

**In The
Supreme Court of the United States**

JANE DOE, as next friend of C.F,

Applicant,

v.

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

Respondents.

**BRIEF FOR RESPONDENT McDONALD IN OPPOSITION TO
EMERGENCY APPLICATION FOR WRIT OF INJUNCTION PENDING APPEAL
AND FOR IMMEDIATE ADMINISTRATIVE INJUNCTION**

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INTRODUCTION

Plaintiff Jane Doe challenges the absence of a religious exemption to New York’s school vaccination requirement on free exercise grounds and seeks preliminary injunctive relief permitting her child to attend kindergarten without receiving the required vaccinations. The U.S. District Court for the Southern District of New York denied plaintiff’s request for a preliminary injunction. The U.S. Court of Appeals for the Second Circuit then denied plaintiff’s request for an injunction pending resolution of her interlocutory appeal, which she has not yet perfected.

Plaintiff now asks this Court for the extraordinary relief of a writ of injunction that would bar respondent the Commissioner of the New York State Department of Health (DOH), as well as the respondent local school district and school official,¹ from enforcing New York’s vaccination requirement—which would permit her child to attend kindergarten without receiving the required vaccinations pending resolution of her appeal. This Court should deny the application. Indeed, under comparable circumstances, the Court recently denied a request to enjoin enforcement of a California law that requires schoolchildren to be vaccinated against various diseases and does not provide a religious exemption. *See We The Patriots USA, Inc. v. Ventura Unified Sch. Dist.*, 146 S. Ct. 323 (2025) (mem.). The same result is warranted here.

This Court does not grant an injunction pending review unless there is a strong likelihood both that certiorari will be granted and that petitioner will prevail on the

¹ This brief is filed on behalf of the DOH Commissioner. The local school district and official are separately represented.

merits. *See Nken v. Holder*, 556 U.S. 418, 434 (2009); *Does 1-3 v. Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring). But this application fails on both counts. As an initial matter, the Court is exceedingly unlikely to grant certiorari in this case, for three independent reasons. First, plaintiff's underlying appeal from the denial of preliminary injunctive relief may now be moot. Plaintiff bases her claimed irreparable harm on her representation that she needed to irrevocably decide to move to Florida and enroll her child in school there absent relief by August 25, 2026, a deadline that has already passed.

Second, plaintiff has not yet obtained a substantive ruling on her claims from the court of appeals. Instead, she challenges the uniform result that the courts of appeals have reached in *other cases* upholding laws like the one at issue here. But this Court generally considers cases where the courts below have issued thorough, reasoned decisions. And there is no reason to depart from that practice here, where other such cases are pending and where both the purported emergency and its expiration are the product of plaintiff's lack of diligence in challenging a law that has been in force since her five-year-old child was born.

Third, there is also no circuit split over the constitutionality of vaccination laws like the one at issue here.

In any event, plaintiff's application should be denied for the additional reason that she fails to show an indisputably clear entitlement to relief on the merits of her free exercise claim. The availability of a medical exemption does not undercut the law's general applicability because the medical exemption is tightly constrained in

both scope and duration, and it serves rather than undermines the law's objective of protecting the health of schoolchildren. For these reasons, the medical exemption is not comparable to the religious exemption that plaintiff seeks, and thus does not support any inference that similarly situated religious interests are being disfavored. This Court's decision in *Mahmoud v. Taylor*, 606 U.S. 522 (2025), does not require heightened scrutiny here. Mandatory vaccination requirements like the one at issue here do not displace parent's religious views; instead, they impose a condition on school attendance to reduce the spread of communicable disease.

New York's law easily satisfies rational-basis review, and would satisfy heightened scrutiny in any event. New York amended its mandatory vaccination law in 2019 in response to what was then the Nation's worst measles outbreak in a quarter-century, with its epicenter in New York. The Legislature concluded that immunization rates in certain schools had fallen well below the rates necessary to keep communities safe and it responded by repealing the religious exemption, which was the only nonmedical exemption to the vaccination requirement. That response was rational because vaccination is widely recognized as an effective tool in promoting public health and preventing the severe harms that may result from vaccine-preventable diseases. And that response was narrowly tailored to address the precise cause of the recent decrease in immunization rates that threatened herd immunity in certain communities.

Finally, the equitable factors weigh heavily against a writ of injunction. The State would suffer irreparable injury if this Court enjoined enforcement of a duly

enacted law that exercises the State’s core police powers to promote public health, safety, and child welfare through compulsory vaccination. Plaintiff’s alleged need, absent relief, to relocate to Florida by August 25 has already come to pass and, in any event, her claimed emergency arose from her own delay in filing this action and seeking preliminary injunctive relief. These claimed harms fall far short of establishing an entitlement to the extraordinary remedy of a writ of injunction.

BACKGROUND

A. New York’s Efforts to Promote Public Health, Safety, and Child Welfare Through School Vaccination Requirements

“[T]he elimination of communicable diseases through vaccination [was] one of the greatest achievements of public health in the 20th century.” *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 226 (2011) (quotation marks omitted). Previously, “infectious diseases were widely prevalent in the United States and exacted an enormous toll on the population,” until morbidity from vaccine-preventable diseases and their complications significantly declined during the 20th century.² Researchers estimate that routine childhood immunization prevented roughly 500 million illnesses, 32 million hospitalizations, and 1.1 million deaths between 1994 and 2023 alone.³ However,

² U.S. Centers for Disease Control & Prevention, *Impact of Vaccines Universally Recommended for Children – United States, 1900-1998*, 48 MMWR Morb. Mortal. Wkly. Rep. 243, 243 (1999). (For sources available on the internet, full URLs appear in the Table of Authorities. All URLs were last visited on August 31, 2026.)

