No. 25-133

IN THE
Supreme Court of the United States

JOSEPH MILLER, et al.,
Petitioners,

v.

JAMES V. MCDONALD, Commissioner,
New York State Department of Health, et al.,
Respondents.

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

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

New York law has long required medically eligible children to be vaccinated against certain serious diseases, including measles, in order to attend school. In 2018, following an increase in the number of students claiming a religious exemption and a dangerous decline in vaccination rates that threatened communities' ability to contain the disease, New York became the epicenter of what was then the Nation's worst measles outbreak in a quarter-century. The New York Legislature responded by amending the law to repeal the only nonmedical exemption to the school vaccination requirement: an exemption for children whose parents or guardians object to vaccination on religious grounds. In making that change, the Legislature marshalled data and other scientific evidence demonstrating that the amendment would increase vaccination rates and prevent future outbreaks. The questions presented are:

1. Whether the Free Exercise Clause permits a State to require that all medically eligible children receive vaccinations against serious diseases in order to attend school.

2. Whether the Court should revisit *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), in the context of a State's exercise of its core police powers to promote public health, safety, and child welfare by requiring vaccination of medically eligible schoolchildren.

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INTRODUCTION

New York has long required medically eligible children attending school in the State to be immunized against certain vaccine-preventable diseases in order to protect the health of all children in school and to protect the health of the public in general against disease outbreaks both in and outside the school environment. *See* N.Y. Pub. Health Law (P.H.L.) § 2164. New York amended its mandatory vaccination law in 2019 in response to what was then the Nation's worst measles outbreak in a quarter-century, with its epicenter in New York. The New York Legislature concluded that immunization rates in certain schools had fallen well below the rates necessary to keep communities safe, and it responded by repealing the only nonmedical exemption to the vaccination requirement, an exemption for children whose parents or guardians had religious objections to vaccination. The purpose was to achieve higher immunization rates and prevent future outbreaks.

Petitioners—Amish individuals and Amish community schools—allege that New York's vaccination requirement, as amended, violates their rights under the Free Exercise Clause. The U.S. District Court for the Western District of New York dismissed petitioners' claims, holding that P.H.L. § 2164 is neutral and generally applicable under *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), and, thus, subject to rational-basis review, which it easily satisfies. The U.S. Court of Appeals for the Second Circuit unanimously affirmed that decision.

The questions raised by the petition do not warrant this Court's review. This Court recently denied a petition seeking review of a Second Circuit decision upholding Connecticut's school vaccination regime, which similarly

requires all medically eligible schoolchildren to be immunized against serious vaccine-preventable diseases without providing a religious exemption. *See We The Patriots USA, Inc. v. Connecticut Off. of Early Childhood Dev.*, 76 F.4th 130 (2d Cir. 2023), *cert. denied*, 144 S. Ct. 2682 (2024). This Court has also repeatedly declined to hear other free exercise challenges to vaccination requirements. *See We The Patriots USA, Inc. v. Hochul*, 17 F.4th 266 (2d Cir.) (per curiam), *clarified by* 17 F.4th 368 (2d Cir. 2021), *cert. denied sub nom. Dr. A. v. Hochul*, 142 S. Ct. 2569 (2022); *F.F. v. State*, 194 A.D.3d 80 (3d Dep't 2021), *appeal dismissed and lv. denied,* 37 N.Y.3d 1040 (2021), *cert. denied*, 142 S. Ct. 2738 (2022); *Workman v. Mingo Cnty. Bd. of Educ.*, 419 F. App'x 348 (4th Cir.), *cert. denied*, 565 U.S. 1036 (2011). The Court should likewise deny certiorari here for any of three reasons.

First, the decision below does not implicate a circuit split. The court of appeals applied the same standard that other courts apply in analyzing the general applicability of a statute challenged under the Free Exercise Clause. Like other courts, the court below considered whether the medical exemption to New York's vaccination requirement is comparable to the repealed religious exemption, as would be necessary to support a finding that the presence of a secular exemption defeats a requirement's general applicability and thereby subjects it to strict scrutiny. The purported split identified by petitioners reflects nothing more than the various courts' application of the same standard to different factual circumstances.

Second, the decision below is correct. Under well-established free exercise principles, the presence of a single, limited medical exemption to a vaccine requirement does not require the State to provide a blanket reli-

gious exemption from vaccination. Indeed, this Court recognized in *Smith* that "compulsory vaccination laws" are among the neutral, generally applicable laws that do not require religious exemptions under the First Amendment. 494 U.S. at 889. And P.H.L. § 2164 is not analogous to other rules to which this Court has previously applied strict scrutiny. The law is not underinclusive because the medical exemption promotes the State's interests in public health, safety, and child welfare, while the religious exemption undermined those interests. Moreover, those two exemptions are not comparable because the increasing use of broad religious exemptions threatened the ready transmission of infectious diseases, while the narrow and limited medical exemption did not. The court of appeals' decision also comports with *Wisconsin v. Yoder*, 406 U.S. 205 (1972), which expressly recognized that States have latitude to promote public health and safety, even when their laws may be in tension with individuals' religious beliefs.

Third, this petition presents a poor vehicle to review the questions presented because such review would not ultimately be outcome determinative. By asking the Court to hold that P.H.L. § 2164 is not generally applicable, petitioner asks the Court to hold that New York's law is subject to strict scrutiny. But such a ruling would not affect the outcome in this case because P.H.L. § 2164 would survive strict scrutiny. New York has a compelling interest in preventing the spread of communicable diseases, and the State's response directly targeted the cause of the 2018-19 measles outbreak: the ever-increasing and, at the time, clustered use of religious exemptions that led to decreasing vaccination rates and enabled the ready transmission of infectious diseases. This case also presents a poor vehicle to revisit *Smith*. The Nation has a long history of deference to

States' exercise of their core police powers to promote public health, safety, and child welfare, even in the face of religious liberties claims. The unique considerations surrounding those powers, and vaccination requirements specifically, make such claims particularly unsuitable for developing new rules governing free exercise claims generally.

STATEMENT

A. The History of New York's Efforts to Promote Public Health, Safety, and Child Welfare Through School Vaccination Requirements

"[T]he elimination of communicable diseases through vaccination [was] one of the greatest achievements of public health in the 20th century." *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 226 (2011) (quotation marks omitted). Previously, "infectious diseases were widely prevalent in the United States and exacted an enormous toll on the population," but morbidity from vaccine-preventable diseases and their complications significantly declined over the course of the 20th century.[1] Researchers estimate that routine childhood immunization prevented roughly 500 million illnesses, 32 million hospitalizations, and 1.1 million deaths between 1994 and 2023 alone.[2] Vaccines ultimately

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[1] U.S. Centers for Disease Control & Prevention, *Impact of Vaccines Universally Recommended for Children – United States, 1900-1998*, 48 MMWR Morb. Mortal. Wkly. Rep. 243, 243 (1999). (For sources available on the internet, full URLs appear in the Table of Authorities. All URLs were last visited on November 3, 2025.)

