No. 25-133

In the Supreme Court of the United States

JOSEPH MILLER, ET AL.,

Petitioners,

v.

JAMES MCDONALD, Commissioner of Health of the State of New York; BETTA A. ROSA, in her official capacity as Commissioner of Education of the State of New York,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF FLORIDA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[*]

Pursuant to Supreme Court Rule 37, the State of Florida, through its Surgeon General, respectfully submits this brief as *amicus curiae* in support of Petitioners. Florida's Surgeon General manages every aspect of public health for the State; he must "[i]dentify, diagnose, and conduct surveillance of diseases," as well as "coordinate preparedness for and responses to public health emergencies in the state." Fla. Stat. § 20.43. Florida similarly has an interest in protecting its citizens from infectious diseases while also ensuring its citizens' rights to freely exercise their religion.

The Second Circuit's opinion undermines these interests. Its misapplication of free-exercise doctrine to mandatory vaccination in schools steamrolls the rights of religious adherents. 44 States and the District of Columbia have protected religious exemptions to compelled vaccination in schools. Their experience has shown that ensuring public health need not come at the cost of sacrificing religious freedom. Florida therefore submits this *amicus* brief in favor of Petitioners and urges this Court to grant certiorari on both questions presented.

SUMMARY OF ARGUMENT

In 2019, New York removed a 50-year-old religious accommodation in its law mandating vaccines for school children. Now parents in New York must sub-

[*] *Amicus* timely notified counsel for all parties of its intention to file this brief as required by Supreme Court Rule 37.2.

ject their school-going child to a battery of nine vaccines for twelve illnesses,[1] or else their children may not attend school and the parents face potential incarceration. N.Y. Pub. Health Law § 2164(1)(a), (7)(a); N.Y. Educ. Law §§ 3205(1)(a), 3233.[2] The sole exemption is where a New York licensed doctor "certifies that such immunization may be detrimental to a child's health." *Id.* § 2164(8).

Three years after passage, New York sought to enforce that law against Petitioners. Compl. ¶ 32. Petitioners are Amish schools in Amish communities and Amish parents who send their children to Amish schools. The Amish, consistent with their sincere religious beliefs, choose to live "separate[] from the outside world and 'worldly' influences." *Wisconsin v. Yoder*, 406 U.S. 205, 217 (1972). Part of the Amish's religious separation is their rejection of modern medicine like vaccines. Compl. ¶ 77. Petitioners therefore raised a First Amendment defense to New York's enforcement action.

The Second Circuit was wrong to reject Petitioners' First Amendment claim. The free *exercise* of religion protects a person's ability to engage in religious practices. *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2351 (2025). Under *Mahmoud*, New York's law is subject to strict scrutiny. Pet. 23–32.

New York cannot show that its law meets strict scrutiny on the limited record here. The State has

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[1] N.Y. Dep't of Health, *2025-26 School Year New York State Immunization Requirements* 1 (2025), https://tinyurl.com/mtj3nczh.

[2] The school can also be fined. N.Y. Pub. Health Law §§ 12(1), 206(4)(c).

shown neither that removing religious accommodations for Petitioners necessarily accomplishes its goal of reducing sustained transmission of disease nor that it cannot accomplish that goal by less drastic means than by eviscerating a class of religious rights wholesale.

New York's arbitrary metric of 95% vaccination ignores the science and experience of States around the Nation. The science of preventing sustained transmission of disease (the concept of "herd immunity") is anything but straightforward. Several of the vaccines that New York requires do not even stop transmission; for the ones that might, the necessary level of immunization is still a complex, evidentiary question. Each disease is different and the necessary vaccination rate will differ. This argument is not an abstract one: 44 States and the District of Columbia recognize religious exemptions while maintaining public health. Their experience bears out that New York's approach is not necessary. In light of that, dismissal was inappropriate.

New York also had less restrictive alternatives. It could have sought to bring unvaccinated children who had neither religious nor medical exemptions into compliance first. It could have prevented abuse of its religious exemption by those with purely philosophical or scientific objections to the vaccine. It could have split up a specified number of exemptions between medical and religious claimants. And ultimately, New York could have gone vaccine-by-vaccine and removed religious exemptions for vaccines in which it was absolutely necessary, such as by only mandating the measles vaccine.