³ Fangjun Zhou et al., *Health and Economic Benefits of Routine Childhood Immunizations in the Era of Vaccines for Children Program – United States, 1994-2023*, 73 MMWR Morb. Mortal. Wkly. Rep. 682, 683 (2024).

vaccination rates have more recently been declining, and the Nation is experiencing outbreaks of infectious diseases on a scale not seen in decades. In 2026 alone, there have already been more recorded cases of measles—a highly infectious and potentially fatal disease—than in any year since the disease was declared eliminated in 2000.⁴

New York was a leader in early efforts to eradicate communicable diseases. In 1860, New York enacted vaccination requirements for schoolchildren by directing local school boards to refuse to admit any child who was not vaccinated against smallpox. Ch. 438, § 1, 1860 N.Y. Laws 761, 761.⁵ In 1968, the Legislature amended the statute to add the requirement of vaccination for measles. Ch. 1094, § 4, 1968 N.Y. Laws 3095, 3096. New York’s current school vaccination law, like that of nearly every other State, mandates vaccinations against several contagious diseases, including measles, polio, varicella (chicken pox), and pertussis (whooping cough).⁶ Any child who does not meet the immunization requirements for any of the enumerated diseases must be vaccinated against that disease for admission to a public or nonpublic childcare center, day nursery, day care agency, nursery school, kindergarten, or

⁴ See [U.S. Centers for Disease Control & Prevention, *Measles Cases and Outbreaks* \(updated Aug. 30, 2026\)](#); Josh Michaud, [Measles Elimination Status: What It Is and How the U.S. Could Lose It](#), KFF.org (Apr. 27, 2026).

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

⁶ [Center for State, Tribal, Loc., & Territorial Support, U.S. Ctrs. for Disease Control & Prevention, *State School Immunization Requirements and Vaccine Exemption Laws* 8 \(2022\)](#).

elementary, intermediate, or secondary school. N.Y. Pub. Health Law (P.H.L.) § 2164(1), (7); 10 N.Y.C.R.R. §§ 66-1.1(f)-(g), 66-1.3(a).

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

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

The repeal bill was prompted by what was then the Nation’s worst measles outbreak in a quarter-century. The Legislature found based on extensive data and scientific evidence that New York was the epicenter of the measles outbreak, with the

virus spreading primarily in areas “with precipitously low immunization rates.” N.Y. Senate Introducer’s Mem. in Supp. of Bill S. S2994-A, 242d Sess. (May 21, 2019) (“Senate Mem.”). The Legislature’s finding was supported by U.S. Centers for Disease Control and Prevention (CDC) research that found that more than 75% of measles cases in 2019 were linked to two outbreaks in New York, with the majority of those cases occurring in communities with large pockets of unvaccinated individuals.⁷

Moreover, the data showed that the recent increase in religious exemptions was impeding New York’s ability to control the rapid spread of infectious disease. Acknowledging that the CDC had advised that a 95% vaccination rate in a community is needed to achieve what is known as “herd immunity,”⁸ which keeps the disease at bay, the Legislature found that vaccination rates in over 280 schools in New York had fallen below 85%, and rates in 170 of those schools had fallen below 70%. N.Y. Assembly Sponsor’s Mem. in Supp. of Bill A. 2371-A, in Bill Jacket for Ch. 35 (2019), at 4A. Over the preceding several years, reliance on the religious exemption had increased statewide by 54%. *See N.Y. Senate, Tr. of Floor Proceedings, 242d Sess., at 5388-89 (June 13, 2019)* (“Senate Tr.”); Senate Mem., *supra*. Statewide, at least five times as many children had a religious exemption as had a medical one. And some

⁷ Manisha Patel et al., National Update on Measles Cases and Outbreaks – United States, January 1-October 1, 2019, 68 MMWR Morb. Mortal. Wkly. Rep. 893, 893 (2019).

⁸ “Herd immunity” refers to the threshold percentage of individuals in a community who must be immunized against a vaccine-preventable disease to prevent the disease from readily spreading through the community. *See U.S. Centers for Disease Control & Prevention, Measles Cases and Outbreaks, supra.*

schools had granted a religious exemption to as many as 20% of their students. *See Miller v. McDonald*, 180 F.4th 420, 425 (2d Cir. 2026).

In the jurisdictions hardest hit by the measles outbreak, the vast majority of those infected were unvaccinated children. *See* [N.Y. Assembly, Tr. of Floor Proceedings, 242d Sess., at 106 \(June 13, 2019\)](#) (“Assembly Tr.”); [N.Y. State Bar Ass’n, Mem. in Supp. of S. 2994-A/A. 2371, at 2-3 \(May 20, 2019\)](#). One local health department reported that one child with a religious exemption who had contracted measles had caused forty four new cases, twenty six of which involved schoolchildren with a religious exemption. Senate Tr. at 5385. The Legislature also considered other States’ recent experiences. For example, after a 2014 measles outbreak, California removed nonmedical exemptions for religious and personal reasons from its school vaccination law, and then saw its vaccination rates “improve[] demonstrably, particularly in schools with the lowest rates of compliance.” Senate Mem., *supra*. The legislative record in New York thus made clear that the repeal bill would increase vaccination rates to restore and maintain herd immunity and thereby “protect the health of all New Yorkers, particularly our children.” *Id.*

