

No. 26A239

In The
Supreme Court of the United States

JANE DOE, individually and as next friend of C.F., a minor,

Applicant,

v.

JAMES V. McDONALD, M.D., in his official capacity as Commissioner of Health of the State of New York; EASTCHESTER UNION FREE SCHOOL DISTRICT; and
CAITLIN MONDELLI, in her official capacity as Principal of Waverly School,

Respondents.

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

**BRIEF IN OPPOSITION TO APPLICANT’S EMERGENCY APPLICATION
FOR A WRIT OF INJUNCTION PENDING APPEAL AND AN
IMMEDIATE ADMINISTRATIVE INJUNCTION**

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INTRODUCTION

Respondents Eastchester Union Free School District (the “District”) and Caitlin Mondelli (“Principal Mondelli”) (collectively, the “School District Respondents”) submit this opposition to applicant Jane Doe’s (“Applicant”) request for an injunction that would allow her child, C.F., to violate the student vaccination requirements of N.Y. Public Health Law § 2164 (“PHL § 2164”). The School District Respondents also oppose Applicant’s parallel request for an injunction that would allow C.F. to attend school within the District while this application is being considered.

This proceeding stems from the Second Circuit’s August 11, 2026 order denying Applicant’s motion for an injunction pending appeal. The Second Circuit referenced the preliminary injunction factors discussed in *Agudath Israel of America v. Cuomo*, 979 F.3d 177, 179-80 (2d Cir. 2020). While the Second Circuit did not expand upon its reference, it affirmed the Southern District of New York’s decisive ruling that the recent decision in *Miller v. McDonald*, 2026 WL 1871521 (2d Cir. 2026) (“*Miller II*”) left Applicant without the requisite likelihood of success on the merits and unable to obtain injunctive relief. Because *Miller II* concluded that PHL § 2164 was a neutral law of general applicability that did not violate the parental free exercise right recognized in *Mahmoud v. Taylor*, 606 U.S. 522 (2025), the District Court found Applicant’s analogous argument to be unpersuasive. *See* Dkt. No. 4.2 at Doc. No. 33, p. 2.

The prudent findings of the two lower courts should not be disturbed through this application. First, the facts of this case are plainly distinguishable to those which gave rise to emergency applications in *Agudath* and *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 15-16 (2020). Second, Applicant has failed to demonstrate that a majority of this Court would conclude that her Free Exercise claim warrants strict scrutiny. Third, any extension of the First Amendment principles espoused in *Mahmoud* or *Mirabelli v. Bonta*, 607 U.S. 492 (2026) is unwarranted in this case. Fourth, Applicant cannot demonstrate that she or her child will suffer the requisite irreparable harm needed for a remedy of injunctive relief. Lastly, the balance of equities and the public interest favor the exclusion of C.F. from the District's schools until there is compliance with the vaccination requirements of PHL § 2164.

PRIOR OPINIONS AND ORDERS

The Second Circuit's August 11, 2026 order denying Applicant's motion for a preliminary injunction pending appeal has been republished below as School District Appendix A. The Second Circuit's July 21, 2026 order, which simultaneously referred Applicant's motion for a preliminary injunction pending appeal to a three-judge motions panel and denied temporary administrative injunctive relief, has been republished below as School District Appendix B. The Southern District's July 10, 2026 order denying Applicant's application for a preliminary injunction and an injunction pending appeal has been republished by Applicant as School District Appendix C.

JURISDICTION

Respondents do not contest the jurisdictional bases which Applicant cited in her application and thus consent to this Court's jurisdiction over this matter.

STATEMENT OF THE CASE

Applicant seeks to enroll C.F. as a kindergarten student in the District's Waverly School for the school year starting this fall. *See* Dkt. 19 (S.D.N.Y.) at ¶ 2. Consistent with New York State requirements for all incoming kindergarten students, Applicant is required to submit proof of immunization for C.F. prior to the start of the 2026-27 school year. *See* Dkt. 19 (S.D.N.Y.) at ¶ 14.

On April 7, 2026, Applicant (through her counsel) wrote to Principal Mondelli and requested a religious exemption for C.F. to the New York State immunization requirements. *See* Dkt. 5-1 (S.D.N.Y.). Within the request, Applicant expressly acknowledged that PHL § 2164 does not presently provide a religious exemption from the State's immunization requirements, and that District officials are obligated to follow the law. *See* Dkt. 5-1, p. 1 (S.D.N.Y.). Nevertheless, Applicant acknowledged that she was objecting to said requirements in order to challenge PHL § 2164 in federal court, citing the recent U.S. Supreme Court decisions in *Mahmoud* and *Mirabelli* as her basis for doing so. *See* Dkt. 5-1, pp. 1-2 (S.D.N.Y.). Applicant's counsel closed the letter by asking the District to provide a written response to the exemption request, although counsel conceded that PHL § 2164 would mandate a denial of the request. *See* Dkt. 5-1, p. 2 (S.D.N.Y.).

Appended to the exemption request was a six-page “Statement of Religious Beliefs,” which served to summarize Applicant’s theological reservations surrounding vaccination. *See* Dkt. 5-1, pp. 5-10 (S.D.N.Y.). Applicant cited her Catholic faith as the religious basis for her opposition to immunizing herself and her children. *See* Dkt. 5-1, p. 6 (S.D.N.Y.). Applicant claimed that her conclusion was “not casual, not adopted for convenience, and not recently formed” and that her opposition was “not the formation of a new belief.” *See* Dkt. 5-1, pp. 6, 9 (S.D.N.Y.). Although Applicant emphasized her frequent engagement in the formal rituals of Catholicism via going to weekly Mass and observing Holy Days of Obligation, she also claimed that her determination was not a result of “what [she has] been told to believe by any organization or movement.” *See* Dkt. 5-1, pp. 5-6 (S.D.N.Y.).

After citing to a number of purportedly relevant scriptural passages, Applicant closed her statement by explicitly claiming that her faith “does not permit [her] to vaccinate.” *See* Dkt. 5-1, p. 9 (S.D.N.Y.). Applicant did not reference specific vaccines that she felt violate the tenets of Catholicism but instead expressed her blanket opposition to all immunizations. *See* Dkt. 5-1 (S.D.N.Y.).

On April 9, 2026, the District confirmed that it received Applicant’s request for a religious exemption. *See* Dkt. 1 at ¶ 12 (S.D.N.Y.). That same day, the District Interim Assistant Superintendent of Pupil Personnel Services, Jo-Anne Dobbins (“Dobbins”), responded to Applicant by email and reiterated the State’s policy on student vaccination. *See* Dkt. 26-1 (S.D.N.Y.). The State’s policy, which Dobbins noted

had been in place since 2019, does not permit non-medical exemptions. *See* Dkt. 26-1 (S.D.N.Y.).

