No. 26-438

IN THE

Supreme Court of the United States

JOSEPH MILLER, *et al.*,

Petitioners,

v.

JAMES V. MCDONALD, COMMISSIONER, NEW YORK STATE DEPARTMENT OF HEALTH, *et al.*,

Respondents.

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

BRIEF OF *AMICUS CURIAE* CHILDREN'S HEALTH DEFENSE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS CURIAE

Children's Health Defense ("CHD") is a nonprofit organization whose mission is to end the childhood chronic disease epidemic by reducing toxic environmental exposures, particularly involuntary exposures. CHD seeks to hold responsible parties accountable and establish safeguards against future harm to children's health and wellbeing. Its work includes protecting the ability of parents to exercise fundamental religious liberties on behalf of their children.[1]

CHD has a substantial interest in the standards governing religious accommodations to vaccination requirements. It has supported litigation protecting students and families subject to those requirements and is a plaintiff in *Children's Health Defense v. McDonald*, No. 25-cv-6877 (E.D.N.Y.). That experience informs its concern for the intersecting rights of parents to direct their children's religious upbringing, education, and medical care.

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1. Pursuant to Rule 37.6, CHD states that no counsel for a party authored this brief in whole or in part. No party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief, and no person or entity other than CHD, its members, or its counsel made such a contribution.

Pursuant to Rule 37.2, on October 22, 2026, CHD gave notice to Petitioners and Respondents on of its intent to file this amicus brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

New York is one of only a few states that categorically denies religious accommodations from school vaccination requirements. For families whose faith prohibits vaccination, that policy exacts a profound cost: parents must authorize conduct contrary to their religious beliefs or forgo their children's attendance at school, including private religious schools. The resulting burden reaches three closely connected aspects of parental liberty—the authority to direct children's religious upbringing, choose their education, and make decisions concerning their medical care.

Those interests lie at the heart of this Court's parental rights precedents. The protections arise from two constitutional guarantees: the Fourteenth Amendment protects parental liberty, and the First Amendment protects the exercise and transmission of religious faith. Their intersection is longstanding. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Parham v. J.R.*, 442 U.S. 584 (1979); and *Wisconsin v. Yoder*, 406 U.S. 205 (1972). *Employment Division v. Smith*, 494 U.S. 872, 881–82 (1990), expressly preserved *Yoder*'s protection of religious exercise in conjunction with parental liberty. And *Mahmoud v. Taylor*, 606 U.S. 522 (2025), reaffirmed that interference of the character addressed in *Yoder* requires strict scrutiny regardless of neutrality or general applicability. The Second Circuit nevertheless treated New York's health-and-safety purpose as a basis for placing Petitioners' claim outside that protection. The State's objective cannot answer the antecedent question of which constitutional rights its chosen means burden.

This is the Court's second opportunity to address that error. On December 8, 2025, it granted certiorari, vacated, and remanded the Second Circuit's affirmance of dismissal for reconsideration in light of *Mahmoud*. On remand, the Second Circuit again affirmed dismissal, notwithstanding the intervening guidance of *Mirabelli v. Bonta*, 607 U.S. 492 (2026) (per curiam). Pet. App. 2a–3a, 21a–24a. The resulting rule is already applied beyond the Amish schools, foreclosing examination of different burdens and secular comparators without analysis of the comparative risks or other factors required to safeguard fundamental rights. Plenary review is warranted to clarify the governing standard and its application.

Even without the Fourteenth Amendment claim, strict scrutiny is independently required here because New York's scheme is not generally applicable. CHD brings the perspective of litigation on behalf of families confronting the law's operation across the State. Those proceedings reveal highly discretionary and individualized judgments about medical exemptions and distinctions that permit unvaccinated attendance for secular reasons while categorically excluding religious accommodation. They also expose consequences of treating general applicability as settled without examining the discretion officials exercise or comparing the risks of permitted and prohibited participation. Under *Fulton* and *Tandon*, those features require scrutiny, not deference to the description of the mandate as a uniform public health measure or dismissal at the pleading stage without a legally sufficient account of the discretion and distinctions the scheme permits.