B. Procedural History

In May 2026, plaintiff filed this lawsuit, challenging the omission of a religious exemption from P.H.L. § 2164 on its face and as applied to her and her child. Plaintiff is a Roman Catholic who asserts that she opposes vaccination on religious grounds. Plaintiff has a five-year-old son who will not be eligible to attend school in New York unless he receives the vaccines required by § 2164. (*See* First Am. Compl. ¶¶ 1, 3-4,

32 (June 22, 2026), SDNY ECF No. 19.) Plaintiff alleges that § 2164 violates her rights under (1) the Free Exercise Clause, (2) substantive due process, and (3) the Equal Protection Clause. (*Id.* ¶¶ 109-146.) She named as defendants the DOH Commissioner, the Eastchester Union Free School District, and a local school official. (*Id.* ¶¶ 33-39.)

In June 2026, plaintiff moved for a preliminary injunction that would allow her to send her child to kindergarten in New York without the vaccinations required by law. On July 10, 2026, the U.S. District Court for the Southern District of New York (Karas, J.) denied plaintiff’s preliminary injunction motion. The court explained that the Second Circuit had recently “rejected a substantively identical challenge to the same law” that plaintiff challenges here. Appl., App. B at 2. Accordingly, the court ruled, plaintiff had no likelihood of success on the merits and “a preliminary injunction cannot issue.” *Id.* at 1-2. Plaintiff’s operative complaint remains pending in the district court.

Plaintiff filed an interlocutory appeal from the order declining to grant her preliminary injunction motion—the order at issue here. She then filed a motion in the U.S. Court of Appeals for the Second Circuit seeking an injunction pending resolution of her interlocutory appeal. Plaintiff claimed that, absent an injunction, she “must irrevocably commit” to relocating to Florida by August 20, 2026, and she requested relief before that date. Pl.’s Reply in Further Supp. of Mot. for an Inj. Pending Appeal (“Pl.’s Reply”) at 12 (July 27, 2026), CA2 ECF No. 23. On August 11, 2026, the Second Circuit (Bianco, Menashi, Kahn, JJ.) denied plaintiff’s motion. The

court concluded that plaintiff failed to meet the stringent requirements for an injunction pending appeal. *See* Appl., App. A.

Notwithstanding plaintiff's supposedly irrevocable commitment to relocate by August 20, 2026, she then waited seven days to file in this Court an application for an emergency injunction pending her appeal. She now claims that she needs relief by August 25, 2026, and that the deadline "can move no further." Appl. at 9. That new deadline has now passed.

ARGUMENT

THE COURT SHOULD DENY PLAINTIFF'S REQUEST FOR THE EXTRAORDINARY RELIEF OF A WRIT OF INJUNCTION

Plaintiff asks this Court to enjoin the enforcement of a duly enacted state law—"extraordinary relief" that "does not simply suspend judicial alteration of the status quo but grants judicial intervention that has been withheld by lower courts." *Respect Me. PAC v. McKee*, 562 U.S. 996, 996 (2010) (quoting *Ohio Citizens for Responsible Energy, Inc. v. NRC*, 479 U.S. 1312, 1313 (1986) (Scalia, J., in chambers)). Such drastic relief is issued "sparingly and only in the most critical and exigent circumstances," such as when "the legal rights at issue are indisputably clear." *Wisconsin Right to Life, Inc. v. Federal Election Comm'n*, 542 U.S. 1305, 1306 (2004) (Rehnquist, C.J., in chambers) (quotation marks omitted). Plaintiff does not come close to satisfying this stringent standard here.

A. This Court Is Exceedingly Unlikely to Grant Certiorari.

This Court’s assessment of plaintiff’s likelihood of success on the merits of her appeal encompasses “a discretionary judgment about whether the Court should grant review in the case.” *Does 1-3 v. Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring); *see Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). Plaintiff fails to establish that her appeal would warrant this Court’s review, for several independent reasons.

1. The current case presents an exceedingly poor vehicle for this Court’s review because the underlying appeal from the order denying applicant’s request for preliminary injunctive relief may now be moot. Plaintiff represented to the district court that she needed preliminary injunctive relief “on or before August 20, 2026, to avoid irreparable harm” because, absent relief by that date, she would need to relocate to Florida so her child can begin kindergarten there. *See* Decl. of Patricia Finn, Esq. in Supp. of Pl.’s Appl. for a TRO & Prelim. Inj. at 3, ¶ 10 (June 22, 2026), SDNY ECF No. 20-1. Plaintiff similarly represented to the court of appeals that, absent an injunction, she “must irrevocably commit” to relocating to Florida by August 20, 2026. Pl.’s Reply at 12. And in her application to this Court, plaintiff represented that she obtained a short “deferral” of her deadline but must obtain injunctive relief by August 25, 2026—a date that plaintiff insists “can move no further.” Appl. at 9.

Both of plaintiff’s asserted deadlines for needing time-sensitive relief to avoid her alleged irreparable injury have now passed. According to her representations, she has thus already needed to “irrevocably commit” to relocating to Florida (*see* Pl.’s

Reply at 12). Accordingly, her claimed need for preliminary injunctive relief to avoid that result has passed, and her underlying appeal is likely to be dismissed as moot. At minimum, there is little basis to grant discretionary certiorari review of the denial of preliminary injunctive relief when plaintiff's asserted equitable grounds for needing such relief have expired on their own terms.