After filing this federal action on May 19, 2026, Applicant received a registration notice from the District and began filling out kindergarten enrollment forms for C.F. *See* Dkt. 19 at ¶ 13 (S.D.N.Y.). In connection with this issue, the District reviewed C.F.’s available Student Immunization History on the New York State Immunization Information System, which included a full accounting of all vaccinations administered to C.F. since birth. *See* Dkt. 26-2 (S.D.N.Y.). C.F. has received a total of twenty-eight doses of nine separate vaccines, including immunizations for Hepatitis A and B, influenza, polio, and rotavirus. *See* Dkt. 26-2 (S.D.N.Y.). The most recent vaccination that C.F. received was the second dose of the Hepatitis A vaccine on April 14, 2023. *See* Dkt. 26-2 (S.D.N.Y.).

On June 16, 2026, Kathryn McGrath (“Nurse McGrath”), a registered nurse who works within the Waverly School’s health office, emailed Applicant regarding the outstanding immunizations that C.F. still needs in order to be compliant with New York State vaccination requirements. *See* Dkt. 20-3, pp. 1-2 (S.D.N.Y.). These immunizations included one dose of the vaccine for DTaP, one dose of the polio vaccine, and two doses of the Varicella vaccine. *See* Dkt. 20-3, p. 1 (S.D.N.Y.).¹ Nurse

¹ In addition to notifying Applicant of the full range of vaccinations that C.F. needs in order to enroll in kindergarten, Nurse McGrath also informed Applicant that positive serologic titers of immunity may be acceptable alternatives to the vaccines for MMR and Varicella. *See* Dkt. 20-3, p. 1 (S.D.N.Y.). However, Nurse McGrath also advised that C.F. would need to receive the actual DTaP and Polio immunizations on or after his 4th birthday. *Id.*

McGrath also reiterated Dobbins' prior instruction regarding the State's prohibition against religious exemptions. *See* Dkt. 20-3, p. 1 (S.D.N.Y.). In any event, Nurse McGrath informed Applicant that C.F. needed to receive the aforementioned vaccinations at least fourteen days prior to the first day of school or be subject to exclusion from school. *See* Dkt. 20-3, p. 2 (S.D.N.Y.).

At no point has Applicant applied for a medical exemption from PHL § 2164 on behalf of C.F. and, as such, the federal complaint is devoid of such an allegation. *See* Dkt. 19 (S.D.N.Y.).

Applicant has lost at every stage of the proceeding to this point. On July 10, 2026, the Honorable Kenneth M. Karas of the Southern District of New York denied Applicant's request for a preliminary injunction, citing the Second Circuit's recent decision in *Miller II*. Judge Karas pointed to Applicant's concession that *Miller II* constituted "controlling Second Circuit authority." (School District Appendix 3, at p. 2.) Because *Miller II* held that (1) PHL § 2164 was a neutral law of general applicability; and (2) that PHL § 2164 did not violate the parental Free Exercise right recognized in *Mahmoud*, Applicant stood no chance of prevailing on her claims. *See id.* Judge Karas also noted that while *Miller II* did not address the Equal Protection Clause, its holdings (namely, that PHL § 2164 was facially neutral and contained no discriminatory purpose) resolved Applicant's Equal Protection claim. (School District Appendix C, at p. 3.)

On July 17, 2026, Applicant appealed the Southern District's denial of her application for a preliminary injunction to the Second Circuit. Applicant requested:

1) that the Second Circuit grant an injunction pending appeal that would allow C.F. to attend Waverly School in violation of PHL § 2164; and 2) that the Second Circuit grant expedited consideration and rule prior to August 20, 2026. Applicant also moved in the alternative for a temporary administrative injunction that would preserve C.F.'s enrollment pending a ruling on the full application. On July 21, 2026, the Second Circuit referred Applicant's motion for an injunction pending appeal to a three-judge motions panel, granted her request for expedited consideration, and denied the alternative request for temporary administrative injunctive relief. (School District Appendix B.)

On August 11, 2026, a three-judge panel of the Second Circuit denied Applicant's motion for a preliminary injunction pending appeal. (School District Appendix A.) While the judges did not expand upon the reasons for their decision, they referred the parties to the decision in *Agudath* and its discussion of the factors a court must consider when assessing an application for a preliminary injunction. (School District Appendix A.)

LEGAL STANDARD

In order for a Circuit Justice to grant a stay pending certiorari, four Members of the Court must consider the issue sufficiently meritorious to grant certiorari or to note probable jurisdiction, there must be a fair prospect that five Justices will conclude that the case was erroneously decided below, and an applicant must demonstrate that irreparable harm will likely result from the denial of equitable relief. *See Lucas v. Townsend*, 486 U.S. 1301, 1304 (1988). When appropriate, a

Circuit Justice will balance the equities to determine whether the injury asserted by the applicant outweighs the harm to other parties or to the public. *See id*; *see also Rostker v. Goldberg*, 448 U.S. 1306, 1308 (1980) (Brennan, J., in chambers); *Times-Picayune Publishing Corp v. Schulingkamp*, 419 U.S. 1301, 1304 (1974) (Powell J., in chambers).

A grant of injunctive relief requires a more substantial justification than a stay. *See Brown v. Gilmore*, 533 U.S. 1301, 1303 (2001) (Rehnquist, C. J., in chambers) (“[A]pplicants are seeking not merely a stay of a lower court judgment, but an injunction against the enforcement of a presumptively valid state statute.”)² Accordingly, such relief is to be used “sparingly and in only the most critical and exigent circumstances.” *Fishman v. Schaffer*, 429 U.S. 1325, 1326 (1976) (Marshall, J., in chambers) (quoting *Williams v. Rhodes*, 89 S. Ct. 1, 2 (1968) (Stewart, J., in chambers)). Additionally, the legal rights at issue must be “indisputably clear.” *Communist Party of Indiana v. Whitcomb*, 409 U.S. 1235 (1972).

In her moving papers, Applicant presents a transparent twisting of the lower court holdings. Contrary to Applicant’s assertion that “no court below exercised equitable judgment to withhold” is the simple fact that two separate judiciaries declined to grant Applicant the relief she sought – namely, a preliminary injunction allowing C.F. to enroll in Waverly School while failing to meet the mandatory vaccination requirements of PHL § 2164. *See Applicant’s Application*, p. 10. While the

² This phrasing is of particular note considering that PHL § 2164 has survived every constitutional challenge lodged against it since its enactment.

district court declined to opine on the other factors required to grant a preliminary injunction, the fact that Applicant showed no likelihood of success on the merits (the dispositive element) rendered consideration of these factors academic. (School District Appendix C, pp. 1-2.) Applicant also characterizes the directive of the district court as sympathetic to her view, representing that the court “directed [her] to seek this relief from the Second Circuit.” *See* Applicant’s Application, p. 10. This is another distortion. Judge Karas denied Applicant’s request for a preliminary injunction and an injunction pending appeal. *See* Applicant’s Application, p. 3. The Judge merely noted that the Second Circuit remained open to Applicant if she sought to pursue the matter further. *See id.*

While the Second Circuit was less specific than the district court in its foreclosure of Applicant’s motion, it was no less decisive. The Second Circuit panel referred Applicant to the injunction factors discussed in *Agudath*, which mirror the elements the district court ruled on when denying Applicant’s initial application. *See Agudath*, 979 F.3d at 180.

