No. 26-438

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.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Second Circuit

BRIEF OF *AMICUS CURIAE* PHYSICIANS FOR INFORMED CONSENT SUPPORTING PETITIONERS

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QUESTION PRESENTED

1. Whether, as applied to the Amish Petitioners, New York's compulsion of permanent acts that are inconsistent with the religious beliefs and practices parents wish to instill in their children violates the Free Exercise Clause under *Mahmoud* v. *Taylor*, 606 U.S. 522 (2025).

2. Whether, as applied to the Amish Petitioners, New York's refusal to allow religious exemptions to a law that allows secular exemptions and other comparable secular activity violates the Free Exercise Clause.

3. Whether *Employment Division* v. *Smith*, 494 U.S. 872 (1990), should be reconsidered.

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INTRODUCTION, SUMMARY, AND INTEREST OF *AMICUS CURIAE*[1]

New York recently repealed its longstanding religious vaccine exemption, describing those with religious objections as "selfish and misguided" people with "fake," "garbage" beliefs. As a result, Amish families who will not vaccinate their children can no longer send them to Old Order Amish schools. Amish thus face the practical choice of leaving the State or forgoing schools they consider essential to the religious development of their children. Yet the Second Circuit found the State's actions consistent with this Court's free-exercise case law. That was wrong; the decision dodged precedent to the contrary. And it did so even though medical ethics and scientific data make the State's rationale for denying religious exemptions debatable (at best). This Court should grant certiorari to redress a widespread First Amendment violation currently ongoing in New York, and to prevent other jurisdictions from following suit.

This Court's precedents rightly understand that laws like New York's can threaten parents' free-exercise rights. The Court has thus subjected such policies to strict scrutiny in two circumstances. Under *Tandon* v. *Newsom* and *Fulton* v. *City of Philadelphia*, a regulation is not neutral and generally applicable, and therefore triggers strict scrutiny, if it "treat[s] *any* comparable secular activity more favorably than

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[1] This brief was not authored, even in part, by counsel for any party and no person or entity other than *amicus curiae* or its counsel or members made a monetary contribution toward the brief's preparation or submission. Counsel of record for all parties received timely notice of *amicus'* intent to file.

religious exercise," *Tandon*, 593 U.S. 61, 62 (2021) (per curiam), or contains a mechanism for individualized exemptions, *Fulton*, 593 U.S. 522, 533 (2021). And under *Mahmoud* v. *Taylor*, a policy that "substantially interfere[s] with the religious development of children" by their parents is subject to strict scrutiny even if it is neutral and generally applicable. 606 U.S. 522, 546, 564-565 (2025) (cleaned up); accord *Mirabelli* v. *Bonta*, 607 U.S. 492, 496 (2026) (per curiam).

Yet many states condition access to in-person education on the willingness of parents like the Amish to engage in activity they consider sinful while exempting students for secular reasons. To reject free-exercise claims on these facts, the Second Circuit misapplied the lessons of *Tandon* and *Fulton*, inappropriately cabined *Mahmoud* and *Mirabelli* to their facts, and treated the State's public-health interest as enough to distinguish *Mahmoud*.

Those errors are troubling to *Amicus* Physicians for Informed Consent, a 501(c)(3) nonprofit educational organization that publishes data on infectious disease and vaccines and supports voluntary vaccination. *Amicus* agrees with Petitioners that the question of whether laws granting secular and individualized exemptions are generally applicable is worthy of this Court's review. *Amicus* writes to emphasize two points. First, the question is nationally important. Second, informed-consent ethics and the comparative-risk record show that the public-health justification the Second Circuit found sufficient would have been contestable if the Second Circuit had applied the strict scrutiny this Court requires.

STATEMENT

New York requires children who attend school to receive certain vaccinations. App.5a (citing N.Y. Pub. Health Law §§2164(1), 2(a), (7)). For more than fifty years, however, it has exempted children from that requirement for medical or religious reasons. *Ibid.* (citing N.Y. Pub. Health Law §§2164(8), (9)). It also does not require adults who work in schools to be vaccinated or enforce the vaccine requirement against tens of thousands of noncompliant students. Pet.27. In 2019, New York repealed the religious exemption but kept the other exemptions and limitations in place. App.5a.