CHD focuses on that practical operation and its constitutional significance. The related proceedings demonstrate why the decision below matters beyond Petitioners' Amish communities and why review here is necessary to ensure that a public health objective does not shield selective burdens on religious exercise from the justification Constitutionally required.

ARGUMENT

I. *Smith* preserves constitutional protection for parental religious upbringing.

A. Parental liberty protects medical care, education, and religious upbringing.

The fundamental nature of parental rights is perhaps the oldest right identified as deserving heightened scrutiny. *Meyer v. Nebraska*, 262 U.S. 390, 399–403 (1923), protected parental educational choices against a state's restriction on language instruction. *Pierce* rejected compulsory public schooling that displaced private and religious education. 268 U.S. at 534–35. Its recognition that "[t]he child is not the mere creature of the state" remains central to the allocation of authority between parents and government. *Id.* at 535. These decisions protect parental liberty under the Fourteenth Amendment independently of whether a parent can establish religious discrimination under the First Amendment.

Troxel v. Granville describes the overarching fundamental liberty of parents to direct their children's care, custody, and control. 530 U.S. 57, 65–66 (2000) (plurality opinion). The plurality explained that fit parents

are presumed to act in their children's interests, and government may not simply substitute its preferred child-rearing judgment. *Id.* at 68–70.

Three established domains of core parental authority converge here. First, medical care. *Parham* recognized parents' substantial, ordinarily dominant role in seeking care for their children, while preserving independent medical review of institutional admission. 442 U.S. at 602–04, 606–07. Second, education. *Pierce* protected parents' authority to choose private and religious education against compulsory public schooling. 268 U.S. at 534–35. Third, religious upbringing. *Yoder* protected Amish parents' direction of their children's religious formation against a compulsory-attendance requirement that substantially interfered with it. 406 U.S. at 214–19, 233–34. These are established, closely connected applications of parental liberty.

The rights are not absolute. *Parham* preserves safeguards for children, and *Pierce* acknowledges reasonable educational regulation. But the existence of legitimate governmental authority does not erase the protected parental role. When the State substantially interferes with parental religious upbringing in the manner addressed by *Yoder* and *Mahmoud*, its action must survive strict scrutiny. Neutrality and general applicability are not threshold requirements for asserting a Fourteenth Amendment parental liberty claim.

The continuity matters. *Meyer* and *Pierce* concerned the State's effort to control education; *Parham* concerned consequential medical decisions; and *Troxel* concerned judicial displacement of a fit parent's judgment about

family relationships. The protected parental role does not depend on the administrative category into which the State places its intervention. Nor is it confined to the initial choice of a school, with constitutional protection ending once the child enrolls.

B. *Smith* expressly preserved *Yoder*'s protection of parental religious exercise.

Smith did not subject every constitutional claim involving religion to its neutrality-and-general-applicability threshold. It distinguished claims involving the Free Exercise Clause alone from claims involving that Clause together with another constitutional protection. Its express example was the parental right recognized in *Pierce* and applied together with free exercise in *Yoder*. *Smith*, 494 U.S. at 881–82 & n.1. *Smith* thus preserved the very conjunction presented by parental religious upbringing: a substantive parental liberty protected independently by the Fourteenth Amendment and religious exercise protected by the First.

That distinction explains why general applicability cannot end the inquiry here. The parental right supplies an independent constitutional foundation, not merely an additional reason to regard a religious burden as severe. *Smith*'s rule for incidental burdens on religious exercise does not diminish the protection of a separate fundamental liberty. Once an infringement requiring strict scrutiny is established, the Fourteenth Amendment does not require parents first to identify a secular comparator or prove religious hostility. *Smith* itself preserved heightened protection for the conjunction of parental authority and religious exercise addressed in *Yoder*. *Id.* It had

to – otherwise religious parental concerns would be less protected than secular ones.

Mahmoud applies that preserved protection for protection of religious upbringing. It expressly relies on *Smith*'s treatment of *Yoder* in holding that a burden of the same character requires strict scrutiny regardless of neutrality or general applicability. 606 U.S. at 564–65. Footnote 14 reserves whether the claim must be classified as a hybrid-rights case; it does not withdraw *Smith*'s express preservation of *Yoder*. *Mahmoud* therefore supplies the operative free exercise rule without requiring resolution of every question concerning hybrid claims. Its reasoning is consistent with, and reinforced by, the independent parental liberty foundation.