Vaccinations are no doubt a hot topic. Few decisions of parents have more lifelong effects. States can certainly use their bully pulpit to try to convince those parents that vaccinations are worth forgoing their deeply held religious practices. What a state may not do, however, is "compel[]" parents "to commit some specific practice forbidden by their religion." *Mahmoud*, 145 S. Ct. at 2352. New York did precisely that.

The Court should grant certiorari.

ARGUMENT

NEW YORK HAS NOT SHOWN THAT ITS ELIMINATION OF RELIGIOUS EXEMPTIONS FROM SCHOOL VACCINATIONS MEETS STRICT SCRUTINY.

At its core, "the Free Exercise Clause of the First Amendment protects" people's ability "to live out their faiths in daily life through the performance of religious acts." *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2351 (2025). The First Amendment protects the "right of parents 'to direct the religious upbringing of their' children," even "the choices that parents wish to make for their children outside the home." *Id.* Those sacred rights are "not shed" at "the schoolhouse gate." *Id.* at 2350. When governments "impermissibly burden[]" parents' religious practices, those policies must satisfy strict scrutiny. *Id.* at 2342.

As Petitioners ably demonstrate, Pet. 23–32, New York's law triggers strict scrutiny. New York therefore must establish that its law is "the least restrictive means of achieving a compelling governmental interest." *Free Speech Coal. v. Paxton*, 145 S. Ct. 2291, 2310 (2025). That is "the most demanding test known

to constitutional law." *Id*. Preventing sustained transmission of harmful disease is of course a compelling interest. But below, Florida and its Surgeon General explain why New York cannot show, at least not at the pleading stage, that New York's law represents the least restrictive means of promoting public safety. Indeed, in Florida's experience, religious exemptions from vaccine mandates do not cause adverse public-health impacts. Florida's experience tracks that of the overwhelming majority of States that also allow religious exemptions.

Those principles resolve this case. Strict scrutiny requires an examination of New York's interest and what is necessary to achieve its goal. New York relies on herd immunity, a scientific concept that approximates the level of immunity necessary to prevent the sustained spread of disease in its population. The available evidence at this early stage does not show that removal of all religious exemptions is necessary to prevent the unchecked spread of illness in its schoolchildren. And New York had other, less restrictive options to achieve that goal, such as attempting to achieve more compliance, screening for purely philosophical or scientific objections to vaccines, and tailoring exemptions for disease type. Its failure to use those options first is fatal. The Court should grant certiorari.

A. To satisfy strict scrutiny, New York must show that eliminating religious exemptions is necessary to stop the sustained spread of dangerous diseases.

New York has failed to prove as a matter of law either that its "restriction" is "'actually necessary' to

achieve [its asserted] interest" or is the least restrictive means of doing so. *United States v. Alvarez*, 567 U.S. 709, 726 (2012). On a motion to dismiss, courts ask only if a claim is plausible, taking all factual allegations in the complaint as true and making all reasonable inferences in the plaintiff's favor. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009). Whether New York has shown that Petitioners' claim is beyond all plausibility requires the Court to understand both New York's asserted objective and what is "actually necessary to the solution." *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 799 (2011).

New York's asserted interest flows from its desire to obtain "herd immunity." Pet. App. 5a. To be clear, that interest is not—and cannot be—merely keeping vaccination rates high in the abstract. *Lowe v. Mills*, 68 F.4th 706, 715 (1st Cir. 2023) (holding that a state had no "independent interest in maximizing vaccination rates apart from the public health benefits of doing so"). The interest must instead be in preventing the unchecked spread of dangerous diseases. Herd immunity means "the proportion of the population that must be immune to block sustained transmission."[3]

Herd immunity is a complex topic, and scientists usually use two factors to approximate that threshold for a particular disease. First, scientists look at the characteristics of a pathogen. Some diseases spread more easily—either because the methods of transmission make spread easier (such as a pathogen being airborne rather than spread solely through bodily fluids) or because a pathogen is particularly good at infecting

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[3] Haley E. Randolph & Luis B. Barreiro, *Herd Immunity: Understanding COVID-19*, 52 Immunity 737, 737 (2020).

exposed people. Second, scientists look at the relevant population. A population that is denser and has more contact between individuals tends to make the sustained spread of disease easier. Given those factors, scientists try to estimate what level of immunity is necessary to prevent sustained spread of a particular pathogen in a particular population.[4] And vaccines produce that herd immunity by lowering the possibility of an infected person transmitting a specific disease to another person. But herd immunity does not block all infections—it works by suppressing *sustained* spread. New York thus cannot hope to achieve the prevention of all infections; it can only combat unchecked spread.