Plaintiff's own tactical choices and delay resulted in both her supposed need for emergency relief and the expiration of the deadlines by which she claimed she needed that relief. The repeal legislation that plaintiff challenges here has been in force since 2019—i.e., since plaintiff's five-year-old child was born. Yet plaintiff delayed until May 2026 to file this action and to seek a preliminary injunction; until seven days after the district court denied preliminary injunctive relief to seek emergency relief in the court of appeals; and until seven days after the court of appeals denied relief to seek a writ of injunction in this Court. Meanwhile, in the court of appeals, plaintiff has requested until late October 2026 to perfect her appeal. *See* Appellant's Scheduling Notification (July 27, 2026), CA2 ECF No. 24.

This case is thus unlike *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020) (per curiam), on which plaintiff incorrectly relies (Appl. at 11). *Roman Catholic Diocese* arose in the context of emergency measures implemented in response to the onset of the COVID-19 pandemic, and there was a “need to issue an order promptly.” 592 U.S. at 16. No such circumstances exist here, where the supposed emergency, and its expiration, resulted from plaintiff's litigation choices.

2. The interlocutory posture of this case further renders it an unsuitable vehicle for certiorari review because plaintiff has not yet obtained a substantive ruling on her claims from the court of appeals, and it is unlikely that there will be a decision from the court of appeals that contains thorough (or detailed) reasoning addressing the parties' various arguments. Because this Court is one "of review, not of first view," *Expressions Hair Design v. Schneiderman*, 581 U.S. 37, 48 (2017) (quotation marks omitted), the Court ordinarily prefers to consider questions with "the benefit of a well-developed record and a reasoned opinion on the merits," *Bankers Life & Cas. Co. v. Crenshaw*, 486 U.S. 71, 80 (1988). No such fully developed record or opinion on the merits currently exists, and there is no reason to expect that one will be created.

Plaintiffs' claims here ultimately challenge the uniform result that the courts of appeals, including the Second Circuit, have reached in other, preexisting cases upholding laws like the one at issue here. *See, e.g., Miller*, 180 F.4th 420 (2d Cir. 2026). *See infra* at 14 (listing decisions). Based on these precedents, the district court's sparse decision below concluded that plaintiff has no likelihood of success on the merits of her claims and that preliminary injunctive relief is therefore not warranted. *See* App. B at 3. And in light of its own precedents, the Second Circuit is unlikely to issue a decision with thorough and detailed reasoning for this Court to consider and review. Intervention here at this juncture is thus unwarranted, particularly because there are other cases that present similar constitutional claims that

have been litigated through to a fully reasoned merits decision in the courts of appeals, or where argument has been held and such a merits decision is forthcoming.⁹

3. Another reason why this Court is unlikely to grant certiorari in this case is that plaintiff fails to identify any split in authority about whether the presence of a medical exemption renders a compulsory vaccination law not generally applicable and therefore subject to strict scrutiny. The decisions from the Second Circuit on that question are consistent with decisions from the Third, Fourth, and Ninth Circuits, holding that vaccination requirements with only limited medical exemptions are subject to rational-basis review under *Employment Division v. Smith*, 494 U.S. 872 (1990). *See Miller*, 180 F.4th at 426-32; *Perry v. Marteney*, 172 F.4th 315, 322-28 (4th Cir. 2026); *Spivack v. City of Philadelphia*, 109 F.4th 158, 174-77 (3d Cir. 2024); *We The Patriots USA, Inc. v. Connecticut Off. of Early Childhood Dev.*, 76 F.4th 130, 150-55 (2d Cir. 2023), *cert. denied*, 144 S. Ct. 2682 (2024); *We The Patriots USA, Inc. v. Hochul*, 17 F.4th 266, 284-88 (2d Cir.) (per curiam), *clarified by*, 17 F.4th 368 (2d Cir. 2021), *cert. denied sub nom. Dr. A. v. Hochul*, 142 S. Ct. 2569 (2022); *Doe v. San Diego Unified Sch. Dist.*, 19 F.4th 1173, 1177-78 (9th Cir. 2021); *Workman v. Mingo Cnty. Bd. of Educ.*, 419 F. App'x 348, 352-54 (4th Cir.), *cert. denied*, 565 U.S. 1036 (2011).

⁹ *See Miller*, 180 F.4th 420 (2d Cir. June 30, 2026); *Perry v. Marteney*, 172 F.4th 315 (4th Cir. Apr. 8, 2026); *Milford Christian Church v. Bye*, No. 25-1955 (2d Cir., argued Apr. 22, 2026); *Grimsby v. Pan*, No. 25-6100 (9th Cir., argued Apr. 17, 2026, along with several other challenges to California's vaccination requirement). Certiorari may be inappropriate in these other cases for other reasons, but they do not present the same vehicle defect present here.

Nor does plaintiff identify any split in authority on whether this Court’s recent decision in *Mahmoud v. Taylor*, 606 U.S. 522 (2025), requires application of strict scrutiny to neutral and generally applicable school vaccination requirements. The two federal appellate courts to reach that question—the Second Circuit and the Fourth Circuit—have both concluded that rational-basis review continues to apply. *See Miller*, 180 F.4th at 432-34; *Perry*, 172 F.4th at 326-27. As explained below (at 22-25), these decisions are correct, but, in any event, intervention on this issue would be premature because the question has just begun to percolate in the lower courts and the appellate decisions to address the question so far are in accord.

