recognized
22 potential reasons for caution.
23
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1
2 8. The medical opinions of treating physicians need to be respected and accepted,
3 without requiring them to prepare extensively documented medical explanations on
4 school health forms that violate the patients' privacy.
5

6 9. The medical opinions of treating physicians need also to be respected and
7 accepted, without physicians fearing personal and professional retribution for rendering a
8 dissenting medical opinion from the state.
9

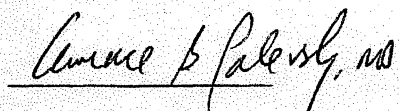
10
11 10. It is my medical judgment that these vulnerable children would be put at grave
12 risk, with no accountability or liability on the part of the judicial system, the state, or the
13 medical system mandating vaccinations to enter school, if their medical exemptions are
14 denied against the advice of their treating physicians.
15

16
17 11. Where is the justification for commissioning non-scientifically and non-medically
18 trained citizens, such as school principals and school superintendents, who have no
19 authority or qualifications to render a medical opinion, to decide on the legitimacy of a
20 medical opinion between a doctor and a patient? There is none.
21

22
23 12. It is my medical opinion that NYS restore the acceptance of medical exemptions
24 to vaccination that are appropriately drafted by NYS licensed treating physicians and
25 other qualified health care practitioners. To not do so would be detrimental to the health
26 of NYS's at-risk and vulnerable children.
27

1
2 13. Wherefore, I respectfully support the Plaintiffs motion for relief.
3

4 RESPECTFULLY SUBMITTED this 20th day of August 2020
5

6 
7

8 Lawrence B. Palevsky, M.D.
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APPENDIX K

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3 **UNITED STATES DISTRICT COURT**
4 **FOR THE NORTHERN DISTRICT OF NEW YORK**

5 JANE DOE, et al.

6 Plaintiffs,

7 vs.

8 HOWARD ZUCKER, et al.

9 Defendants.
10

Civil Action No.: 1:20 – CV – 0840 (BKS/CFH)

DECLARATION OF A.M. 2 IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION

11
12 A.M. 2 pursuant to 28 U.S.C. § 1746 declares under penalty of perjury as follows:

13 2. I am the mother of a medically fragile child that attends public school in Manhattan.

14 3. I write this declaration in support of the Plaintiffs' motion for a preliminary injunction
15 and as a potential class member in this suit.

16 12. My daughter had a serious adverse reaction to vaccines which left her with a
17 permanent movement disorder, and other serious issues.

18 13. Last year, we submitted a medical exemption for our daughter written by a well-
19 respected physician licensed to practice medicine in New York.

20 14. As a follow up to our physician's exemption, we were completing testing in a
21 medically sound, professional and comprehensive manner pursuant to our doctors'
22 recommendations in support of a medical exemption and in our continued search to fully
23 understand the health of our daughter.
24
25

26 DECLARATION OF A.M. 2 IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY
27 INJUNCTION - 1
28

1
2 15. From the start of the exemption process, we were continuously harassed. Our doctors
3 made repeated requests outlining the actionable workup and timeline required for
4 extensive immunology and genetic testing.
5

6 16. Our doctors' determinations about the timeline required to submit this follow up
7 information were ignored and the tests they required were not compatible with the
8 timeline we were given by the school. (Maximum 1- 3.5 weeks for a full report at any
9 given time.)
10

11 17. It was so invasive, completely nonsensical and extraordinary... I have never
12 experienced anything like it.

13 18. Every month I was fighting for my medically fragile child to remain in school and her
14 doctors couldn't comprehend the inability of the NYC Department of Education/ Office of
15 School Health, to follow their directives-- ie science/ best practice required of the testing
16 protocols.
17

18 19. Also, her principal acted unconscionably with me-- argued that the timeline was
19 inaccurate and fraudulent, ignored repeated requests for a meeting and humiliated my
20 daughter by pulling her out of class and telling her that 'she needed to get her shots.'
21

22 20. In the end, my child was allowed to return to school after continued and repeated
23 efforts on behalf of myself and her doctors. (Her doctors include a top pediatric
24 neurologist at Cornell, the director of Pediatric Allergy and Immunology at NYU
25

26 DECLARATION OF A.M. 2 IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY
27 INJUNCTION - 2
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Langone, and specialists from Columbia, Harvard, Children's National (DC), Johns Hopkins.)

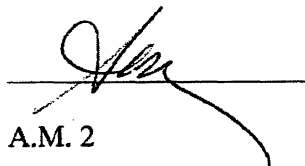
21. We did receive back the comprehensive testing, and our doctors agree that my daughter has serious contraindications and immune challenges and cannot be vaccinated safely.

22. Nonetheless, the school will not give us a straight answer about whether our exemption will be accepted this coming year.

23. We cannot go through another invasive and terrible and humiliating year like last year again. We cannot walk on eggshells wondering if my daughter might suddenly be removed from school or confronted with another inappropriate and humiliating lecture from the school.

24. Wherefore, I respectfully ask this Court to grant the relief and let our children remain in school pending the outcome of this case and to stay the regulations that allow school districts to overrule treating physicians.

RESPECTFULLY SUBMITTED this 2nd day of August 2020


A.M. 2

DECLARATION OF A.M. 2 IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION - 3

APPENDIX L

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

JANE DOE, et al.

Civil Action No.: 1:20 – CV – 0840 (BKS/CFH)

Plaintiffs,

vs.

HOWARD ZUCKER, et al.

DECLARATION OF E.C. IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION

Defendants.

E.C., pursuant to 28 U.S.C. § 1746 declares under penalty of perjury as follows:

1. I am the parent of a medically fragile child who sought a medical exemption in the New York City (Kings County) school district in New York for the 2019-2020 school year.
2. I write this declaration in support of the Plaintiffs' motion for a preliminary injunction and as a potential class member in this suit.
3. My child suffers from Chronic Inflammatory Demyelinating Polyneuropathy.
4. My child never had a medical exemption before the 2019-2020 school year and had been fully vaccinated up until such time. My three other children are fully vaccinated and have not had exemptions of any kind.
5. However, my child's treating physicians felt that further vaccination would not be safe for him given his severe condition.
6. At the start of the 2019 school year, we submitted two exemption applications, both certified by NYS licensed specialists- my child's neurologist and immunologist.
7. The two exemptions that we submitted were both denied. I was then forced to hire a lawyer to help navigate the appeal process, which was a burdensome expense for a nursery school teacher and a New York City fireman to bear.
8. In the new appeal, we had the neurologist rewrite with exact quotes taken from the ACIP guidelines substantiating my son's medical condition and the need to defer vaccination. I resubmitted the appeal to the school. Although they claim to have forwarded the exemption to the Office of School Health, we never received a response. The principal kindly allowed my son to remain in school.
9. It was an extremely stressful ordeal, and we lived in constant fear of him being pulled out of class one day and not allowed back. I am full of worry about the upcoming school year.
10. It is so frightening to imagine having to go through this ordeal every year. It is extremely stressful not to be able to plan for the simple things, such as will we be able to continue living in New York State, or will I be forced to move so that my son may remain in school?
11. It is hard enough having a child with a serious medical condition. We do not need to be further victimized and penalized by the education system.
12. I would like to add that my sons' doctors were furious at the denial of his exemptions. "Any doctor that would knowingly vaccinate your son given his condition should hand in their medical license," is what they said. Why should a parent have to choose between risking their child's health, or removing them from the NYS education system? What gives any school official the right to override the orders of NYS licensed doctors and the

ACIP guidelines?

13. Wherefore, I respectfully ask this Court to grant the relief and let our children remain in school pending the outcome of this case.

RESPECTFULLY SUBMITTED this 20th day of August 2020

E.C.

E C

DECLARATION OF E.C. IN SUPPORT OF PLAINTIFFS'
MOTION FOR A PRELIMINARY INJUNCTION - 3

APPENDIX M

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

JANE DOE, et al.

Plaintiffs,

vs.

HOWARD ZUCKER, et al.

Defendants.

Civil Action No.: 1:20 – CV – 0840 (BKS/CFH)

**DECLARATION OF J.S. IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION**

J.S., pursuant to 28 U.S.C. § 1746 declares under penalty of perjury as follows:

2. I am the mother of a medically fragile child that attends public school in New York.

3. I write this declaration in support of the Plaintiffs' motion for a preliminary injunction and as a potential class member in this suit.

