No. _____

In the Supreme Court of the United States

WE THE PATRIOTS USA, INC., JAMES CHILDS,

Applicants,

v.

PENDER MAKIN, in her official capacity only; CARI MEDD, in her official capacity only

Respondents.

To the Honorable Ketanji Brown Jackson
Associate Justice of the Supreme Court of the United States and Circuit Justice for the First Circuit

EMERGENCY APPLICATION FOR WRIT OF INJUNCTION

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November 12, 2026

PARTIES TO THE PROCEEDING

Applicants (plaintiffs-appellants below) are We The Patriots USA, Inc. and James Childs.

Respondents (defendants-appellees below) are Pender Makin, in her official capacity as Commissioner of the Maine Department of Education, and Cari Medd, in her official capacity as Superintendent of Maine School Administrative District #52.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

We The Patriots USA, Inc., does not have any parent entities, and no parent entity or publicly held company owns 10% or more of its stock.

LIST OF RELATED PROCEEDINGS

United States Court of Appeals (1st Cir.):

We The Patriots USA, Inc. v. Makin, No. 26-2035 (1st Cir.) (order denying injunction pending appeal entered Nov. 3, 2026; appeal pending).

United States District Court (D.Me.):

We The Patriots USA, Inc. v. Makin, No. 2:26-cv-00369-SDN (D. Me.) (order denying temporary restraining order and preliminary injunction entered Sept. 8, 2026 (ECF No. 37); order denying injunction pending appeal entered Sept. 22, 2026 (ECF No. 50); case still pending).

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TO THE HONORABLE KETANJI BROWN JACKSON, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FIRST CIRCUIT:

Pursuant to Rules 22 and 23 of this Court and 28 U.S.C. § 1651(a), the Applicants We The Patriots USA, Inc. ("WTP") and James Childs respectfully request that the Court enjoin Respondents from enforcing Maine's school vaccination requirement, 20-A M.R.S. § 6355, against Childs' son, G.C., and WTP's similarly situated members pending disposition of Applicants' appeal in No. 26-2035 in the First Circuit and of any petition for a writ of certiorari. In the alternative, given the importance and urgency of the issues, Applicants request that the Court treat this application as a petition for a writ of certiorari before judgment.

* * *

G.C. should be in the eighth grade at Tripp Middle School in Turner, Maine, where last year he made the honor roll. He received every vaccine Maine required of him until his father learned of the connection between modern vaccines and elective abortion, and he lacks only two doses Maine adds in the seventh grade. His father will not violate his Christian convictions that authorizing those vaccinations would make him complicit in abortion (an unconscionable sin in his faith), and that yielding to the State would teach his son that faith should be abandoned when it becomes costly. The district court found Childs' beliefs sincere. App. 28a n.3. Because of them, the Respondents have barred G.C. from school since August 27, 2026, and Respondent Medd threatened Maine's truancy process against Childs. Childs and his fiancée both

work, and he is paying out of his own pocket for remote instruction in place of the schooling Maine has denied his son – the very dilemma this Court declared "insulting and legally unsound." *Mahmoud v. Taylor*, 606 U.S. 522, 562 (2025). Childs will not violate his faith, and, because Maine's vaccination law bars him from public, private, and religious schools, he has nowhere to send his son.

The First Circuit and the district court have held that the First Amendment has nothing to say about this. They reached that conclusion by confining *Wisconsin v. Yoder*, 406 U.S. 205 (1972), and *Mahmoud* to policies that reach the child's mind "through the school itself," App. 28a, or that require "a student's submission to school-facilitated instruction," App. 2a, a test found in none of this Court's opinions. This Court rejected a limit of the same kind eight months ago. The Ninth Circuit read *Mahmoud* as "a narrow decision focused on uniquely coercive 'curricular requirements'"; this Court vacated that order, *Mirabelli v. Bonta*, 607 U.S. 492, 495–96 (2026), and three Justices added that the court of appeals had "significantly misunderstood *Mahmoud*," *id.* at 501 (Barrett, J., concurring). The limit adopted below differs from the Ninth Circuit's only in its label. It excludes the direct compulsion *Mahmoud* placed at the core of the doctrine, 606 U.S. at 548, and it does so for a single reason: the statute's purpose is public health.

For its part, the First Circuit expressed uncertainty as to whether *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), and *Zucht v. King*, 260 U.S. 174 (1922), limit *Yoder*, *Mahmoud*, and *Mirabelli*. App. 2a. No such uncertainty exists. The panel itself described *Prince v. Massachusetts*, 321 U.S. 158 (1944), as "applying the balancing

analysis ultimately adopted in *Yoder*," App. 2a, and then treated *Prince* as a reason the balance need not be struck.

Jacobson and *Zucht*, however, were due process and equal protection decisions. Neither involved a religious objection; neither passed on the First Amendment; and both were decided under a standard that asked only whether the legislature's judgment was "beyond all question, a plain, palpable invasion of rights." *Jacobson*, 197 U.S. at 31. Both held that compulsory vaccination lies within the police power. *Zucht*, 260 U.S. at 176. Applicants accept that holding and that the interest it describes is compelling. What *Jacobson* and *Zucht* could not decide is how that interest is weighed against a burden of *Yoder*'s character under a tiered-scrutiny framework that did not exist when they were decided. *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 23–25 (2020) (Gorsuch, J., concurring).

This Court's later cases plainly supply the answer, and they have answered it the same way for sixty years. *Prince*, 321 U.S. at 166–67 & n.12, brought *Jacobson*'s vaccination point into the Free Exercise context only as an example of a state interest in child welfare that prevailed. *Sherbert v. Verner* listed *Jacobson* and *Prince* as cases in which religious or constitutional claims yielded to "some substantial threat to public safety, peace or order," 374 U.S. 398, 403 (1963), a statement about justification, not about whether a burden existed. *Yoder* then confined *Prince*. It found the burden first, 406 U.S. at 218; resolved to "searchingly examine" the State's interests, *id.* at 221, and treated the *Prince* interest as one that prevails only on a showing that "parental decisions will jeopardize the health or safety of the child, or

have a potential for significant social burdens," *id.* at 233–34, a showing it found absent on the record, *id.* at 230. *Mahmoud* crystallized the analysis: the burden is defined by its character, and, once found, strict scrutiny applies. 606 U.S. at 565. In that sequence, *Jacobson* establishes the State's interest at the first step of strict scrutiny. It does not, and, under its own standard of review, could not, resolve the second, and *Jacobson* itself reserved that a mandate might "go so far beyond what was reasonably required for the safety of the public" as to require judicial intervention. 197 U.S. at 28. Accordingly, the Court's precedents have already rendered the First Circuit's uncertainty non-existent.