[2] Fangjun Zhou et al., *Health and Economic Benefits of Routine Childhood Immunizations in the Era of Vaccines for Children Program – United States, 1994-2023*, 73 MMWR Morb. Mortal. Wkly. Rep. 682, 683-84 (2024).

proved "so effective in preventing infectious diseases that the public became much less alarmed at the threat of those diseases." *Bruesewitz*, 562 U.S. at 226. Yet, vaccination rates have more recently been declining, and the Nation now sees outbreaks of infectious diseases on a scale not seen in decades. Just this year, for example, forty States recorded confirmed cases of measles—a highly infectious and potentially fatal disease declared eliminated in 2000[3]—and Louisiana now faces its worst outbreak of pertussis (whooping cough) in thirty-five years.[4]

This case concerns New York's efforts to promote public health, safety, and child welfare in response to the resurgence of vaccine-preventable diseases by combatting declining vaccination rates that threaten communities' ability to control the spread of infectious disease.

1. New York was a leader in early efforts to eradicate communicable diseases. In 1860, New York became the second State, following close behind Massachusetts, to enact vaccination requirements for schoolchildren. Ch. 438, § 1, 1860 N.Y. Laws 761, 761.[5] That law "directed and empowered" local school boards to refuse to admit any child who was not vaccinated against smallpox. *Id.* In 1968, the Legislature amended the statute to add the

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[3] U.S. Centers for Disease Control & Prevention, *Measles Cases and Outbreaks* (updated Oct. 29, 2025); Josh Michaud, *Measles Elimination Status: What It Is and How the U.S. Could Lose It*, KFF.org (July 28, 2025).

[4] *See* Letter from Senator Bill Cassidy, M.D. to Secretary Robert F. Kennedy, Jr. (Sept. 12, 2025).

[5] *See* James G. Hodge, Jr. & Lawrence O. Gostin, *School Vaccination Requirements: Historical, Social, and Legal Perspectives*, 90 Ky. L.J. 831, 851 (2002).

requirement of vaccination for measles. Ch. 1094, 1968 N.Y. Laws 3095, 3095.

New York's school vaccination law, like that of every other State at the time of the legislative repeal at issue here,[6] mandates vaccinations against several contagious diseases, including measles, polio, varicella (chicken pox), and pertussis (whooping cough).[7] New York's law provides that any child who is not immune to any of the enumerated diseases based on past exposure must be vaccinated against that disease for admission to a public or nonpublic childcare center, nursery school, or elementary, intermediate, or secondary school. P.H.L. § 2164(1), (7); 10 N.Y.C.R.R. §§ 66-1.1(f)-(g), 66-1.3(a).

The law contains a single, narrow exception to its vaccination requirements: a medical exemption that is limited in duration and scope. P.H.L. § 2164(8); 10 N.Y.C.R.R. § 66-1.3(c). As to scope, the exemption applies only when the clinical assessment is consistent with a "nationally recognized evidence-based standard of care," 10 N.Y.C.R.R. § 66-1.1(*l*), and only as to the specific immunization that is medically contraindicated, *id.* § 66-1.3(c). As to duration, the exemption applies only until the "immunization is found no longer to be detrimental to the child's health," P.H.L. § 2164(8), and that duration must be specified in the child's medical exemption certification, 10 N.Y.C.R.R. § 66-1.3(c).

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[6] Since then, Idaho enacted the Medical Freedom Act which bars schools, among other entities, from mandating "medical intervention[s]." Idaho Code § 73-503(4).

[7] Center for State, Tribal, Loc., & Territorial Support, U.S. Ctrs. for Disease Control & Prevention, *State School Immunization Requirements and Vaccine Exemption Laws* 8 (Feb. 2022).

2. For over one hundred years after New York adopted its first statutory vaccination requirement for smallpox, New York's statutes did not contain a religious exemption. New York enacted a religious exemption in 1966, Ch. 994, § 2, 1966 N.Y. Laws 3331, 3333, which, as later clarified, exempted children whose parents or guardians objected to vaccination on religious grounds, Ch. 538, § 3, 1989 N.Y. Laws 2785, 2787 (codified at P.H.L. § 2164(9) (1989)). Then, in 2019, the Legislature enacted a bill amending the school vaccination law by repealing the religious exemption and thereby restoring the pre-1966 statutory regime. Ch. 35, 2019 N.Y. Laws 133.

The repeal bill was prompted by what was then the Nation's worst measles outbreak in a quarter-century. In considering the bill, the Legislature weighed extensive data and scientific evidence. That evidence showed that New York was the epicenter of the outbreak, with the virus primarily spreading in areas "with precipitously low immunization rates." N.Y. Senate Introducer's Mem. in Supp. of Bill S. S2994-A, 242d Sess. (May 21, 2019) ("Senate Mem."). The Legislature's finding was supported by CDC research that found that more than 75% of measles cases in 2019 were linked to two outbreaks in New York, with the majority of those cases occurring in communities with large pockets of unvaccinated individuals.[8] The outbreak was so severe that the Nation was at risk of losing its status as a country that had eradicated measles. *See* Senate Mem., *supra*; N.Y. Senate, Tr. of Floor Proceedings, 242d Sess., at 5387 (June 13, 2019) ("Senate Tr.").

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[8] Manisha Patel et al., *National Update on Measles Cases and Outbreaks – United States, January 1-October 1, 2019*, 68 MMWR Morb. Mortal. Wkly. Rep. 893, 893 (2019).

Moreover, the data showed that the recent increase in religious exemptions was impeding New York's ability to control the rapid spread of infectious disease. Acknowledging that the CDC had advised that a 95% vaccination rate in a community is needed to achieve what is known as "herd immunity,"[9] which keeps the disease at bay, the Legislature found that vaccination rates in over 280 schools in New York had fallen below 85%, and rates in 170 of those schools had fallen below 70%. N.Y. Assembly Sponsor's Mem. in Supp. of Bill A. 2371-A ("Assembly Mem."), in Bill Jacket for Ch. 35 (2019), at 4A. Over the preceding several years, reliance on the religious exemption had increased statewide by 54%. *See* Senate Tr. at 5388-89. Statewide, at least five times as many children had a religious exemption as had a medical one. And some schools had granted a religious exemption as many as 20% of their students. (*See* Pet. App. 5a.)