4. For the past year, I have not slept through the night.

5. When my son's medical exemption was submitted to his high school in September 2019, they said that there would be a decision within 10 days and that my son could stay in school until a decision was made.

6. We never heard back from the high school about a decision and my son just kept going to school. I did not want to ask the principal or anyone involved and call attention to our case in case it had just gotten lost or misplaced by the health department.

DECLARATION OF J.S. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION -

1
2 7. So many other families with medically fragile children were getting sudden denials.

3
4 They were coming all throughout the year.

5 8. Every day we checked the mailbox and I worried if that would be the day ours would
6 arrive.

7
8 9. I did not want to homeschool my son and I would in no way vaccinate him against
9 medical advice, so I just held my breath and waited.

10 10. My son didn't really make friends at school all of last year and he missed a lot of
11 school because of stress.


12
13 11. He said he didn't want to make friends if he was just going to be kicked out anyway.
14 So every day until school closed down in March because of Covid, we both were just
15 waiting for the ax to fall.

16 12. We pray that this lawsuit will be successful and that schools will stop overruling or
17 second-guessing doctors. We cannot go through another year like we did last year.

18
19 Especially with Covid and all the uncertainty, we need something we can rely on. Even if
20 the schools end up doing distance learning again, that is okay so long as we know that my
21 child will have access to all the same curriculum and resources as his peers and we won't
22 suddenly have to figure out how to do it all ourselves out of nowhere.
23

1
2 13. Wherefore, I respectfully ask this Court to grant the relief and let our children remain
3 in school pending the outcome of this case and to stay the regulations that allow school
4 districts to overrule treating physicians.
5

6 RESPECTFULLY SUBMITTED this 14 day of August 2020
7

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9 _____
10 J.S.
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26 DECLARATION OF J.S. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION -
27 3
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APPENDIX N

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

JANE DOE, et al.

Plaintiffs,

vs.

HOWARD ZUCKER, et al.

Defendants.

Civil Action No.: 1:20 – CV – 0840 (BKS/CFH)

**DECLARATION OF N.C. IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION**

N.C., pursuant to 28 U.S.C. § 1746 declares under penalty of perjury as follows:

1. I am the parent of two medically fragile children who both had medical exemptions to vaccines since 2012, and 2014, respectively.

2. I write this affidavit in support of the Plaintiffs' motion for a preliminary injunction and as a potential class member in this suit.

3. My children both suffer from autism and Mitochondrial disease Complex 1 & 4, respectively. My son's mitochondrial disease was proven in 2011 after a biopsy was conducted on his burst appendix. The procedure, testing and results were groundbreaking. The surgeon did not know about Mitochondrial disease and was skeptical that there would be any findings. When the biopsy results came back, he called me himself, apologizing and noting that the results were clear. Now we know exactly what my son's mitochondria look like. They are misshapen, missing cristae, are abnormal in color and there are not enough of them. Every doctor who has seen the

DECLARATION OF N.C. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION - 1

1
2 lab results agrees that my son's disease makes him unable to process or filter toxins and antigens,
3 including vaccines. His body must fight hard just to make enough energy to get through the day.
4 Now sixteen, he is still nonverbal, has food allergies, low muscle tone, apraxia, and
5 encephalopathy. My daughter, now thirteen, suffers from many of the same issues. She was
6 tested via buccal swab and also shown to have mitochondrial disease. Both children's genetic
7 tests further reveal vulnerability including MTHFR mutation.
8

9
10 4. Doctors who normally refuse to even allow patients to remain in their practice
11 unless vaccinated have been writing my children exemptions since 2012 and multiple treating
12 physicians have stressed that it is not safe for my children to receive more vaccines over the
13 years.
14

15 5. From 2012 to 2019, my children have always had medical exemptions accepted
16 by their schools. Please note that my son did not need his first medical exemption until 2014,
17 because he was up to date with vaccines until then. My daughters first medical exemption in
18 2012 was based on my son's biopsy results.

19 6. At the start of the 2019 school year, as usual, we submitted medical exemptions
20 for our children from their pediatrician, a physician licensed to practice medicine in New York
21 and familiar with their health and conditions. As usual, both exemptions were promptly accepted
22 and my children were able to attend school.
23

24 7. In September 2019, our long-time pediatrician moved out of state. She assured us
25 that another doctor in the practice would be able to write the exemption for 2020. After all, two
26

27 DECLARATION OF N.C. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION - 2
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1
2 different physicians in that practice had already written medical exemptions for our children
3 throughout the years and there was no controversy among our treating physicians that our
4 children could not safely handle vaccines.
5

6 8. However, shortly after our pediatrician moved out of state, we were told that our
7 new pediatrician would not only be unwilling to write a medical exemption, but that the practice
8 would not see us anymore because our children were not up to date on vaccines.
9

10 9. We have been patients of this practice for sixteen years, since my oldest was a
11 newborn. This experience was devastating.

12 10. We have spent the last year paying out of pocket to talk to various practitioners
13 who have through the years either written our children medical exemptions or agreed that they
14 need them. In February 2020 I paid out of pocket to return to the doctor who had written a
15 detailed medical exemption for my children in 2015. He unapologetically said that does not write
16 medical exemptions anymore though he agrees that my children cannot be safely vaccinated. We
17 have also been paying out of pocket to see another licensed physician annually since 2007 who
18 has expertise in our children's conditions. She cannot write an exemption for us because she is
19 not licensed in New York State. She told us that none of her New York licensed colleagues
20 would likely write an exemption for us. She said, "after the emergency mandates, which threaten
21 to take a physician's license away, no doctor will chance writing an exemption."
22

23 11. This year has been the most stressful year of my life. Knowing that the clock is
24 ticking. Knowing that no doctor I have heard of in New York will write exemptions anymore.
25

26 DECLARATION OF N.C. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION - 3
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2 The situation feels hopeless.

3
4 12. My children have severe, significant special needs and medical conditions. They
5 need school and socialization. My son's individualized education plan cannot be tailored to home
6 based education.

7
8 13. Children like mine, who have permanent conditions and have had approved
9 medical exemptions for years, now are told they don't qualify anymore under the new impossible
10 mandate. Doctors who have written them in the past are now afraid to stand up and protect their
11 own patients. This has been a horrific nightmare for so many medically fragile children and their
12 families.

13
14 14. Wherefore, I respectfully ask this Court to grant the relief and let our children
15 remain in school this upcoming year pending the outcome of this case.

16 RESPECTFULLY SUBMITTED this ____ day of August 2020

17 
18 _____
19 N.C.

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26 DECLARATION OF N.C. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION - 4
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APPENDIX O

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

JANE DOE, et al.

Plaintiffs,

vs.

HOWARD ZUCKER, et al.

Defendants.

Civil Action No.: 1:20 – CV – 0840 (BKS/CFH)

DECLARATION OF B.B. IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION

B.B. pursuant to 28 U.S.C. § 1746 declares under penalty of perjury as follows:

1. I am the parent of a medically fragile child who sought a medical exemption in Richmond County, Staten Island school district in New York.
2. I write this affidavit in support of the Plaintiffs' motion for a preliminary injunction and as a potential class member in this suit.
3. My child has the MTHFR A1298C mutation, which predisposes to severe adverse reactions due to an inability to properly methylate and detoxify vaccine components. My child had a severe allergic reaction to a previous vaccination. The reaction consisted of a febrile seizure, crossing of the eye towards the nose, "dancing" eye syndrome, severe headaches, vomiting, high fever, sensitivity to light and irritability. Several doctors informed us that continuing with vaccination is detrimental to my child's health and that the risks outweigh the benefits.