ARGUMENT

I. THE PROCEDURAL HISTORIES OF *AGUDATH*, *ROMAN CATHOLIC DIOCESE*, AND *MIRABELLI* ARE INAPPOSITE TO THE FACTS OF THIS CASE.

Applicant’s first argument centers around the procedural histories of the *Agudath*, *Roman Catholic Diocese*, and *Mirabelli* decisions. However, the facts of those cases are distinguishable from the matter at hand.

In *Agudath* and *Roman Catholic Diocese*, this Court intervened to address public health determinations which were made in response to a rapidly evolving

pandemic that had taken the lives of over 250,000 people at the time of the latter decision's issuance. *See Roman Catholic Diocese*, 592 U.S. at 33. At the time those decisions were released, there was no known cure or vaccine for COVID-19. *See Agudath*, 979 F.3d at 181. Thus, it made sense for the Court to issue a detailed, expedited ruling on the cases (which were later consolidated) so that worshippers and public health officials knew whether they were at risk of running afoul of the Constitution.

Here, there is no comparable risk. Applicant seeks to pressure this Court into issuing a rushed decision which would allow her child to violate a public-health measure that has withstood a very recent Constitutional challenge. *See Miller v. McDonald*, 2026 WL 1871521 (2d Cir. 2026). Additionally, while the restrictions at issue in *Agudath* and *Roman Catholic Diocese* were hastily introduced via a Governor's executive order, the religious exemption to PHL § 2164 was repealed over seven years ago, and no court has issued a preliminary injunction excepting a child from its ambit since that time. *See Agudath*, 979 F.3d at 179; *Roman Catholic Diocese*, 592 U.S. at 15; *Goe v. Zucker*, 43 F.4th 19, 25 (2d Cir. 2022). Moreover, the vaccines which C.F. is required to receive in order to attend kindergarten – namely, the MMR, varicella, and Hepatitis A inoculations – have been deemed safe and effective for children for decades.³

³ *See* Liv Hospital, [When Did the MMR Vaccine Come Out and Who Invented It?](#) (last accessed Aug. 28, 2026); Medical Advisory Board, [When Was the Varicella \(Chicken Pox\) Vaccine First Introduced in the United States?](#) (Jan. 24, 2026); Monique A. Foster et al., [Epidemiology and Prevention of Vaccine-Preventable Diseases - Chapter 9: Hepatitis A](#), CDC (May 21, 2024).

Applicant also failed to bring to this Court’s attention two comparable cases in which injunctive relief was denied to plaintiffs seeking to avoid complying with public health restrictions during the onset of the COVID-19 crisis. In *S. Bay United Pentecostal Church v. Newsom*, 590 U.S. 965 (2020), this Court rejected a church’s attempt to seek enjoinder of the Governor of California’s COVID-19 restrictions. In his concurrence, Justice Roberts noted that the Constitution principally entrusts “[t]he safety and the health of the people” to the politically accountable officials of the States “to guard and protect.” *Id.* at 967 (quoting *Jacobson v. Massachusetts*, 197 U.S. 11, 38 (1905)). Likewise, in *Calvary Chapel Dayton Valley v. Sisolak*, 591 U.S. 1042 (2020), the Court rejected a similar appeal for injunctive relief from the Governor of Nevada’s public health measures.

This Court has also issued more recent denials of requests for injunctive relief from vaccine mandates. In *Doe v. Mills*, 142 S.Ct. 17 (2021), the Court rejected a plaintiff’s request for a religious exemption from the COVID-19 vaccination requirements for Maine healthcare workers. In her concurrence, Justice Barrett noted that applicants who seek expedited relief from vaccine requirements “could use the emergency docket to force the Court to give a merits preview in cases that it would be unlikely to take—and to do so on a short fuse without benefit of full briefing and oral argument.” *Id.* at 18. Justice Sotomayor declined a similar application for injunctive relief in *Dr. A. v. Hochul*, 142 S. Ct. 552 (2021).

Lastly, as we will discuss *infra*, *Mirabelli* involved a factual background even more distinguishable from the case at bar than either *Agudath* or *Roman Catholic*

Diocese. Thus, any attempt to draw similarities between the applications for injunctive relief in these cases is fruitless.

II. APPLICANT HAS NOT DEMONSTRATED THAT A MAJORITY OF THIS COURT WOULD CONCLUDE THAT HER FREE EXERCISE CLAIM WARRANTS STRICT SCRUTINY.

A. Miller II Shuttered Any Argument on Injunctive Relief.

The Second Circuit effectively slammed the door shut on Applicant’s claims with its June 30, 2026 decision in *Miller II*. It is irrefutable that the lower court found that PHL § 2164 presents a “different” situation than that examined in *Mahmoud* and *Wisconsin v. Yoder*, 406 U.S. 205 (1972). See *Miller II*, 2026 U.S. App. LEXIS 19006, * 22. The Court held that “[e]ven assuming the statute burdens Plaintiffs’ religious exercise by conditioning in-person school attendance on vaccination, the burden does not operate in the way the burdens in *Yoder* and *Mahmoud* did.” *Id.* The panel explained the statute imposes a health-and-safety condition on in-person school attendance and “is not the kind of state interference with a child’s religious development that triggered strict scrutiny in *Yoder* or *Mahmoud*.” *Id.* The Court also rejected plaintiffs’ argument that vaccination imposes an irreversible and greater burden than unwanted classroom instruction. *Id.* at 22-23 and fn. 17.

The *Miller II* court noted that its findings were consistent with the Fourth Circuit’s decision in *Perry v. Marteney*, 172 F.4th 315 (4th Cir. 2026), which similarly involved a challenge to West Virginia’s school vaccination law containing a medical exemption but not a religious one. In *Perry*, the Fourth Circuit expressly distinguished the facts from those reviewed in *Yoder* and *Mahmoud* as the West

Virginia vaccination mandate was a public health measure that did not require schools to “extoll the virtues of vaccines” and that neither *Yoder* nor *Mahmoud* involved a need for the protection of the public’s health and well-being. *See Miller II*, 2026 U.S. App. LEXIS 19006, * 23-24 (citing *Perry*, 172 F.4th at 327).