Mirabelli makes the two constitutional grounds explicit. After finding likely success on religious parents' free exercise claim under *Mahmoud*, the Court separately found likely success for parents asserting due process protection independent of establishing a religious objection. Invoking *Pierce*, *Meyer*, and *Parham*, it recognized primary parental authority and protection against exclusion from decisions concerning children's mental health. 607 U.S. at 496–98. These separate analyses, undertaken in assessing interim relief, confirm that parental protection is not exhausted by *Smith*'s rule for free exercise standing alone.

That application also answers efforts to confine the principles justifying heightened scrutiny in *Mahmoud* to curriculum. The Ninth Circuit had treated *Mahmoud* as a narrow decision about coercive instructional requirements; this Court nevertheless restored relief

for parents challenging policies concerning information provided to them about their children's gender pronoun preferences. *Id.* Justice Barrett's concurrence, joined by the Chief Justice and Justice Kavanaugh, explained that existing Fourteenth Amendment parental rights precedents governed the preliminary assessment. *Id.* at 498-500 (Barrett, J., concurring). The relevant continuity is the protected parental function, not the particular subject matter of a classroom lesson.

The Court need not recognize a new exception to *Smith* to resolve the first question presented. It can enforce the protection *Smith* expressly preserved and *Mahmoud* applied. The Fourteenth Amendment precedents explain the parental liberty underlying that protection; CHD does not ask the Court to decide a freestanding due process claim outside the questions presented. The controlling inquiry is whether New York imposes the kind of interference with religious upbringing addressed in *Yoder* and *Mahmoud*. General applicability does not answer that question.

C. The State's health objective does not determine the character of the religious burden.

The Second Circuit reasoned that section 2164 does not prescribe instruction, compel an affirmation, or conceal information from parents. Pet. App. 22a–24a. It further concluded that even a more severe burden than that in *Mahmoud* need not be the same kind of burden. *Id.* at 23a. But Petitioners' objection is not merely that vaccination is more consequential than exposure to a book. It is that New York demands conduct inconsistent with the religious practices parents seek to uphold in their child's

upbringing and threatens continued operation of the schools through which they instill the children's religious upbringing. *See* Pet. 6–8, 16–20.

The challenged condition reaches all three domains of parental authority at once: whether to authorize a medical intervention, where and how to educate a child, and whether families must choose between upholding religious practices related to vaccination and sending children to religious schools their faith also requires. These overlapping burdens explain why the parental claim cannot be reduced to an ordinary objection to medical regulation. The State's designation of its objective does not determine which constitutional rights its chosen means burden.

Religious formation occurs through conduct and example as well as instruction. Parents teach religious obligations by observing them, guiding their children's observance, and choosing institutions that sustain that way of life. Requiring a parent to authorize an act the family's faith forbids directly undermines that formation. The State cannot eliminate the burden by leaving parents free to explain afterward to their children why they believe the required act was wrong.

The alternative compounds the interference. Petitioners have chosen religious schools within their Amish communities. New York conditions access to those schools on the very conduct to which they object and imposes substantial penalties on the schools for accommodating their beliefs. Pet. 6–8, 12–14. The resulting choice implicates both the practice of faith

within the family and its transmission through the family's chosen religious educational community.

Describing this as a health-and-safety condition merely identifies the State's asserted purpose. It does not determine whether the condition substantially interferes with parental religious development. Otherwise, the State could avoid *Mahmoud* by attaching an administrative designation to a burden that directly conflicts with religious practices parents are trying to instill. The State may establish that a particular intrusion is necessary to protect health and safety. That justification must satisfy the governing constitutional standard, including narrow tailoring. Simply invoking health and safety cannot substitute for actual inquiry.

Nor does the availability of education at home resolve the constitutional question. *Mahmoud* rejected the premise that parents must withdraw from public education to avoid the challenged religious burden, calling it insulting and legally unsound. 606 U.S. at 561–62. Here the State reaches private religious schools as well. The ability to abandon the family's chosen religious school is not an answer to the claim that government has impermissibly burdened that choice.