DECLARATION OF B.B. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION - 1

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- 2
- 3 4. At the start of the 2019 school year, we submitted a medical exemption written by three
- 4 physicians licensed to practice in New York who are all familiar with my child (a
- 5 pediatrician, ophthalmologist, and a neurologist).
- 6
- 7 5. My child's immunization exemption request was denied without an explanation. As of
- 8 today, I still do not know the criteria that were used to judge the medical exemption and
- 9 we were never given the chance to discuss or contest said criteria. The impersonal letter
- 10 only stated "Your request for medical immunization exemption your child has been
- 11 denied. Your request was reviewed by a doctor at the NYC Department of Health and
- 12 Mental Hygiene's Office of School Health. The records provided by your child's health
- 13 care provider(s) do not meet standards needed to exempt your child from receiving
- 14 immunization (s) that are required to attend school."
- 15
- 16 6. When I called the Office of School Health (the number provided on the denial letter) and
- 17 asked to speak and/or meet with the doctor who *recommended* this decision, the Health
- 18 Services Coordinator, Jason Wright, stated that the physician does not speak to parents
- 19 directly and that is their policy.
- 20
- 21 7. At this point, I contacted the ophthalmologist to provide the additional medical records
- 22 explaining the severity of the previous adverse reaction. The ophthalmologist filled out
- 23 the form and then yet again I received the *same exact letter* in the mail stating that the
- 24 information submitted by the ophthalmologist has been denied.
- 25
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- BB

BB

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3 8. At this point, I called my child's pediatrician and was informed that a doctor at the NYC
4 Department of Health and Mental Hygiene contacted my child's pediatrician and was
5 very rude, stating that my child's medical exemption will be denied unless we provide
6 further documentation from a neurologist. Specifically, he stated that my child's reaction
7 must have been documented by a neurologist within 10 days of the immunization
8 reaction. Although we did go to a neurologist eventually after the adverse reaction, we
9 had initially taken our child to the ophthalmologist since the febrile seizure resulted in
10 eye crossing, light sensitivity, and "dancing" eye syndrome.

11
12 9. Nevertheless, we went to the neurologist to fill out the form. The neurologist was in
13 agreement and also feels that the strong history of vaccine reaction should be monitored
14 with extreme caution. Yet again we received exactly the same letter and were again at
15 risk for getting kicked out of school.

16
17 10. I felt like I have exhausted all my options to keep my child safe. We had 3 different
18 physicians all stating that my child is not a candidate to receive further vaccinations and
19 my pediatrician does not feel at ease going against her/his recommendations. This
20 upcoming school year, yet again, I would be required to resubmit all paperwork to a
21 doctor that has *never met* my child and does not have complete access to their medical
22 history.

23
24 11. At this point, I do not even know if my pediatrician would be willing to *again* complete
25 the paperwork and be vulnerable to the scrutiny of the doctors at the NYC Department of
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BB

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2 Health and Mental Hygiene. Nevertheless, this third party's *recommendation* unjustly
3 overrules the professional judgment made by my child's team of doctors.
4

5 12. Additionally, after the notification of the decision, *the principal or person in charge of a*
6 *school is responsible for making the final determination on the medical exemption*
7 *request*. The final determination should not be decided by an individual who has never
8 met my child and does not have a medical license. This is not ethical!
9

10 13. It is imperative to note that since the DOH implemented an approved catch-up schedule, I
11 am frightened to even think how this aggressive schedule will impact my fragile child if I
12 was required to vaccinate against my will and against the recommendation of my child's
13 three treating physicians. This accelerated schedule, given with a short time, combining
14 multiple shots in one visit has *never* been tested and studied. I'm beyond devastated and
15 very nervous about going through this treacherous process this year protecting my child's
16 health and wellbeing.
17

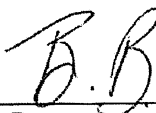
18 14. The ACIP guidelines were never intended to replace a physician's clinical judgment,
19 where the clinician believes vaccination can cause serious injury to a child. Hence,
20 requiring a parent to act contrary to the judgment of their child's doctor, who takes into
21 consideration the child's medical history, is just not acceptable. ACIP guidelines do not
22 define medical exemptions and they are evolving documents that are not a one-fits-all!
23

24 15. Wherefore, I respectfully ask this Court to grant the relief and let our children remain in
25 school pending the outcome of this case.
26

27 DECLARATION OF B.B. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION - 4
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2 RESPECTFULLY SUBMITTED this 7th day of August, 2020
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6 B.B.
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27 DECLARATION OF B.B. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION - 5
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APPENDIX P

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

JANE DOE, et al.

Plaintiffs,

vs.

HOWARD ZUCKER, et al.

Defendants.

Civil Action No.: 1:20 – CV – 0840 (BKS/CFH)

**DECLARATION OF A.M. IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION**

A.M., pursuant to 28 U.S.C. § 1746 declares under penalty of perjury as follows:

1. I am the parent of a six-year-old medically fragile child who has sought a medical exemption in the Amsterdam school district in New York since October 2019.

2. I write this affidavit in support of the Plaintiffs' motion for a preliminary injunction and as a potential class member in this suit.

3. My son received some vaccinations as a baby. After a reaction to the hepatitis B vaccine and due to religious reasons, I decided that, in the best interest of my child, I would stop vaccinating. Due to the law that was passed in June 2019, my son was required to receive more vaccines to enter school. In late August 2019, he received the polio vaccine with a note from his doctor that in 30 days he would receive the varicella vaccine and in another 30 days, the MMR vaccine. 10 days after he received the polio vaccine, I received a call from the school and the school nurse told me that I needed to go against my doctor's recommendations because they

DECLARATION OF A.M. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION - 1

would not allow my son into school until he received the MMR and varicella vaccine. On 9/10/19 my son received both the MMR and varicella vaccine, he then suffered serious adverse effects. It was the scariest thing that I have ever gone through as a parent, and I feared for his life and safety.

4. After witnessing my son's serious adverse reactions to his vaccines in 2019, my son's life-long physician, who is a respected physician licensed to practice medicine in New York, agreed with me that my child should not receive any more doses of the varicella, MMR or hepatitis B vaccine. My doctor recommended increasing the interval between the polio vaccines to decrease any possible side effects. I received a valid medical exemption in October 2019 and a letter from the doctor stating that he recommends increasing the interval between the polio vaccine doses. I then submitted both the exemption and letter to the principal and nurse of his school.

5. My son attends a small catholic school and the principal told me she had to send my son's medical exemption to the superintendent of Amsterdam school district for review. It then was sent to the NYS department of health for review.

6. The director of the bureau wrote a letter stating that she reviewed my son's medical exemption and that the medical exemption "does not support that vaccination would be detrimental to the student's health". Without ever once having examined my child or seeing him suffer after his immunizations in 2019, she recommended the medical exemption written by my son's lifelong treating physician be denied.

7. In addition, she did not agree to the recommendation of delaying the polio vaccine.

8. Shortly thereafter, I received an email from the principal of the school and my son was kicked out of school the day before his Halloween party. My heart was torn, telling my son that he could not attend his Halloween party at school because he became so ill after immunizations. My child was devastated and confused.

9. With two other children to take care of and a part time job, the thought of homeschooling was truly terrifying. But I had no other choice; I lessened my hours at work and ordered a curriculum.

10. Every day, we had to drop my son's sister off at school and pick her up. He had to see all of his friends playing and having fun.

11. My 9-year-old daughter then started experiencing extreme anxiety at school. She could not bear to see her friends waving to their younger siblings, all of whom were friends with her brother. She felt the stigma that had been placed on our family just because we were trying to follow the advice of our treating physician and keep our son safe. She was sad that I could no longer volunteer at school. How could I? My son was not allowed there. My go-lucky, happy, vibrant daughter became anxious and isolated. She missed her brother dearly and neither of my children could comprehend how any adult could treat children in such an awful way.

12. My son, my daughter, and my whole family has suffered serious and lasting harm because of my son's exclusion from school. In addition to the loss of education, the message that has been sent to my child itself is harmful.

13. My child deserves to be in school. It is not his fault that he cannot tolerate any more vaccines safely after such a severe reaction. I cannot subject him to harm again. I cannot ignore the advice of his lifelong physician in favor of a person who has never met him and doesn't understand how serious his reaction was or what we went through. My child is one of these children we are supposed to be protecting with the school vaccine program. Instead, he is being harmed.

14. Wherefore, I respectfully ask this Court to grant the relief and let our children remain in school pending the outcome of this case.