Indeed, in the jurisdictions hardest hit by the measles outbreak, the vast majority of those infected were unvaccinated children. *See* N.Y. Assembly, Tr. of Floor Proceedings, 242d Sess., at 106 (June 13, 2019) ("Assembly Tr."); N.Y. State Bar Ass'n, Mem. in Supp. of S. 2994-A/A. 2371, at 2-3 (May 20, 2019). One local health department reported that one child with a religious exemption who had contracted measles had caused forty-four new cases, twenty-six of which involved schoolchildren with a religious exemption. Senate Tr. at 5385. The legislative record thus made clear that the repeal bill would increase vaccination rates to restore

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[9] "Herd immunity" refers to the threshold percentage of individuals in a community who must be immunized against a vaccine-preventable disease in order to prevent that disease from readily spreading through the community. (*See* Pet. App. 5a.)

and maintain herd immunity and thereby "protect the health of all New Yorkers, particularly our children." Senate Mem., *supra*.

The Legislature modeled the bill after legislation that other states, including California, had recently adopted. After a 2014 measles outbreak, California had removed its nonmedical exemptions (exemptions for religious and personal reasons) from its school vaccination law. *See id.* Thereafter, its vaccination rates "improved demonstrably, particularly in schools with the lowest rates of compliance." *Id.*; *see also* Senate Tr. at 5385. Specifically, the vaccination rate in California increased from approximately 90% (below the threshold for herd immunity) to approximately 95% (at the threshold for herd immunity). Assembly Tr. at 47.

When considering the bill, the State made clear its respect for religious practices while also finding that public health concerns necessitated the measure. One legislative memorandum accompanying the bill noted that "freedom of religious expression is a founding tenet of this nation" while also observing that the Legislature could pass laws to protect the public health, including through compulsory vaccination. *See* Senate Mem., *supra*. Similar sentiments animated the floor debate over the repeal bill. *See* Senate Tr. at 5436, 5448-49. Indeed, one senator who opposed the bill nonetheless acknowledged, "I do appreciate the debate and the respectfulness with which this issue was approached." *Id.* at 5451.

There were a handful of outlier statements, as well, including intemperate ones, that reflected the tension between promoting public health and respecting religious beliefs. On balance the legislative history establishes that the Legislature, guided by scientific data,

crafted a sensible measure to confront the pressing public-health threat posed by insufficient vaccination rates and thereby to "protect the health of all New Yorkers, particularly our children." Senate Mem., *supra*.

B. Procedural History

1. Petitioners are Amish community schools, a representative of those schools, and parents of Amish children. They allege that they have sincerely held religious objections to vaccines. In accordance with these beliefs, the Amish community school petitioners do not require proof of vaccination from students in order to permit them to attend school. And all petitioners admit that they violate P.H.L. § 2164. (Pet. App. 2a-3a, 6a.)

In 2021, the New York State Department of Health (DOH) audited the vaccination records of the Amish community school petitioners and subsequently charged them with failure to comply with P.H.L. § 2164. In December 2022, the DOH Commissioner sustained the charges and imposed monetary penalties for knowing violations of the law, noting the absence of any claim that the schools could not afford the penalties. (Pet. App. 5a, 65a-69a.)

2. In June 2023, petitioners commenced this federal action. The complaint names as defendants the DOH Commissioner, Dr. James V. McDonald, and the Commissioner of the New York State Department of Education, Dr. Betty A. Rosa. The complaint asserts one cause of action under 42 U.S.C. § 1983 for an alleged violation of petitioners' rights under the Free Exercise Clause of the First Amendment. Defendants moved to dismiss the complaint. (Pet. App. 3a, 6a.)

In May 2024, the U.S. District Court for the Western District of New York dismissed the complaint.[10] (*See* Pet. App. 25a-64a.) The court held that the Second Circuit's prior decision upholding Connecticut's school vaccine requirement, *We The Patriots USA, Inc. v. Connecticut Office of Early Childhood Development* (*COECD*), compelled the dismissal of petitioners' complaint. The court explained that Connecticut's vaccination regime was materially indistinguishable for First Amendment purposes from New York's vaccination regime. (Pet. App. 28a.) Accordingly, P.H.L. § 2164, like the Connecticut statute at issue in *COECD*, was subject to rational-basis review as a neutral law of general applicability, and petitioners conceded it satisfied that standard. (Pet. App. 43a-63a.)

3. In March 2025, the U.S. Court of Appeals for the Second Circuit unanimously affirmed. The court of appeals first concluded that P.H.L. § 2164 is facially neutral and that the legislative history of the repeal bill did not reveal an antireligious bias.[11] (Pet. App. 11a-13a.)

The court of appeals also concluded that P.H.L. § 2164 is generally applicable and thus subject to rational-basis review, which it readily satisfies. The court reasoned that the continuing availability of a medical exemption did not establish that comparable secular conduct was treated more favorably, because the medical exemption was not comparable to the repealed reli-

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[10] As a threshold matter, the court concluded that petitioners lacked Article III standing to assert claims against Dr. Rosa. (Pet. App. 38a-41a.) Petitioners abandoned those claims on appeal (*see* Pet. 17 n.11; Pet. App. 3a n.5) and do not pursue them here.

[11] Petitioners do not challenge the court of appeals' conclusion that P.H.L. § 2164 is neutral, despite references to purported animus in the legislative process (*see* Pet. 12-13).

gious exemption; while the medical exemption furthered the State's interest in promoting the health of schoolchildren, the religious exemption had undermined that interest. (Pet. App. 14a-15a.) Additionally, the two exemptions were not comparable because they were "meaningfully different in scope and duration." (Pet. App. 15a.)

The court of appeals further concluded that § 2164's medical exemption did not create a system of discretionary, individualized exemptions that defeated the statute's general applicability. The court explained that the exemption is defined by objective criteria and does not vest a government official with broad discretion to decide which reasons for noncompliance are worthy of solicitude. (Pet. App. 17a-19a.)

Finally, the court of appeals rejected petitioners' argument that *Yoder* requires heightened scrutiny. (Pet. App. 20a-24a.) The court concluded that *Yoder*'s reasoning does not apply to public-health measures like P.H.L. § 2164; to the contrary, *Yoder* specifically emphasized that noncompliance with the compulsory education law at issue there would *not* have resulted "in any 'harm to the physical or mental health of the child or to the public safety, peace, order, or welfare.'" (Pet. App. 23a (quoting *Yoder*, 406 U.S. at 230).) The court also reasoned that allowing a religious exemption to § 2164 would pose workability problems not present in *Yoder*; the presence of a religious exemption "resulted in clusters of low vaccination rates and an inability to achieve herd immunity in certain communities" that contributed to the risk that potentially fatal infectious diseases would spread. (Pet. App. 24a.)