Under the Free Exercise Clause, the government may occasionally burden the external practice of religion. A law that incidentally burdens religious exercise is constitutional if it: 1) is neutral and generally applicable; and 2) satisfies rational basis review. *See Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872, 879 (1990). On the other hand, if the challenged law is not neutral or not generally applicable, strict scrutiny applies and the government must establish that the law is narrowly tailored to advance a compelling government interest. *See Tandon v. Newsom*, 141 S. Ct. 1294, 1296-97 (2021) (per curiam).

The *Miller II* court expressly examined the neutrality and general applicability of PHL § 2164. The lower court found the statute to be neutral on its face as it applies to all children who do not qualify for a medical exemption. *See Miller II*, 2026 U.S. App. LEXIS 19006, * 11-12. Further, the legislative history did not reveal an anti-religious bias. *Id.* at 12. Similarly, the Second Circuit found that its prior decision in *We the Patriots* had foreclosed the argument that the statute favors secular conduct, and the court proceeded to analyze the issue accordingly. *Id.* at 14-17 (citing *We the Patriots USA, Inc. v. Hochul*, 17 F.4th 266 (2d Cir. 2021)).

Thus, because the law at issue is both neutral and generally applicable, it need only to satisfy a rational basis review to be upheld. *Id.* at 20. Tellingly, the *Miller II*

plaintiffs conceded that PHL § 2164 satisfies a rational basis review. *Id.* The same outcome is warranted here.

Lastly, Applicant's proposition that this Court has been chomping at the bit to invalidate the vaccination requirements of PHL § 2164 is belied by the Court's own holdings. On December 8, 2025, the Court granted the writ in *Miller I* and held just the following:

Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Second Circuit for further consideration in light of *Mahmoud v. Taylor*, 606 U.S. 522, 145 S.Ct. 2332, 222 L.Ed.2d 695 (2025).

Miller v. McDonald, 146 S.Ct. 879, at *1 (2025). Thus, anything beyond those stated words was mere conjecture that has been shown to be incorrect based on the June 30, 2026 follow up decision by the Second Circuit in *Miller II*. If the Court preferred, it could have proceeded to the merits stage instead of merely vacating the judgment and remanding for further proceedings.

B. PHL § 2164 Does Not Violate the Free Exercise Clause

1. The Mandate Is Neutral and Generally Applicable

Under the Free Exercise Clause, the government may occasionally burden the external practice of religion. A law that incidentally burdens religious exercise is constitutional if it: 1) is neutral and generally applicable; and 2) satisfies rational basis review. *See Smith*, 494 U.S. at 879. On the other hand, if the challenged law is not neutral or not generally applicable, strict scrutiny applies and the government

must establish that the law is narrowly tailored to advance a compelling government interest. *See Tandon*, 141 S.Ct. at 1296-97 (per curiam); *see also Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993).

Under the *Smith* standard, a law is not neutral if it “proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature.” *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877, 2021 WL 2459253 (2021). However, a law that merely “affects” religion will not be deemed non-neutral; the law or the process of its enactment must demonstrate “hostility” to religion. *See We the Patriots*, 76 F.4th at 145.

In *We the Patriots*, the Court held that the State of Connecticut’s repeal of the religious exemption to school immunization requirements was neutral and not hostile to religion simply because the legislators who repealed the Act’s religious exemption engaged in impassioned debates about the fallout effect on religious objectors. *Id.* at 148.

In terms of the “generally applicable” prong, a law is generally applicable when it “treats similar conduct similarly, without regard to whether the conduct is religiously motivated.” *Id.* at 146. In *We the Patriots*, the Court held that Connecticut’s vaccination policy was generally applicable because “exempting religious objectors from vaccination would only detract from the State’s interest in promoting public health by increasing the risk of transmission of vaccine-preventable diseases among vaccinated and unvaccinated students alike.” *Id.* at 153.

Here, the proponents of the 2019 repeal of PHL § 2164's religious exemption were motivated by reducing the virality of communicable diseases and not by hostility towards religion. *See* 2019 New York Assembly Bill No. 2371 (May 22, 2019) (bemoaning the low vaccination rates in certain New York schools and discussing how the enactment of the bill would ameliorate this issue). And as discussed in *We the Patriots*, PHL § 2164 seeks to shield both the vaccinated and unvaccinated alike from the deleterious effects of disease.

The Second Circuit, in *Miller II*, expressly examined the neutrality and general applicability of PHL § 2164. The Second Circuit found the statute to be neutral on its face as it applies to all children who do not qualify for a medical exemption. *See Miller*, 2026 U.S. App. LEXIS 19006, * 13. Further, the legislative history did not reveal an anti-religious bias. *Id.* at 11-13. Similarly, the Second Circuit found the prior decision in *We The Patriots* had foreclosed the argument that the statute favors secular conduct, and the court proceeded to analyze the issue accordingly. *Id.* at 14-17.

Thus, because PHL § 2164 is both neutral and generally applicable, it need only satisfy a rational basis review to be upheld. *Id.* at 20.

2. Rational Basis Review Applies as No Fundamental Right Is Implicated

A neutral and generally applicable law's burden on religion is constitutional if the law passes the relatively low hurdle of rational basis review - that the state has chosen a means for addressing a legitimate government interest rationally related to achieving that goal. *See e.g., Kane v. De Blasio*, 19 F.4th 152, 166 (2d Cir. 2021) (per curiam). The public health of both the District's students and staff is considered a

“legitimate state interest.” *See e.g., Freedom Holdings, Inc. v. Cuomo*, 624 F.3d 38, 45, n. 8 (2d Cir. 2010).

Here, Applicant does not have a fundamental constitutional right to an education. *See Goe*, 43 F.4th at 25. Nor is there a fundamental right for a parent to refuse to immunize a child where immunization is a precondition to a child attending school. *See Workman v. Mingo Cty. Bd. of Educ.*, 419 F. App’x 348, 355 (4th Cir. 2011); *see also Prince v. Massachusetts*, 321 U.S. 158, 166-67 (1944); *Torrey-Love v. State Dep’t of Educ.*, 2017 U.S. Dist. LEXIS 236267, * 9-10 (Cal. Cent. Dist. Ct. 2017) (“the linchpin of Plaintiff’s due process claim is whether the right to refuse immunization before attending a public school that requires immunization is a fundamental right subject to heightened protection. ‘The Nation’s history, legal traditions, and practices answer with a resounding ‘no.’”) (citing *Boone v. Boozman*, 217 F.Supp.2d 938, 956 (E.D. Ark. 2002). Rather, “rational basis review is appropriate” “when a parental right is involved against state regulation.” *Doe v. Zucker*, 520 F.Supp.3d, 218, 250 (N.D.N.Y. 2021). Because the elimination of non-medical vaccine exemptions is rationally related to the State’s goal of boosting vaccination rates (and thus improving and/or safeguarding public health), the statute satisfies rational basis review.