RESPECTFULLY SUBMITTED this 4th day of August, 2020

A handwritten signature in black ink, consisting of the letters 'A' and 'M' joined together, followed by a horizontal line.

A.M.

APPENDIX Q

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

JANE DOE, et al.

Plaintiffs,

vs.

HOWARD ZUCKER, et al.

Defendants.

Civil Action No.: 1:20 – CV – 0840 (BKS/CFH)

DECLARATION OF K.W. IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION

A.M., pursuant to 28 U.S.C. § 1746 declares under penalty of perjury as follows:

1. I am the parent of two medically fragile children whose physicians have determined cannot be vaccinated due to the risk of harm.

2. I write this affidavit in support of the Plaintiffs' motion for a preliminary injunction and as a potential class member in this suit.

3. In August 2019, we submitted medical exemptions for our children to a private Catholic school in New York State. I was aware that there were schools that were arbitrarily overruling medical exemptions in the district. I asked the school to provide confirmation about whether the exemptions were accepted or not before I signed a contract or paid tuition.

4. The school nurse reviewed the exemptions and the school principal promptly let me know that the exemptions were accepted. In reliance, I signed the contract and paid tuition and my children started school.

DECLARATION OF K.W. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION -
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2 5. In October 2019, without my permission or knowledge, the school forwarded my
3 children's medical exemption to the public school's district consulting physician.
4

5 6. At the end of October, the head of our school told me that our children's medical
6 exemption was going to be overruled because the public school's doctor did not think it met the
7 legal criteria for the new health department regulations issued in August. They did not provide
8 any further detail about why. I was given a week to subject my children to vaccines that their
9 physician felt could endanger them or to leave school without reimbursement for the tuition paid.
10

11 7. My exemption was certified by a physician licensed to practice in New York and
12 familiar with my children who agreed that immunization would put them at risk.

13 8. Tremendous stressful back and forth ensued. The Catholic school admitted that
14 they had accepted the exemption in August. The head of the school said that the reason that she
15 decided to revisit the issue was that she'd been given guidance that she could be fined \$2,000 a
16 day if the department of health disagreed that the children met the legal criteria set forth in the
17 new regulations, and she could not risk that.
18

19 9. I consulted a second physician licensed to practice in New York who concurred
20 that it was not safe to immunize my children. On or about November 3, 2019, I asked the school
21 if they would allow my children more time to stay in school so that the second physician could
22 write a corroborating medical exemption for them. This request was declined. My children were
23 forced to leave school on November 4th.
24

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2 10. The experience was devastating for them. They could not understand why they
3 were not welcome at school. We were at a loss suddenly trying to juggle work and have young
4 children out of school all day needing an education.
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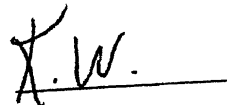
6 11. Ultimately, we had to hire an attorney and go through enormous expense and
7 stress. After substantial legal negotiation, my children were re-admitted in January 2020 and
8 allowed to remain in school pending a review by the Department of Health of the second medical
9 exemption.
10

11 12. The Department of Health did not respond. We spent the whole rest of the school
12 year walking on eggshells, not knowing if at any moment we would hear back, and our children
13 would be removed from school abruptly as they had been in November.
14

15 13. This experience has been emotionally, financially, and psychologically
16 devastating. My children and family already struggle with so many health issues. These new
17 policies and regulations are too much.

18 14. Wherefore, I respectfully ask this Court to grant the relief and let our children
19 remain in school this upcoming year pending the outcome of this case.
20

21 RESPECTFULLY SUBMITTED this 7 day of August, 2020

22 

23 K.W.
24

25
26 DECLARATION OF K.W. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION -
27 3
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APPENDIX R

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

JANE DOE, et al.

Plaintiffs,

vs.

HOWARD ZUCKER, et al.

Defendants.

Civil Action No.: 1:20 – CV – 0840 (BKS/CFH)

**DECLARATION OF C.M. IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION**

C.M. pursuant to 28 U.S.C. § 1746 declares under penalty of perjury as follows:

1. I am the mother of two medically fragile children who attend school in New York State.
2. I write this declaration in support of the Plaintiffs' motion for a preliminary injunction and as a potential class member in this suit.
3. My husband has a history of severe adverse reaction to immunization, as he became epileptic as a child as a documented adverse vaccine injury.
4. The CDC guidelines state that our girls should be medically exempt from at least the MMR vaccine due to the risk of seizures in the immediate family history.
5. My children had never been vaccinated as a result of the family history and due to our sincere religious beliefs.

DECLARATION OF C.M. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION - 1

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- 3 6. Last fall, after the religious exemption was repealed, we sought a medical exemption
- 4 at least from the MMR and DTaP vaccines, per the ACIP precautions.
- 5 7. We went to our pediatrician and to my husband's original diagnosing neurologist, a
- 6 renowned pediatric neurologist at Columbia Presbyterian who diagnosed my
- 7 husband's condition as having occurred in reaction to his childhood vaccines.
- 8 8. Our pediatrician acknowledged that the girls were at risk of harm from vaccines but
- 9 said he could not write an exemption because "they will take away my license and I
- 10 will lose my practice."
- 11 9. The neurologist stated that he could not because "many families had requested them
- 12 recently and he decided he would not write any."
- 13 10. Neither reason had anything to do with our children's well-being. I don't see why we
- 14 need to risk our children getting a documented reaction that would result in a
- 15 permanent, life-altering disability such as my husband suffers just to satisfy an
- 16 arbitrary quota.
- 17 11. The CDC guidelines say that herd immunity is achieved at a 95% vaccination rate. Our
- 18 girls were the only two children kicked out of their elementary school after the
- 19 religious exemption was repealed, meaning the school was well-above 95%
- 20 compliant.
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DECLARATION OF C.M. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION - 2

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2 12. We honestly don't know what to do. We did discuss moving out of state; financially
3 that was a challenge as we had only just purchased our home in December 2018.
4

5 13. The ordeal has been physically, mentally and emotionally draining, for all of us.

6 14. Our younger daughter fell in to a depression, and she is our kind, happy, joyful child.
7 It was all so bad, she didn't want to get out of bed in the morning and "do home-
8 school".
9

10 15. The older daughter was graduating elementary school, and she missed so many fun
11 activities in what is a very special year at our school. For example, she is not in the
12 class picture of her yearbook; in fact, she's hardly represented at all in the yearbook
13 after spending 5 years at the school. These are stolen memories, and so grossly
14 unfair to a child.
15

16 16. I do feel as if I've been mandated to play "Russian Roulette" with my children's
17 health.
18

19 17. What I can't understand is, when you start with a new doctor, they always do a
20 comprehensive intake starting with your family history, which then builds your health
21 picture and decision making. If your father had a heart condition, you'll be monitored
22 for the same as it's likely you've inherited that condition too. Why doesn't family
23 history guide vaccine decisions?
24
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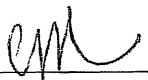
26 DECLARATION OF C.M. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY
27 INJUNCTION - 3
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2 18. New York's regulations are putting families at risk by intimidating doctors out of
3 making their own clinical determinations.
4

5 19. I truly believe that these new regulations, including and especially all of the scrutiny
6 and push back against any doctor that writes an exemption, are a tragedy to
7 vulnerable families.
8

9 20. Wherefore, I respectfully ask this Court to grant the relief and let our children remain
10 in school pending the outcome of this case and to stay the regulations that allow school
11 districts to overrule treating physicians or the state to take clinical judgment away
12 from treating doctors.
13

14 RESPECTFULLY SUBMITTED this 16 day of August 2020

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16  _____

17 C.M.
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26 DECLARATION OF C.M. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY
27 INJUNCTION - 4
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APPENDIX S

1
2 **UNITED STATES DISTRICT COURT**
3 **FOR THE NORTHERN DISTRICT OF NEW YORK**

4 JANE DOE, et al.

Civil Action No.: 1:20 – CV – 0840 (BKS/CFH)

5
6 Plaintiffs,

7 vs.