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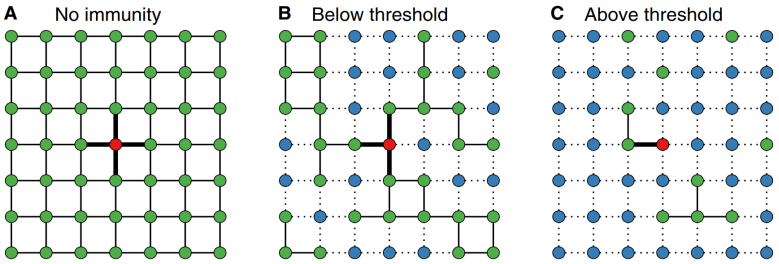
[4] *See id.* To approximate herd immunity, scientists first calculate a theoretical value called R_0, which measures the "average number of [additional] infections caused by a single infectious individual introduced into a completely susceptible population." *Id.* R_0 is difficult to calculate, as the CDC notes, because "in the real world, a fully susceptible population rarely exists." *Behind the Model: CDC's Tools to Assess Epidemic Trends*, CDC (Oct. 4, 2024), https://tinyurl.com/4axvc9me. Herd immunity is derived from R_0 using the formula, Randolph & Barreiro, *supra*:

$$1 - (\frac{1}{R_0})$$

Illustration of Herd Immunity. In diagram (A) below, a community has no immunity and so disease progresses completely unchecked. In diagram (B), a community has some immunity, but disease continues to spread uncontained. In diagram (C), a community has achieved herd immunity by reaching sufficient immunity to stop uncontrolled spread.[5]



So what does New York have to show? New York must prove that its policy—the denial of religious exemptions from school-related vaccination to Petitioners—is actually necessary to prevent the sustained spread of disease. The question is not "whether the [State] has a compelling interest in enforcing its [vaccination] policies generally." *Fulton v. City of Philadelphia*, 593 U.S. 522, 541 (2021). It is not even its interest in denying all religious exemptions, but the "harm" to a State's compelling interest in "granting specific exemptions to *particular religious claimants*." *Id.* (emphasis added). If New York cannot show that the denial of religious exemptions generally achieves its interest (further distinct from the general interest in mandatory vaccination as a whole), it cannot show that a denial to Petitioners achieves that goal.

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[5] Figure from Ben Ashby & Alex Best, *Primer: Herd Immunity*, 31 CellPress 174, 174 (2021).

In sum, New York's denial of religious exemptions must actually achieve its "compelling interest" both (1) in "general[]" and (2) by "denying an exception to" these Petitioners. *Id*. As explained below, it is entirely plausible, if not probable, that New York will fail to prove the first.[6]

B. The data at this stage does not show that New York's artificial target of 95% immunization is necessary for herd immunity.

The complexity of the science informing public-health decisions regarding vaccines made this case particularly inappropriate for dismissal at the pleading stage. New York and the Second Circuit relied exclusively on their conception that "a 95% vaccination rate to maintain herd immunity" was "vital to the prevention of disease outbreaks," making any deviation from that goal unacceptable. Pet. App. 4a–6a. That logic is flawed for at least three reasons.

1. Most basically, herd immunity is flat-out irrelevant for several of the diseases for which New York mandates vaccines. Tetanus, for instance, is not a transmissible disease. Compl. ¶ 95 & n.7 (citing sources). Vaccines used for other diseases in the United States, including those for pertussis, diphtheria, polio, and meningitis, lack evidence to show that

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[6] Petitioners provide reason to doubt New York's ability to establish the second proposition as well. They "live in communities removed from modern society," Pet. 32, and the Second Circuit identified no evidence of sustained outbreaks stemming from their isolated community, *see* Pet. App. 2a–24a.

they stop the transmission of disease. *Id.*[7] Those vaccines thus cannot achieve the State's goal of reducing sustained transmission of those illnesses.