This is problematic for the Amish. They believe that vaccination is wrong because it conflicts with their conviction, rooted in the Bible, to trust God rather than medicine. Pet.7-8. Because of their beliefs about abortion, they also object to the way vaccines are developed. App.32a. Amish children also attend community schools, which they consider vital to their spiritual development. *Ibid.*

Because of the religious exemption's repeal, New York's Department of Health charged the petitioner Amish schools with violating the vaccine law and imposed $118,000 in fines. App.6a. Although the Amish prefer to live a peaceful life free of the turmoil of litigation, the petitioner schools and several others felt compelled to sue the State, alleging violations of their First and Fourteenth Amendment rights. App.7a; Pet.2, 13.

The district court dismissed their case for failure to state a claim. App.8a. The Second Circuit affirmed

the district court's decision, holding that the vaccine law was generally applicable and did not impose the same kind of burden that triggered strict scrutiny in *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972). App.45a, 48a-49a. This Court granted certiorari, vacated the judgment below, and remanded for further consideration in light of *Mahmoud* v. *Taylor*, 606 U.S. 522 (2025). App.26a, 29a; Pet.2.

On remand, the Second Circuit adhered to its prior decision, distinguishing *Mahmoud*. App.21a-25a.

ADDITIONAL REASONS FOR GRANTING THE PETITION

I. The Second Circuit Withheld the Strict Scrutiny that *Tandon*, *Fulton*, and *Mahmoud* Require.

The Second Circuit made two errors that will be devastating to religious exercise if allowed to stand or to spread to other courts. First, it withheld strict scrutiny under *Tandon* v. *Newsom*, 593 U.S. 61 (2021) (per curiam) and *Fulton* v. *City of Philadelphia*, 593 U.S. 522 (2021). It did so by inaccurately characterizing the religious and medical exemptions as incomparable and disregarding the individualized exemption mechanism because it wasn't discretionary enough. App.16a, 19a. Second, it withheld strict scrutiny under *Mahmoud* v. *Taylor*, 606 U.S. 522 (2025), because the state law was a public-health measure. App.21a-23a. But none of those cases brooks departures for the reasons the Second Circuit gave. The Court should grant the petition and settle both questions before those departures spread.

A. The Second Circuit's decision departed from *Tandon*'s comparability standard.

In concluding that the vaccine mandate was generally applicable, the Second Circuit departed from *Tandon*'s comparative-risk standard. It sidestepped the rule by improperly considering factors *Tandon* did not contemplate, an approach that allows States to justify discriminatory exemption structures.

Under this Court's current precedents, neutral and generally applicable laws that burden religious exercise only need a rational basis. *Employment Div.* v. *Smith*, 494 U.S. 872, 878-879 (1990). But this Court clarified in *Tandon* (an emergency-docket decision) that "government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise." 593 U.S. at 62. And "whether two activities are comparable" depends on whether they present similar risks to the "asserted government interest." *Ibid.*

Here, the State does not require students with medical needs or any adults who work in schools to be vaccinated. App.18a n.13 (citing N.Y. Pub. Health Law §2164(8)); Pet.9 (citing N.Y. Pub. Health Law §2164). And it allows between 66,000 and 97,900 students to be unvaccinated without an exemption. Pet.27 (citing A-32-33, A-574)[2]. But it no longer allows the Amish children who attend private, isolated Amish schools to receive a religious exemption. Pet.6; App.5a (citing

[2] Citations to "A-" refer to the Joint Appendix filed in the Second Circuit, No. 24-681, ECF Nos. 40-43.

N.Y. Pub. Health Law §2164(9) (repealed 2019)). That is a quintessential failure of general applicability as defined in *Tandon*. The State treats some children differently than others, even though the risk they will transmit a disease is the same whether they are unvaccinated for medical or religious reasons. Measles does not discriminate between religious children and those with medical exemptions.

In holding otherwise, the Second Circuit dodged *Tandon*—perhaps because of its status as an emergency-docket decision. Under *Tandon*, the only relevant comparison is between the risks that the two activities pose to the State's asserted interest. 593 U.S. at 62. Rather than focus on that question, the Second Circuit compared the duration and scope of the two exemptions. App.16a. A medical exemption applied only to specific vaccines, not to vaccination generally. *Ibid.* (citing N.Y. Comp. Codes R. & Regs. 10, §66-1.3(c)). And while the Second Circuit considered the State's reasons for repealing the religious exemption alone, App.15a-16a, it failed to ground its decision on the one comparison that matters—whether the public-health risk from unvaccinated children depends on whether they are unvaccinated for medical or religious reasons. Of course it doesn't.