8 HOWARD ZUCKER, et al.

DECLARATION OF N.F. IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION

9 Defendants.
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12 N.F. pursuant to 28 U.S.C. § 1746 declares under penalty of perjury as follows:

13 2. I am the mother of a medically fragile sixteen-year-old girl in the New Paltz School
14 District of New York.
15

16 3. I write this declaration in support of the Plaintiffs' motion for a preliminary injunction
17 and as a potential class member in this suit.
18

19 12. Last fall, my daughter was starting a new medication that had potential serious side
20 effects. To prevent diagnostic confusion in the event that a vaccine side effect occurred
21 during that period, her pediatrician recommended that she get a three month exemption
22 from immunizations and then resume the catch up schedule one vaccine at a time after so
23 that we knew which medication was causing the problem if she encountered one.
24

25 13. The school denied the initial exemption application and my daughter was removed
26 from school.
27

28 DECLARATION OF N.F. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION -
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2 14. More detrimentally, my child was taken out of her classroom and brought to the
3 principal. He had no right to speak to her the way he did, making her feel like she had
4 done something wrong. We were treated like we were criminals.
5

6 15. I had to speak with the superintendent and demand that if there is paperwork due from
7 the Dr's office or something that needs catching up on, that it is to be handled by the
8 adults in her life and to let her focus on school. She is a minor and should not be dragged
9 into following up on paperwork. I also asked the same of the nurse. "Please stop calling
10 my daughter into your office! Call me!"
11

12
13 16. We then submitted a second exemption request that explained exactly how the
14 exemption fit within the ACIP guidelines. Our doctor's reason for the delay falls squarely
15 in the guidelines, so this wasn't hard. However, the follow up request was still denied.
16

17 17. We had to appeal to the Commissioner of Education. We could not afford to hire an
18 attorney. It was extremely stressful, took weeks to prepare, and we made a lot of mistakes
19 trying to do it without representation.
20

21 18. The appeal was finally successful but only after my daughter missed six weeks of
22 school after she was removed initially. After the appeal was successful, the school let her
23 resume studies but then again kicked her out shortly after when she attempted to follow
24 the doctor's advice and get the boosters one at a time.
25
26
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1
2 19. Ultimately, after a lot of expense and stress, they let her back in school but then she
3 had to have the added stress of making up six weeks of work while attempting to keep up
4 with the current work.
5

6 20. The anxiety, stress and isolation caused some very negative behaviors that were
7 concerning. Also, my daughter's rheumatoid arthritis and Lyme disease symptoms were
8 significantly exacerbated by her overly sped up catch up immunization schedule.
9

10 21. Schools have no business attempting to overrule treating physicians over treatment
11 recommendations for medically fragile kids like my daughter.
12

13 22. Wherefore, I respectfully ask this Court to grant the relief and let our children remain
14 in school pending the outcome of this case and to stay the regulations that allow school
15 districts to overrule treating physicians.
16

17 RESPECTFULLY SUBMITTED this 19 day of August 2020
18

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21 N.F.
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APPENDIX T

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

JANE DOE, et al.

Plaintiffs,

vs.

HOWARD ZUCKER, et al.

Defendants.

Civil Action No. 1:20 - CV - 0840 (BKS/CFH)

DECLARATION OF C.B. IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION

C.B. pursuant to 28 U.S.C. § 1746 declares under penalty of perjury as follows:

1. I am a nurse practitioner and have two children whose medical exemptions to vaccines, written by a physician licensed to practice in New York, were denied by the Alfred Almond Central School District.
2. I write this declaration in support of the Plaintiffs' motion for a preliminary injunction and as a potential class member in this suit.
3. I have personal history of developing autoimmune condition alopecia universalis (total body hair loss) following administration of Hep B vaccine series in nursing school so my husband and I decided our children would never receive this vaccine series.
4. My children both have genetic mutations and vulnerabilities that put them at increased risk of serious harms from vaccines.

DECLARATION OF C.B. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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3 5. We submitted medical exemptions for both children in January 2020. Detailed genetic
4 analysis was performed on each child. Our doctor recommended that one of the
5 children be exempt only from Hepatitis B vaccine and the other from all vaccines.

6 6. The school made us homeschool our children pending review of the exemptions. We
7 did not hear back until June 1, 2020, at which time the school district denied the
8 exemptions based on the recommendation of the school medical director.

9 7. The school medical director never reached out to speak to the NY physician who
10 signed our medical exemptions to discuss.

11
12 8. Our burdens have been great both emotionally and financially. My older son who is
13 16 was removed from all his athletic opportunities as home schooled children are not
14 allowed to participate in school sports in NYS.

15 9. My husband and I have both had to take time off of work to help home school the
16 children especially our 11 year who was in his 6th grade year.

17
18 10. I recently had to quit my job as an NP working for the University of Rochester and
19 this will have a significant effect on our family financially, we have already lost
20 thousands of dollars since the repeal.

21
22 11. This should not be happening

23 12. There are many differences in medical opinions on most subjects in medicine. It is
24 vital that parents, who know their children and their family health history the best, be
25 able to work with the physicians that they feel most comfortable with and follow their

26 DECLARATION OF C.B. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION
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1
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3 advice. Licensed physicians must adhere to standards of care, even if there are
4 differences of opinion about what that requires.

5 13. I am a medical professional. I know that my children cannot safely take all of the
6 vaccines. This has been confirmed by a licensed physician.

7 14. Wherefore, I respectfully ask this Court to grant the relief and let our children remain
8 in school pending the outcome of this case and to stay the regulations that allow school
9 districts to overrule treating physicians or the state to take clinical judgment away
10 from treating doctors.
11

12 RESPECTFULLY SUBMITTED this 15th day of August 2020

13
14 C.B.

15
16 C.B.

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26 DECLARATION OF C.B. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION
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APPENDIX U

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

JANE DOE, et al.

Plaintiffs,

vs.

HOWARD ZUCKER, et al.

Defendants.

Civil Action No.: 1:20 – CV – 0840 (BKS/CFH)

DECLARATION OF A.M. IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION

A.M. pursuant to 28 U.S.C. § 1746 declares under penalty of perjury as follows:

1. I am the mother of a medically fragile boy who attend school in New York State.
2. I write this declaration in support of the Plaintiffs' motion for a preliminary injunction and as a potential class member in this suit.
3. My son has serious health issues and is immune compromised. In addition to other health challenges, he has primary immune deficiency, cerebral palsy, elevated platelet counts, speech motor apraxia, and an unstable progressive neurological disorder that has yet to be understood fully.
4. Last fall, my son's pediatrician wrote a medical exemption which was accepted. This year, however, he has refused to sign it for the coming school year 2020-2021 despite these ongoing conditions, and prior reactions to vaccination and medications. Upon

DECLARATION OF A.M. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

1
2 information and belief, he is acting out of fear of retaliation. There has been no
3 change in my son's health to justify such a reversal.
4

5 5. The nurse from his special education school has contacted my pediatrician about
6 renewing the exemption and has not received correspondence in reply.
7

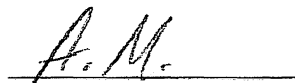
8 6. I attempted to change pediatricians and he is now holding my son's medical records
9 for hostage at seventy-five cents per page even if they put them on a disc.

10 7. My son was already accepted at another pediatrician and I believe the pediatrician
11 will write him an exemption (my son's conditions fit squarely within the criteria). But
12 the new pediatrician will not see him without records.
13

14 8. I believe that these new regulations are stopping vulnerable children from getting the
15 medical exemptions that they deserve and need – the immunization mandates were
16 supposed to be here to protect our most vulnerable kids. Now they are hurting them.
17

18 9. Wherefore, I respectfully ask this Court to grant the relief and let our children remain
19 in school pending the outcome of this case and to stay the regulations that allow school
20 districts to overrule treating physicians or the state to take clinical judgment away
21 from treating doctors.
22

23 RESPECTFULLY SUBMITTED this ____ day of August 2020

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26 DECLARATION OF A.M. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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A.M.

DECLARATION OF A.M. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

- 3

APPENDIX V

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

JANE DOE, et al.

Plaintiffs,

vs.

HOWARD ZUCKER, et al.

Defendants.