Finally, the Court’s grant of certiorari in *St. Mary Catholic Parish v. Roy*, which does not involve vaccination requirements, further supports denying plaintiff’s emergency application here. In *St. Mary*, the Court will consider the application of *Smith*’s general applicability test in the context of a challenge to the imposition of a nondiscrimination requirement on private entities receiving public funds to operate preschool programs. *See* Pet. at ii (Nov. 13, 2025), *St. Mary Cath. Par.*, No. 25-281. Because the Court may soon elaborate on *Smith*’s test on its merits docket, it is especially inopportune to address that issue here on the emergency docket, where the Court lacks the benefit of full briefing and oral argument and where plaintiff’s entitlement to relief is not indisputably clear under this Court’s existing precedent. *See Mills*, 142 S. Ct. at 18 (Barrett, J., concurring).

B. Plaintiff Has Not Shown an Indisputably Clear Right to Relief on Her Free Exercise Claim.

Plaintiff's request for interim relief should be denied for the additional reason that she has failed to make a "strong showing" of likely success on the merits of her free exercise claim, *see Nken v. Holder*, 556 U.S. 418, 426 (2009) (quotation marks omitted), let alone establish an "indisputably clear" constitutional violation, *Wisconsin Right to Life*, 542 U.S. at 1306 (Rehnquist, C.J., in chambers) (quotation marks omitted).¹⁰

Under this Court's precedents, "laws incidentally burdening religion are ordinarily not subject to strict scrutiny under the Free Exercise Clause so long as they are neutral and generally applicable." *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021). This Court has specifically identified "compulsory vaccination laws" as among the neutral, generally applicable laws that do not require religious exemptions under the First Amendment. *Smith*, 494 U.S. at 889. Here, plaintiffs' free exercise claim fails because § 2164 is a neutral law of general applicability that is subject to rational-basis review—which it readily satisfies. *See Miller*, 180 F.4th at 426-32.

¹⁰ The application does not seek injunctive relief based on plaintiff's substantive due process or equal protection claims, and she has thus waived any such argument.

1. New York’s vaccination requirement is neutral and generally applicable.

As plaintiff does not dispute, P.H.L. § 2164 is neutral because it does not “target[] religious conduct for distinctive treatment,” *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 533-34 (1993). On its face, the law does not mention religious activity. Rather, it applies to every child in the State entering school between the ages of two months and eighteen years, unless the child falls under the exemption for cases in which a physician determines that a vaccine would be detrimental to the child’s health. P.H.L. § 2164(1), (6), (8). Nor does § 2164’s history or implementation reveal any “subtle departures from neutrality” reflecting hostility or animus towards religion. *See Lukumi*, 508 U.S. at 534 (quotation marks omitted).

Plaintiff’s conclusory assertion that the presence of a medical exemption renders § 2164 not generally applicable falls far short of the indisputably clear showing required for an injunction pending this Court’s review. *See Appl.* at 12-13. This Court has identified two circumstances under which a policy can fail to be generally applicable. The first is if the policy is substantially underinclusive because it “prohibits religious conduct while permitting secular conduct that undermines the government’s interests in a similar way.” *Fulton*, 593 U.S. at 534. The second is if the policy “invites the government to consider the particular reasons for a person’s conduct by providing a mechanism for individualized exemptions.” *Id.* at 533 (quotation and alteration marks omitted). Neither circumstance applies here.

a. A law is substantially underinclusive and not generally applicable “if it prohibits religious conduct while permitting secular conduct that undermines the government’s asserted interests in a similar way.” *Id.* at 534. As this Court has explained, the Free Exercise Clause bars disparate treatment of otherwise *comparable* claims for exemption from a challenged law, where the claimed exemptions differ only in their religious or nonreligious motivation. *See Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (per curiam). Contrary to plaintiff’s arguments (at 12-13), P.H.L. § 2164’s medical exemption is not comparable to the repealed religious exemption, and therefore repealing the religious exemption while retaining the medical exemption does not violate this principle.

The medical exemption advances the public-health interests underlying the vaccination requirement, while a religious exemption would undermine those interests. New York’s interests in implementing a vaccination requirement are twofold: “First, it aims to protect the health of children while they are physically present in the school environment. Second, it aims to protect the health of the public in general against disease outbreaks both in and outside of school[.]” *Miller v. McDonald*, 720 F. Supp. 3d 198, 216 (W.D.N.Y. 2024) (quotation marks omitted). P.H.L. § 2164 accomplishes the latter interest “by serving as the apparatus that ensures that[] the vast majority of children—who will quickly grow into the vast majority of adults—are vaccinated.” *Id.* (quotation marks omitted); *see Viemeister v. White*, 179 N.Y. 235, 241 (1904).