If this Court allowed this kind of reasoning to percolate further, it would invite other courts to circumvent *Tandon* even when a permitted secular activity poses the same risk to the government's interest as a prohibited religious activity. And the risk is not hypothetical. Even now, religious believers in the Second Circuit like those in New York's Amish community are poised to be driven from the State.

Because the harm is happening now in States in the Second Circuit, this Court should not wait to clarify that what matters for comparability is the risk to the State's purported interest, not the State's explanation for its discrimination. See *Tandon*, 593 U.S. at 62. Review in this case will also enable the Court to solidify *Tandon* by adopting its principles in an ordinary merits case.

B. The Second Circuit improperly added a new element to *Fulton*'s individualized-exemption rule.

The Second Circuit's decision also flouts *Fulton*. There, this Court held that a law is not generally applicable if it "permit[s] the government to grant exemptions based on" individual circumstances. *Fulton*, 593 U.S. at 534. And it clarified that the mere existence of a mechanism to grant such exemptions is enough, even if it is never used. *Id.* at 535-536. That means that a rule is not generally applicable if it considers individual circumstances. See *id.* at 533-534.

Yet in New York, a child can be evaluated for a medical exemption to the vaccine law based on his or her individual medical needs and the sufficiency of the documentation, as determined by a physician and school officials. App.18a-19a (citing N.Y. Pub. Health Law §2164(8); N.Y. Comp. Codes R. & Regs. 10, §66-1.1(*l*), -1.3(c)). By any objective measure, this is a mechanism for individualized exemptions. But the Second Circuit held the law generally applicable because doctors and school officials do not exercise *enough* discretion to make the exemption individualized—"a physician's use of her professional

medical judgment is limited by the statute and regulations." App.19a.

This is not *Fulton*'s standard. In *Sherbert* v. *Verner*, this Court found a law not generally applicable because decisionmakers had to look at an individual's circumstances to determine whether an applicant fit specific eligibility criteria. *Smith*, 494 U.S. at 884 (discussing *Sherbert* v. *Verner*, 374 U.S. 398 (1963)). So too here: a physician and school officials look at an individual child's medical needs and their documentation to determine whether the child may receive an exemption. App.18a-19a. That is enough to trigger strict scrutiny even if the discretion is not limitless. *Fulton* does not suggest otherwise. To the contrary, it requires strict scrutiny if the government has any discretion to "consider the particular reasons" before granting an exemption. *Fulton*, 593 U.S. at 533.

As with its misapplication of *Tandon*, the Second Circuit's misapplication of *Fulton* fabricates an arbitrary "discretion" standard. This creates yet another strict scrutiny loophole foreign to this Court's precedent and sure to establish an unpredictable and confusing standard for lawmakers and parents. This Court should grant the petition to effectuate *Fulton*'s full scope and restore consistency in free-exercise cases.

C. The Second Circuit improperly cabined *Mahmoud* to its facts.

Worst of all, the Second Circuit departed from *Mahmoud* even after this Court remanded for reconsideration under that very decision.

Mahmoud held that "the rights of parents to direct the religious upbringing of their children" are violated when "government policies *** substantially interfere with the religious development of children." 606 U.S. at 546 (cleaned up). When the burden is of that character, strict scrutiny applies even if the law is neutral and generally applicable. *Id.* at 564-565.

This Court has repeatedly held that this principle applies broadly. *Mahmoud* held that *Yoder* was "an exception to the general rule that governments may burden religious exercise pursuant to neutral and generally applicable laws" "because of the special character of the burden in that case." *Ibid.* (discussing *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972)). And the Court emphasized that strict scrutiny would apply even if a law did not mirror the particular facts of *Yoder*. *Yoder* was "never confined *** to its facts"; it was "a statement of general principles." *Id.* at 558.

Later cases haven't confined *Mahmoud* to its facts either. In *Mirabelli* v. *Bonta*—also an emergency-docket decision—this Court held that a law allowing "unconsented facilitation of a child's gender transition" "substantially interfere[d] with the right of parents to guide the religious development of their children." 607 U.S. 492, 496 (2026) (per curiam) (cleaned up). This was the same kind of burden that triggered strict scrutiny in *Yoder* and *Mahmoud* because it violated parents' ability to raise their children in accordance with their beliefs about sex and gender. *Ibid.*

Yet the Second Circuit made the same mistake here that this Court tried to correct in *Mirabelli*.