Civil Action No.: 1:20 – CV – 0840 (BKS/CFH)

**DECLARATION OF R.B. IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION**

R.B. pursuant to 28 U.S.C. § 1746 declares under penalty of perjury as follows:

1. I am the father of two medically fragile children. We reside in the Sayville School District in New York.
2. I write this declaration in support of the Plaintiffs' motion for a preliminary injunction and as a potential class member in this suit.
3. My children have received most of the vaccines on the schedule. We stopped vaccinating after one son developed such a severe reaction that he is now permanently and severely disabled for life, and is undergoing stem cell therapy to try to repair the damage that has been done to him from his vaccine injury.
4. We ultimately obtained exemptions for both of our children and they were able to attend school last year.

DECLARATION OF R.B. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION
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- 3 5. However, the process was extremely traumatic for our entire family. Given our family
- 4 medical history and the children's genetic vulnerabilities and vaccine adverse reactions,
- 5 it was clear to our physicians that our children should not receive more vaccines (they
- 6 are missing between them boosters of the DTaP, inactivated polio and varicella
- 7 vaccines).
- 8
- 9 6. However, under the new regulations, it was not enough for our physicians to simply
- 10 make clinical determinations and have that respected.
- 11
- 12 7. Instead, our privacy was significantly invaded. Our family has experienced more stress
- 13 since last summer than anyone should ever be subjected to.
- 14
- 15 8. Our children were subjected to an enormous amount of medical testing to substantiate
- 16 the need for the exemption.
- 17
- 18 9. The entire experience has negatively impacted our parenting experience in a profound
- 19 way. It is difficult to enjoy time with my children based on the constant stress that I
- 20 am now under.
- 21
- 22 10. We have been walking on eggshells wondering if our children would suddenly be
- 23 kicked out of school if some bureaucrat who has never met them or examined them
- 24 decided that they disagreed with our doctors, or that we have not provided enough
- 25 information.

26 DECLARATION OF R.B. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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3 11. This situation has caused me great difficulty sleeping for the past year. Certain smells
4 from last summer trigger tremendous anxiety in the form of tightness in my chest and
5 shortness of breath.

6 12. I have developed a deep distrust of the government- particularly the government of the
7 State of New York. I live in a constant state of fear that a time will come when I will
8 no longer be able to protect my boys from a tyrannical and overreaching state
9 government that is hell-bent on vaccinating my children against my will and against
10 the strong advice of their physician, who is personally aware of their vulnerabilities,
11 thereby causing them even greater harm than has already been inflicted on my already
12 vaccine-injured son.
13

14 13. No parent should ever have to choose between the health of their child and their
15 child's right to an education. The unconscionability of this situation is magnified with
16 our son who was injured, who is in even greater need of an education tailored to his
17 special needs, who will be denied that education unless we agree to more of the same
18 vaccines that caused his disability in the first place.
19

20 14. Law abiding citizens living in a free country should not live in fear of their
21 government.
22

23 15. Wherefore, I respectfully ask this Court to grant the relief and let our children remain
24 in school pending the outcome of this case and to stay the regulations that allow school
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1
2 districts to demand such invasive documentation and to prevent parents from being
3 allowed to follow the advice of their treating physicians.
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5 RESPECTFULLY SUBMITTED this 18TH day of August 2020
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9 R.B.
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26 DECLARATION OF R.B. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION
27 - 4
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APPENDIX W

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

JANE DOE, et al.

Plaintiffs,

vs.

HOWARD ZUCKER, et al.

Defendants.

Civil Action No.: 1:20 – CV – 0840 (BKS/CFH)

DECLARATION OF M.D. IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION

M.D., pursuant to 28 U.S.C. § 1746 declares under penalty of perjury as follows:

1. I am the parent of two medically fragile children. We reside in the Fayetteville Manlius School District in New York.
2. I write this declaration in support of the Plaintiffs' motion for a preliminary injunction and as a potential class member in this suit.
3. My oldest son had increasingly severe reactions to immunization. As an infant, he vomited, developed large painful swelled and hard lumps at the injection site and then began to show seizure reactions after immunizations.
4. After he got the MMR vaccine, the symptoms increased. He had severe swelling and brain injury and lost his ability to speak.
5. We chose not to vaccinate our younger daughter due to the reactions of her brother.

DECLARATION OF M.D. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION -

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3 6. In 2008, 2009, 2010, 2011, 2012, and 2013 we submitted medical exemptions written by
4 our children's pediatrician, who is licensed to practice in New York.

5 7. Before the beginning of the 2014-2015 school year, our physician told us though she did
6 not think it was safe for my children to receive any more vaccines and she stood by her
7 multiple medical exemption letters she'd written, New York was adopting increasingly
8 narrow policies on medical exemptions and she did not want to write more medical
9 exemptions. She mentioned that the religious exemption was a much easier process.
10

11 8. We felt we had no other option but to write religious exemptions going forward as those
12 are the only other option to keep our children safe from the vaccines. Although I have
13 strong religious beliefs, I didn't think I would need to share them since they had been
14 medically exempt for years.
15

16 9. In 2018, when the religious exemption was repealed, we went to our doctor again to get a
17 medical exemption, but she said that she was unwilling to write any more medical
18 exemptions for anyone given New York's "new law" despite her opinion that it is not
19 safe to immunize our children any more.
20

21 10. My children were removed from school and the only option we had was homeschooling
22 to save my children which put a huge financial hardship on my family. I had to go part
23 time and work from home to homeschool. The stress caused my marriage to end. I am
24 now going through a divorce.
25

1
2
3 11. Both of my children have suffered depression not wanting to be in this world. Not
4 understanding why they have been kicked out of school and all their sports and not able
5 to be with friends.

6 12. My doctor is scared to write an exemption given the new narrow regulations, even though
7 she has written so many before and clearly maintains that my children cannot safely be
8 vaccinated.

9
10 13. I have to protect my children. They suffered severe and lasting harm from vaccines and it
11 has been acknowledged that they are some of those children for whom vaccines are not
12 safe.

13 14. My children have already lost so much. All they want is to be able to go to school, to get
14 services they need, to participate like the other kids. They pose no danger to anyone.

15 15. We need our doctor to be able to make this determination not on politics or arbitrary new
16 regulations, but based on her clinical judgment of what is safe for our kids.

17 16. Wherefore, I respectfully ask this Court to grant the relief and let our children remain in
18 school pending the outcome of this case.
19

20
21 RESPECTFULLY SUBMITTED this 16 day of August 2020

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M.D.

26 DECLARATION OF M.D. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION -
27 3
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APPENDIX X

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

JANE DOE, et al.

Plaintiffs,

vs.

HOWARD ZUCKER, et al.

Defendants.

Civil Action No.: 1:20 – CV – 0840 (BKS/CFH)

DECLARATION OF B.P. IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION

B.P. pursuant to 28 U.S.C. § 1746 declares under penalty of perjury as follows:

1. I am the mother of two medically fragile children who attend school in the Mamaroneck School District in New York. My children both have immune dysfunction and suffer from mitochondrial disease and autoimmune encephalitis. My son also had severe allergic reactions to immunizations.
2. I write this declaration in support of the Plaintiffs' motion for a preliminary injunction and as a potential class member in this suit.
3. My children have both had medical exemptions which were accepted in the Mamaroneck School District for four years, and in our previous school district many years before.

DECLARATION OF B.P. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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3 4. However, when the rules changed last year, we were subjected to enormous harmful
4 uncertainty, stress and expense that has negatively impacted our children and our family.
5 We are currently going through the same issues again.

6 5. Before the start of the fall semester of 2019, like many years before, we submitted
7 medical exemptions from our pediatrician, a respected physician licensed to practice in
8 New York. This is the same pediatrician my children have seen for years prior to
9 submitting medical exemptions and the same one who has written medical exemptions
10 that were accepted for prior years.
11

12 6. The School District responded for the first time that they “needed more information”
13 which we suddenly had to procure within a matter of days. But the School District refused
14 to answer questions we had about what they were looking for, what the problems were or
15 to let us speak to the reviewing consulting physician who was guiding their decisions so
16 that we could get them the information they wanted. We were forced to obtain a
17 corroborating opinion from a neurologist or infectious disease specialist as well as another
18 certification from our pediatrician and opinion from our mitochondrial geneticist. My
19 children’s exemptions do fit within the ACIP criteria.
20
21

22 7. It was a very expensive and traumatic experience. Many of these specialists have
23 waiting lists over a year long. We had to go through near impossible feats and anxiety to
24 get new “specialist” opinions for our kids within the short time frame as well as explain to
25

1
2 new doctors our kids' entire medical histories and hope they understood and would be
3 able to respond in the short time they had to make a determination.
4

5 8. We have had so much stress as a family it has caused physical illness in us as parents
6 due to the enormous stress both mental and financial.