By allowing for only a limited medical exemption, and no other exemption, P.H.L. § 2164 promotes New York’s public-health objectives. The statutory vaccination requirement “promotes the health and safety of *vaccinated* students by decreasing, to the greatest extent medically possible, the number of unvaccinated students (and, thus, the risk of acquiring vaccine-preventable diseases) in school.” *Connecticut Off.*, 76 F.4th at 153. And § 2164’s limited medical exemption promotes the health and safety of the small proportion of students who cannot be vaccinated for medical reasons: First, these students avoid the medical harms that they would face from receiving a contraindicated vaccine; second, the absence of any other exemption decreases the risk that they will acquire a vaccine-preventable disease by lowering the number of unvaccinated peers that they will encounter. *See id.*

By contrast, adding the requested religious exemption to § 2164 would undermine the health and safety of both the unvaccinated child who obtains that exemption and other members of the community. Indeed, “[r]eligious exemptions increase the risk of transmission of vaccine-preventable diseases among vaccinated and unvaccinated students alike,” *Miller*, 180 F.4th at 429-30 (quotation marks omitted), without any medical benefit for the exempted child.

Moreover, as a result of the medical exemption’s narrow scope and limited duration, it does not pose the same degree of risk to herd immunity and disease outbreaks as the repealed religious exemption did. The medical exemption’s scope is limited both because it is available only when a student can demonstrate a need based on objective medical guidelines, *see* 10 N.Y.C.R.R. § 66-1.1(*l*), and because it applies

only to the specific vaccination that is medically contraindicated for that child, *see id.* § 66-1.3(c). And the medical exemption’s duration is limited until a vaccine “is found no longer to be detrimental to the child’s health.” P.H.L. § 2164(8). Additionally, that duration must be specified in the child’s medical records, and the child must reapply for the medical exemption annually. 10 N.Y.C.R.R. § 66-1.3(c).

Compared to the medical exemption, the repealed religious exemption was far broader in scope and duration. It was not limited by any objective criteria. *See Thomas v. Review Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 714 (1981) (religious beliefs “need not be acceptable, logical, consistent, or comprehensible to others” to merit protection). It was not limited to any particular vaccination. And the religious exemption was not limited in time or periodically reassessed.

The legislative record here confirms that the risk to herd immunity (and thus the spread of infectious disease) posed by the medical and religious exemptions were not comparable. In the school year before the repeal, the number of religious exemptions obtained was five times greater than the number of medical exemptions. *See Miller*, 180 F.4th at 425. The health risks associated with the religious exemption—both to the exempt individuals and the broader public—were further exacerbated by the facts that (i) such exemptions tended to cluster geographically¹¹ and (ii) the rate at which

¹¹ Multiple studies have documented the phenomenon of geographic clustering of nonmedical exemptions, which are associated with an increase in the risk of outbreaks of vaccine-preventable diseases. *See, e.g., Aamer Imdad et al., Religious Exemptions for Immunization and Risk of Pertussis in New York State, 2000-2011*, 132 *Pediatrics* 37, 38-40 (2013); *Saad B. Omer et al., Geographic Clustering of*

(continued on the next page)

such exemptions were obtained had been increasing. *See* Senate Tr. at 5384-85, 5388-89, 5399; Assembly Tr. at 58-59.

b. P.H.L. § 2164 also does not provide a mechanism for individualized exemptions that would render it not generally applicable. *See Miller*, 180 F.4th at 430-31. In *Fulton*, this Court determined that a scheme granting foster-care contracts was not generally applicable because it allowed a government official to grant exceptions to an antidiscrimination provision in that official’s “sole discretion.” 593 U.S. at 535. P.H.L. § 2164 provides no such broad discretionary scheme under which officials may consider claims of religious hardship alongside other requests for individualized exemptions.

Instead, P.H.L. § 2164 contains only a single medical exemption that is narrow, categorical, and clearly defined by objective criteria. Specifically, schools are charged with ensuring that a child can receive an exemption only when a specific immunization is medically contraindicated, 10 N.Y.C.R.R. § 66-1.3(c), and only when consistent with a nationally recognized evidence-based standard of care, *id.* § 66-1.1(l). Schools thus lack discretion to grant exemptions for any other reason and thereby to impermissibly favor nonreligious claims over claims of religious hardship. *See, e.g., Connecticut Off.*, 76 F.4th at 150-51; *San Diego Unified School Dist.*, 19 F.4th at 1180; *Hochul*, 17 F.4th at 288-90.

Nonmedical Exemptions to School Immunization Requirements and Associations with Geographic Clustering of Pertussis, 168 Am. J. Epidemiol. 1389, 1394-95 (2008).

P.H.L. § 2164 is thus similar to the law at issue in *Smith*, which prohibited possession of peyote “unless the substance has been prescribed by a medical practitioner,” 494 U.S. at 874. This objective, categorical “prescription exception” did not preclude the Oregon law from being generally applicable for purposes of a free exercise claim because it did “not necessarily undermine Oregon’s interest in curbing the unregulated use of dangerous drugs.” *Fraternal Ord. of Police Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359, 366 (3d Cir. 1999) (Alito, J.). Instead, it was consistent with the drug law’s objective of protecting public health and welfare because “when a doctor prescribes a drug, the doctor presumably does so to serve the patient’s health and in the belief that the overall public welfare will be served,” *Blackhawk v. Pennsylvania*, 381 F.3d 202, 211 (3d Cir. 2004) (Alito, J.). Section 2164’s medical exemption does not trigger strict scrutiny for the same reasons.

2. Yoder, Mahmoud, and Mirabelli do not require heightened scrutiny here.

Contrary to petitioner’s arguments (at 16), this Court’s decisions in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), *Mahmoud v. Taylor*, 606 U.S. 522 (2025), and *Mirabelli v. Bonta*, 607 U.S. 492 (2026) (per curiam), do not require the application of heightened scrutiny to neutral and generally applicable vaccination requirements. See *Miller*, 180 F.4th at 432-34; *Perry*, 172 F.4th at 326-27.

