

No. 26-319

IN THE
Supreme Court of the United States

KRYSTLE PERRY, INDIVIDUALLY AND ON
BEHALF OF THEIR MINOR CHILD, K. P., *et vir*,
Petitioners,

v.

STACY MARTENEY, AS THE VIRTUAL LEARNING
COORDINATOR OF THE UPSHUR COUNTY
VIRTUAL SCHOOL, *et al.*,
Respondents.

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

**BRIEF OF *AMICUS CURIAE*
ALVIN H. MOSS, M.D.
IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICUS CURIAE*¹

Contrary to West Virginia's apparent assumption, allowing religious exemptions from forced vaccination for students—as almost every other state does—will not endanger the health and safety of its citizens. The no exceptions for religious reasons policy—while allowing many exceptions for other reasons—sought to be enforced here thus needlessly sacrifices Constitutional rights and medical ethics in the name of phantom safety concerns that are supported by, at most, vague generalizations about health that cannot justify forced vaccination of an online student in the face of religious beliefs against vaccination.

Amicus curiae is a tenured Professor of Medicine at West Virginia University School of Medicine and the Director of the University's Center for Health Ethics and Law. He is a physician-scientist with recognized expertise in clinical medical ethics, public health ethics, conflicts of interest, research ethics, the scientific method, health policy, and medical journal manuscript review. He is triple board-certified in internal medicine, nephrology, and palliative medicine, and fellowship trained in clinical medical ethics.

Amicus has received West Virginia University's highest research award—the Benedum Distinguished Scholars Award—for distinction in research. He also serves on the Data Safety and Monitoring Board for a National Institutes of Health study: the Kidney Precision

1. Rule 37 Statement: No attorney for any party authored any part of this brief, and no one apart from *amicus curiae* and his counsel made any financial contribution toward the preparation or submission of this brief. Additionally, notice of this filing was timely provided to counsel of record for the parties.

Medicine Project. *Amicus* has published 179 articles in the peer-reviewed medical literature, served on two medical journal editorial boards, and been a reviewer for 26 peer-reviewed medical journals. For 25 years, he directed and taught the required course in medical ethics at the West Virginia University School of Medicine. In 2010, *Amicus* chaired the committee that drafted the first West Virginia University Health Sciences Center Code of Conduct: Conflicts of Interest and Conflicts of Commitment Policy. This policy remained in effect until 2019, when the West Virginia University Board of Governors adopted a broader policy for the entire university. He has taught and published in the field of public health ethics.

Amicus has dedicated his professional work to promoting ethical principles and informed consent in patient care—especially in the State of West Virginia. He thus has a substantial interest in ensuring that health policy regarding vaccination be grounded on: (1) the ethical practice of person-centered care free from conflicts of interest; (2) established public health ethics; and (3) scientific integrity in the representation of the state of vaccine science. In decisions about treatment, the ethical principle of respect for patient autonomy is paramount. Voluntariness is a key element of informed consent. If a patient is coerced (or mandated) to receive an unwanted treatment (in this case a vaccine), the consent is vitiated. A religious exemption to vaccine mandates is one way to ensure that a person’s autonomy is not compromised—thus complying with long-understood medical ethics—while simultaneously honoring sincerely held religious beliefs.²

2. All opinions contained herein are those of *Amicus* and not those of his employer.

SUMMARY OF ARGUMENT

The sky is not falling—and West Virginia knows it. Allowing religious or philosophical exemptions from forced vaccination for students—as 45 states do—will not endanger the health and safety of its citizens. This is underscored by the State’s allowance of vast numbers of exemptions from the vaccination mandate. But the State told the Fourth Circuit otherwise, prompting Judge Wilkinson to lament (multiple times at oral argument) that an exception here could lead to “unravelling this whole public health scheme.” *Perry v. Marteney*, Fourth Circuit Case No. 24-2132, Oral Argument Recording at 13:39-13:46; 45:00-45:23, *available at* ca4.uscourts.gov/OAarchive/mp3/24-2132-20260127.mp3. Those concerns are a red herring.³