7 9. We cannot continue to go through this annually. The hoops we had to go through, and
8 the adverse impacts and burdens on our family of having to go through them, have had
9 lasting impacts. We are already struggling so much just to try to work on helping our
10 children's health improve and easing their symptoms.
11

12 10. We do not have the resources or the time to arrange for and gather additional opinions,
13 or to have our privacy invaded as strangers comb over our children's private medical
14 information and second guess their NYS licensed and Board certified pediatrician (a
15 Professor at a prestigious hospital in New York), as well as second guessing specialist
16 physicians.
17

18 11. This year, we submitted our exemptions earlier in the summer, hoping to get a swift
19 determination and put this behind us so that we could prepare for the challenges and
20 uncertainties that already exist due to Covid-19. The School District has not let us know
21 yet whether the medical exemptions are accepted, or if we again need additional second
22 opinions or other additional information, etc. This is too much. Our kids are already
23 working so hard to try to be well enough to make it through each day. They should not
24
25

26 DECLARATION OF B.P. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

1
2 have to wonder if they will have the right to go to school or if someone who has no
3 medical training or has never treated them will suddenly decide they need to leave school.

4
5 12. Wherefore, I respectfully ask this Court to grant the relief and let our children remain
6 in school pending the outcome of this case and to stay the regulations that allow School
7 Districts to overrule treating physicians.

8 RESPECTFULLY SUBMITTED this 15th day of August 2020

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11 B.P.

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26 DECLARATION OF B.P. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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APPENDIX Y

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

JANE DOE, et al.

Plaintiffs,

vs.

HOWARD ZUCKER, et al.

Defendants.

Civil Action No.: 1:20 – CV – 0840 (BKS/CFH)

**DECLARATION OF R.F. IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION**

R.F., pursuant to 28 U.S.C. § 1746 declares under penalty of perjury as follows:

1. I am the parent of a medically fragile child who sought a medical exemption in the South Huntington school district in New York for the 2019-2020 school year.
2. I write this declaration in support of the Plaintiffs' motion for a preliminary injunction and as a potential class member in this suit.
3. My child suffers from seizure disorder, encephalopathy, pediatric autoimmune neuropsychiatric disorder associated with streptococcal infections (PANDAS), Autism and the MTHFR genetic mutation.
4. At the start of the 2019 school year, we submitted a medical exemption written by a physician licensed to practice in New York who is familiar with my child.
5. It was overruled and my son was kicked out of school.

DECLARATION OF R.F. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION - 1

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- 2
- 3 6. I had to reduce my hours at work so I could stay home with him. The financial toll has
- 4 been horrible. But much worse even is the toll on my son.
- 5 7. My son is non-verbal. He can't even speak to express himself and he needs his services
- 6 that the school now refuses to provide. He's become so depressed at home. He has
- 7 disengaged from everyone, even us his family. He just sleeps all day. In addition, Kyle's
- 8 older brother moved into a group home affiliated with their school. Kyle was on the wait
- 9 list to go in. Since he is no longer in school, he technically cannot be on the wait list to
- 10 go into the home with his older brother. We had planned long and carefully for that.
- 11
- 12 8. My heart is broken, and my family is in crisis. We need help. We cannot go against
- 13 medical advice and subject our child to harm. He deserves and needs his federally
- 14 guaranteed services though and an education. Our son has suffered so much.
- 15
- 16 9. Wherefore, I respectfully ask this Court to grant the relief and let our children remain in
- 17 school pending the outcome of this case.

18 RESPECTFULLY SUBMITTED this 14 day of August 2020

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21 

22 _____

23 R.F.

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27 DECLARATION OF R.F. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION - 2

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APPENDIX Z

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

JANE DOE, et al.

Plaintiffs,

vs.

HOWARD ZUCKER, et al.

Defendants.

Civil Action No.: 1:20 – CV – 0840 (BKS/CFH)

DECLARATION OF M.N. IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION

M.N. pursuant to 28 U.S.C. § 1746 declares under penalty of perjury as follows:

1. I am the mother of a vaccine injured child with special needs residing in the Elwood District in New York.
2. I write this declaration in support of the Plaintiffs' motion for a preliminary injunction and as a potential class member in this suit.
3. Our son was vaccinated for the first two years of his life.
4. He is too sick to be vaccinated now. Among other issues, he has been diagnosed with a progressive/unstable neurological condition with seizure activity. This is one of the precautions that even ACIP recognizes.
5. My son's treating doctor, a respected physician licensed to practice in New York, wrote a medical exemption without hesitation.

DECLARATION OF M.N. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION - 1

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- 2
- 3 6. Nonetheless, the School District denied the medical exemption and my son was
- 4 removed from school.
- 5 7. This has had a profound impact on my son and on our family.
- 6 8. My son was not able to experience the high degree of in-person special education
- 7 services that were on his IEP.
- 8 9. We ended up enrolling him in a homeschool co-op so that he would benefit from
- 9 socialization with other children as he became depressed. He missed out on
- 10 participating in cross country sports as well as shop class, school plays and orchestra
- 11 which he really looked forward to.
- 12
- 13 10. It ended up costing us close to \$8,000 in addition to the \$11,000+ property tax burden
- 14 we already have, which part of it goes toward the Elwood school district and he is now
- 15 not allowed to benefit from that.
- 16
- 17 11. My husband and I both experienced great mental anguish in trying to figure out how
- 18 we were going to homeschool him ourselves when he has special needs as well as
- 19 trying to figure out how to afford the co-op. We ended up having to borrow money
- 20 from family and friends.
- 21
- 22 12. Wherefore, I respectfully ask this Court to grant the relief and let our children remain
- 23 in school pending the outcome of this case and to stay the regulations that allow school
- 24 districts to overrule treating physicians.
- 25

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2 RESPECTFULLY SUBMITTED this 20th day of August 2020
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6 M.N.
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26 DECLARATION OF M.N. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY
27 INJUNCTION - 3
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APPENDIX AA

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

JANE DOE, et al.

Plaintiffs,

vs.

HOWARD ZUCKER, et al.

Defendants.

Civil Action No.: 1:20 – CV – 0840 (BKS/CFH)

**DECLARATION OF S.P. IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION**

S.P. pursuant to 28 U.S.C. § 1746 declares under penalty of perjury as follows:

2. I am the mother of a very sick medically fragile eleven-year-old boy who until recently attended school in the Franklins Square School District (17) of New York.

3. My child suffers from a number of neurodegenerative disorders, immunodeficiency disorders and has mitochondrial disease and other health challenges. His seizure disorder is so bad that he falls to the ground up to thirty-five times a day on average and needs constant one on one attention to avoid suffering injury.

4. I write this declaration in support of the Plaintiffs' motion for a preliminary injunction and as a potential class member in this suit.

12. Last fall, we submitted a medical exemption from my child's treating physician, who is licensed to practice in New York and who we trust.

DECLARATION OF S.P. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION
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3 13. The school denied the request with no explanation. Worse, my son was not only
4 thrown out of school, but everything that had been put in place for him in terms of his
5 extensive required services (including in home teacher support) was taken away from him.