The First Circuit's denial of relief should not stand, and the injunction it withheld should issue. As *Mahmoud* recognized, in line with *Yoder*, a policy that will "substantially interfer[e]" with "the parents' ability to direct the 'religious development' of their children," or that poses "a very real threat of undermining" the beliefs and practices they wish to instill, burdens parents' religious rights and triggers strict scrutiny. 606 U.S. at 554, 565 (cleaned up). Nothing in *Mahmoud* confines that rule to instruction or "inculcation." *See, e.g.*, *Yoder*, 406 U.S. at 212 (relying on evidence that "the modern high school is not equipped, in curriculum or social environment, to impart the values promoted by Amish society"). In fact, *Mahmoud* applies with greater force when a State "condition[s]" the "availability" of public education "on parents' willingness to accept a burden on their religious exercise." *Id.* at 561. There is no question that Maine's vaccination requirement both

interferes with parents' ability to direct their children's religious upbringing and denies them a public benefit because they will not forsake their faith.

Childs thus remains, to this day, punished for making a decision this Court has always placed with parents. Children "are not able to make sound judgments concerning many decisions, including their need for medical care or treatment," and "[p]arents can and must make those judgments," *Parham v. J.R.*, 442 U.S. 584, 603 (1979), including in line with their faith. Eight months ago, this Court held that this parental right – including its religious aspect – includes the right not to be shut out of decisions about a child's mental health. *Mirabelli*, 607 U.S. at 497. The First Amendment likewise protects a parent from being displaced or punished for making a religious judgment about a state-required physical intervention on his child, because the right "extends to the choices that parents wish to make for their children outside the home." *Mahmoud*, 606 U.S. at 547. Maine has done precisely that. It has not merely overridden Childs' judgment about a physical intervention on his son. It has replaced it with a list of judgments it will accept instead even though they carry the exact same consequences. A physician's judgment that vaccination "may be medically inadvisable" suffices. 20-A M.R.S. § 6355(2). A secular parent's philosophical objection, lodged before 2021 for a child with an IEP, suffices, and keeps sufficing after the IEP ends. § 6355(4); 05-071 C.M.R. ch. 126, § 3(A)(4). A religious father's judgment, lodged in 2026, does not. He is not consulted. He is threatened with a truancy prosecution.

Free Exercise challenges to the handful of state laws that eliminate religious exemptions to compulsory vaccination requirements keep appearing before this Court.[1] Members of the Court have dissented from denials of relief in four of them, *Does 1–3 v. Mills*, 595 U.S. 1029, 142 S. Ct. 17, 18 (2021) (Gorsuch, J., joined by Thomas and Alito, JJ., dissenting); *We The Patriots USA, Inc. v. Hochul*, 595 U.S. 1106 (2021) (Thomas, Alito, and Gorsuch, JJ., would grant); *Dr. A. v. Hochul*, 142 S. Ct. 2569 (2022) (Thomas, J., joined by Alito and Gorsuch, JJ., dissenting from the denial of certiorari); *Doe v. McDonald*, No. 26A239 (Sept. 8, 2026) (Alito and Gorsuch, JJ., would grant). Last December, the Court vacated a court of appeals' judgment upholding one such law for reconsideration in light of *Mahmoud*. *Miller v. McDonald*, 146 S. Ct. 879 (2025). Judges of two circuits have now dissented from decisions declining to apply *Mahmoud* and *Yoder* to these laws, App. 3a (Dunlap, J., dissenting); *Perry v. Marteney*, 172 F.4th 315, 332–35 (4th Cir. 2026) (Niemeyer, J., dissenting), and the panel below acknowledged that the law is "emerging." App. 2a.

The cost of these laws falls on ordinary religious families who ask only that their faith be respected. As in every other State with such a regime, Maine has barred Childs' son from school, forced his father to undertake the nearly impossible financial task of homeschooling him, and threatened quasi-criminal truancy proceedings

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[1] *See, e.g.*, *Does 1–3 v. Mills*, 595 U.S. 1029 (2021); *We The Patriots USA, Inc. v. Hochul*, 595 U.S. 1106 (2021); *Dr. A. v. Hochul*, 595 U.S. 1107 (2021); Dr. A. v. Hochul, 142 S. Ct. 2569 (2022); *We The Patriots USA, Inc. v. Connecticut Office of Early Childhood Development*, 144 S. Ct. 2682 (2024); *We The Patriots USA, Inc. v. Ventura Unified School District*, 146 S. Ct. 323 (2025); *Miller v. McDonald*, 146 S. Ct. 879 (2025); Perry v. Marteney, No. 26-319 (U.S. filed Sept. 4, 2026); Miller v. McDonald, No. 26-438 (U.S. filed Sept. 28, 2026).

against Childs. California threatened a mother with a uniformed police officer, and then criminally charged her with truancy until litigation began and the district attorney thought better of it. *See* Petition, *We The Patriots USA, Inc. v. Ventura Unified School District*, 146 S.Ct. 323(Mem) (2025). Connecticut tried to shut down a church ministry because it would not compel its students to violate church doctrine by becoming vaccinated or expel them for not doing so. *Milford Christian Church v. Bye*, 2025 WL 2300788, at *1 (D.Conn. 2025). West Virginia forced a child out of a video public school program because she was not vaccinated and forced her disabled father and bread-winning mother to find homeschooling solutions. *Perry*, 172 F.4th at 329 (Niemeyer, J., dissenting). None of these parents sought anything more than the respect and accommodation that forty-five States grant as a matter of course.

The relief Applicants request is not controversial. It would return G.C. and the children of religiously objecting parents to school and leave in force the statute Maine already uses to protect its schools and every other unvaccinated student, exclusion during an outbreak, 20-A M.R.S. § 6356(1). Maine permitted religious exemptions for decades before 2021 and ran its schools safely throughout. Forty-five States still do today. Judge Dunlap found that allowing G.C. to attend for the duration of the appeal would cause no "significant harm," App. 3a, and Respondents, through three rounds of briefing, "have not made any argument that the requirement survives strict scrutiny," *id.* The injunction would restore the balance this Court struck in *Mirabelli*: the parent's right protected, the State free to address genuine danger. 607 U.S. at 497–98.

STATEMENT OF THE CASE

I. Maine's School Vaccination Regime:

Maine requires every child attending a public or private school to be immunized against nine diseases, App. 6a, and makes attendance or alternative education compulsory, 20-A M.R.S. § 5001-A. Until September 1, 2021, Maine permitted parents with sincere religious or philosophical objections to opt out. App. 6a–7a. The Maine Legislature repealed that exemption in 2019, and the repeal took effect with the 2021–22 school year. *Id.*

Three groups of unvaccinated students may still attend. A parent may enroll a child on a written assurance that the child will be immunized within ninety days. 20-A M.R.S. § 6355(1). A child may attend on a licensed provider's written statement that, in the provider's "professional judgment," immunization "may be medically inadvisable," *id.* § 6355(2), and the implementing rules may not include "any provision governing medical exemptions," *id.* § 6358(1). And a student who had an individualized education plan (IEP) and a religious or philosophical exemption on September 1, 2021 may keep that exemption on a provider's statement that the parent has been counseled on the risks and benefits of immunization. *Id.* § 6355(4). Under Maine's rules, the legacy exemption survives "dismissal from special education services" and continues until the student is "no longer eligible for free, appropriate public education." 05-071 C.M.R. ch. 126, § 3(A)(4).