In *Mahmoud*, this Court held that plaintiffs were entitled to a preliminary injunction against the implementation of a school policy that did not give parents notice of, or an opportunity to opt their children out from, instruction using LGBTQ+-inclusive texts in an elementary school curriculum. See 606 U.S. at 528-30. The Court

considered “the specific religious beliefs and practices asserted,” “the specific nature of the educational requirement or curricular feature at issue,” and “the specific context in which the instruction or materials at issue are presented.” *Id.* at 550. Based on those factors, the Court concluded that the instruction at issue in *Mahmoud*, like the instruction at issue in *Yoder*,¹² sought to “impose upon children a set of values and beliefs that are ‘hostile’ to their parents’ religious beliefs” and to “exert upon children a psychological ‘pressure to conform’ to their specific viewpoints.” *Id.* at 553-54 (quoting *Yoder*, 406 U.S. at 211, 218). The Court then reaffirmed *Smith*, explaining that, in most circumstances, “the government is generally free to place incidental burdens on religious exercise so long as it does so pursuant to a neutral policy that is generally applicable.” *Id.* at 564. But the Court explained that where, as in *Mahmoud*, “the burden imposed is of the same character as that imposed in *Yoder*,” courts apply “strict scrutiny” regardless of whether the law is neutral and generally applicable. *Id.*

The Court applied *Mahmoud* in *Mirabelli*. In that case, the Court vacated a Ninth Circuit order that stayed, pending appeal, a district court’s permanent injunction of policies that “prevent schools from telling [parents] about their children’s efforts to engage in gender transitioning at school unless the children consent to parental notification.” *Mirabelli*, 607 U.S. at 493. The Court concluded that the challenged policies were likely subject to strict scrutiny under the Free Exercise Clause

¹² In *Yoder*, the Court held that Wisconsin’s compulsory education statute impermissibly burdened the religious exercise of Amish defendants who believed that their children’s attendance at high school was contrary to the Amish religion and way of life. *See* 406 U.S. at 207-09.

because they “substantially interfere with the ‘right of parents to guide the religious development of their children’” and “impos[e] the kind of burden on religious exercise that *Yoder* found unacceptable.” *Id.* at 496 (quoting *Mahmoud*, 606 U.S. at 550, 559).

None of these decisions require heightened scrutiny here because the burdens that § 2164 places on religious beliefs and practices are not of the same character as the burdens that triggered heightened scrutiny in *Yoder*, *Mahmoud*, and *Mirabelli*. See *Miller*, 180 F.4th at 432-34; *Perry*, 172 F.4th at 326-27. Section 2164 “does not regulate what children are taught, does not require them to affirm any belief, does not expose them to state-selected instruction contrary to their parents’ faith, and does not enlist school officials to displace parental religious formation.” *Miller*, 180 F.4th at 432-33. Instead, it “imposes a health-and-safety condition on in-person school attendance to reduce the spread of communicable disease.” *Id.* at 433.

Moreover, *Mahmoud* and *Mirabelli* did not disturb this Court’s past precedents directly addressing the issue of vaccination requirements. For example, *Smith* specifically recognized “compulsory vaccination laws” as among the neutral, generally applicable laws that do not require religious exemptions under the First Amendment. *Smith*, 494 U.S. at 889 (citing *Cude v. State*, 237 Ark. 927 (1964)). And *Yoder* contrasted the compulsory education statute at issue there from laws 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 vaccination requirement upheld in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905). *Yoder*, 406 U.S. at 230 & n.20. Given that

Mahmoud and *Mirabelli* said nothing to cast doubt on these aspects of *Yoder* or *Smith*, plaintiff falls short of showing a clear entitlement to relief.

3. New York’s vaccination requirement has a rational basis and would survive heightened scrutiny in any event.

As a neutral law of general applicability, § 2164 satisfies rational-basis review because it demonstrates a “reasonable fit” between the State’s purpose and “the means chosen to advance that purpose.” *See Reno v. Flores*, 507 U.S. 292, 305 (1993) (quotation marks omitted). The State’s interest in promoting public health, safety, and welfare by combatting potentially fatal diseases through compulsory vaccination is not just a legitimate interest, it is a compelling one. *See Roman Cath. Diocese*, 592 U.S. at 18. And the repeal of New York’s religious exemption to § 2164 is reasonably related to furthering that interest. The Legislature reasonably concluded that continuing to permit religious exemptions to multiply would increase the risk of further outbreaks of vaccine-preventable infectious disease given the then recent outbreak of measles and declining vaccination rates that threatened herd immunity. *See Connecticut Off.*, 76 F.4th at 154.

Even if some form of heightened scrutiny did apply, § 2164 would satisfy it. The repeal bill was narrowly tailored to address the precise cause of the recent decrease in immunization rates that threatened herd immunity in certain communities—increased reliance on the religious exemption—by eliminating that exemption. As explained above (at 6-8), the Legislature considered, among other things, that New York had become the epicenter of an outbreak of measles; there was a statewide trend of decreasing immunization rates; and rates had reached alarmingly low levels

in certain school districts that fell below the threshold for herd immunity. Moreover, data showed a marked increase in religious exemptions in the years preceding this decrease in immunization rates. And the Legislature tailored the amendment to ameliorate the precise public-health threat resulting from increasing use of religious exemptions that led to measles immunization rates falling below the threshold for herd immunity in a significant number of schools.¹³ *See F.F. ex rel. Y.F. v. State*, 66 Misc. 3d 467, 482-83 (Sup. Ct. Albany County 2019) (concluding that New York’s vaccination law satisfies strict scrutiny), *aff’d on other grounds*, 194 A.D.3d 80 (3d Dep’t 2021); *see also Workman*, 419 F. App’x at 353 (finding same, as to West Virginia vaccination law).