2. Next, a 95% vaccination rate is not the rigid measuring stick the Second Circuit thought it to be. The science is far more nuanced. Each disease has its own transmissibility characteristics and thus has different herd-immunity thresholds. The variable nature of herd immunity undercuts the argument that removal of all religious exemptions is make or break for herd immunity. For each disease covered by New York's compulsory-vaccination regime, commonly reported scientific data shows different herd-immunity thresholds:[8]

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[7] *See also* Mark McMillan, *Effectiveness of Meningococcal Vaccines at Reducing Invasive Meningococcal Disease*, 73 Clinical Infection Diseases 609, 609, 613–14 (2020).

[8] For data on R_0 values, *see, e.g.*, Paul E.M. Fine, *Herd Immunity: History, Theory Practice*, 15 Epidemiological Revs. 265, 268 (1993); Alessia Melegaro et al., *What Types of Contacts are Important for the Spread of Infections?*, 3 Epidemics 143, 146 (2011); P. G. Coen et al., *Mathematical Models of* Haemophilus influenzae *type b*, 120 Epidemiological Infection 281, 281 (1998); Markku Nurhonen, Allen C. Cheng & Kari Auranen, *Pneumococcal Transmission and Disease In Silico*, 8 PLoS One 1, 9 (2013); Caroline L. Trotter, Nigel J. Gay, W. John Edmunds, *Dynamic Models of Meningococcal Carriage, Disease, and the Impact of serogroup C Conjugate Vaccination*, 162 Am. J. of Epidemiology 89, 95 (2005); Chuanqing Xu et al., *A Mathematical Model to Study the Potential Hepatitis B Virus Infections and Effects of Vaccination Strategies in China*, 11 Vaccines 1, 1 (2023).

Disease	**R_0**	**Herd Immunity**
Measles	12–18	91.6–94.4%
Pertussis	12–17	91.6–94.1%[9]
Varicella	4.5–7	77.7–85.7%
Mumps	4–7	75–85.7%
Rubella	6–7	83.3–85.7%
Polio	5–7	80–85.7%[10]
Diphtheria	6–7	83.3–85.7%
HiB	2–4	50–75%
Meningitis	<2	<50%
Pneum.	2	50%
Hep. B	1.7	41.2%
Tetanus	N/A	N/A

For many diseases, in other words, a community need not hit the Second Circuit's 95% vaccination rate to obtain herd immunity. The spread of diseases like rubella, mumps, polio, and others can all be halted with vaccination rates of just 75–85%. For still other diseases, like HiB, meningitis, and pneumonia, the threshold is lower. It was therefore error for the Sec-

[9] The pertussis vaccines used in the U.S. do not stop transmission. *See supra* 9–10.

[10] The polio vaccines used in the U.S. do not stop transmission (only the oral polio vaccine which is no longer used in the United States prevents transmission of the virus). *See supra* 9–10.

ond Circuit to woodenly measure the State's less restrictive alternatives against the 95% threshold for all diseases.

But even by the 95% herd-immunity metric, New York's own data undercuts the Second Circuit's rationale. Before the State's elimination of religious exemptions, 96.8% of students were immunized statewide.[11] Only 0.8% of public-school students and 3.8% of nonpublic-school students claimed religious exemptions before New York amended its law; New York City had even fewer—just 0.43% of public-school students and 1.53% of nonpublic-school students claimed an exemption.[12] But because herd-immunity thresholds vary by pathogen and community, and those thresholds are often lower than 95%, the State needed to prove far more.[13] One of New York's own legislators said it best: if the percentage of exemptions

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[11] John W. Correira, et al., *School Vaccine Coverage and Medical Exemption Uptake After the New York State Repeal of Nonmedical Vaccination Exemptions*, 7 JAMA Network Open No. 2 (2024), https://tinyurl.com/3xpyxvvc.