REASONS FOR DENYING THE PETITION

I. THE DECISION BELOW DOES NOT IMPLICATE A CIRCUIT SPLIT.

Petitioners are incorrect in arguing (Pet. 19-23) that the ruling below deepens a purported split in authority on whether the presence of a categorical secular exemption renders a law not generally applicable and therefore subject to strict scrutiny. A law is substantially underinclusive and not generally applicable "if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Fulton v. City of Philadelphia*, 593 U.S. 522, 534 (2021). As this Court has explained, the Free Exercise Clause bars disparate treatment of otherwise *comparable* exemptions to a challenged law, where the exemptions differ only in their religious or nonreligious motivation. *See Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (per curiam). None of the decisions relied on by petitioners ruled that a categorical exemption for nonreligious conduct automatically defeats general applicability. Rather, consistent with *Tandon* and *Fulton*, they conducted a comparability analysis to determine whether the secular exemptions would undermine the challenged law's purpose to the same degree that the sought-after religious exemptions would. The courts merely reached different results based on the application of the same comparative analysis to different circumstances.

1. As petitioners acknowledge (Pet. 19-21), the decision below is consistent with decisions from the Third and Ninth Circuits, as well as past decisions from the Second Circuit, holding that vaccination requirements with only limited medical exemptions are gener-

ally applicable under *Smith*.[12] *See Spivack v. City of Philadelphia*, 109 F.4th 158, 174-77 (3d Cir. 2024); *COECD*, 76 F.4th at 151-55; *Hochul*, 17 F.4th at 284-88; *Doe v. San Diego Unified Sch. Dist.*, 19 F.4th 1173, 1177-78 (9th Cir. 2021); *see also Workman*, 419 F. App'x at 351-54 (rejecting free exercise challenge to West Virginia's vaccination requirement).

Contrary to petitioners' assertion (Pet. 20 & n.12), *Spivack* does not conflict with the Third Circuit's prior decision in *Fraternal Order of Police Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359 (3d Cir. 1999). Instead, *Fraternal Order* reflects the application of the same legal standard to the different circumstances at issue. That case involved a rule prohibiting police officers from having beards in order to maintain a uniform appearance of law enforcement personnel and thereby render them more readily identifiable as such by members of the public. The rule was challenged because it included two secular exemptions, but no religious exemption. The court concluded that the medical exemption defeated the rule's general applicability because the medical exemption directly undermined the policy's purpose in maintaining a uniform appearance for law enforcement personnel in the same manner that a religious exemption would. *Id.* at 360, 365-66. At the same time, the court concluded that the exemption for undercover officers—who thus were allowed to have beards—did not defeat the rule's general applicability because

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[12] Petitioners' amici are wrong to claim (Br. of Amicus Curiae Thomas More Society at 7) that the decision below is inconsistent with *M.A. v. Rockland County Department of Health*, 53 F.4th 29 (2d Cir. 2022). That case raised questions of fact as to the scope of the nonreligious exemptions. 53 F.4th at 39. It did not "reach the constitutional question that case and this one share." *COECD*, 76 F.4th at 147.

the city had no interest in assuring the public's ability to identify its undercover officers as law enforcement personnel.[13] *See id.*

2. The decisions on which petitioners rely from the First, Sixth, and Eleventh Circuits and the Iowa Supreme Court (*see* Pet. 21-22) are in accord.

In *Lowe v. Mills*, the First Circuit applied the same test as the court below—it considered whether Maine's vaccination requirement "'treats any comparable secular activity more favorably than religious exercise.'" 68 F.4th 706, 714 (1st Cir. 2023) (alteration marks and emphasis omitted) (quoting *Tandon*, 593 U.S. at 62), *cert. denied*, 114 S. Ct. 345 (2023). The court expressly agreed with the Second Circuit on how to conduct the comparability analysis. *See id.* at 715-16 (citing *Hochul*, 17 F.4th at 286). And the court explained that a vaccine requirement may be generally applicable if "medical exemptions are likely to be rarer, more time limited, or more geographically diffuse than religious exemptions, such that the two exemptions would not have comparable public health effects." *Id.* at 715.

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[13] Petitioners mischaracterize *Spivack* in contending that it held that "*only* 'discretionary' secular exemptions trigger strict scrutiny, not those with 'objective criteria.'" (Pet. at 20 n.12 (emphasis added).) The portion of *Spivack* on which petitioners rely addressed the distinct issue of whether the challenged policy ran afoul of *Fulton* by providing a mechanism for discretionary, individualized exemptions. *See* 109 F.4th at 171-73. See *infra* at 22-24. A separate portion of *Spivack* considered whether there was an objective, categorical exemption that defeated general applicability; in that portion of *Spivack*, the court applied the same comparability test as *Fraternal Order* and *Tandon* and concluded that the requested religious exemption was not comparable to the medical exemption. *See id.* at 174-77.

In allowing plaintiffs' claims to proceed to discovery, *Lowe* rested on materially different facts and legal arguments concerning the application of that test. *First*, the scope of the medical exemption at issue in *Lowe* is materially different from the medical exemption at issue here. Unlike New York's narrow and clearly defined medical exemption, Maine's broader medical exemption allowed individuals to avoid vaccination when "vaccination *may* be medically inadvisable," or an employee has "mere *trepidation* over vaccination" for medical reasons, *Does 1-3 v. Mills*, 142 S. Ct. 17, 19 (2021) (Gorsuch J., dissenting) (quotation marks omitted and emphasis added in part); *see Hochul*, 17 F.4th at 289 n.28 (distinguishing Maine's medical exemption). *Second*, Maine did not press the legal argument that New York relies on here. In *Lowe*, Maine explicitly disclaimed reliance on a comparative assessment of the risks of medical and religious exemptions. 68 F.4th at 715. Here, in contrast, the court below correctly concluded that religious exemptions pose a risk to herd immunity that New York's medical exemption does not, because the exemptions differ in scope and duration. (Pet. App. 15a.)