In addition to the ethical questions raised by the State’s position, such a fear lacks scientific justification. A few religious exemptions would pale in comparison to the large numbers of medical exemptions here, and those religious exemptions would not push vaccination coverage below herd immunity thresholds anyway (especially with an online student). See also *Perry v. Marteney*, 172 F.4th 315, 330 (4th Cir. 2026) (Niemeyer, J., dissenting) (“The injunction entered here hardly affects West Virginia’s compelling interest in preventing the spread of infectious disease * * *”). At the same time, *Jacobson*

3. These concerns also obscure the panel’s new addition to First Amendment jurisprudence that the underlying activity—here, going to school—must itself be a religiously-motivated activity before warranting religious protection. *Perry v. Marteney*, 172 F.4th 315, 325 (4th Cir. 2026); see also Pet. at 14–19 (highlighting circuit split on this question).

v. *Massachusetts*, 197 U.S. 11, 25 (1905)—a case about the reach of the state’s general police power—should not be used to justify overriding the First Amendment rights of the parents here. Indeed, it is startling to see the primary case subsequently used to support “cutting the Fallopian tubes” of “imbeciles” as the justification for overriding religious exemptions more than a hundred years later. *Buck v. Bell*, 274 U.S. 200, 207 (1927) (relying on *Jacobson*’s allowance of compulsory vaccination). This Court’s First Amendment jurisprudence is stronger than that. See, e.g., *Mahmoud v. Taylor*, 606 U.S. 522 (2025).

The petition for a writ of certiorari should be granted.

ARGUMENT

Judge Niemeyer correctly framed the case: “the issue here is not whether we must defer to the West Virginia legislature, but whether the West Virginia legislature has deferred to the Constitution.” *Perry*, 172 F.4th at 333 (Niemeyer, J., dissenting). He sought to focus on the exceptions granted, not the general applicability of the law. But to overlook that basic point, the majority relied heavily on *Jacobson* and leaned into *Employment Div., Dept. of Human Resources of Or. v. Smith*, 494 U.S. 872, 889 (1990), to justify mandating “vaccines [that] are beneficial to * * * health and well-being.” *Perry*, 172 F.4th at 326 (“These determinations will not offend the Free Exercise Clause so long as West Virginia remains focused in all cases on health and safety.”).

Setting aside that West Virginia does not remain “focused in all cases on health and safety” since it allows various exceptions—both medical and for other types of students, teachers, or the general public attending school

events, *id.* at 325—the panel majority’s unsubstantiated fears of disease transmission are overblown. It also violates 21st century health care standards that consider person-centered care; public health ethics as it applies to compulsory versus voluntary public health measures; and research ethics on the state of the science of vaccines.

I. Patient-Centered Medical Ethics—The Standard In The 21st Century—Does Not Create An “Unraveling” Of The Public Health Care Scheme.

A. Individualized Considerations are the Standard in Modern Medical Ethics.

In 2001, the Institute of Medicine identified patient-centered care as a key element of high-quality medical care for the 21st Century and defined it as “providing care that is respectful of and responsive to individual patient preferences, needs, and values, and ensuring that patient values guide all clinical decisions.”⁴ Over time, the term “person-centered care” became preferred because it encompassed the entirety of a person’s needs and preferences, beyond just the medical. Person-centered care shifts the traditional health care model from one in which the physician or other clinician is in the primary decision-making role to one that supports individual choice and the ethical principle of respect for autonomy in health care decisions.⁵

4. Institute of Medicine, *Crossing The Quality Chasm: A New Health System for the 21st Century*, Washington DC: National Academy Press (2001).

5. American Geriatrics Society Expert Panel on Person-Centered Care, *Person-Centered Care: A Definition and Essential Elements*, 64 J Am Geriatr Soc 1 (2016)

In a commentary on the crisis of confidence in public health, researchers noted that if public health is to bounce back from its present state of public distrust, it would do well to heed the advice of Norman Daniels, a highly respected scholar in public health and medical ethics. He notes that everyone has a right to be treated with equal dignity and respect as a person whose life matters.⁶ If heeded, Daniels' advice would propel public health policy toward person-centered care. Yet, as Jennings and Gostin observed, some public health officials are not in sync with the general public who value personal rights and freedom of choice as just as important, if not more important, than public health. They urge public health officials to undergo self-examination, compromise, and reconciliation as there is a need for dialogue with diverse members of the community and accommodation of those values and priorities.