III. THE FACTS GIVING RISE TO *MAHMOUD* AND *MIRABELLI* ARE DISTINCT FROM THOSE PRESENT HERE.

While Applicant attempts to characterize the facts examined in the *Mahmoud* and *Mirabelli* decisions as directly pertinent to the facts at hand, there is a stronger argument that the cases could not be more dissimilar. *Mahmoud* did not address vaccination mandates, public health and safety issues, or the State’s inherent police

powers on such issues. Rather, it presented a situation where a school board “introduced a variety of ‘LGBTQ+ inclusive’ storybooks into the elementary school curriculum,” specifically “designed to ‘disrupt’ children’s thinking about sexuality and gender,” while mandating children’s attendance during those lessons and refusing to provide advance notice to parents about when the books would be discussed. *Mahmoud*, 606 U.S. at 528-30. The parents alleged the mandatory curriculum undermined their efforts to raise their children in line with particular faiths, as the messages ran counter to their religious beliefs. *Id.* at 540-42. The lower courts characterized the claims as a “free exercise violation based on indoctrination.” *Id.* at 544. The U.S. Supreme Court found a First Amendment violation in that the school “policy, like the compulsory-attendance law in *Yoder*, threatened to interfere with the children’s religious development by subjecting them to schooling that pressured them towards views at odds with their parents’ faith.” *Miller II*, 2026 U.S. App. LEXIS 19006, * 25 (citing *Mahmoud*, 606 U.S. at 553-54, 565).

In reaching its decision in *Mahmoud*, the Court referred back to its decision in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), which “concerned Amish parents who wished to withdraw their children from conventional schooling after the eighth grade, in direct contravention of a Wisconsin law requiring children to attend school until the age of 16.” *Mahmoud*, 606 U.S. at 543. The Supreme Court in *Mahmoud* explained that the compulsory education law examined in *Yoder* carried the kind of objective danger to the free exercise of religion that the First Amendment was designed to prevent because it placed Amish children into an environment hostile to Amish

beliefs, where they would face pressure to conform to contrary viewpoints and lifestyles. *Id.* at 549-50.

On this basis, the Supreme Court, in *Mahmoud*, found that mandatory inclusion of the challenged books into the educational curriculum also carried a real threat of undermining the religious beliefs that the parents wished to instill in their children, because they “impose upon children a set of values and beliefs that are hostile to their parents’ religious beliefs” and “exert upon children a psychological pressure to conform to their specific viewpoints.” *Id.* at 553-54; *see also id.* at 555. (“Here, the Board requires teachers to instruct young children using storybooks that explicitly contradict their parents’ religious views, and it encourages the teachers to correct the children and accuse them of being ‘hurtful’ when they express a degree of religious confusion.”)

The facts examined in *Yoder* did not involve questions of public health and safety, nor did the *Yoder* court opine on the scope of the State’s police power on such issues. Instead, in *Yoder*, the Supreme Court expressly distinguished the compulsory education statute 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 that was upheld in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905). *See Yoder*, 406 U.S. at 230 & n. 20. Thus, any attempts to insert *Mahmoud* into the questions at issue here should fail at the outset.

Likewise, the *Mirabelli* court dealt with issues wholly distinct from our case. The plaintiffs in *Mirabelli* were parents who objected to a California school district’s

policy of only notifying parents about a child's gender transition if the child gave their advance consent. *See Mirabelli*, 607 U.S. at 493. While it is true that the Court expanded the scope of the Free Exercise Clause to include parental notification policies, it made no attempt to extrapolate these findings onto state vaccine policies. *See id.* at 496.

IV. APPLICANT CANNOT ESTABLISH IRREPARABLE HARM.

Applicant cannot establish the second element necessary to grant a preliminary injunction pending appeal: irreparable harm. “In the absence of a showing of irreparable harm, a motion for preliminary injunction should be denied.” *Rodriguez v. DeBuono*, 175 F.3d 227, 234 (2d Cir. 1999). “Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 22 (2008).

The mere “assertion of constitutional injury is insufficient to automatically trigger a finding of irreparable harm” in any event. *Donohue v. Mangano*, 886 F.Supp.2d 126, 150, 2012 WL 3561796 (E.D.N.Y. 2012); *Gazzola v. Hochul*, 645 F.Supp.3d 37, 55, 2022 WL 17485810 (N.D.N.Y. 2022), *aff'd*, 88 F.4th 186 (2d Cir. 2023). Rather, only where a constitutional injury is “convincingly shown” may a finding of irreparable harm be justified. *See Donohue*, 886 F. Supp. 2d at 150; *see also Turley v. Giuliani*, 86 F. Supp. 2d 291, 295 (S.D.N.Y. 2000) (explaining that in similar circumstances, the irreparable harm inquiry folds into the likelihood of success on

the merits inquiry). Courts “have not consistently presumed irreparable harm in cases involving allegations of the abridgement of First Amendment rights[.]” *Bronx Household of Faith v. Bd. of Educ.*, 331 F.3d 342, 349 (2d Cir. 2003) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

Here, as discussed above, Applicant’s certain failure to establish a likelihood of success on her constitutional claims precludes a finding of irreparable harm. *See Miller II*, 2026 U.S. App. LEXIS 19006 (affirming the dismissal of a religious-based challenge to the vaccination requirements of PHL § 2164); *We the Patriots*, 17 F.4th at 294 (“Although Plaintiffs are subject to meaningful burdens on their religious practice if they choose to obtain the COVID-19 vaccine, because they have failed to demonstrate a likelihood of success on their First Amendment or other constitutional claims, their asserted harm is not of a constitutional dimension.”).

Even if Applicant could establish that she incurred irreparable harm as a result of the enforcement of PHL § 2164, such harm has been created by her own actions and cannot serve as a basis to grant exigent injunctive relief now. *See e.g., Broecker v. N.Y.C. Dep’t of Educ.*, 585 F.Supp.3d 299, 322 (E.D.N.Y. 2022) (rejecting an injunction sought against a COVID-19 vaccine mandate, holding “[n]or should Plaintiffs be heard in support of their motion for injunctive relief to complain that they will suffer [] harm because of their own choices”).

Another factor for the Court to consider is the fact that Applicant’s claim may already be mooted by the deadline she provided in her brief. On page 9 of her application, Applicant noted that she “must commit on or about August 25, 2026 to

relocating the children to Florida to secure C.F.'s schooling, while her husband remains in New York for work." Applicant's Application, p. 9. She elaborated that she has "deferred that commitment by a few days since her July declaration, but it can move no further." *Id.* The School District Respondents are submitting this brief in opposition on August 31, 2026, in accordance with the Court's specified deadlines. Accordingly, it will likely be well into September by the time Applicant gets the chance to review and reply to our opposition. This makes it impossible for the Court to review all parties' moving papers before the professed deadline for Applicant to make an educational decision has passed. While Applicant may argue that this constitutes harm in and of itself, courts within the Second Circuit disagree. *See In re Adelpia Communs. Corp.*, 361 B.R. 337, 347 (S.D.N.Y. 2007) ("A majority of courts have held that a risk of mootness, standing alone, does not constitute irreparable harm.")