The other decisions on which petitioners rely similarly applied the same settled standard to distinct factual scenarios and concluded that strict scrutiny applied in those circumstances because comparable secular, but not religious, conduct was exempted. In *Monclova Christian Academy v. Toledo-Lucas County Health Department*, the Sixth Circuit concluded that a COVID-19 resolution's exemptions allowing gyms, tanning salons, office buildings, and casinos to remain open, while closing a parochial school, endangered state interests "'in a similar or greater degree than' the religious conduct" would endanger those state interests. 984 F.3d

477, 480 (6th Cir. 2020) (quoting *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 543 (1993)); *see id.* at 482. In *Midrash Sephardi, Inc. v. Surfside*, the Eleventh Circuit considered a claim under the Religious Land Use and Institutionalized Persons Act consistent with the same settled standard discussed above. 366 F.3d 1214, 1235 (11th Cir. 2004). More specifically, the court concluded that exemptions to a business district's zoning ordinance for private clubs and lodges endangered the government's asserted interest in "retail synergy" "as much or more" than would an exemption for religious assemblies. *Id.* at 1235. And in *Mitchell County v. Zimmerman*, the Iowa Supreme Court concluded that exemptions for school buses and emergency vehicles to an ordinance that prohibited driving with steel cleats threatened the statutory purpose of protecting roadways to an equal or greater degree than would an exemption for tractors driven in accordance with religious practice.[14] 810 N.W.2d 1, 3-4, 12-15 (Iowa 2012).

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[14] Petitioners' amici are wrong to claim (Br. of Thomas More Society at 4-6; Br. of Navy Seals at 12-13) that other decisions not identified by petitioners create a conflict. For example, in *Does 1-11 v. Board of Regents of University of Colorado*, the court concluded that a vaccine policy was not generally applicable because it set more lenient standards for secular exemptions than for religious exemptions. *See* 100 F.4th 1251, 1277-78 (10th Cir. 2024). In *U.S. Navy Seals 1-26 v. Biden*, the court addressed a claim under the Religious Freedom Restoration Act, which is by statute subject to strict scrutiny. *See* 27 F.4th 336, 350-52 (5th Cir. 2022).

II. THE DECISION BELOW IS CORRECT AND CONSISTENT WITH THIS COURT'S PRECEDENTS.

A. The Court of Appeals Correctly Applied the Comparability Analysis.

Contrary to petitioners' claim (Pet. 24-27), the court of appeals correctly applied *Fulton* and *Tandon* in concluding that P.H.L. § 2164's medical exemption is not comparable to the repealed religious exemption.

1. The medical exemption advances the public-health interests underlying the vaccination requirement at issue here, while a religious exemption would undermine those interests. As the court below noted, New York's interest is twofold: "First, it aims to protect the health of children while they are physically present in the school environment. Second, it aims to protect the health of the public in general against disease outbreaks both in and outside of school."[15] (Pet. App. 59a (quotation marks omitted).) P.H.L. § 2164 accomplishes the latter interest "by serving as the apparatus that ensures that[] the vast majority of children—who will quickly grow into the vast majority of adults—are vaccinated." (Pet. App. 59a (quotation marks omitted).) The New York Court of Appeals recognized as much in *Viemeister v. White*, 179 N.Y. 235, 241 (1904).

The medical exemption promotes New York's public-health objectives. It "promotes the health and safety of vaccinated students by decreasing, to the greatest extent medically possible, the number of unvaccinated students

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[15] Petitioners are mistaken to narrowly cabin the State's interest in vaccinating schoolchildren. (*See* Pet. 24-25.) "The government often acts for several interrelated reasons," and the comparability analysis should "consider all legitimate interests asserted by the government." *Spivack*, 109 F.4th at 175.

(and, thus, the risk of acquiring vaccine-preventable diseases) in school." (Pet. App. 60a (quotation marks omitted).) The medical exemption also promotes the health and safety of the small proportion of students who cannot be vaccinated for medical reasons by avoiding the medical harms that they would face from receiving a contraindicated vaccine, while decreasing the risk that they will acquire a vaccine-preventable disease by lowering the number of unvaccinated peers that they will encounter. (Pet. App. 60a.)

By contrast, the requested religious exemption would undermine the health and safety of both the unvaccinated children who obtain that exemption and other members of the community. As the court of appeals explained, "[r]eligious exemptions increase the risk of transmission of vaccine-preventable diseases among vaccinated and unvaccinated students alike" (Pet. App. 15a (quotation marks omitted)) without any medical benefit for the exempted child.

2. As a result of the medical exemption's narrow scope and limited duration, it does not pose the same degree of risk to herd immunity and disease outbreaks as the repealed religious exemption did. The medical exemption's scope is limited both because it is available only when a student can demonstrate a need based on objective medical guidelines, *see* 10 N.Y.C.R.R. § 66-1.1(*l*), and because it applies to only the specific vaccination that is medically contraindicated, *see id.* § 66-1.3(c). And the medical exemption's duration is limited until a vaccine "is found no longer to be detrimental to the child's health." P.H.L. § 2164(8). Additionally, that duration must be specified in the child's medical records, and the child must re-apply for the medical exemption annually. 10 N.Y.C.R.R. § 66-1.3(c).

Compared to the medical exemption, the repealed religious exemption was far broader in scope and duration. It was not limited by any objective criteria. *See Thomas v. Review Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 714 (1981) (religious beliefs "need not be acceptable, logical, consistent, or comprehensible to others" to merit protection). It was not limited to any particular vaccination; indeed, petitioners here allege that they object to *all* of the vaccines required by P.H.L. § 2164. (*See* CA2 J.A. 13.) And the religious exemption was not limited in time or periodically reassessed.

The legislative record confirmed that the risk to herd immunity (and thus the spread of infectious disease) posed by the medical and religious exemptions were not comparable. In the school year before the repeal, the number of religious exemptions obtained was five times greater than the number of medical exemptions. (*See* Pet. App. 5a.) The health risks associated with the religious exemption—both to the exempt individuals and the broader public—were further exacerbated by the facts that (i) such exemptions tended to cluster geographically[16] and (ii) the rate at which such exemptions were obtained had been increasing. *See* Senate Tr. at 5384-85, 5388-89, 5399; Assembly Tr. at 58-59.

3. Petitioners' three contrary arguments are unavailing. *First,* petitioners are mistaken to claim

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[16] Multiple studies have documented the phenomenon of geographic clustering of nonmedical exemptions, which are associated with an increase in the risk of outbreaks of vaccine-preventable diseases. *See,* e.g., Aamer Imdad et al., *Religious Exemptions for Immunization and Risk of Pertussis in New York State, 2000-2011*, 132 Pediatrics 37, 38-40 (2013); Saad B. Omer et al., *Geographic Clustering of Nonmedical Exemptions to School Immunization Requirements and Associations with Geographic Clustering of Pertussis*, 168 Am. J. Epidemiol. 1389, 1394-95 (2008).