For public health officials and physician groups—including the American Medical Association⁷ and the American Academy of Pediatrics⁸—to categorically dismiss as unimportant a person's sincerely held religious beliefs is not conducive to building bridges with members

6. Jennings B, Gostin LO, *The crisis in public trust and legitimacy in public health: Being successful in a world of turmoil*, 47 J Public Health 1 (2025).

7. American Medical Association, *Public Health: Nonmedical Exemptions from Immunizations*, H-440.970 (2025), available at https://policysearch.ama-assn.org/policyfinder/detail/*?uri=%2FAMADoc%2FHOD.xml-0-3985.xml.

8. AAP: *Nonmedical exemptions to school immunization requirements should be eliminated* (2025), available at <https://publications.aap.org/aapnews/news/32619/AAP-Nonmedical-exemptions-to-school-immunization?autologincheck=redirected>.

of the community and restoring trust. This public health exceptionalism (believing that public health values are more important than any other values in society) has unfortunately contributed to the crisis of confidence and a sense that public health officials are not advocates for what is most important to the actual public. They are disregarding the importance of person-centered care and the ethical principle of respect for autonomy on which it is grounded.

In person-centered care, the individual's religious beliefs must be respected. Similar to the case of Jehovah's Witnesses and blood transfusions, individuals should not be forced to accept a treatment that is abhorrent to their religious beliefs. Here, the Petitioners believe that abortion is a sin—the taking of an innocent human life—and that giving their child K.P. vaccinations developed using aborted fetal cells would require them to condone abortion. After prayer and reflection, Petitioners also came to believe that they should not seek medical intervention, including vaccines, unless K.P. is sick. They believe that humans are made in God's image, according to His perfect plan, and they believe that only the sick should take medicine after determining that their God-given immune systems cannot eliminate an illness. A preemptive measure, in the Petitioners' view, reveals a lack of faith in God. This view can, and should, be accepted and accommodated.

B. Patient-Centered Medical Ethics is Consistent with Both the Constitution and the Evidence.

The rise of person-centered ethics in medicine does not, of course, signal the end of public health concerns.

Such concerns may be dealt with on a broad basis, and normally courts—not public health experts—will still “respect the judgment of those with special expertise and responsibility in this area.” *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020). But this Court also recognizes that “even in a pandemic, the Constitution cannot be put away and forgotten.” *Ibid.* Precedent thus confirms that person-centered medical ethics may be considered in the 21st Century under the First Amendment.

Thankfully, such consideration of individual rights does not pose a risk to public health anyway—and especially not in this case. West Virginia lawmakers predicted dire public health consequences of allowing religious exemptions to compulsory vaccination in West Virginia.⁹ They were seemingly oblivious to the fact that 45 other states have religious exemptions to compulsory vaccination without the calamitous occurrences of disease and death that they described. Clearly, there are less restrictive means of maintaining the public health in West Virginia as is practiced in these other states.

Tellingly, one cannot point to a correlation between West Virginia’s compulsory vaccination and better health outcomes for its students—and simultaneously, the health of students in other states with religious exemptions is not being threatened in the way by allowing those accommodations. The Title V National Outcome Measures Across State Comparison Table, 2020-2021 National Survey of Children’s Health of the Child and

9. Adams SA, W.Va. *Senate passes religious/philosophical exemptions to school-age vaccine*, The Journal (2025), available at https://www.journal-news.net/journal-news/w-va-senate-passes-religious-philosophical-exemptions-to-school-age-vaccine/article_1e262401-fb91-5cdf-898d-dfcfc29cb7d1.html.

Adolescent Health Measure Initiative supported by the U.S. Department of Health and Human Services found that in overall health status (percent of children, ages 0 through 17, in excellent or very good health) West Virginia ranks 49th of 50 states, with only one state having a worse score on measured health

metrics.¹⁰ At the same time, there does not appear to be a positive association between high childhood vaccination rates and the health of West Virginia's children nor does the health of West Virginia appear to be in jeopardy if West Virginia allows a religious exemption to compulsory vaccination as do the 44 other states that allow religious exemptions who have overall better health scores (only one state that allows religious exemptions has a worse score than West Virginia).