Although the Second Circuit's original opinion relied on the Fourth Circuit's now-reversed decision in *Mahmoud* and held that *Yoder* was a narrow, fact-specific decision, App.47a & n.16, the Second Circuit came to the same conclusion the second time around—holding this case is not factually similar enough to *Mahmoud* to trigger strict scrutiny because it is a "health-and-safety" measure. App.22a-24a.

But *Mirabelli* and *Mahmoud* cannot be avoided so easily. This case presents the same burden that triggered strict scrutiny in *Mahmoud*. There, the Court clarified that the challenged curriculum "impose[s] upon children *** a psychological pressure to conform," just like the law in *Yoder*. *Mahmoud,* 606 U.S. at 554 (cleaned up). If government actions that merely *pressure* children to violate their parents' religious beliefs trigger strict scrutiny, laws that *require* children to do so to participate in in-person schooling raise the same concern. The Second Circuit even acknowledged that New York's law may impose a greater burden than that in *Mahmoud*, but it said that comparison "measure[d] the wrong thing" since a "greater burden in degree is not necessarily the same burden in kind." App.23a.

In fact, New York's vaccination requirement is *both* more burdensome than that in *Mahmoud* and "the same burden in kind." If the Second Circuit's decision stands, *Mirabelli* will have corrected efforts to limit *Mahmoud* to curriculum, but only to have a new, artificial limitation take its place. *Mahmoud* clarified that the character of the burden, not the State's label, is what decides whether *Yoder* applies. Just as this Court should not leave in place the Second Circuit's

departure from *Tandon* and *Fulton*, it should not leave in place its inversion of *Mahmoud*—or its refusal to follow *Mirabelli*. And here again, full review in this case will enable the Court to establish *Mirabelli* as the law of the land.

D. The rules applied below will sow confusion and harm in other circuits.

Nor is the confusion over what *Tandon*, *Fulton*, *Mahmoud*, and *Mirabelli* require confined to courts in the Second Circuit. Lawsuits have been filed seeking religious exemptions to vaccine requirements in Connecticut, West Virginia, Maine, and California.[3] And the danger that the misguided analysis applied by the Second Circuit here will expand elsewhere is not hypothetical. Indeed, the Second Circuit cited the Fourth Circuit's refusal to apply *Mahmoud* in a similar case as justification for its decision here. See App.24a (quoting *Perry* v. *Marteney*, 172 F.4th 315 (4th Cir. 2026), *petition for cert. docketed*, No. 26-319 (U.S. Sep. 10, 2026)).[4] And other courts are likely to cite the Second Circuit's decision in this case to similar effect.

For these reasons, too, this Court should grant the petition and decide whether a religious objection may

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[3] See, *e.g.*, *Spillane* v. *Lamont*, 323 A.3d 1007, 1014 (Conn. 2024); *Perry* v. *Marteney*, 172 F.4th 315, 318 (4th Cir. 2026), *petition for cert. docketed*, No. 26-319 (U.S. Sep. 10, 2026); *We the Patriots USA, Inc.* v. *Makin*, No. 2:26-CV-00369-SDN, 2026 WL 2837787, at *1 (D. Me. Sep. 22, 2026); *Grimsby* v. *Pan*, No. 5:25-CV-01575-AB-JC, 2025 WL 2829502, at *1 (C.D. Cal. Aug. 29, 2025), *appeal docketed*, No. 25-6100 (9th Cir. Sep. 29, 2025).

[4] The petition in *Perry* is pending and should be granted with this one. See No. 26-319 (docketed Sep. 10, 2026).

be denied merely because the State can recite reasons for its discriminatory exemption structure or call the rule a health measure.

II. The Second Circuit Improperly Treated a Contestable Health Interest as Given.

The Second Circuit's deference to the State's asserted interest in public health is another powerful reason to grant review. The Second Circuit repeatedly cited the State's purported public-health interest. See, *e.g.,* App.15a-16a, 22a-23a. And to that court, this asserted interest made New York's medical and secular exemptions incomparable and distinguished this case from *Mahmoud* and *Mirabelli*. But even though the State has a general interest in protecting public health, the public-health justification for the vaccine mandate should have been contestable through strict-scrutiny review under *Mahmoud*, *Tandon*, and *Fulton*, as shown above. The State's naked assertion of a debatable interest is no reason to withhold strict scrutiny.