New York's condition on access to education violates the unconstitutional conditions doctrine. Government may not deny an otherwise available benefit on a basis that infringes protected constitutional interests merely because the claimant lacks an independent entitlement to the benefit. *Perry v. Sindermann*, 408 U.S. 593, 597 (1972). *Barnette* likewise demonstrates that attendance requirements do not place religiously objectionable

conduct beyond constitutional review. *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 629–30, 642 (1943). Petitioners' privately supported schools are not a public subsidy, but the State's condition on attending them likewise cannot be insulated from review by identifying another possible educational arrangement.

This argument does not presume that every school condition is unconstitutional. It identifies why exclusion can burden protected exercise even when the State leaves parents physically free to refuse vaccination. The Court must first identify the religious burden and then examine the justification for imposing it. For these Petitioners, communal schooling is itself part of the religious life they seek to preserve. A rule requiring abandonment of that setting cannot be treated as leaving religious upbringing undisturbed. Pet. 6–8, 16–20.

II. New York's secular exceptions and individualized exemption process independently require strict scrutiny.

The burden on parental religious upbringing is compounded by selective operation of New York's vaccination requirements. Although religious accommodation is categorically unavailable, New York permits secular exceptions that undermine its asserted public health interests in comparable ways and maintains mechanisms for individualized, discretionary exemptions. Each feature independently triggers strict scrutiny under *Fulton* and *Tandon*. CHD's litigation on behalf of affected families provides a concrete view of how those exceptions operate and why the mandate cannot be treated as generally

applicable merely because the State characterizes it as a uniform health-and-safety requirement.

A law lacks general applicability when it provides a mechanism for individualized exemptions or treats comparable secular conduct more favorably than religious exercise. *Fulton v. City of Philadelphia*, 593 U.S. 522, 533–34 (2021). Comparability turns on the risks relevant to the government's asserted interest, rather than the reasons for the conduct. *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (per curiam). The decision below acknowledged those principles but treated medical review as the application of objective criteria and rejected the asserted secular comparators. Pet. App. 15a–20a & n.13. The proceedings discussed below illustrate what that categorical treatment overlooks.

A. Medical exemptions permit comparable secular conduct and individualized exceptions.

New York permits unvaccinated attendance for medical reasons while categorically refusing religious accommodation. Under *Tandon* and *Fulton*, that distinction requires two independent inquiries: whether the State permits secular conduct that undermines its asserted interest comparably, and whether it maintains a mechanism for individualized exemptions while excluding religious hardship. The Second Circuit's analysis fails on both grounds.

First, the Second Circuit justified the medical–religious distinction by defining the State's interest broadly as protecting student health: medical exemptions advance that interest by protecting children from

vaccination that could harm them. Pet. App. 15a–17a. But that reasoning substitutes approval of the secular reason for the comparison *Tandon* requires. Comparability turns on the risks the permitted conduct presents to the government's asserted interest. *Tandon*, 593 U.S. at 62. Protecting a medically vulnerable child explains why an exemption deserves solicitude; it does not establish that the child's unvaccinated attendance presents less risk of disease transmission. The State's willingness to accommodate one important interest cannot itself justify categorically refusing to accommodate religious exercise. The whole point of strictly scrutinizing such policies is to ensure that religious concerns are not inadvertently treated less favorably than secular.

Members of this Court have identified precisely that error. Dissenting in *Does v. Mills*, Justice Gorsuch, joined by Justices Thomas and Alito, rejected reliance on an encompassing health-and-safety interest to distinguish medical from religious exemptions to a healthcare vaccination mandate. 595 U.S. 1029, 1032–33 (2021). In New York's healthcare mandate litigation, Justice Gorsuch, joined by Justice Alito, likewise explained that unvaccinated workers could undermine the State's asserted public health goals equally whether their reasons were medical or religious. *Dr. A v. Hochul*, 595 U.S. 1107, 1113 (2021) (dissenting from denial of application for injunctive relief). Those dissents identify the analytical error repeated here: general applicability requires comparison of the risks of permitted and prohibited conduct, not merely endorsement of the secular reason for permitting it.