Additionally, America is increasingly out-of-step with its vaccination schedule. The U.S. recommends more childhood vaccines and more than twice as many doses as some European countries—in fact, 17 of the 30 European Union and European Economic Area countries have no vaccine mandates for children.¹¹

10. Child and Adolescent Health Measurement Initiative, *Title V National Outcome Measures (NOMs) Across State Comparison Table, 2020-2021*, NSCH (two years combined). Data Resource Center for Child and Adolescent Health supported by the U.S. Department of Health and Human Services, Health Resources and Services Administration (HRSA), Maternal and Child Health Bureau (MCHB), retrieved on April 19, 2026 from www.childhealthdata.org.

11. Farina S, Maio A, Gualano MR, Ricciardi W, Villani L., *Childhood Mandatory Vaccinations: Current Situation in European Countries and Changes Occurred from 2014 to 2024*, 12 Vaccines (Basel) 11 (2024).

Amicus is not arguing that children should not be encouraged to be vaccinated or that parents should not be warned of significant individual risks to their children of not having them vaccinated. To the contrary, extensive education on this topic is warranted. To suggest, however—as Judge Wilkinson, the author of the majority opinion here, did at oral argument—that vaccinated children in the schools will somehow be at risk from unvaccinated children learning at their computers at home is unsupported by the science. This is only further underscored by the individuals allowed in the school system—in person—with medical exemptions from the required vaccines.

The Centers for Disease Control and Prevention (hereinafter CDC) reports that nationally 4 percent of kindergarteners receive non-medical vaccine exemptions.¹² Given that such a number would likely hold true in West Virginia, it will not be a significant challenge to public health whatsoever—especially if those children are learning from home. A focus on person-centered medical ethics will not cause the harms Judge Wilkinson feared.

II. Public Health Ethics—Like The Constitution—Demands The Least Restrictive Alternative In This Case.

Justice is a core value of public health ethics, and justice requires fairness in the way people are treated and decisions are made. Justice also requires that there be a

12. Centers for Disease Control and Prevention, *Vaccination Coverage and Exemptions among Kindergartners* (2026), available at <https://www.cdc.gov/schoolvaxview/data/index.html>.

balance between public health and civil liberties and that there be equal respect for the interests of all members of a community.¹³ It is a black eye for public health ethics in West Virginia that the interests of a minority of West Virginians for free exercise of religion regarding vaccination are being denied.

An article in the public health ethics literature—set forth by philosophers, physicians, and attorneys—mapped out general considerations for the field of public health ethics which bear directly on *Perry v. Marteney* and the lack of a religious exemption to compulsory vaccination in West Virginia.¹⁴ The article mentions as particularly noteworthy general moral considerations: respecting autonomous choices and actions, including liberty of action, and producing the maximal balance of benefits over harms and other costs (often called utility). It also identifies five justificatory conditions when there is conflict between general moral considerations: effectiveness, proportionality, necessity, least infringement, and public justification. The authors note that even if a policy satisfies the first three conditions, public health agents should seek the least restrictive alternative. If a policy, in this case compulsory vaccination, will infringe a general moral consideration—respecting autonomous choices—it provides a strong moral reason to seek an alternative strategy that is less morally troubling and less restrictive. The burden of moral proof is on those public health

13. Gostin LO, Powers M., *What does social justice require for the public's health? Public health ethics and policy imperatives*, 25 Health Affairs 4, 1053-60 (2006).

14. Childress, et al., *Public health ethics: mapping the terrain*, 30 J Law Med. Ethics. 2, 178–80 (2002).

agents who would use coercive policies (like compulsory vaccination without a religious exemption).

Here, the burden of moral proof for the proposition that compulsory vaccination without a religious exemption is the least restrictive alternative falls on the State of West Virginia. That burden cannot be met. The State's own medical exemptions and other exceptions for students, combined with the overwhelming majority of states allowing for religious or philosophical exemptions, show that there are less restrictive means to accomplish the State's purported goals here. That creates a medial ethics violation—period. And contrary to the panel majority, nothing in the Constitution or our system of dual sovereignty requires a free pass for choosing to single out religious individuals for unfavored treatment in an otherwise “neutral” scheme. See *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 524 (1993) (“Our review confirms that the laws in question were enacted by officials who did not understand, failed to perceive, or chose to ignore the fact that their official actions violated the Nation's essential commitment to religious freedom.”).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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OCTOBER 2026