Lastly, while the lower Courts did not make a finding on the sincerity of Applicant's religious beliefs, their reticence should not prevent this Court from doing so. The Second Circuit has indicated that "philosophical and personal" belief systems are not religion, in spite of the fact that these belief systems may be held with "strong conviction" and inform critical life choices. *See Mason v. General Brown Cent. School Dist.*, 851 F.2d 47, 52 (2d Cir. 1988). Many of Applicant's beliefs on vaccinations cut in stark contrast to those espoused by the Catholic Church, which Applicant claims to be a devout follower of. In *Caviezel v. Great Neck Pub. Sch.*, 701 F.Supp.2d 414 (E.D.N.Y. 2010), a plaintiff sought to invoke the then-in-force religious exemption to

PHL § 2164's vaccine requirements in order to avoid vaccinating her children. The *Caviezel* court held that because plaintiff's church in no way expressed opposition to vaccinations, she could not classify her anti-vaccination beliefs as religious in nature. *Caviezel*, 701 F.Supp.2d at 429.

Similarly, in *Harris v. Univ. of Mass.*, 557 F.Supp.3d 304, 2021 WL 3848012 (D. Mass. 2021), a district court held that a student who sought a religious exemption to the University of Massachusetts' COVID-19 vaccine requirements on the basis of her Catholic faith could not find relief under the Free Exercise Clause. Supporting reasons for this conclusion included the student's prior vaccination history and the lack of public statements from the Catholic church against the COVID-19 vaccine. *See Harris v. Univ. of Mass.*, 557 F. Supp. 3d at 314.

An April 2015 memorandum from the United States Conference of Catholic Bishops' Secretariat of Pro-Life Activities entitled, "Conscience Exemption for Vaccines based on Fetal Tissue from Abortions," is informative on this issue. While the memorandum urges Catholics to reflect on how certain vaccines are produced, it does not indicate a categorical bar of the faithful receiving vaccines, even (under certain circumstances) vaccines which were manufactured using fetal tissue from induced abortions.⁴ The memorandum also specified that "risk" should be determined on a case-by-case basis, and that Catholic schools have accordingly adopted different policies regarding "conscience exemptions." *Id.*

⁴ See [Conscience Exemption for Vaccines based on Fetal Tissue from Abortions](https://www.usccb.org/beliefs-and-teachings/our-beliefs/religious-liberty/conscience-exemptions-for-vaccines-based-on-fetal-tissue-from-abortions), USCCB.ORG (2015).

The Catholic Church’s pro-vaccine stance was further cemented in a recent letter sent by the Florida Conference of Catholic Bishops to the state’s attorney general.⁵ The letter’s author, Michael B. Sheedy, noted that “Catholic diocesan schools in Florida do not accept religious exemptions from school vaccination requirements.” *Id.* at p. 2. Thus, Applicant’s blanket statement that her faith “does not permit [her] to vaccinate” in any case is erroneous. *See* Dkt. No. 5.1 at p. 9 (S.D.N.Y.).

Another factor to consider is the fact that plaintiff has already allowed C.F. to receive dozens of vaccinations, several of which were produced using fetal cell lines.⁶ Specifically, the MMR, varicella, and Hepatitis A vaccines in use today were developed from fetal cell lines. *Id.* Here, C.F. received one dose of the MMR vaccine on April 14, 2022 and two doses of the Hepatitis A vaccine on October 14, 2022 and April 14, 2023, respectively. *See* Dkt. 26-2 (S.D.N.Y.)

The fact that these vaccines were administered to C.F. relatively recently (within the last five years) also casts doubt on Applicant’s assertion that her opposition to vaccination is “not the formation of a new belief.” *See* Dkt. No. 4.2 at 5-1, p. 9 (S.D.N.Y.). Just as the plaintiff in *Harris* had her prior vaccination history reviewed and weighed in the determination against her, so too should it occur with

⁵ *See* Michael B. Sheedy, *August 7, 2026 Letter to the Honorable James Uthmeier*, FLORIDA CONFERENCE OF CATHOLIC BISHOPS (Aug. 7, 2026). We also note that Florida is the state where Applicant claimed C.F. will be forced to move to if she is denied the injunctive relief sought here.

⁶ *See* [Understanding Cell Use in Vaccines](#), TEX. CHILDREN’S HOSP. (2026).

Applicant's decision to recently inoculate C.F. with numerous vaccines, as they belie her claim as to the sincerity of her religious beliefs regarding vaccination.

Because Applicant cannot establish irreparable harm, her motion for a injunctive relief should be denied.

V. THE BALANCE OF HARMS AND THE PUBLIC INTEREST FAVOR THE PRESERVATION OF THE STATUS QUO.

Lastly, neither the balance of equities nor the public interest favor Applicant. These factors merge when the state is the opposing party. *See Nken v. Holder*, 556 U.S. 418, 420 (2009). Courts within the Second Circuit have rejected the argument that permitting a small number of unvaccinated children to attend school outweighs the interest of the governmental interest in slowing the spread of preventable diseases. *See Miller II*, 2026 U.S. App. LEXIS 19006; *We the Patriots*, 76 F.4th at 153 (discussing Connecticut's interest in requiring vaccination and explaining that "exempting religious objectors from vaccination would only detract from the State's interest in promoting public health by increasing the risk of transmission of vaccine-preventable diseases among vaccinated and unvaccinated students alike."). While not binding on this Court, New York's state courts have also construed PHL § 2164 unsympathetically against those challenging vaccine mandates. *See e.g., F.F. v. State of N.Y.*, 65 Misc. 3d 616, 625, 2019 WL 4050472 (Sup. Ct., Albany Cnty. 2019) (finding that the balance of equities did not favor individuals challenging a vaccine mandate where the injunction would place individuals "at increased risk of contracting diseases which, as history shows, can result in life-long disabilities or death."). In terms of the public interest, school districts "have a strong interest in

protecting school children, their families, school staff, and the broader public from infectious disease.” *See Walker v. New York State Dep’t of Health*, 788 F. Supp. 3d 427, 512, 2025 WL 1786917 (E.D.N.Y. 2025).