Second, New York's medical exemption process independently defeats general applicability under *Fulton*. There, the government argued that its exception provision was irrelevant because the responsible official had never granted an exception. This Court rejected that argument. Citing *Smith*, 494 U.S. at 884, it held that the mechanism itself defeated general applicability because it invited the government to decide "which reasons for not complying with the policy are worthy of solicitude." *Fulton*, 593 U.S. at 537. Religious claimants did not have to identify an exception already granted. Reservation of authority to consider individual reasons for noncompliance was enough.

Miller departed from that rule, reasoning that school officials cannot approve or deny exemptions case by case "for *any* reason." Pet. App. 19a (emphasis in original). But *Fulton* did not require unrestricted authority to excuse compliance for every conceivable reason. The question is whether officials may evaluate individual reasons and determine whether they warrant an exception—not whether their authority has no limits. Otherwise, government could preserve individualized consideration of secular hardship while categorically excluding religious hardship, then invoke that restriction to establish general applicability, inverting *Fulton*'s rule.

New York's statutory/regulatory framework demonstrates the individualized authority that *Miller* discounts. The statute begins with the judgment of the child's physician: "If any physician licensed to practice medicine in this state certifies that such immunization may be detrimental to a child's health, the requirements of this section shall be inapplicable..." N.Y. Pub. Health Law § 2164(8). But the Second Circuit is well aware that

this seemingly mandatory and objective standard is no longer operative.

After repealing the religious exemption in June 2019, New York tightened medical exemption regulations and pre-defined "what may be detrimental," placing school principals in charge of deciding if a physician was correct. The State expressly connected that change to concern that families who previously relied on religious exemptions would seek medical exemptions without valid medical grounds. Brief in Opposition for State Respondents 6, *Goe v. McDonald*, No. 22-404 (Feb. 2, 2023). Heightened review thus arose directly from the repeal and anticipation that religious families would obtain medical protection. That history makes particularly consequential the authority officials exercise to credit or reject those families' explanations.

The amended regulations tie the statutory phrase "may be detrimental" to a medical contraindication or precaution consistent with ACIP guidance or another nationally recognized evidence-based standard of care (N.Y. Comp. Codes R. & Regs. tit. 10, § 66-1.1(l)), and permits the principal or person in charge of the school to demand additional information (*Id.* § 66-1.3(c)). Under the review authority upheld by the Second Circuit, the treating physician's certification does not settle whether the child qualifies. School officials may reject it where they disagree that a physician's determination falls within complex standards of care.

That delegation was central to *Goe v. Zucker*. Parents challenged school officials' authority to deny exemptions notwithstanding physicians' certifications of medical need

and compliance with nationally recognized evidence-based standards. The Second Circuit upheld the review process, upholding "broad discretion" and citing the state's "long-standing discretion" "to determine when and under what circumstances the requirement shall be enforced." 43 F.4th 19, 34 (2d Cir. 2022) (discussing *Zucht v. King*, 260 U.S. 174, 175–76 (1922)). Yet *Miller* characterized that same framework as mandatory and objective when religious parents invoked the constitutional consequences of the acknowledged discretion. Pet. App. 18a–20a. The Second Circuit cannot characterize the statute's grant of authority depending on the claim. It either allows schools to make case-by-case determinations about which reasons are worthy of solicitude or it does not.

Doe v. Oceanside Union Free School District, Nos. 26-2679 & 26-2836, currently pending before the Second Circuit, illustrates the unfettered discretion that schools exercise to grant and deny exemption requests. In that case, a mother challenges her daughter's exclusion from school despite repeated physician certifications supporting medical deferral. The family alleges that, after repeal of the religious exemption, Sarah Doe received eighteen vaccine doses, contrary to her mother's religious practices, to remain in school. The filings describe serious subsequent medical problems, including recurrent infections/sepsis, episodic paralysis, and severe urticaria and dermatographia. First Am. Verified Compl. ("Oceanside FAC"), *Doe v. Oceanside Union Free Sch. Dist.*, No. 2:25-cv-02304-GRB-ST (E.D.N.Y. June 12, 2025), ECF No. 16.

Sarah lacks only two additional required doses. Ten New York State licensed physicians have certified that

she cannot now be safely vaccinated. Even a walk-in clinic refused vaccination when she sought to comply. Mot. for Inj. Pending Appeal, 26-2679, Dkt. 26.1, at 22. Yet she is currently being excluded again.