6 The district would not even give me work-books to try to teach him at home myself.

7 14. I am not a teacher and I do not have the necessary expertise to give my child the
8 additional services he needs. I tried my best to homeschool my son. I had to almost
9 completely give up my job to care for him.
10

11 15. Without income, we could not afford tutors, or online instruction. My child was
12 devastated after being told he could not go to school anymore, or participate in any of the
13 activities with the children who he had made friends with. It was so hard to make friends.
14 He'd finally found kids who weren't afraid of his ticking disorders, his seizures and his
15 falls to the ground and screaming.
16

17 16. To add insult to injury, the school district then called CPS on me to allege I hadn't
18 turned in my quarterly reports and they thought I was "lying" about the medication my son
19 was taking.
20

21 17. Teachers and administrators at the school have humiliated us and looked down on us.
22 They have no idea what is happening to us and how devastating the loss of school and
23 special services has been for our family. We are trying so hard every day to help our son
24 just even get through the day and to handle his health challenges, leave aside to also
25

1
2 educate him and provide everything that a team of professionals was supposed to be
3 providing for him.
4

5 18. Our doctor has written another medical exemption request. Our son clearly needs this.
6 He also clearly needs school. We ask for the Court's help. We have been put in an
7 impossible position and our child is suffering. He suffers so much already and does not
8 deserve to suffer more.
9

10 19. Wherefore, I respectfully ask this Court to grant the relief and let our children remain
11 in school pending the outcome of this case and to stay the regulations that allow school
12 districts to overrule treating physicians.

13 RESPECTFULLY SUBMITTED this 14 day of August 2020
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26 DECLARATION OF S.P. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION
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APPENDIX BB

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

JANE DOE, et al.

Plaintiffs,

vs.

HOWARD ZUCKER, et al.

Defendants.

Civil Action No.: 1:20 – CV – 0840 (BKS/CFH)

**DECLARATION OF J.H. IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION**

J.H. pursuant to 28 U.S.C. § 1746 declares under penalty of perjury as follows:

1. I am the father of two children residing in the Marcellus School District in New York.
2. I write this declaration in support of the Plaintiffs' motion for a preliminary injunction and as a potential class member in this suit.
3. Last year, on the advice of our Pediatrician, we submitted a medical exemption for our son written by our pediatrician, a physician licensed to practice in New York who treats my child.
4. I did not try to seek out this medical exemption. We were trying to do what was asked of us by the state of NY and had taken my son and daughter in to get vaccinated to start the school year.
5. My daughter had side effects that were troubling and consistent with negative effects that I had had as a child to immunizations.

DECLARATION OF J.H. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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3 6. However, when it came to our son, our regular pediatrician on his own suggested that
4 we get a medical exemption based on his determination that the potential harm vastly
5 outweighed the potential benefit given my son's condition. Our son clearly needed this
6 exemption and we agreed it was in his best interest.

7
8 7. We handed in the exemption to the school and it was denied within hours. I asked
9 who denied it. The school nurse seemed very unsure how to answer but told me it was
10 the Department of Health. We gave up. It was awful.

11
12 8. I thought he had one more day before the 14-day cut off and sent my son to school.
13 They were waiting for him, pulled him aside, and took him to the office and held him
14 there away from his classes until I could come and pick him up.

15
16 9. To say he was devastated and embarrassed is an understatement. Mortified and in
17 disbelief as to what was happening. And it happened so quickly with no explanation
or discussion.

18
19 10. In addition to the above, my son was left completely depressed, alone, afraid, unsure
20 and he began to lose weight. He felt ostracized from society.

21
22 11. His mental state, which had some fragility before, has severely deteriorated. We were
23 all suddenly thrust into homeschooling which was the last thing that he wanted. He
24 wants to be in school.

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26 DECLARATION OF J.H. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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3 12. My job, which I am no longer at, suffered because I needed to help with
4 homeschooling and honestly, we felt that it was not safe to leave him home alone due
5 to seeing the depression set in.

6 13. My heart absolutely goes out to the other families in this situation. But please be
7 assured of the fact that the effect this had on my son as an individual and us as a
8 family was very great indeed.

9
10 14. I want to also take a moment to say something. We are but one family from a small
11 town in Upstate NY.

12 15. We are trying the best we can to follow the rules the state sets, even though it goes
13 against our judgment of what is best for our children and is troubling to us. However,
14 at this point, we just have no choice. Even our son's doctor agrees he cannot be safely
15 vaccinated right now. What are we supposed to do? We feel helpless and we implore
16 the Court to intervene. This has gone too far.

17
18 16. Wherefore, I respectfully ask this Court to grant the relief and let our children remain
19 in school pending the outcome of this case and to stay the regulations that allow school
20 districts to overrule treating physicians.

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22 RESPECTFULLY SUBMITTED this 14 day of August 2020

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25 J.H.

26 DECLARATION OF J.H. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

APPENDIX CC

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

JANE DOE, et al.

Plaintiffs,

vs.

HOWARD ZUCKER, et al.

Defendants.

Civil Action No.: 1:20 – CV – 0840 (BKS/CFH)

DECLARATION OF H.D. IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY
INJUNCTION

H.D. pursuant to 28 U.S.C. § 1746 declares under penalty of perjury as follows:

2. I am the mother of a medically fragile high school aged boy who attends school in the Auburn School District of New York.

3. I write this declaration in support of the Plaintiffs' motion for a preliminary injunction and as a potential class member in this suit.

12. Our middle son has always had bad reactions to vaccines. After his vaccinations he would be covered in a horrible and painful full body rash for months. It would start to clear up and then would return after each set of vaccinations. He would also suffer from personality changes after vaccinations. He would scream and be extremely irritable.

13. We never knew what vaccines were causing the problems because he was given so many at once. One time after a vaccine appointment our son was unable to move his arm for several days. It was terrifying.

DECLARATION OF H.D. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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3 14. All of these issues after his vaccine appointments caused us to research possible causes
4 and we obtained a religious exemption based on our sincere beliefs that further
5 vaccination would violate our religious responsibilities to our child given the harm he'd
6 suffered.

7
8 15. Our son is only missing a few vaccines. We noticed a remarkable improvement in his
9 health during the years he did not receive any boosters.

10 16. This last year we were forced to make an impossible decision after the religious
11 exemption was repealed. We tried to get our pediatrician to write a medical exemption but
12 he did not feel comfortable enough with the new regulations to do it. He did recommend
13 that the remaining vaccines be spaced out.

14 17. We waited until the last possible date and then made the appointments for the three
15 boosters our son needed to remain in school and sports.

16
17 18. We did the first one, meningococcal, and then made the appointments for the last two.

18 19. Despite our doctor's advice to spread them out, and the law, which provided for a
19 catch up schedule that allowed children to be in school so long as appointments were
20 scheduled, our son was kicked out of school several times and we were told he could not
21 be on a catch up schedule and he needed the last two shots immediately. We hired an
22 attorney but the school district would not budge and insisted that our son get all three
23 shots immediately without the two weeks in between as recommended.
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26 DECLARATION OF H.D. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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2 20. Within a couple days, my son therefore also received his Tdap (which was the sixth
3 DTaP booster) and varicella.
4

5 21. The next morning he woke up and was completely unable to move his arm. He went to
6 school but was sent home with an excruciating headache. It went downhill from there. The
7 arm pain continued and was so bad he couldn't use his arm.

8 22. The headaches got worse and he also had extreme sensitivity to light. He also started
9 having very bad pain in his joints especially his knees and ankles.
10

11 23. His brain swelling became so bad that he ended up in the ER. The doctor in the ER
12 told us it was a vaccine reaction and he shouldn't receive any more vaccinations. We
13 asked her to write us a medical exemption but she said she could not.

14 24. My son's condition deteriorated and he ended up at Golisano Children's hospital. The
15 doctors at Golisano agreed it was from the vaccines but there was nothing they could do.
16

17 25. Our son returned to school but has been dealing with several health problems since
18 being vaccinated in the fall including ongoing joint pain, migraines, neurological
19 symptoms and weakness and recently being diagnosed with an eating disorder. All of
20 these are known vaccine adverse side effects.


21 26. Next year, our son will need another meningococcal to continue high school. His
22 younger brother is vulnerable too, having exhibited some of the same early symptoms our
23 older son initially had.
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26 DECLARATION OF H.D. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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3 27. We are beside ourselves. How can these doctors acknowledge that our son has been
4 harmed by vaccines and say it isn't safe for him to receive more, but then tell us that their
5 hands are tied and it isn't up to their clinical judgment? How is this okay for children like
6 my son?

7 28. Wherefore, I respectfully ask this Court to grant the relief and let our children remain
8 in school pending the outcome of this case and to stay the regulations that allow school
9 districts to overrule treating physicians.
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11 RESPECTFULLY SUBMITTED this 10 day of August 2020

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15 H.D.
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26 DECLARATION OF H.D. IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION
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