(Pet. 26) that the relevant comparator is the risk of transmission in Amish communities alone. That argument conflates the general applicability analysis with the application of strict scrutiny. (*See* Pet. App. 57a-58a.) The test for general applicability is whether the challenged law as a whole is underinclusive at achieving its stated objectives. *See, e.g.*, *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 543-46 (1993). And that analysis turns on whether the secular exemption "is comparable in terms of risk to allowing a religious exemption for all who would potentially claim it." (Pet. App. 58a.)

Second, petitioners miss the mark in contending that New York should have focused on enforcement efforts against noncompliant students. (*See* Pet. 24, 26-27.) As the court below correctly explained (Pet. App. 56a-57a): (i) petitioners offer no allegations as to the reasons for noncompliance, and there is thus no ground to infer that DOH's supposed underenforcement favors secular over religious noncompliance; (ii) the number of supposed noncompliant students improperly includes children who are homeschooled and thus not subject to P.H.L. § 2164; (iii) the number of supposed noncompliant students includes students who are in the course of receiving their vaccination; and (iv) the fact that the State has not achieved perfect compliance alone does not defeat general applicability.

Third, petitioners fail to allege any facts to substantiate, and thereby render plausible, their conclusory contention that the potential presence of unvaccinated adults in schools and the congregation of unvaccinated children outside of schools undermine the State's interest in the same or a similar way that a religious exemption for children in school does. (*See* Pet. 26.) Petitioners fail to allege any facts to suggest that there

is an appreciable number of unvaccinated adults in the State's schools. *Tandon*, 593 U.S. at 62 (general applicability looks to whether the law treats "comparable secular activity more favorably than religious exercise"). Nor could they plausibly do so, given the ubiquity of established vaccination requirements. Nearly every adult present in a New York school who grew up in the United States lived somewhere with a mandatory school vaccination law. And, for nearly three decades, any adult who has immigrated to the United States has been subject to the federal law that generally requires adults, for admissibility to the United States, to be vaccinated against several diseases, including measles. *See* 8 U.S.C. § 1182(a)(1)(A)(ii).

Similarly, plaintiffs do not plausibly allege that unvaccinated children who do not attend school and are thus not subject to P.H.L. § 2164 pose a comparable risk, though they can congregate outside of school. *See Tandon*, 593 U.S. at 62. Plaintiffs do not allege how many such children are unvaccinated for secular reasons or because they have not yet completed their vaccinations. Nor do plaintiffs plausibly allege that the nature of their contacts poses comparable risks to those encountered in a school setting.

B. The Court of Appeals Correctly Declined to Consider the Vaccination Requirement as Implicating a Discretionary System of Individualized Exemptions.

The court of appeals also correctly determined that petitioners failed to plausibly allege that P.H.L. § 2164 provides a mechanism for individualized exemptions that would render it not generally applicable. *See Fulton*, 593 U.S. at 533. Petitioners do not—and cannot—

identify a circuit split on this question,[17] but rather mistakenly assert (Pet. 27-29) that the court of appeals misapplied *Fulton*.

In that case, this Court determined that a scheme granting foster-care contracts was not generally applicable because it allowed a government official to grant exceptions to an antidiscrimination provision in that official's "sole discretion." 593 U.S. at 535. P.H.L. § 2164 provides no such broad discretionary scheme under which officials may consider claims of religious hardship alongside other requests for individualized exemptions. Instead, it contains only a single medical exemption that is narrow and clearly defined. The exemption applies only if a specific immunization is medically contraindicated, 10 N.Y.C.R.R. § 66-1.3(c), and only when consistent with a nationally recognized evidence-based standard of care, *id.* § 66-1.1(*l*). And schools are charged with ensuring that a child may receive an exemption if and only if these objectively defined criteria are met. Schools thus lack discretion to grant exemptions for any other reason and thereby impermissibly to favor nonreligious claims over claims of religious hardship. *See, e.g.*, *COECD*, 76 F.4th at 150-51; *San Diego Unified School Dist.*, 19 F.4th at 1180; *Hochul*, 17 F.4th at 288-90.

Petitioners are wrong to assert that the mere presence of a mechanism for granting a secular exemp-

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[17] The First Circuit in *Lowe* explicitly stated that it was not considering whether the medical exemption to Maine's vaccine requirement created a mechanism for individualized exemptions. 68 F.4th at 717 n.14. And the other decisions on which petitioners rely did not concern individualized exemptions. *See Moncola Christian Acad.*, 984 F.3d at 480-82; *Midrash Sephardi*, 366 F.3d at 1234-35; *Zimmerman*, 810 N.W.2d at 15-16.

tion requires a corresponding religious exemption. (Pet. 28.) The presence of discretionary, individualized exemptions triggers strict scrutiny if the exemptions create "the opportunity for a facially neutral and generally applicable standard to be applied in practice in a way that discriminates against religiously motivated conduct." *Blackhawk v. Pennsylvania*, 381 F.3d 202, 209 (3d Cir. 2004) (Alito, J.). But the presence of an objective, categorical secular exemption triggers strict scrutiny only if it is comparable to the requested religious exemption. See *supra* at 13.

The law at issue in *Smith*, for instance, prohibited possession of peyote "unless the substance has been prescribed by a medical practitioner." 494 U.S. at 874. This objective, categorical "prescription exception" did not preclude the Oregon law from being generally applicable for purposes of a free exercise claim because it did "not necessarily undermine Oregon's interest in curbing the unregulated use of dangerous drugs," *Fraternal Ord.*, 170 F.3d at 366; instead, it was consistent with the drug law's objective of protecting public health and welfare because "when a doctor prescribes a drug, the doctor presumably does so to serve the patient's health and in the belief that the overall public welfare will be served," *Blackhawk*, 381 F.3d at 211.

As the Iowa Supreme Court decision on which petitioners rely explained, "not every secular exemption automatically requires a corresponding religious exemption," *Zimmerman*, 810 N.W.2d at 12, and laws are generally applicable "when the exceptions, even if multiple, are consistent with the law's asserted general purpose," *id.* at 14.

C. The Court of Appeals Correctly Applied *Yoder* Here, and *Mahmoud* Does Not Alter That Conclusion.

This Court's review is also not warranted to review petitioners' meritless claim (Pet. 29-31) that this case falls directly under *Yoder*.