The past three years have shown Sarah's access to education turns on discretionary determinations by the school's medical consultant. The District accepted one doctor's certification but rejected another's subsequent identical certification identifying the same dermatographia-and-hives grounds. Oceanside FAC ¶¶ 115–126; ECF Nos. 7-6, 7-7. The district physician described his process as calling certifying doctors, and seeing if they can "convince me that the medical exemption is warranted." Sept. 22, 2026 Hr'g Tr. 156:21–24, 158:1–3, reproduced in Appellees' Opp., Dkt. 32.1 (2d Cir. Oct. 13, 2026), Ex. A. He refuses to speak to parents or examine impacted children but decides based on his impression of the certifying physician. These are subjective judgments about whether an individual child's reasons justify deferral and whether the doctor is a persuasive speaker—the very function *Miller* denied that officials perform.

Reference to a standard of care does not make that process ministerial. Whether a particular child's condition warrants deferral under the governing medical guidance may itself be the subject of competing expert judgments. School officials evaluate those judgments, determine what supporting evidence is sufficient, and decide whether the asserted grounds justify an exemption.

DOH's own procedures confirm school officials retain discretionary authority and there is no mandatory and objective standard. DOH offers optional consultation

about whether a physician's certification complies, but states: "After the appropriate medical consultation has occurred, the principal or person in charge of a school is responsible for making the final determination on the medical exemption request." NYSDOH, *Medical Exemption Review Procedures for Schools Outside New York City* 2 (Sept. 2025), reproduced in *Oceanside*, ECF No. 100-19. New York itself acknowledged before this Court that schools were "ultimately responsible for deciding petitioners' medical exemption requests." Brief in Opposition for State Respondents 8, *Goe v. McDonald*, No. 22-404 (Feb. 2, 2023).

The significance is clearest when DOH recommends denial. Even then, its recommendation does not bind the principal to deny the request. The principal retains authority to reach a different conclusion and grant the exemption. Neither the treating physician's assessment nor DOH's contrary assessment necessarily controls.

In *Fulton*, an unused exemption mechanism was sufficient to trigger strict scrutiny. Here, schools are given unfettered discretion to evaluate medical exemption requests on a case-by-case basis and grant exemptions even where the DOH does not agree that they are warranted. New York must justify its categorical exclusion of religious hardship under strict scrutiny, independently of the comparative-risk analysis.

B. New York permits unvaccinated attendance at eighteen, when parental authority ends.

Sarah Doe's approaching eighteenth birthday exposes another distinct feature of the scheme that

independently defeats general applicability. While her current repeated exclusions threaten course credit and graduation, in January 2027 she may attend without receiving either remaining dose or obtaining an accepted medical exemption. The sole change will be her eighteenth birthday at which time Section 2164 no longer applies. N.Y. Pub. Health Law § 2164(1)(b); *Oceanside*, ECF No. 96, at 13–14.

The statute's structure makes the parental rights burden unmistakable. Its vaccination command is expressly directed to the person in parental relation to the child. N.Y. Pub. Health Law § 2164(2)–(3). School exclusion enforces that command while the decision belongs to the parent. Once the student turns eighteen, the same vaccination status no longer bars attendance and the same student can attend the same classes in the same building unvaccinated just not for religious reasons. The statutory line tracks the end of parental authority, not the end of classroom exposure.

The cutoff has already had a concrete consequence in CHD's own litigation. In *Children's Health Defense v. McDonald*, No. 25-cv-6877 (E.D.N.Y.), plaintiffs sought religious protection against exclusion for Raphael Goe under the same requirement. The district court held Raphael's preliminary injunction motion was moot because he had turned eighteen and was no longer subject to section 2164. ECF No. 34, at 1 n.1 (Aug. 20, 2026). His birthday eliminated the statutory barrier to continued school attendance independently of his vaccination status.

The same decision addressed the asserted disparity between Betsy Roe, age seventeen and still excluded,

and her older sister, who is over eighteen, and allowed to attend the same school unvaccinated for the entire year. The court did not identify a difference in transmission risk. It instead treated *Miller* as dispositive, reasoning that the Second Circuit's general applicability holding on the medical exemption necessarily encompassed the statute's age limit too. *Id.* at 3–4. Thus, *Miller* is already foreclosing examination of secular attendance that the State permits while denying religious accommodation even when the specific facts have never been assessed.