Here, Applicant claims that the harm to the School District Respondents from allowing C.F. to enroll in school is minimal because “the District already operates alongside medically exempt children, students over eighteen, and unvaccinated staff, and retains the State’s outbreak-exclusion mechanism, 10 N.Y.C.R.R. § 66-1.10, to exclude unvaccinated children if an actual outbreak arises.” *See* Dkt. No. 7, p. 6 (2d Cir.). First, a medical exemption to the State’s vaccine requirement is a legitimate and narrow exception which only 0.3% of kindergarteners in New York State qualified for in 2025.⁷ Second, any student who is over eighteen and has previously attended school in New York State as a child has already had to comply with the State’s vaccine requirements. Neither of these narrow exceptions to the State’s vaccine mandate justify plaintiff’s strategy of belatedly “exclud[ing] vaccinated children if an actual outbreak occurs.” *See* Dkt. No. 7, p. 6 (2d Cir.).

Applicant also fails to discuss the often-protracted nature of litigation or consider the exponential viral effect which could occur if C.F. contracted a preventable communicable disease while attending school. Accordingly, because the balance of equities favors the School District Respondents and their public interest

⁷ *See [Vaccination Coverage and Exemptions among Kindergartners: Exemptions](#)*, CDC (Jul. 31, 2025),

in preserving the health of the District's community, these applications for a writ of injunction and an immediate administrative injunction should be denied.

CONCLUSION

The School District Respondents respectfully request that the Circuit Justice, or the Court upon referral: (1) deny Applicant's request for an administrative injunction preserving C.F.'s enrollment and ability to attend Waverly School while this application is being considered; and (2) decline to issue a writ of injunction pending disposition of Second Circuit Appeal No. 26-1912.

The School District Respondents also request the rejection of any alternative interim relief which would allow C.F. to attend Waverly School without receiving the necessary vaccinations required by PHL § 2164.

Dated: Farmingdale, New York
August 31, 2026

Respectfully submitted,

GUERCIO & GUERCIO LLP

*Attorneys for the School
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CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2026, I caused a true and correct copy of the foregoing Brief in Opposition to Applicant's Emergency Application for Writ of Injunction Pending Appeal, together with Appendixes A through C, to be submitted through the Supreme Court's electronic filing system and served on counsel of record for Applicant and the non-School District Respondent by electronic mail, with all counsel having already consented in writing to service via electronic means. *See Sup. Ct. R. 29.3.*

Counsel served include Patricia Finn, Esq., Patricia Finn Attorney, P.C., counsel for Applicant Jane Doe, individually and as next friend of C.F., a minor; and Barbara D. Underwood, Solicitor General, Judith N. Vale, Deputy Solicitor General, and Mark S. Grube, Senior Assistant Solicitor General, Office of the New York State Attorney General, together with Roderick Arz, Esq. and Seth J. Farber, Esq., Office of the New York State Attorney General, counsel for Respondent James V. McDonald, M.D.

Dated: Farmingdale, New York
August 31, 2026

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CERTIFICATE OF WORD COUNT

This document shall constitute the certification of word count required by Supreme Court Rule 33.1:

The number of words in the annexed 7,716 complies with the word count limit required by the Supreme Court of the United States. The number of words, exclusive of the caption and signature block is 7,716.

Counsel has relied on the word count of the word processing system used to prepare the brief in opposition to plaintiff's application to the Supreme Court for injunctive relief.

APPENDIX

- Appendix A – August 11, 2026 Second Circuit Order Denying Applicant’s Request for a Preliminary Injunction Pending Appeal.
- Appendix B – July 21, 2026 Second Circuit Order Referring Applicant’s Motion to a Three-Judge Motions Panel and Denying Applicant’s Application for Temporary Administrative Injunctive Relief.
- Appendix C – July 10, 2026 Southern District of New York Order Denying Applicant’s Application for a Preliminary Injunction and an Injunction Pending Appeal.

APPENDIX A

SECOND CIRCUIT ORDER DENYING APPLICANT'S APPLICATION FOR AN INJUNCTION PENDING APPEAL

Doe v. McDonald, No. 26-1912 (2d Cir. Aug 11, 2026); Dkt. No. 30.1 (2d Cir.).

[A true copy of the order, as filed on the Second Circuit docket and transmitted in the record on appeal, follows this page.]

Description: A one-page order of a three-judge motions panel of the United States Court of Appeals for the Second Circuit which was entered on August 11, 2026. The three judges on the panel were Judges Joseph F. Bianco, Steven J. Menashi, and Maria Araujo Kahn. The order denied Applicant's request for a preliminary injunction pending appeal on the basis of the injunction factors discussed in *Agudath Isr. of Am. v. Cuomo*, 979 F.3d 177, 179–80 (2d Cir. 2020).

APPENDIX B

SECOND CIRCUIT ORDER REFERRING APPLICANT'S MOTION TO A THREE-JUDGE MOTIONS PANEL AND DENYING APPLICANT'S APPLICATION FOR TEMPORARY ADMINISTRATIVE INJUNCTIVE RELIEF

Doe v. McDonald, No. 26-1912 (2d Cir. Jul. 21, 2026); Dkt. No. 14.1 (2d Cir.).

[A certified copy of the order, as issued by the Clerk of Court on July 21, 2026,
follows this page.]

Description: A one-page order of the United States Court of Appeals for the Second Circuit which was entered on July 21, 2026. The order referred Applicant's motion to a three-judge motions panel, granted Applicant's request for expedited consideration, and denied Applicant's request for temporary administrative injunctive relief. The certified copy was issued by the Clerk of Court on July 21, 2026.

APPENDIX C

SOUTHERN DISTRICT OF NEW YORK DENYING APPLICANT'S APPLICATIONS FOR A PRELIMINARY INJUNCTION AND AN INJUNCTION PENDING APPEAL

Doe v. McDonald, No. 7:26-cv-04176 (KMK) (S.D.N.Y. July 10, 2026); Dkt. No. 33
(S.D.N.Y.)

[A true copy of the order, as filed on the district court docket and transmitted in the
record on appeal, follows this page.]

Description: A three-page order of the United States District Court for the Southern District of New York entered by Judge Kenneth M. Karas on July 10, 2026. The order denied Applicant's request for a preliminary injunction, citing the Second Circuit's recent decision in *Miller v. McDonald*, 2026 WL 1871521 (2d Cir. 2026) ("*Miller II*"). The order also denied Applicant's request for an injunction pending appeal but noted that Applicant was free to request an injunction pending appeal from the Second Circuit.

S.D.N.Y. – W.P.
26-cv-4176
Karas, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 11th day of August, two thousand twenty-six.

Present:

Joseph F. Bianco,.
Steven J. Menashi,.
Maria Araújo Kahn,.
Circuit Judges.

Jane Doe, as next friend of C.F., a minor,

Plaintiff-Appellant,

v.

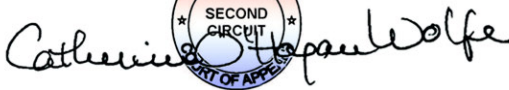
26-1912

James V. McDonald, M.D., in his official capacity as
Commissioner of Health of the State of New York, Eastchester
Union Free School District, Caitlin Mondelli, in her official
capacity as Principal of Waverly School,

Defendants-Appellees.