As this Court recently explained, *Yoder* supports a heightened form of scrutiny for review of free exercise challenges to school programs of instruction that implicate "the potentially coercive nature of classroom instruction." *Mahmoud v. Taylor*, 606 U.S. 522, 554 (2025); *see also Doe No. 1 v. Bethel Local Sch. Dist. Bd. of Educ.*, No. 23-3740, 2025 WL 2453836, at *7 n.3 (6th Cir. Aug. 26, 2025) ("*Mahmoud*'s reasoning principally relates to curricular requirements"). *Yoder* does not extend to school vaccination laws that promote public health, safety, and child welfare. To the contrary, *Yoder* expressly distinguished the compulsory education statute at issue there from laws and regulations that protect against "harm to the physical or mental health of the child or to the public safety, peace, order, or welfare," such as the smallpox vaccination requirement upheld in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905). *Yoder*, 406 U.S. at 230 & n.20. Justice White's three-justice concurrence emphasized this distinction: "The challenged Amish religious practice here does not pose a substantial threat to public safety, peace, or order; if it did, analysis under the Free Exercise Clause would be substantially different." *Id.* at 239 n.1 (White, J. concurring).

While *Mahmoud* criticized lower courts for "dismiss[ing] our holding in *Yoder* out of hand" and "confin[ing] *Yoder* to its facts," it also recognized that

this Court has "distinguished it when appropriate."[18] 606 U.S. at 557-58. Here, the court of appeals correctly distinguished *Yoder*, and *Mahmoud* does not cast doubt on the express limitations concerning public health, safety, and welfare contained in the *Yoder* decision itself.[19] Since *Mahmoud* does not alter the court of appeals' holding that *Yoder* does not apply here on that ground, there is no reason for this Court to remand this case for reconsideration in light of *Mahmoud*, as petitioner suggests (Pet. 37-38). But if this Court concludes, to the contrary, that *Mahmoud* might be relevant to the disposition of this case, it should allow the court of appeals to address *Mahmoud* in the first instance rather than grant certiorari for full consideration on the merits. *See* Stephen M. Shapiro et al., *Supreme Court Practice* 5-38 (11th ed. 2019).

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[18] In making this observation, the Court cited *Lyng v. Northwest Indian Cemetery Protective Association*, which held that free exercise claims do not turn "on measuring the effects of a governmental action on a religious objector's spiritual development," 485 U.S. 439, 451 (1988).

[19] Petitioners dismiss *Yoder*'s express limitations by relying on *Tandon* and *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2021) (per curiam), for the proposition that this Court "has already soundly rejected such a public-health exception to the Free Exercise Clause" (Pet. 30). But as explained above (at 13), *Tandon* bars favorable treatment of only *comparable* secular activity, *see* 593 U.S. at 62. It does not require a religious exemption from all public-health measures containing secular exemptions that are not comparable.

III. THIS DISPUTE DOES NOT PROVIDE AN APPROPRIATE VEHICLE FOR CONSIDERING THE QUESTIONS PRESENTED BY PETITIONERS.

A. Even If the Law at Issue Here Were Not Generally Applicable, It Would Survive Because It Satisfies Strict Scrutiny.

This case would provide a poor vehicle for review even if P.H.L. § 2164 were not generally applicable under *Smith,* and therefore subject to strict scrutiny, because an independent basis exists for affirming dismissal of the complaint: § 2164 satisfies any standard of review, including strict scrutiny.

As an initial matter, the State has a compelling interest in promoting public health, safety, and welfare by combatting potentially fatal diseases through compulsory vaccination. *See Roman Cath. Diocese*, 592 U.S. at 18; *Workman*, 419 F. App'x at 353. And contrary to petitioners' argument here (Pet. 32), that interest is not diminished merely because petitioners are Amish and seek to remove themselves from modern society for religious reasons. The 2018-19 measles outbreak occurred under similar circumstances, namely areas with a concentration of children with a religious exemption from vaccination who attended religious schools together. And documented outbreaks of measles, pertussis, and polio in Amish communities showed that "the unique attributes of Amish communities do not present a lesser risk as it pertains to the State's interest in protecting New Yorkers from disease." (Pet. App. 16a-17a.)

Moreover, the repeal bill was narrowly tailored to address the precise cause of the recent decrease in immunization rates that threatened herd immunity in

certain communities—increased reliance on the religious exemption—by eliminating that exemption.

As explained above (at 7-9), the Legislature was aware of the following facts: New York had become the epicenter of an outbreak of measles, a disease that had been eliminated in the United States since 2000. There was a statewide trend of decreasing immunization rates, and rates had reached alarmingly low levels in certain school districts that fell below the threshold for herd immunity. Data showed a marked increase in religious exemptions in the years preceding this decrease in immunization rates. While immunization rates had not yet reached alarmingly low levels on a statewide basis,[20] the Legislature was not required to wait for a public-health crisis on such a large scale before taking action but rather could take preventive action to avoid further outbreaks. This Court affords substantial deference to such predictive judgments by legislative bodies. *See Turner Broadcasting Sys. v. F.C.C.*, 512 U.S. 622, 665 (1994). Furthermore, the Legislature tailored the amendment to ameliorate the precise public-health threat facing the State: the increase in religious exemptions leading to measles immunization rates falling below the threshold for herd immunity in a significant number of schools. Indeed, for all these reasons, a New York trial court has specifically concluded that the State's vaccination law satisfies strict scrutiny. *See F.F. v. State*, 66 Misc. 3d 467, 482-83 (Sup. Ct. Albany County 2019), *aff'd on other grounds*, 194 A.D.3d 80 (3d Dep't 2021); *see also*

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[20] Researchers have explained that county-level data showing pockets of unvaccinated individuals may be predictive of where outbreaks occur even when statewide vaccination rates are not too low. *See* Marina Kopf et al., *Measles Outbreak Growing in Parts of Arizona and Utah, Health Officials Say* (last updated Sept. 24, 2025).

Workman, 419 F. App'x at 353 (finding same, as to West Virginia vaccination law). Accordingly, anything less than repeal of the religious exemption would not have adequately served the government's compelling interest. *See Fulton,* 593 U.S. at 541.

Petitioners and their amici nonetheless claim that New York is an outlier in declining to provide a religious exemption for school vaccination requirements. (*See* Pet. 31-32.) Even if that claim were accurate, it would fail to show that New York's vaccination requirement is not narrowly tailored. But the claim is not accurate. Numerous States in addition to New York, including California, Connecticut, Maine, Mississippi, and West Virginia, have statutes that do not allow a religious exemption from vaccination requirements for schoolchildren.[21] The States that enforced that requirement this past year had vaccination rates for measles, mumps, and rubella for incoming kindergartners that exceeded the threshold for herd immunity: California (96.1%); Connecticut (98.2%); Maine (97.6%); New York (97.8%). *See* U.S. Centers for Disease Control & Prevention, *Vaccination Coverage and Exemptions Among Kindergartners* (July 31, 2025). By contrast, many amici States supporting petitioners and claiming that they have effec-