A. A mandate without a religious exemption flouts established principles of informed consent.

One reason the State's interest is shaky is that physicians universally recognize their ethical obligation to provide and obtain informed consent. A mandate without a religious exemption lets the legislature dictate a family's medical decisions by threatening access to in-person education. But it is well-established that "[p]atients have the right to receive information and ask questions about recommended treatments so that they can make well-

considered decisions about care."[5] Such informed consent should "precede vaccination administration" just as it should precede any other medical care.[6] And "[p]atients who decline vaccination should continue to be supported with appropriate care options that honor their autonomous choices."[7]

Successful doctor-patient relationships depend on safeguarding the patient's informed-consent right of refusal. And vaccination, an invasive medical procedure that punctures the skin for direct access to the patient's tissue and bloodstream, carries potential risk.

Government institutions that coerce patients into accepting this vaccination procedure thus violate fundamental principles of medical ethics. Any asserted interest in public health should be guided by the principles of informed consent and medical ethics. And New York's violation of medical ethics here is another powerful reason to review the decision below.

B. Comparative risk makes the State's health justification contestable.

Nor can a parent give informed consent to a child's vaccination without knowing how the risk of the vaccine compares with the risk of the disease. A

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[5] *AMA Code of Medical Ethics: Opinion 2.1.1, Informed Consent*, Am. Med. Ass'n, https://tinyurl.com/4cr58m79 (last visited Oct. 31, 2026).

[6] *Committee Opinion No. 829, Ethical Issues With Vaccination in Obstetrics and Gynecology*, Am. Coll. of Obstetricians & Gynecologists (July 2021, reaff'd 2024), https://tinyurl.com/4cr5j2r8.

[7] *Ibid.*

review of those comparative risks here shows that the interest the Second Circuit treated as given should and would have been contestable had the court properly applied strict-scrutiny review.

1. *Amicus* has long striven to understand how disease risk empirically compares to vaccine risk, and it has spent the last ten years studying this question using mainstream scientific sources. In 2025, *Amicus* published its rigorous scientific findings in a book called *Vaccines and the Diseases They Target: An Analysis of Vaccine Safety and Epidemiology* ("*Silver Booklet*").[8] In the *Silver Booklet*, *Amicus* reviewed a wealth of scientific studies and concluded that "[f]or normal-risk U.S. children the data" about the risk of vaccines compared to the diseases they are designed to prevent "is inconclusive."[9] *Amicus* also showed that some data suggests that "[v]accines may cause more death or permanent disability than the diseases they target."[10] Those findings are the record a court applying strict scrutiny would have had to confront. Although this Court would not have to weigh that evidence at this stage—or even on the merits after a grant—it supports review here.

In this case the State's unprecedented repeal of its religious exemption was motivated by a fear of future measles outbreaks after an outbreak in 2018 to

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[8] Physicians for Informed Consent, *Vaccines and the Diseases They Target: An Analysis of Vaccine Safety and Epidemiology* (2025), https://tinyurl.com/2faupt48 [hereinafter "*Silver Booklet*"].

[9] *Id.* at 2.

[10] *Ibid.*

2019. App.17a. But the *Silver Booklet* shows why that fear does not justify violating people's First Amendment rights. For measles, it estimates that, without vaccination, the cumulative ten-year risk of death or permanent disability for normal-risk U.S. children under age ten is approximately 1.0 per 100,000 for measles (among children with normal vitamin A levels), 0.6 per 100,000 for mumps, and 0.5 per 100,000 for fatal rubella acquired after birth (excluding congenital rubella syndrome). As noted by the longtime Chief Epidemiologist of what is now the Centers for Disease Control—Dr. Alexander Langmuir—"in the United States measles is a disease whose importance is not to be measured by total days disability or number of deaths."[11]

Even the sponsor of the legislation that repealed the religious exemption conceded, "I had the measles. Most people survive the measles, but not everybody does."[12] According to the data, "most people" is a gross understatement. Before the introduction of the measles vaccine in 1963, almost everyone had measles by age 15, and 99.99% of cases fully recovered and then benefited from lifelong immunity.[13] In contrast, among individuals vaccinated twice for measles, about 35% of 7-year-olds and 60% of 15-year-olds are susceptible to subclinical measles infection. By age 24-26, a projected 33% of vaccinated adults are

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[11] Alexander D. Langmuir et al., *The Importance of Measles as a Health Problem*, 52 (Suppl. 2) Am. J. Pub. Health 1, 3 (1962), https://tinyurl.com/yxcskhxw.