Plaintiff’s contrary arguments are unavailing. Plaintiff failed to present any evidence to substantiate her conclusory contention that the potential presence of unvaccinated adults undermines the State’s interest in the same or a similar way that a religious exemption for children in school does. *See Appl.* at 15. Plaintiff failed to present any evidence showing that there is an appreciable number of

¹³ The States that enforced vaccination requirements without religious exemptions this past year had vaccination rates for measles, mumps, and rubella for incoming kindergartners that exceeded the 95% threshold for herd immunity: California (95.7%); Connecticut (98.6%); Maine (98.0%); New York (97.7%). *See U.S. Centers for Disease Control & Prevention, Vaccination Coverage and Exemptions Among Kindergartners* (Aug. 17, 2026). By contrast, many other States that allow religious exemptions had precipitously low vaccination rates statewide: e.g., Alaska (81.2%); Florida (88.8%); Idaho (78.5%); Ohio (88.3%). *See CDC, Vaccination Coverage, supra*; *Erika Edwards et al., Data Investigation: Childhood Vaccination Rates Are Backsliding Across the U.S.*, NBCNews.com (Sept. 15, 2025) (investigation in collaboration with Stanford University).

unvaccinated adults in the State's schools or otherwise. Nor could she plausibly do so, given the ubiquity of established vaccination requirements. *See, e.g.*, 8 U.S.C. § 1182(a)(1)(A)(ii) (generally requiring immigrant adults seeking admissibility to the United States to be vaccinated against several diseases, including measles). *See supra* at 5 (describing States' school vaccination requirements). And as explained above (at 19-21), the presence of children unvaccinated for medical reasons does not pose a risk to public health that is comparable to plaintiff's requested religious exemption.

C. The Irreparable Injury to the State and the Balance of the Equities Weigh Heavily Against an Injunction.

The extraordinary relief of a writ of injunction is also unwarranted here for the additional reasons that the State would suffer irreparable injury and the balance of the equities weigh decidedly against an injunction. A State suffers a form of irreparable injury when it "is enjoined by a court from effectuating statutes enacted by representatives of its people." *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (quotation marks omitted). Such extraordinary relief against a State's duly enacted vaccination requirement would "deprive states of their historic sovereignty" and "infringe on the democratic prerogative of societal self-protection." *Perry*, 172 F.4th at 329.

The public interest also weighs against an injunction because the enactment and enforcement of § 2164 constitute the exercise of the State's core police power to protect the public health in its jurisdiction through mandatory vaccination. *See Jacobson*, 197 U.S. at 24-27. Achieving high vaccination rates in school settings is of the utmost importance. An injunction would undermine the State's strong interest in

protecting the health of all children in school. And it would undermine the State's important interest in protecting the health of the public in general against disease outbreaks both in and outside the school environment. If an injunction issued, the public would thus face an increased risk of a range of harms that are caused by vaccine-preventable diseases, including death, permanent paralysis, birth defects, kidney failure, brain swelling, seizures, spasms, cirrhosis, and liver cancer. *See Perry*, 172 F.4th at 322 (citing 2 Gerald Mandell et al., *Principles and Practice of Infectious Diseases* (7th ed. 2010)).

On the other side of the ledger, plaintiff has failed to establish any harms that warrant the extraordinary relief of a writ of injunction. As an initial matter, plaintiff's delay cuts against equitable relief. Plaintiff provides no explanation as to why she waited until the eve of her child's kindergarten enrollment to seek relief when New York has not had a religious exemption to its school vaccine requirement since 2019. Plaintiff's contention (at 17) that she will need to move with her child to Florida to avoid complying with § 2164 pales in comparison to the toll that vaccine-preventable diseases have wreaked in the past and are increasingly causing in the present. Moreover, because plaintiff is unlikely to succeed on the merits (see *supra* at 16-27), she is incorrect to claim (at 17) that she has established a constitutional injury that would constitute irreparable harm.

Finally, plaintiff's contention that she seeks an injunction as to only her child, who can be excluded from school during an active outbreak, does not diminish the interests of the State or the general public. *See Appl.* at 19. *First*, the fact that the

State has tools to mitigate the harms that flow from active outbreaks does not replace the need for vaccination to prevent such outbreaks in the first place. *Second*, it is of no moment that plaintiff limits her request for relief to her child. Her argument is indistinguishable from that of any other parent who holds religious objections to vaccination. If this Court were to start granting interim relief to carve out individual exceptions to vaccination requirements beyond the limited and well-defined medical exception that the New York Legislature chose, it would create a “judicial scratch on the surface of . . . [a] pillar[] of modern medicine [that] would in time become a gash, as courts progressively chipped away at the means by which ends of undisputed public benefit are implemented.” *Perry*, 172 F.4th at 329. This Court should reject the invitation to do so here in an emergency posture without the benefit of full briefing and oral argument.

CONCLUSION

The emergency application for a writ of injunction should be denied.

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Respectfully submitted,

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