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[21] *See* Cal. Health & Safety Code § 120325 et seq.; Conn. Gen. Stat. Ann. § 10-204a; Me. Rev. Stat. Ann. tit. 20-A, § 6355; Miss. Code Ann. § 41-23-37; W. Va. Code Ann. § 16-3-4. While petitioners observe that West Virginia's governor has issued an executive order purporting to allow a religious exemption (Pet. 9 n.4), the West Virginia Board of Education has sought to enforce the state law and appealed an order granting the plaintiffs preliminary injunctive relief on state law grounds, *see* Order, *Guzman v. West Virginia Bd. of Educ.*, No. CC-41-2025-C-230 (Cir. Ct. Raleigh County Aug. 12, 2025). Mississippi permits a religious exemption pursuant to a federal court injunction. *See Bosarge v. Edney*, No. 1:22-cv-00233, 2023 WL 5598983 (S.D. Miss. Aug. 18, 2023).

tively handled the spread of infectious diseases while permitting a religious exemption (*see* Br. of Alabama and 20 Other States as Amici Curiae at 18-20) had precipitously low vaccination rates statewide: *e.g.*, Alaska (81.2%); Florida (88.8%); Idaho (78.5%); Ohio (88.3%),[22] *see* CDC, *Vaccination Coverage*, *supra*. Simply put, the Free Exercise Clause does not require New York to adopt the lowest-common-denominator policy of its fellow States to protect the health of children and the public generally. *Cf. Bell v. Wolfish*, 441 U.S. 520, 554 (1979) ("the Due Process Clause does not mandate a 'lowest common denominator' security standard, whereby a practice permitted at one penal institution must be permitted at all institutions").

Petitioners are wrong to claim that the concerns expressed about the workability of religious exemptions in *Smith* and *United States v. Lee*, 455 U.S. 252 (1982), are not present here and that States permitting religious exemptions do not face "'widespread consequences.'" (Pet. 33 (quoting *Mahmoud*, 606 U.S. at 568); *see* Pet. 31-32.) This year alone, forty States have confirmed cases connected to the largest measles outbreak in thirty years, including over 800 confirmed cases in Texas alone.[23] *See* CDC, *Measles Cases and Outbreaks*, *supra*. Petitioners' workability argument fails to

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[22] While Alabama had a statewide vaccination rate that barely exceeded the threshold for herd immunity, county-level data shows that Alabama too has several pockets with dangerously low vaccination rates: Wilcox County (85.7%); Greene County (85%); Lowndes County (87.4%). Joe Murphy et al., *Vaccination Map: How Protected Is Your Community?* NBCNews.com (Sept. 15, 2025).

[23] As of late September 2025, the epicenter of measles outbreaks had shifted to Washington County in Southwest Utah, where only 79% of kindergartners are vaccinated against measles. *See* Kopf et al., *Measles Outbreak Growing in Parts of Arizona and Utah*, *supra*.

acknowledge the toll measles now inflicts on children across the Nation, let alone the risks of future outbreaks given that "[a] large swath of the U.S. currently does not have the basic, ground-level immunity medical experts say is necessary to stop the spread of measles."[24] And the consequences of low vaccination rates are not limited to measles. Louisiana, for example, faces the worst outbreak of pertussis (whooping cough) in thirty-five years, an outbreak that has already killed two babies.[25]

Petitioners also seek to cast doubt on repeals of religious exemptions by noting that such repeals are a recent development. (*See* Pet. 9, 32.) That argument ignores the fact that New York did not have a statutory religious exemption for over one hundred years, from 1860 to 1966. And the argument additionally ignores that what petitioners criticize as a recent development is simply a prompt and tailored response to the recent decline in vaccination rates that caused a recent public-health emergency, namely the resurgence of potentially fatal diseases long considered eliminated.

The Court should be especially cautious not to constrain the policy choices available to state public-health officials and override their expert judgments when they are responding to an emerging crisis. As this Court just recently explained, "the need for legislative flexibility" to respond to emerging medical developments is paramount. *See United States v. Skrmetti*, 145 S. Ct. 1816, 1836 (2025).

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[24] *See* Erika Edwards et al., *Data Investigation: Childhood Vaccination Rates Are Backsliding Across the U.S.*, NBCNews.com (Sept. 15, 2025) (investigation in collaboration with Stanford University).

[25] *See* Letter from Senator Bill Cassidy, *supra*.

B. Even If the Court Were Inclined to Revisit *Smith*, This Case Would Provide a Poor Vehicle for Doing So.

This case would provide a poor vehicle for revisiting *Smith,* even if the Court were otherwise inclined to revisit that decision, given the long tradition recognizing the States' wide latitude to enact neutral and generally applicable laws promoting public health, safety, and child welfare even in the face of competing claims of religious liberty.

This tradition goes back to the Founding Era. The "predominant model" for state constitutions at the time, which "provide[s] the best evidence of the scope of the right embodied in the First Amendment," expressly provided that the right to religious liberty did not "protect conduct that would endanger 'the public peace' or 'safety.'" *Fulton*, 593 U.S. at 575 (Alito, J., concurring). Petitioners fail to acknowledge this historical limitation on free exercise rights, let alone explain its contours or its application here.

That Founding Era tradition continued after this Court incorporated the First Amendment to apply against the States. In *Prince v. Massachusetts*, this Court concluded that Massachusetts' child labor laws did not infringe the free exercise rights of Jehovah's Witnesses who believed that they had an obligation to circulate religious publications and that failure to do so "would bring condemnation to everlasting destruction at Armageddon." 321 U.S. 158, 163 (1944) (quotation marks omitted). The Court explained that "the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare; and . . . this includes, to some extent, matters of conscience and religious conviction." *Id.* at 167. For example, the Court

noted that a parent "cannot claim freedom from compulsory vaccination for the child more than for himself on religious grounds," and "[t]he right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death." *Id.* at 166-67.

This tradition continued in *Yoder*. The Court expressly noted that the religious exemption sought there would not bring "any harm to the physical or mental health of the child or to the public safety, peace, order, or welfare," and cited the vaccination requirement in *Jacobson* as an example of the type of public safety regulation that might restrict religious beliefs or principles consistent with the Free Exercise Clause. *Yoder*, 406 U.S. at 230.

Accordingly, to afford relief to petitioners, the Court would need not only to revisit *Smith*, but also to assess the scope of the express public-health limitations on religious liberties recognized by *Yoder* and *Prince* and the Founding Era documents on which the Free Exercise Clause was based. To the extent the Court is inclined to revisit *Smith*, it should decline to do so here, where the health of children is at issue. Petitioners do not seriously grapple with the unique issues applicable to this setting, and a case arising in a different context would provide a better vehicle to assess how any new approach to Free Exercise Clause claims generally would balance States' interests and challengers' religious beliefs.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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