Separately, and regardless of the basis on which a child attends, Maine excludes any child not immunized against a disease when a public health official

determines that the child's presence poses a clear danger to the health of others. 20-A M.R.S. § 6356(1). That provision governs medically exempt and legacy students today.

Maine's own data describe the result. In every surveyed grade, the medical-exemption rate in every year since the repeal has exceeded the religious-exemption rate in each of the three years before it. Declaration of Jessica Shiminski ¶¶ 55–59, ECF No. 34-3 ("Shiminski Decl."); Pls.' Mot. for TRO & Prelim. Inj. at 13–14, ECF No. 18 ("TRO Mot."). Maine's medical witness attributes the increase to "prior underuse of medical exemptions when personal belief exemptions were still available." Declaration of Dr. Laura Blaisdell ¶ 21, ECF No. 34-1 ("Blaisdell Decl."). By Respondents' own count, the twelfth-grade legacy class in 2024–25 (fifty-four students) was larger than the twelfth-grade religious exemption in two of the three years before the repeal (twenty-two and forty-one). Shiminski Decl. ¶¶ 44, 46, 50. And in every surveyed year since the repeal, the rate of students attending with no immunization records at all has exceeded, in each surveyed grade, the highest religious-exemption rate recorded in that grade in the three years before the repeal; in 2024–25, fifty-three schools with 100 or more students reported missing-records rates from 0.7% to 17%. TRO Mot. 13–14, 23.

II. James Childs and G.C.

Mr. Childs is a Christian. He believes that each vaccine Maine requires for school attendance is tested using cell lines derived from aborted children, that authorizing his son's vaccination would be "a personal act of sin," and that doing so

would teach his son that the religious principles Mr. Childs is instilling "can be abandoned whenever it is convenient or things become hard," compromising his authority to instruct G.C. in their shared faith. Declaration of James Childs ¶¶ 6–14, 22–24, ECF No. 18-1 ("Childs Decl."). The district court found his beliefs sincere. App. 28a n.3.

G.C. was a rising eighth grader at Tripp Middle School, in Maine School Administrative District #52, when this action began. App. 5a, 8a n.1. He received every vaccine Maine required through the sixth grade and lacks only the two doses Maine adds in seventh: one dose each of Tdap (tetanus, diphtheria, and pertussis) and meningococcal (MenACWY) vaccine. App. 7a–8a. He attended seventh grade without them and made the honor roll. App. 8a–9a; Childs Decl. ¶ 28. In November 2025, the district told Mr. Childs that G.C. needed both vaccines to remain enrolled; it later told him that G.C. could not begin eighth grade without them. Childs Decl. ¶¶ 15, 20; App. 9a. School began on August 27, 2026, and Maine's requirements "prevented [G.C.] from re-enrolling." App. 8a n.1. Mr. Childs has no objection to keeping G.C. home during any outbreak. Childs Decl. ¶ 29. He and his fiancée both work and cannot educate G.C. at home. *Id.* ¶¶ 26–27.

III. Proceedings Below:

Childs and We The Patriots USA, Inc., of which he is a member, sued Respondents in their official capacities on July 16, 2026, and, on August 12, moved for a temporary restraining order as to G.C. and a preliminary injunction as to the

children of WTP's members. App. 10a. The district court heard argument on September 3 and denied both motions on September 8. App. 5a–36a.

The district court first held that § 6355 is neutral and generally applicable, concluding that none of the medical, legacy, or missing-records categories is a comparable secular exemption and that neither the medical nor the legacy provision creates a mechanism for individualized exemptions under *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021). App. 17a–25a.

The district court then held that § 6355 imposes no burden of the kind *Yoder*, *Mahmoud*, and *Mirabelli* address. Those cases, it reasoned, "measure whether the State has stepped into the relationship between parent and child to compete for the child's own beliefs," and in each "the challenged practice reached the child directly, through the school itself." App. 28a. Section 6355, by contrast, "asks nothing of G.C.'s mind" and imposes "a religiously neutral condition of school enrollment." App. 29a. The court further read *Yoder* to have "contemplated that a showing of harm to public health or safety would place a case outside its protection, even where a sincere religious objection to a facially valid law is otherwise established." App. 26a. Applying rational-basis review, the court upheld the statute. App. 30a–32a.

On irreparable harm, the court found that "the harm to G.C. is readily apparent," because "[e]ach day he is absent from eighth grade results in lost educational opportunity, a missed conversation with a classmate, and a disruption to his childhood," but declined to find irreparable harm because Applicants had not

prevailed on the merits. App. 34a–35a. It found the equities in equipoise. App. 36a. It made no finding that G.C.'s attendance would endanger anyone.

Applicants appealed the same day and moved the next day for an injunction pending appeal. The district court denied that motion on September 22, holding that, because irreparable harm turned on the merits, "a tie does not become a win." App. 41a. Applicants moved in the court of appeals for an injunction pending appeal on September 28; Respondents opposed on October 6; Applicants replied on October 8. On November 3, 2026, a divided panel of the court of appeals denied the motion. App. 1a–4a. The majority thought it "not obvious that *Yoder*, *Mahmoud*, and *Mirabelli* govern the situation we face given that Maine's vaccination law does not appear to require a student's submission to school-facilitated instruction," reasoned that the States' power to compel vaccination "is entrenched in other Supreme Court authority," and concluded that Applicants had shown "only that there is emerging law in this area." App. 2a. Judge Dunlap dissented. He would have applied strict scrutiny because the district court had limited it "to instances in which a school directly inculcates values contrary to the parents' beliefs," the narrow reading *Mirabelli* rejected; found the harm to G.C. "substantial and irreparable"; found that, given the grace period and the legacy exemption, G.C.'s attendance during the appeal would cause no "significant harm"; and observed that Respondents "have not made any argument that the requirement survives strict scrutiny." App. 3a (Dunlap, J., dissenting).