Appellant moves for a preliminary injunction pending appeal. Upon due consideration, it is hereby ORDERED that the motion is DENIED. *See Agudath Isr. of Am. v. Cuomo*, 979 F.3d 177, 179–80 (2d Cir. 2020) (discussing injunction factors).

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




**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 21st day of July, two thousand twenty-six.

Before: Beth Robinson,
 Circuit Judge.

Jane Doe, as next friend of C.F., a minor,

Plaintiff - Appellant,

v.

James V. McDonald, M.D., in his official
capacity as Commissioner of Health of the State
of New York, Eastchester Union Free School
District, Caitlin Mondelli, in her official capacity
as Principal of Waverly School,

Defendants - Appellees.

ORDER

Docket No. 26-1912

Appellant moves for an injunction pending appeal, expedited consideration of this motion, or alternatively, for a temporary administrative injunction until the Court can rule on this motion.

IT IS HEREBY ORDERED that the motion for an injunction pending appeal is REFERRED to a three-judge motions panel. The request for expedited consideration is granted to the extent that the motion will be submitted to a panel sitting prior to August 20, 2026. The request for temporary administrative injunctive relief is DENIED.

For the Court:
Catherine O'Hagan Wolfe,
Clerk of Court

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JANE DOE, *as next friend of C.F., a minor*,

Plaintiff,

v.

JAMES V. MCDONALD, *et al.*,

Defendants.

No. 26-CV-4176 (KMK)

ORDER

KENNETH M. KARAS, United States District Judge:

Jane Doe (“Plaintiff”), on behalf of her minor child, C.F., brought this Action against James McDonald (the Commissioner of Health of the State of New York), the Eastchester Union Free School District, and Caitlin Mondelli (the principal of Waverly School) (together, “Defendants”), claiming New York’s school immunization requirements are unconstitutional as applied to C.F. Before the Court is Plaintiff’s request for a preliminary injunction barring Defendants from enforcing those requirements against C.F. or denying C.F.’s enrollment at school for noncompliance. Because the Second Circuit’s recent decision in *Miller v. McDonald* leaves Plaintiff without the requisite likelihood of success on the merits, the Court does not issue a preliminary injunction. --- F.4th ---, 2026 WL 1871521 (2d Cir. June 30, 2026) (“*Miller IP*”).

“A plaintiff seeking a preliminary injunction must establish that [s]he is likely to succeed on the merits, that [s]he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in h[er] favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008); *see also Benihana, Inc. v. Benihana of Tokyo*, 784 F.3d 887, 895 (2d Cir. 2015) (same). If there is no likelihood of success on the

merits, a preliminary injunction cannot issue. *See A.H. by and through Hester v. French*, 985 F.3d 165, 176 (2d Cir. 2021) (explaining “likelihood of success on the merits is . . . the dominant, if not the dispositive, factor” (quotation marks omitted)); *Sosa v. Lantz*, 660 F. Supp. 2d 283, 291 (D. Conn. 2009) (“Because Plaintiff has shown no likelihood of success on the merits, . . . his motion for a preliminary injunction will be denied.” (quotation marks omitted)).

Plaintiff challenges New York Public Health Law § 2164—the immunization requirement at issue—arguing it violates the Free Exercise Clause, the substantive due process right of parents to direct their children’s religious upbringing recognized in *Mahmoud v. Taylor*, 606 U.S. 522 (2025), and the Equal Protection Clause. (*See* Pl.’s Mem. 7–22 (Dkt. No. 23).) *Miller II*, decided while Plaintiff’s preliminary injunction request was pending, rejected a substantively identical challenge to the same law by Amish families. The Second Circuit held (1) that § 2164 was a neutral law of general applicability, noting the Circuit “repeatedly upheld neutral and generally applicable immunization laws in the face of free exercise challenges” under *Employment Division v. Smith*, 494 U.S. 872 (1990); and (2) that § 2164 did not violate the parental free-exercise right recognized in *Mahmoud* because if it imposed any burden on that right at all, it was not “of the same character” as the burden in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), a case on which *Mahmoud* relied. *Miller II*, 2026 WL 1871521, at *4, *9. Plaintiff concedes *Miller II* is “controlling Second Circuit authority.”¹ (Reply 1 (Dkt. No. 31).) Accordingly, “in light of recent precedent within this Circuit, plaintiff has virtually no chance of success on the merits” on her Free Exercise or *Mahmoud* claims. *Fielding v. Index Futures Grp., Inc.*, 699 F. Supp. 416, 418 (S.D.N.Y. 1988); *see also Frey v. Bruen*, No. 21-CV-5334, 2022 WL

¹ As Plaintiff notes in her Reply, however, her disagreements with *Miller II* are preserved for further appellate review. (*See* Reply 1, 3–4.)

522478, at *9 (S.D.N.Y. Feb. 22, 2022) (“Therefore, based on established Supreme Court and Second Circuit precedent, Plaintiffs do not have a high likelihood of success on the merits.”).

Plaintiff also brings an Equal Protection Clause claim, contending § 2164 treats secular and religious children differently. While *Miller II* did not address the Equal Protection Clause, its holdings largely resolve this claim, too, and Plaintiff does not defend it in her Reply. “§ 2164 is neutral on its face.” *Miller II*, 2026 WL 1871521, at *4. “Plaintiffs challenging such facially neutral laws on equal protection grounds bear the burden of making out a ‘prima facie case of discriminatory purpose,’” *Jana-Rock Constr., Inc. v. New York State Dep’t of Econ. Dev.*, 438 F.3d 195, 205 (2d Cir. 2006), or showing the law is “applied in a discriminatory fashion,” *Hayden v. Cnty. of Nassau*, 180 F.3d 42, 48 (2d Cir. 1999). *Miller II* rejected the argument that § 2164 had any discriminatory purpose, *see Miller II*, 2026 WL 1871521, at *5, and Plaintiff has not argued the law is applied in a different way to religious or nonreligious children, (*see generally* Pl.’s Mem.). So that claim, too, is unlikely to succeed on the merits.

Because there is insufficient likelihood of success on the merits in light of *Miller II*, the Court denies Plaintiff’s request for a preliminary injunction. For the same reasons, the Court denies Plaintiff’s request for an injunction pending appeal or prior to Plaintiff filing her appeal, but notes Plaintiff may request an injunction pending appeal from the Second Circuit. *See Ramos v. Aviles-Ramos*, No. 24-CV-5109, 2025 WL 2986508, at *1 (S.D.N.Y. Oct. 23, 2025).
SO ORDERED.

Dated: July 10, 2026
White Plains, New York



KENNETH M. KARAS
United States District Judge