[12] Assemblyman Jeffrey Dinowitz, *Assembly Update*, at 1:38 (Facebook, Mar. 19, 2019), https://tinyurl.com/yvkebum2.

[13] *Silver Booklet*, *supra* note 8, at 24-25.

susceptible to clinical infection. Furthermore, a third (booster) dose of the measles, mumps, and rubella (MMR) vaccine only lasts for a year.[14]

As to MMR vaccine risks generally, the *Silver Booklet* reports that seizures occur in approximately 1 in 640 children (about 5,700 seizures annually) after the first dose. And available safety studies lack the statistical power to rule out a risk of death or permanent disability as high as 42 per 100,000 children for the MMR vaccine. It is thus "not known whether the actual vaccine risk is less than, equal to, or greater than the disease risk."[15] The *Silver Booklet* also explains that the Institute of Medicine found the evidence inadequate to accept or reject causal relationships between MMR vaccination and certain neurological and autoimmune disorders, including encephalopathy, hearing loss, and chronic arthritis.[16] That is, MMR vaccination poses its own potential serious risks.

The MMR vaccine is not the only vaccine for which serious risks have not been ruled out. For example, polio and DTaP vaccines carry a potential risk of sudden infant death syndrome.[17] DTaP, varicella (chickenpox), and hepatitis B vaccines carry

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[14] *Id.* at 45.

[15] *Id.* at 2-3 & fig.1.

[16] *Id.* at 30-31.

[17] *Id.* at 14-15, 22-23.

a potential risk of neurological disorders.[18] And several vaccines carry a risk of seizures.[19]

Against these risks, a properly informed parent would have to consider that the diseases themselves are rarely fatal among normal-risk children, even in populations without mass vaccination.[20] And, although the inconclusive findings do not establish vaccine causation, they identify uncertainties relevant to informed medical decision making. The *Silver Booklet* thus concludes that it is "not accurate to state that vaccines have been *proven* safer than those diseases."[21]

More generally, the public-health rationale for school vaccine requirements differs among diseases. For example, tetanus is contracted through infected wounds and is not contagious, and hepatitis B is contracted through infected blood during sexual contact or injection drug use and is not transmitted through ordinary classroom contact.[22] And the *Silver Booklet* explains that the inactivated polio, diphtheria, and acellular pertussis vaccines can protect against disease but do not prevent asymptomatic infection or transmission.[23] These distinctions reinforce the importance of examining the unique justification for

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[18] *Id.* at 6-7, 14-15, 34-35.

[19] *Id.* at 6-7, 22-23, 30-31, 34-35.

[20] *Id.* at 4-5, 8-13, 20-21, 24-25, 32-33.

[21] *Id.* at 2 (emphasis added); see also *id.* at 4-5, 8-13, 20-21, 24-25, 32-33.

[22] *Id.* at 4, 10.

[23] *Id.* at 9, 13-14, 22.

each requirement rather than treating all vaccines as scientifically and legally interchangeable.

2. The *Silver Booklet* also shows that many required vaccines cause internal exposure to aluminum compounds that a parent may reasonably decide is unacceptable. Both the Food and Drug Administration and the Agency for Toxic Substances and Disease Registry have raised concerns about the negative effects of aluminum exposure in humans.[24] And scientific studies have shown that small amounts of aluminum can interfere with cellular and metabolic processes in the nervous system.[25] The most damaging effects can range from motor skill impairment to encephalopathy.[26] Yet up to 22 doses of aluminum-containing vaccines are typically administered to children, 11 of those between birth and six months of age.[27]

The Court need not examine the science in detail to grant review; it is enough that the interest the Second Circuit treated as settled under rational-basis review would be unproven had the Second Circuit applied the proper standard of review—strict scrutiny. The Court should grant the petition to allow lower courts to consider the scientific record in the first instance and under the right standard.

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[24] *Id.* at 38-40.

[25] *Ibid.*

[26] *Ibid.*

[27] *Id.* at 38 fig.1.

CONCLUSION

The Second Circuit wrongly refused to apply *Mahmoud*, *Tandon*, and *Fulton* and overstated the State's public-health interest. These errors invite further confusion and litigation. The Court should grant review and reverse.

Respectfully submitted,

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