IV. Events Since The District Court's Rulings:

On September 23, the day after the district court denied relief pending appeal, Respondent Medd wrote to Mr. Childs. She stated that G.C. had been absent nineteen days, that the school had excused eleven of them while the litigation proceeded, and that Mr. Childs must send G.C. to school or arrange an alternative education. Supplemental Declaration of James Childs ¶ 3, Exhibit 5 to Emergency Motion for Injunction Pending Appeal, No. 26-2035 (1st Cir. filed Sept. 28, 2026) (C.A. Doc. 00118515546) ("Supp. Decl."). The next day she warned that G.C.'s absences were approaching truancy and that, if Mr. Childs did not provide G.C. an education, she would be required to use the truancy process. *Id.* ¶¶ 5, 7. Mr. Childs asked what the district would do to meet G.C.'s educational needs. *Id.* ¶¶ 8–9. The only response he received was a promise from Respondent Medd to lend him textbooks for homeschooling. Childs has since arranged alternative, remote learning for G.C., at an expense he has paid out of his own pocket.

JURISDICTION

This Court has jurisdiction under the All Writs Act, 28 U.S.C. § 1651(a), and, if the Court treats this application as a petition for a writ of certiorari before judgment, under 28 U.S.C. §§ 1254(1) and 2101(e). The relief sought is not available from any other court. The district court denied a temporary restraining order and a preliminary injunction on September 8, 2026, App. 5a–36a, and denied an injunction pending appeal on September 22, 2026, App. 37a–42a. A divided panel of the court of appeals denied an injunction pending appeal on November 3, 2026, App. 1a–4a.

Rehearing en banc of a motions-panel order is not available as of right in the First Circuit, and the court's merits panel, which received Applicants' opening brief on November 3, 2026, will not decide the appeal before G.C. loses the remainder of the school year.

REASONS FOR GRANTING THE APPLICATION

This Court has granted injunctions pending appeal when applicants have "clearly established their entitlement to relief pending appellate review" by showing that their First Amendment claims are likely to prevail, that denying relief would lead to irreparable injury, and that granting relief would not harm the public interest. *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 16 (2020); *accord Tandon v. Newsom*, 593 U.S. 61, 62–64 (2021). Applicants satisfy each element here.

I. Applicants' First Amendment Claim Is Likely To Prevail.

A. 20-A M.R.S. § 6355 must undergo strict scrutiny under *Yoder* and *Mahmoud*.

When a law imposes a burden "of the same character as that imposed in *Yoder*, strict scrutiny is appropriate regardless of whether the law is neutral or generally applicable." *Mahmoud v. Taylor*, 606 U.S. 522, 565 (2025). The burden is of the same character when the requirement would "substantially interfer[e] with the religious development" of the child or pose "a very real threat of undermining" the religious beliefs and practices the parents wish to instill. *Id.* at 556, 565 (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 218 (1972)) (cleaned up).

Mahmoud traced the development of this protection through the Court's precedents, beginning with *West Virginia State Board of Education v. Barnette*, 319

U.S. 624 (1943). *Barnette* dealt with "direct coercion," where West Virginia "condition[ed] access to public education on making a prescribed sign and profession and at the same time… coerce[d] attendance by punishing both parent and child." *Mahmoud*, 606 U.S. at 548 (quoting *Barnette*, 319 U.S. at 630–31). Even though West Virginia's policy did not require students to "become unwilling converts," it compelled "an affirmation, in contravention of their beliefs and those of their parents…" in violation of the First Amendment. *Id.*

Yoder, as *Mahmoud* explained next, extended the Free Exercise Clause's protections to "more subtle forms of interference with the religious upbringing of children." *Mahmoud*, 606 U.S. at 548. Wisconsin did not compel "Amish children to make an affirmation" contrary to "their parents' or their own religious beliefs," or to "commit some specific practice forbidden by their religion." *Id.* at 549. Instead, by compelling Amish parents to send their children to school after the eighth grade, Wisconsin exposed those children to worldly influences that would "substantially interfer[e] with the religious development of the Amish child." *Id.* at 549 (cleaned up). *Yoder*, therefore, held the First Amendment did not permit such a burden to be imposed.

Mahmoud held that confining *Yoder* to its specific facts and evidence was improper. *Id.* at 557–58. It explained that it "embodies a principle of general applicability," and did not exist "as a special exception granted to one particular religious minority." *Id.* at 558. The Court confirmed that the general principle is that strict scrutiny applies when government policies "substantially interfer[e] with the

religious development of the parents' children" and "pose a very real threat of undermining the religious beliefs and practices that the parents wish to instill in their children." *Id.* at 565 (cleaned up). It also confirmed that a State may not condition public education ("a public benefit") on "parents' willingness to accept a burden on their religious exercise." *Id.* at 561 (cleaned up).

Mirabelli v. Bonta, 607 U.S. 492 (2026) then applied these rules to a California policy that involved no instruction at all, and rejected attempts to confine *Barnette, Yoder*, and *Mahmoud* to the curricular or instructional context. California required its schools to facilitate a student's gender transition while withholding notice from, and overriding the religious objections of, the student's parents. 607 U.S. at 493–94. The Ninth Circuit stayed a permanent injunction against those policies, reasoning that *Mahmoud* was "a narrow decision focused on uniquely coercive 'curricular requirements.'" *Id.* at 495–96. This Court vacated the stay and applied *Mahmoud*: these policies "likely trigger strict scrutiny" 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). Far from falling outside *Mahmoud* because no curriculum was involved, the "unconsented facilitation of a child's gender transition" was an intrusion "greater" than the storybooks in *Mahmoud*. *Id.* And this Court gave due regard to California's child safety and health interests at the scrutiny stage and held that they "could be served by a policy that allows religious exemptions" while addressing the specific danger the State identified. *Id.* at 496–97.

These cases make clear that (1) States may not condition public schooling on the performance of an act directly at odds with a parent or child's religious beliefs; (2) the burden caused by more subtle interference is measured by its effect on the parent's ability to direct the child's religious upbringing, not by the mechanism the State employs; (3) these rules apply generally, not just to the facts of *Barnette*, *Yoder*, *Mahmoud*, and *Mirabelli*; (4) once the burden is shown, strict scrutiny applies; (5) the State's interests must be weighed at the strict scrutiny stage instead of defining the burden away; and (6) strict scrutiny allows the State to address genuine health and safety interests while accommodating religious parents.

Section 6355 plainly violates the first rule. It conditions compulsory schooling on the performance of an act Childs' faith forbids and punishes him when he refuses by depriving his son of critical education and subjecting him to the threat of truancy proceedings. Maine compels school attendance or alternative education, 20-A M.R.S. § 5001-A; it conditions attendance on vaccination – an act that Childs' faith forbids, 20-A M.R.S. § 6355, and it punishes the parent for the child's absence. 20-A M.R.S. §§ 5051-A, 5053-A. The record below established everything *Mahmoud* requires, in evidence the district court credited: authorizing the vaccinations would be, for Childs, "a personal act of sin," and it would teach his son that the principles his father is instilling "can be abandoned whenever it is convenient or things become hard." Childs Decl. ¶¶ 22–24; App. 28a n.3. The burden runs through the father himself, who is compelled to sin in front of his son and undermine his faith and his religious teachings.