[12] *Id.* (1% of public-school students and 4.1% of nonpublic-school students claimed medical or religious exemptions before New York's law went into effect, and medical exemptions made up 0.2% of public-school exemptions and 0.3% nonpublic-school exemptions); *see* N.Y. Assembly Tr. Floor Proceedings, 242d Sess. 72 (June 13, 2019) [Assembly Tr.], https://tinyurl.com/5c2dthvn (providing New York City statistics); N.Y. Senate Tr. Floor Proceedings 5389 (June 13, 2019) [Senate Tr.], https://tinyurl.com/3e99568x (same).

[13] *See* Paul L. Delamater et al., *Complexity of the Basic Reproduction Number*, 25 Emerging Infectious Diseases 1, 2 (2019), https://tinyurl.com/58ucj8s7 (noting that more than 20 different R_0 values have been found for measles, with one as low as 5.4, equating to a herd-immunity threshold of 81.5%).

is so low, "how do[] [religious exemptions] hurt the herd immunity theory?" Senate Tr. 5398.

The Second Circuit emphasized that certain communities had lower vaccination rates—closer to 80%. Pet. App. 5a. Yet it remains plausible that New York's removal of religious exemption was unnecessary to achieve its goal, even in light of those pockets. For 50 years, the State recognized religious objections without existential threat. New York has not met its burden to show otherwise. Because this case was dismissed, the State never proved the necessary level of herd immunity for each disease, the proper population for herd immunity (whether it be state, county, or school), or how Petitioners' decision not to vaccinate threatens that interest. If anything, this complexity only highlights that dismissal was inappropriate.

3. Relatedly, the experiences of other States underline New York's failure to tailor. 44 States and D.C. allow religious exemptions in their laws, despite a general policy of robust vaccination. *See* Pet. 8 n.4.[14] Of those, 16 States permit even philosophical objections.[15] Those States have not seen the vast, sustained infections the Second Circuit warned of. "[N]early every other State has found that it can satisfy its [disease-related] public health goals without coercing religious objectors to accept a vaccine." *Dr. A v. Hochul*,

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[14] In addition to those 44 States, Mississippi has been enjoined to provide for religious exemptions, *Bosarge v. Edney*, 669 F. Supp. 3d 598, 625 (S.D. Miss. 2023), and West Viriginia allows religious exemptions by executive order of the Governor, W. Va. Exec. Order No. 7-25 (Jan. 14, 2025).

[15] *State Non-Medical Exemptions*, Nat'l Conf. of State Legislatures (July 24, 2025), https://tinyurl.com/48w24pph.

142 S. Ct. 552, 557 (2021) (Gorsuch, J., dissenting). And "when so many [States] offer an accommodation, a [State] must, at a minimum, offer persuasive reasons why it believes that it must take a different course, and [New York] failed to make that showing here." *Holt v. Hobbs*, 574 U.S. 352, 369 (2015).

Florida's experience bears that out. Florida has long preserved religious exemptions to its compulsory-vaccination law for schools. *See* Fla. Laws ch. 1971-283 § 2 (1971). Just like in New York, Florida's vaccination rates are high—88.7% in 2024.[16] Even more than in New York, religious exemptions for school vaccinations have increased—from 4.1% in 2016 to 6.4% in 2024. *Id.* Yet Florida has fended off infectious disease in its school-aged population of roughly 3 million. *Id.* Since 2014, Florida has seen no cases of polio, diphtheria, tetanus, or rubella. *Id.* Its infection rates for other diseases are also miniscule: only one case of HiB, 34 cases of acute hepatitis B, and 68 cases of mumps. *Id.*[17] In the past decade, measles—New York's key concern—has afflicted only 17 students in Florida. *Id.* The following tables summarize that data:

[16] This data is drawn from Florida's FL SHOTS and FL CHARTS databases that the Florida Department of Health maintains to track vaccination and disease incidence data.

[17] Pertussis (whooping cough) often causes an outsized amount of illness, but that reflects only the whooping-cough vaccine's failure to stop transmission. *See supra* 9–10.