The district court avoided that conclusion by doing what the second and third principles prohibit. It held that *Yoder*, *Mahmoud*, and *Mirabelli* "measure whether the State has stepped into the relationship between parent and child to compete for the child's own beliefs," through practices that reach the child "through the school itself," and that § 6355 "asks nothing of G.C.'s mind." That proposition appears nowhere in this Court's decisions. *Mahmoud* measures effect, not mechanism. Whether a requirement can be characterized as "exposure" is "not the touchstone," 606 U.S. at 556, and the Free Exercise Clause protects the ability "to live out their faiths in daily life through the performance of" religious acts or abstention from sinful ones, not belief alone, *id.* at 546 (quoting *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022)).

For its part, the First Circuit avoided the conclusion compelled by *Yoder*, *Mahmoud*, and *Mirabelli* by violating the third and fifth principles. It thought it "not obvious" that those cases "govern the situation we face given that Maine's vaccination law does not appear to require a student's submission to school-facilitated instruction." App. 2a. That is the Ninth Circuit's "curricular requirements" limit under a new name – a proposition this Court already rejected in *Mirabelli*. *Mahmoud* itself identified compelled commission of "some specific practice forbidden by their religion" as the form of interference lying between affirmation and exposure, *Mahmoud*, 606 U.S. at 549, which no reading confined to "school-facilitated instruction" can reach. Judge Dunlap, dissenting, saw the error for what it was. The court had limited strict scrutiny "to instances in which a school directly inculcates

values contrary to the parents' beliefs," the "narrow reading[]" of this Court's precedents that *Mirabelli* rejected. App. 3a (citing 607 U.S. at 495).

The First Circuit then violated the fifth principle in its explanation of why it was limiting application of the Court's precedents. It reasoned that "*Yoder* itself recognized that prior Supreme Court authority allows States to impose the kind of broad public health initiative that underlies this appeal," that the States' power to compel vaccination "is entrenched in other Supreme Court authority," and that Applicants had shown "only that there is emerging law in this area." App. 2a (citing *Jacobson, Zucht,* and *Prince*). The panel's own description of that authority refutes its use of it. It characterized *Prince* as "applying the balancing analysis ultimately adopted in *Yoder*," App. 2a, which is correct, and then treated *Prince* as a reason the balance need not be struck. *Yoder* did not recognize a public-health exception to the First Amendment. It found the burden, 406 U.S. at 218; resolved to "searchingly examine" the State's justifications, *id.* at 221; and rejected the *Prince* interest on the evidence because no harm "has been demonstrated or may be properly inferred." *Id.* at 230. *Mirabelli* weighed California's child-safety interest the same way, only under strict scrutiny. 607 U.S. at 496–97. The panel instead treated the weight of Maine's interest as settling whether a burden exists, and so never required Maine to carry a burden that, as Judge Dunlap observed, Maine has never even attempted to carry: Respondents "have not made any argument that the requirement survives strict scrutiny." App. 3a (Dunlap, J., dissenting). Where that interest actually enters the analysis, and what *Jacobson* and *Zucht* do and do not decide, is addressed next.

The bottom line is that no court below ever applied this Court's precedents and fairly assessed the burden on Childs' religious exercise. Instead, the courts below found reasons to limit the Court's precedents and deny Childs the protection they afford. This Court's precedents make clear that the burden on Childs' religious right to direct the religious upbringing of his son is the same as that in *Barnette, Yoder, Mahmoud*, and *Mirabelli,* and that 20-A M.R.S. § 6355 should have been subjected to strict scrutiny.

B. The Court's compulsory vaccination precedents only need to be properly applied, not overruled.

The First Circuit denied the Applicants injunctive relief pending appeal because it was unsure whether this Court's compulsory vaccination decisions in *Jacobson v. Massachusetts* and *Zucht v. King* controlled rather than *Barnette, Yoder, Mahmoud,* and *Mirabelli*. App. 2a. *Jacobson* and *Zucht* do not control, but rather fit within the analysis. Nor do they compel any court to deny Applicants relief or overrule them to grant relief.

Jacobson establishes the weight of the State's public health interest and the propriety of accommodating it under a suitable showing of a constitutional right requiring accommodation. It upheld Cambridge's smallpox ordinance against a due process challenge, holding that "a community has a right to protect itself against an epidemic of disease which threatens the safety of its members." 197 U.S. at 27. Dealing with the issue thirty-five years before the Free Exercise Clause applied to the States, it asked only whether the legislature's judgment was "beyond all question, a plain, palpable invasion of rights." *Id*. at 31. Even so, it reserved the possibility that

a vaccination mandate might be applied in "such an arbitrary, unreasonable manner, or might go so far beyond what was reasonably required for the safety of the public, as to authorize or compel the courts for the protection of such persons." *Id*. at 28. Such situations exist when the laws go "beyond the necessity of the case, and, under the guise of exerting a police power… violate[] rights secured by the Constitution," and this Court's "duty" is "to hold such laws inval*id*." *Id*.

Zucht dismissed, for want of a substantial federal question, a due process challenge to San Antonio ordinances that conditioned school attendance on a certificate of vaccination and left "to the board of health discretion to determine when and under what circumstances the requirement shall be enforced." 260 U.S. at 175–76.[2] It explained that classifications drawn by the law were reasonable and did not vest officials with arbitrary power. *Id*. at 177. It acknowledged that the equal protection claims regarding administration of the ordinance raised "a substantial constitutional question," but declined to hear them because they were improperly presented through a writ of error rather than a petition for a writ of certiorari. *Id*. at 177.

Both *Jacobson* and *Zucht*, therefore, require courts to conduct the appropriate constitutional analysis instead of categorically exempting compulsory vaccination laws from it. Each assumed that the challenger's constitutional rights were implicated and asked whether the State's exercise of its police power was justified,

[2] Laws vesting individualized exemption discretion would be subject to strict scrutiny under the First Amendment today. *See Fulton v. City of Philadelphia, PA*, 593 U.S. 522 (2021).

under the standard the Due Process Clause then supplied. *Jacobson* answered that question by deferring to the legislature while reserving judicial intervention for laws that went "beyond the necessity of the case." 197 U.S. at 28. *Zucht* answered it by holding that the discretion vested in the health board was not arbitrary while acknowledging that arbitrary administration would present "a substantial constitutional question." 260 U.S. at 177. Neither case held that no right was burdened; each held that the burden was justified. They are justification cases, and, in a Free Exercise challenge of *Yoder*'s character, the justification stage is strict scrutiny, where *Jacobson* establishes that Maine's interest is compelling and *Zucht*'s concern with arbitrary administration fits perfectly into the narrow tailoring analysis where, as in *Mirabelli*, Maine remains free to take appropriate steps to protect public health so long as it respects the rights of religious objectors.

While much of the Court's later dicta regarding *Jacobson* and *Zucht* has swept broadly, it does not create the categorical exception the First Circuit found "entrenched." Each statement, read in the case in which it appears, places vaccination where *Jacobson* and *Zucht* placed it: as a weighty State interest to be justified, not as a class of law beyond the First Amendment's reach. *Prince*'s remark that a parent "cannot claim freedom from compulsory vaccination for the child more than for himself on religious grounds," 321 U.S. at 166–67, appears in a child-labor case as an illustration of a State interest that prevailed in the balance, and in a paragraph that also lists compulsory school attendance among the State's powers over children, a requirement *Yoder* then barred as applied to the Amish. 406 U.S. at 234. *Sherbert*

cited *Jacobson* and *Prince* as cases in which a claim yielded to "some substantial threat to public safety, peace or order," 374 U.S. at 403, a statement about the strength of the justification, not the absence of a burden. *Employment Division v. Smith*, 494 U.S. 872 (1990), listed "compulsory vaccination laws" among the laws from which the First Amendment requires no exemption, 494 U.S. at 889, as an illustration of the general rule for neutral and generally applicable laws, the rule *Mahmoud* held does not govern a burden of *Yoder*'s character. 606 U.S. at 565.

When the Court has been asked to treat *Jacobson* as a general license for public-health restrictions on religious exercise, it has declined: *Jacobson* "hardly supports cutting the Constitution loose during a pandemic," *Cuomo*, 592 U.S. at 23 (Gorsuch, J., concurring), and the Court enjoined public-health measures that burdened religious exercise under ordinary strict scrutiny. *Id.* at 16–19 (per curiam); *Tandon*, 593 U.S. at 62–64.

The Court has also declined to categorically elevate States' interests in student safety over the First Amendment. *Mirabelli* weighed California's interest in student safety and privacy only under strict scrutiny, and held that it "could be served by a policy that allows religious exemptions" while addressing the danger the State identified. 607 U.S. at 496–97. The courts below have abandoned that approach, and have carved out of the Court's precedents a non-existent exception that allows "a showing of harm to public health or safety" to remove a case from the First Amendment's protection. App. 2a, 26a.

General expressions in an opinion "are to be taken in connection with the case in which those expressions are used," and "[i]f they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision." *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 399 (1821). The First Circuit's conclusion that the States' power to compel vaccination "is entrenched in other Supreme Court authority," App. 2a, is therefore correct and beside the point. No one disputes Maine's police power in this case. Its exercise against a religious objector, however, is not exempt from the scrutiny this Court's cases require, and no decision of this Court says otherwise.

C. Section 6355 is independently not generally applicable, because Maine preserves the very exemption it repealed for a favored legacy class.

Even under *Smith*, § 6355 is not generally applicable. "[G]overnment regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise." *Tandon*, 593 U.S. at 62. A law also fails the requirement when it "prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Fulton*, 593 U.S. at 534. Comparability "is concerned with the risks various activities pose, not the reasons why people" engage in them. *Tandon*, 593 U.S. at 62.

This Court's prior vaccination applications turned on whether a medical exemption is comparable to a religious one, a question on which the courts of appeals have sided with the States and which this Court has declined to resolve on an

emergency basis. *See Does 1–3*, 142 S. Ct. at 18–22 (Gorsuch, J., dissenting); *Dr. A. v. Hochul*, 595 U.S. 1107 (2021). Applicants do not ask the Court to resolve that question here. Maine's statute presents a comparator that requires no work to compare. Section 6355(4) preserves the very exemption Maine repealed, religious and philosophical, for students who had an individualized education plan (IEP) on September 1, 2021. The exemption is not tied to the student's special-education status: under Maine's own rule, it survives "dismissal from special education services" and continues until the student is "no longer eligible for free, appropriate public education." 05-071 C.M.R. ch. 126, § 3(A)(4). Its philosophical members are unvaccinated for purely secular reasons. And the class is not small. By Respondents' own count, the twelfth-grade legacy class in 2024–25 (fifty-four students) exceeded the twelfth-grade religious exemption in two of the three years before the repeal (twenty-two and forty-one). Shiminski Decl. ¶¶ 44, 46, 50.

That is *Tandon* in its simplest form. The risk an unvaccinated legacy student poses to his classmates is identical to the risk G.C. poses; the only difference is the reason Maine tolerates the one and excludes the other. The district court's answer, that the legacy class is "a legally constrained accommodation" because federal law "constrains the State's ability to unilaterally revoke a previously vested IEP," App. 21a, is a reason, not a risk, and it does not fit the exemption Maine actually wrote, which outlives the IEP. Nothing in the Individuals with Disabilities Education Act (IDEA) requires a State to keep a philosophical objector unvaccinated after he leaves special education. Maine chose to. Judge Dunlap recognized the point when he found

that, "because the vaccination requirement does not apply to certain students who previously invoked a religious objection," G.C.'s attendance would cause no significant harm. App. 3a (Dunlap, J., dissenting). A State that makes that choice for some objectors cannot tell a religious objector that his child's attendance is intolerable.

Two further categories confirm the point, though the Court need not rely on them. Maine's own data show that, in every surveyed grade, the medical-exemption rate in every year since the repeal has exceeded the religious-exemption rate in each of the three years before it, Shiminski Decl. ¶¶ 55–59; TRO Mot. 13–14. The statute sets no time limit on a medical exemption, and the implementing rules may not govern medical exemptions at all. 20-A M.R.S. § 6358(1). Maine's annual school survey likewise reports enrolled students with no immunization records at all, in every surveyed grade and every year since the repeal, at rates exceeding the highest religious-exemption rate recorded in that grade before it, TRO Mot. 13–14, 23, and the State's response to those students is outreach, not exclusion: tracking software, notice letters, clinics, and reminders. Shiminski Decl. ¶¶ 68–82.

Put differently, Maine now tolerates unvaccinated students in categories that exceed any impact historically caused by its now-repealed religious exemption. Section 6355, therefore, is not generally applicable.

D. Section 6355 fails strict scrutiny as applied to G.C. and WTP's members.

Under strict scrutiny, Maine must show that excluding G.C. "advances 'interests of the highest order' and is narrowly tailored to achieve those interests."

Fulton, 593 U.S. at 541 (quoting *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993)). The question is not whether Maine has a compelling interest in immunizing schoolchildren, which Applicants concede, "but whether it has such an interest in denying an exception to" G.C. *Id.* "[S]o long as the government can achieve its interests in a manner that does not burden religion, it must do so." *Fulton*, 593 U.S. at 541.