Florida's Vaccination Rates[18]

Year	Population	Total Religious Exemptions	% Religious Exemptions	% Fully Vaccinated
2015	2,968,473	108,814	3.7%	93.7%
2016	2,984,350	122,202	4.1%	94.1%
2017	3,008,195	136,048	4.5%	93.7%
2018	3,056,048	149,306	4.9%	93.8%
2019	3,097,580	160,754	5.2%	93.5%
2020	3,132,279	172,078	5.5%	93.3%
2021	3,164,482	183,523	5.8%	91.7%
2022	3,263,182	194,484	6.0%	90.6%
2023	3,226,133	203,504	6.3%	89.8%
2024	3,288,892	210,668	6.4%	88.7%

Florida's Illness Incidents Rates

Year	Measles	Mumps	Varicella	Pertussis	Diph./ Polio/ Rub./ Tet.
2015	3	0	270	115	0

[18] Florida's school-age population in this table are children aged 5 to 17. "Total Religious Exemptions" is the number of religious exemptions among that population, and "% Religious Exemptions" refers to the percentage of students with religious exemptions out of all school-aged children. "% Fully Vaccinated" is the percentage of fully vaccinated students entering kindergarten.

Year	Measles	Mumps	Vari-cella	Pertussis	Diph./ Polio/ Rub./ Tet.
2016	1	2	254	90	0
2017	1	20	171	117	0
2018	5	13	279	86	0
2019	0	22	277	119	0
2020	0	2	76	59	0
2021	0	0	86	12	0
2022	0	4	114	11	0
2023	0	3	194	21	0
2024	7	2	244	263	0

That data shows that catastrophic outcomes have not flowed from Florida's recognition of religious exemptions. Florida has seen somewhat decreasing immunization rates, and an increase in the number of religious exemptions as well as the share of the overall population claiming those exemptions. At the same time, disease incidence is not unchecked—it has been contained and stable over the past decade.

Other States tell a strikingly similar tale. Take Idaho, which saw fewer than 10 cases of measles each year in 2024 and 2025, despite having a *79.6% vaccination rate*.[19] Alaska had an 84.3% statewide vaccination rate yet saw no measles cases in 2024 and

[19] *Measles Cases and Outbreaks*, CDC (Aug. 27, 2025), https://tinyurl.com/4ys57jsv.

less than 10 in 2025 (the same is true with Iowa's 89.1% rate, Hawaii's 89.8% rate, and Arkansas's 92.5% rate). *Id.* The CDC's available data shows no statistically significant relationship between the differences in state vaccination rates (from Idaho's 79.6% vaccination rate to West Virginia's 98.3% rate) and measles incidence. *See id.* As they stand, vaccination levels appear sufficient to prevent sustained transmission even with religious exemptions.

Just as telling are New York's own infection rates before the removal of religious exemptions. In 2018, no school-age child was reported as having acute hepatitis B, rubella, polio, or diphtheria (which has not occurred in the United States since 1997)[20]; and only 38 cases of mumps were reported.[21] To be sure, the impetus for this law was a (relatively small and contained) measles outbreak in and around New York City.[22] But the data is far too muddy at this stage to

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[20] *Diphtheria Surveillance and Trends*, CDC (May 12, 2025), https://tinyurl.com/42br932y.

[21] *See Communicable Disease in New York State Exclusive of New York City Cases Reported in 2018*, N.Y. State Dep't of Health (Aug. 26, 2019), https://tinyurl.com/mr2btv4x (providing age-breakdowns for diseases in children aged 5 to 19); *Communicable Disease in New York City Cases Reported in 2018*, N.Y. State Dep't of Health, https://tinyurl.com/6fxk2kn6 (same); *Nationally Notifiable Infectious Diseases and Conditions, United States: Annual Tables. Table 2l*, CDC (Nov. 4, 2019), https://tinyurl.com/rp82jxmm; *Nationally Notifiable Infectious Diseases and Conditions, United States: Annual Tables. Table 2k*, CDC (Nov. 4, 2019), https://tinyurl.com/2mfc5e2t.

[22] Most of the roughly 900 individuals infected in the outbreak were outside of school age. *See* Jane R. Zucker et al., *Consequences of Undervaccination — Measles Outbreak, New York City, 2018–2019*, 382 New England J. of Med. 1009, 1012 (2020),

say there is no plausible case for Petitioners. It is at least plausible that repeal of religious exemptions was unnecessary to achieve New York's interest in preventing sustained transmission *in the future*, especially because New York had religious exemptions without issue for decades, like most States.