Maine has never attempted that showing, as Judge Dunlap recognized below. Through a preliminary injunction proceeding, a motion for an injunction pending appeal before the district court, and an identical motion in the First Circuit, Respondents "have not made any argument that the requirement survives strict scrutiny." App. 3a (Dunlap, J., dissenting). Nor could they. G.C. has every vaccine Maine required through the sixth grade and lacks two adolescent doses. App. 7a–8a. Tripp Middle School reported a 100% vaccination rate for its most recently surveyed seventh-grade class; one exempt student in a class that size produces a rate of 0.7%, the medical-exemption rate Maine accepts at Leavitt Area High School in G.C.'s own district. TRO Mot. 22–23. Neither of Maine's medical declarants addresses G.C., his school, or the risk his attendance would pose. See Blaisdell Decl., ECF No. 34-1; Declaration of Dr. Isaac Benowitz, ECF No. 34-2. The district court made no finding that his attendance would harm anyone. App. 36a.

Maine's regime is also underinclusive in every direction. A law that "leaves appreciable damage to that supposedly vital interest unprohibited" cannot "be regarded as protecting an interest 'of the highest order.'" *Lukumi*, 508 U.S. at 547

(cleaned up). Maine leaves unprohibited the legacy class, the medical class, and the missing-records class, each larger than the religious exemption it repealed. In *Mahmoud*, the Board's "system of exceptions," including opt-outs required by state law and programming for students with individualized education programs, defeated its claim that accommodating religious parents was "infeasible or unworkable." 606 U.S. at 566–67. Maine's system of exceptions includes an exemption for students with individualized education plans by name.

And Maine already uses a less restrictive means. It excludes any child not immunized against a disease when a public health official determines that the child's presence poses a clear danger to others. 20-A M.R.S. § 6356(1). That is the precaution Maine applies to every medically exempt and legacy student, and Childs has no objection to it for G.C. Childs Decl. ¶ 29. "Where the government permits other activities to proceed with precautions, it must show that the religious exercise at issue is more dangerous than those activities even when the same precautions are applied." *Tandon*, 593 U.S. at 63. Maine has not tried to make that showing. *Mirabelli*'s tailoring holding was the same: the State's interest in safety "could be served by a policy that allows religious exemptions" while addressing the specific danger the State identified. 607 U.S. at 496–97. Forty-five States operate school-immunization programs with a religious exemption, and this Court treats the experience of other jurisdictions as evidence that denying an accommodation is not necessary. *Holt v. Hobbs*, 574 U.S. 352, 368–69 (2015); see *Does 1–3*, 142 S. Ct. at 22 (Gorsuch, J., dissenting). Section 6355, as applied to G.C. and WTP's members, fails strict scrutiny.

II. There Is A Reasonable Probability That The Court Will Grant Certiorari And A Fair Prospect Of Reversal.

When the Court declined to enjoin Maine's health-care-worker mandate in 2021, two Justices explained that an applicant must show not only a likelihood of success but a likelihood that the Court would grant certiorari, and that applicants should not use the emergency docket to force a merits preview "on a short fuse without benefit of full briefing and oral argument." *Does 1–3*, 142 S. Ct. at 18 (Barrett, J., concurring). The Court denied the applications in *Dr. A.*, 595 U.S. 1107, *We The Patriots USA, Inc. v. Ventura Unified School District*, 146 S. Ct. 323 (2025), and *Doe v. McDonald*, No. 26A239 (Sept. 8, 2026), in the same posture. Two things distinguish this case from each of them.

First, the question is already before the Court. A GVR is appropriate only where intervening developments "reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration." *Lawrence v. Chater*, 516 U.S. 163, 167 (1996). In *Miller v. McDonald*, 146 S. Ct. 879 (2025), the Court vacated a judgment upholding a school-immunization law that lacked a religious exemption and remanded for consideration in light of *Mahmoud*. The Court has thus already found a reasonable probability that such a judgment rests on a premise *Mahmoud* rejects. On remand, the Second Circuit adhered to its judgment. *Miller v. McDonald*, 180 F.4th 420, 432–34 (2d Cir. 2026). The Fourth Circuit did the same, over a dissent that read this Court's order as binding and dispositive instruction to apply *Mahmoud* to compulsory vaccination laws. *Perry*, 172 F.4th at 332–35 (Niemeyer, J., dissenting). Petitions for certiorari in both cases

are pending. Nos. 26-438, 26-319. The panel below, for its part, acknowledged that Applicants had shown "emerging law in this area." App. 2a. This is not a case in which the Court would be asked to preview a question it has not engaged. The Court has engaged the question, and the lower courts have answered it contrary to this Court's precedents.

Second, the question will not percolate. The States that have eliminated religious exemptions from school immunization sit in the First, Second, Fourth, and Ninth Circuits, and three of those circuits have now ruled. The Ninth Circuit is considering it now. *See Grimsby v. Pan*, No. 25-6100 (9th Cir.). No other circuit will see the question, because no other State presents it. Rule 10(c) describes this case: an important question of federal law that has not been, but should be, settled by this Court. The stakes are national, not regional. Forty-five States maintain religious exemptions by legislative grace; and whether they may repeal their religious exemptions is the constitutional question this case presents. The panel below answered it provisionally when it described the States' power as "entrenched" and Applicants' authority as merely "emerging." App. 2a. The Court should not wait until tens of thousands more families are outlawed from the school systems and suffer, as those in California, West Virginia, New York, Connecticut, and Maine have.

While the record here was developed on an expedited schedule, it is a record. Maine's own declarants supplied the figures in Part I.C; the district court made the sincerity finding, and declined to make the harm finding, on which Part I.D rests; and a judge of the court of appeals has noted that Maine has never argued the statute

survives strict scrutiny. The ruling below is interlocutory, but so was the ruling in *Mirabelli*, and the Court granted certiorari before judgment in a comparable posture in *Whole Woman's Health v. Jackson*, 595 U.S. 30 (2021). For the reasons given in Part I, there is also a fair prospect that a majority of the Court would conclude that the courts below erred.

III. Applicants Are Suffering Irreparable Harm.

"The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Cuomo*, 592 U.S. at 19 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)). In this posture, "[t]he denial of plaintiffs' constitutional rights during the potentially protracted appellate process constitutes irreparable harm." *Mirabelli*, 607 U.S. at 497 (cleaned up).

The harm is also concrete, and judges below recognized it. The district court found that "the harm to G.C. is readily apparent," because "[e]ach day he is absent from eighth grade results in lost educational opportunity, a missed conversation with a classmate, and a disruption to his childhood," and withheld a finding of irreparable harm only because it had rejected the merits. App. 34a–35a. Judge Dunlap found that "[t]here is no dispute that, because of the vaccination requirement, Childs' son has been deprived of the opportunity to attend public school," and that, absent a showing that the requirement survives strict scrutiny, "this is a substantial and irreparable harm." App. 3a (Dunlap, J., dissenting). G.C. has now been out of school since August 27, 2026. Whatever alternative his father manages to find, Supp. Decl. ¶ 12, will not be the public education Maine compels and to which G.C. is entitled; it will be the

"abstain[ing] from public education" that *Mahmoud* held a State may not demand of religious parents. 606 U.S. at 561–62. No later judgment can return the days.

The harm has also escalated since the rulings below. Respondent Medd has told Childs that he must send G.C. to school or arrange an alternative education, and that she will otherwise be required to use the truancy process. Supp. Decl. ¶¶ 3, 5, 7. A student who has completed sixth grade is truant after ten full days or seven consecutive school days of unexcused absence. 20-A M.R.S. § 5051-A(1)(B). The process that follows can end in a referral for prosecution of a civil violation against the parent, carrying a fine and orders to "take specific action to ensure the child's attendance at school." *Id.* §§ 5051-A(2)(E), 5053-A(1)–(2). For Childs, that would be a court order to do what his faith forbids. That is the coercion *Mahmoud* described. 606 U.S. at 561.

Applicants sued before the school year began and sought emergency relief before its first day. They appealed the day the district court ruled, sought relief pending appeal the next day, moved in the court of appeals within days of that motion's denial, and have filed this application speedily after the First Circuit's order. The continuing deprivation of First Amendment rights, now compounded by the threat of truancy enforcement, is irreparable.

IV. The Balance Of The Equities And The Public Interest Favor Relief.

When the government is the opposing party, the balance of harms and the public interest merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). The district court found them in equipoise and denied relief only because Applicants had not shown a likelihood of success. App. 36a, 41a. Part I supplies that likelihood, and the balance

is not even. On Applicants' side are an ongoing First Amendment injury, lost schooling, and the threat of truancy enforcement. On Respondents' side is a student whose attendance no one has shown would endanger anyone. Judge Dunlap put it directly: although the State "has a legitimate interest in safeguarding the health of its residents," that interest "would not be substantially undermined by an injunction pending appeal," because Maine "already permits certain students a grace period to vaccinate" and exempts "certain students who previously invoked a religious objection," so that allowing G.C. and the children of other WTP members to attend "for the short period of this appeal would [not] cause significant harm." App. 3a (Dunlap, J., dissenting). Respondents "ha[ve] not shown that public health would be imperiled if less restrictive measures were imposed." *Cuomo*, 592 U.S. at 19.

The relief requested is narrow. It would bar Respondents from excluding G.C., and the children of WTP members who have submitted sincere religious objections, from school because they lack the vaccinations at issue, and from pursuing truancy proceedings based on absences that exclusion caused. It would leave intact Maine's authority to exclude any of them, like every medically exempt and legacy student, during an outbreak. 20-A M.R.S. § 6356(1). That is the protection Maine itself deems sufficient for the exempt students it already admits, and it mirrors the injunction this Court reinstated in *Mirabelli*, which protected parents' rights while leaving the State free to address genuine danger. 607 U.S. at 497–98. Maine permitted religious exemptions for decades before 2021 and operated its schools throughout. Even in a

public-health case, "the Constitution cannot be put away and forgotten." *Roman Catholic Diocese*, 592 U.S. at 19.

V. In The Alternative, The Court May Wish To Treat This Application As A Petition For A Writ Of Certiorari Before Judgment.

For the foregoing reasons, the Court should enjoin enforcement of § 6355 against G.C. pending appeal. If, however, the Court denies that relief, it may wish to construe this application as a petition for a writ of certiorari before judgment, grant the petition, and set the case for briefing and argument this Term on the questions (1) whether a State that conditions compulsory school attendance on an act a parent's faith forbids imposes a burden of the kind *Yoder* and *Mahmoud* subject to strict scrutiny, and (2) whether a school-immunization law that preserves a religious-and-philosophical exemption for a favored legacy class is generally applicable. Cf. *Biden v. Nebraska*, No. 22A444 (U.S. Dec. 1, 2022) (treating application as petition for certiorari before judgment and granting it); *United States v. Texas*, No. 22A17 (U.S. July 21, 2022) (same). Alternatively, the Court may wish to hold the constructive petition pending its disposition of *Miller v. McDonald*, No. 26-438, and *Perry v. Marteney*, No. 26-319, which present related questions, and then grant it alongside either of those cases or dispose of it in light of them. Applicants would be prepared to brief the case on a schedule that would allow argument during the Court's January, February, or March 2027 sittings.

A writ of certiorari before judgment under 28 U.S.C. § 2101(e) is an extraordinary remedy, but the issues presented here are "of such imperative public importance as to justify deviation from normal appellate practice and to require

immediate determination in this Court." Sup. Ct. R. 11. This Court has already acted once on the question whether *Mahmoud* reaches school-immunization laws, vacating a court of appeals' judgment and remanding for reconsideration in its light. *Miller*, 146 S. Ct. 879. The Second and Fourth Circuits have declined to apply *Mahmoud* to school religious exemption cases, and the First Circuit panel below resolved the question by holding that this Court's authority on the point is merely "emerging" while the States' power is "entrenched." App. 2a. The panel's order, which does not address the merits of Applicants' claim beyond calling them "not obvious," leaves G.C. out of school and his father under threat of truancy enforcement for the balance of the year. The order thus places the weight of Maine's public-health interest, which Applicants concede, above a question of federal constitutional law that only this Court can settle.

Absent certiorari before judgment, this Court likely could not hear the case this Term. Applicants filed their opening brief in the court of appeals on November 3, 2026; Respondents' briefs are due December 3, 2026; no argument date has been set; and there is no guarantee when the court of appeals will rule. Postponing review until the court of appeals enters judgment would thus likely delay this Court's resolution of the question until October Term 2027 at the earliest, after G.C. has lost the entire eighth grade. Certiorari before judgment would allow this Court to consider the question "promptly" and after "full briefing and oral argument," *Whole Woman's Health v. Jackson*, 594 U.S. 975, 141 S. Ct. 2494, 2496 (2021) (Roberts, C.J.,

dissenting), as it did when it granted certiorari before judgment in that case, 595 U.S. 30 (2021), and as it did in *Nebraska* and *Texas*.

CONCLUSION

The Court should enjoin Respondents from enforcing 20-A M.R.S. § 6355 against G.C. and the children of WTP members who have submitted sincere religious objections, and from initiating truancy proceedings against their parents on account of absences caused by that enforcement, pending disposition of the First Circuit appeal and of any petition for a writ of certiorari. In the alternative, the Court should treat this application as a petition for a writ of certiorari before judgment and hold it pending disposition of *Miller v. McDonald*, No. 26-438, and *Perry v. Marteney*, No. 26-319.

Dated: November 12, 2026

Respectfully submitted,

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