C. Even if higher vaccination rates were necessary, New York has not shown it cannot achieve them through less restrictive means.

In all events, New York would have less restrictive alternatives even if it needed to boost its overall vaccination rates. "[S]o long as the government can achieve its interests in a manner that does not burden religion, it must do so." *Fulton*, 593 U.S. at 541. New York's blunderbuss approach to religious liberty ignores the less restrictive ways of accomplishing its goal. Consider four alternatives.

1. Targeting non-compliant parents first. Religious and medical objectors were not the only ones unvaccinated in 2019. As one state legislator put it, the problem with infections arguably lied with the "3 or 4 percent [of parents] who don't have a medical exemption or a religious exemption," but chose not to comply with New York's law anyway. Assembly Tr. 73. Religious exemptions paled in comparison to those individuals. *See supra* 12. One less restrictive way of achieving greater vaccination rates would be to apply stronger incentives (either punishments or benefits)

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https://tinyurl.com/dn6szzpp; *Measles*, Rockland Cnty., https://tinyurl.com/yn9kc5v3.

and better enforcement mechanisms to bring these individuals into compliance first.

2. More rigorous screening for scientific or philosophical objections. Many proponents of the law believed that too many people were "using the current religious exemption as a safe harbor for their personal beliefs." Assembly Tr. 83. Those people, in legislators' eyes, "don't believe that vaccines are safe" or had "personal preferences" against vaccines. Assembly Tr. 85, 103. Legislators also quoted a New York City report suggesting that "school audits show[ed] many exemptions to be philosophical," revealed through the parents' obvious use of "'cookie cutter' language that is not reflective of individual religious beliefs." Senate Tr. 5384. In the same breath, that report also noted that "states with more lax religious exemption requirements have higher overall rates of exemption than states with more burdensome religious exemptions." *Id.*

If phony claimants were the root of the problem, New York had narrower means available to it. The Free Exercise Clause protects religion, but it does not compel States to honor conduct rooted in the scientific or philosophical. *See Yoder*, 406 U.S. at 216 (stating that "philosophical and personal [views]" "do[] not rise to the demands of the Religion Clauses"); *DeMarco v. Davis*, 914 F.3d 383, 388 & n.8 (5th Cir. 2019). A state certainly may choose to honor feelings of personal autonomy from philosophical objections. The communities in the 16 States do remain safe from sustained disease. *See supra* 13. But strict scrutiny here requires New York to save its religious exemption by

tightening it before eradicating it entirely. The legislature did nothing to weed out these non-religious claims or question the "cookie cutter" requests that were obviously "not reflective of individual religious beliefs." Senate Tr. 5384. The State cannot punish the genuine religious views of the Amish over the fraudulent actions of others.

3. Dividing exemptions among religious and non-religious categories. New York also could have preserved some religious exemptions by allocating a permissible number of total vaccine exemptions between religious and medical exemptions. The State could then have "restrict[ed] vaccine exemptions to a particular number divided in a nondiscriminatory manner between medical and religious objectors." *Dr. A*, 142 S. Ct. at 556–57 (Gorsuch, J., dissenting).

4. Tailored exemptions by disease type. As noted above, not all vaccines prevent transmission. *Supra* 9–10. Herd immunity also varies from disease to disease. New York could have tailored exemptions based on disease type. More specifically, if the measles outbreak in 2019 was the central concern, without any data of other outbreaks, New York could have "eliminate[d] the religious exemption for [the] measles vaccine only." Senate Tr. 5402. While that would not have cured the burden on religion entirely, it would have been less restrictive.

* * *

All these alternatives, in isolation or in concert, are less restrictive ways of accomplishing the State's goals. "It is the government's burden to show th[ese] alternative[s] won't work; not the Amish's to show

[they] will." *Mast v. Fillmore Cnty.*, 141 S. Ct. 2430, 2433 (2021) (Gorsuch, J., concurring). The State's failure to do so is fatal to its request for dismissal.

CONCLUSION

The Court should grant the writ of certiorari.

Respectfully submitted,

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