Defendants in *Oceanside* contend that age defines the regulated class rather than creates an exemption. Appellees' Opp., Dkt. 32.1, at 18–19. That drafting distinction cannot answer *Fulton* and *Tandon*. The same student may attend the same classroom with the same vaccination history once the decision is no longer her parent's to make. New York must explain why that permitted attendance presents a materially different risk from the religious accommodation it categorically denies. It cannot establish general applicability simply by placing older students outside the statutory definition.

The age cutoff therefore bears on both questions presented: whether New York permits comparable secular conduct and whether the mandate interferes with parental religious upbringing. The State invokes classroom safety to displace a parent's religious decision, then permits attendance without further vaccination once parental authority ends. That distinction requires constitutional scrutiny, not a presumption that the law applies uniformly.

C. The treatment of school activities likewise turns on administrative classifications rather than demonstrated differences in risk.

Another proceeding illustrates how the mandate's application depends on the classification of an activity. In *Chorba v. South Seneca Central School District*, No. 6:26-6302 (W.D.N.Y.), John, a homeschooled child sought to participate in a school-sponsored trap club meeting outdoors at an off-campus sportsmen's facility. The district denied participation under its interpretation of the vaccination requirements, although, as his father testified, John was allowed to participate in wrestling at school with enrolled students using school equipment two to three days a week without any vaccination requirement. *Id.* ECF 24-1, Mar. 25, 2026 Hr'g Tr. 10:2–24, 12:21–13:5; 16:2–10.

The superintendent distinguished the activities principally by sponsorship: the trap club was school-sponsored, while an outside organization technically operated the wrestling program (though the school supplied the coach, mats, and singlets featuring the school mascot). *Id.* at 116:4–24. The superintendent acknowledged he had not performed a threat assessment concerning John's requested trap club accommodation. *Id.* at 136:11–20. The distinction thus permitted indoor physical contact with enrolled students while prohibiting participation in an outdoor, off-campus activity, without an assessment establishing that the permitted activity presented less relevant risk. The superintendent further testified that outside organizations reserved school facilities almost daily and he assumed enrolled students were there at the same time. *Id.* at 134:25–135:15. This fact pattern ties into *Miller.* In small communities like South

Seneca, where the Chorbas live, or in Amish communities, excluding unvaccinated children from school will not stop them from interacting with their peers in schools. It just serves to make children feel ostracized and penalized for their family's religious practices.

In *Chorba*, the district court issued and maintained temporary relief allowing John to participate in Trap Club. In its preliminary assessment, the Court indicated the restriction might reflect a discretionary district decision requiring strict scrutiny rather than automatic treatment as a neutral, generally applicable state-law command. *Id.* at 145:8–18. The temporary restraining order remains in effect. *Id.* at 146:9–10.

The *Chorba* case demonstrates why courts must examine the particular restriction officials impose and the participation they permit. Administrative sponsorship does not establish comparative transmission risk. *Chorba* also shows that withdrawing from classroom instruction does not necessarily free a family from the burden; the restriction may follow a homeschooled child into extracurricular activities. The relevant comparison is the contact the district permits, not merely the name of the organization sponsoring it.

D. Homeless-student enrollment further demonstrates that vaccination is not an invariable condition of attendance.

New York's own immunization guidance expressly allows school attendance before immunization requirements are satisfied. Under "Homeless Students," NYSED states: "Homeless students are not required to

present proof of immunity or immunization in order to be admitted to school." It then directs: "Every school district, BOCES, and charter school is required to have a liaison for homeless students whose duties include making eligibility determinations on a case-by-case basis..." N.Y. State Educ. Dep't, *Immunization Guidelines for Schools* 8 (emphasis deleted), reproduced in *Chorba*, ECF No. 23-6, at 12. The guidance contemplates students who lack immunizations themselves, as well as students who merely lack records. Its homeless student paragraph specifies no fixed deadline terminating that enrollment protection.

That protection implements the federal McKinney-Vento Act. *See* 42 U.S.C. § 11432(g)(3)(C). Its statutory source explains why schools must provide the accommodation; it does not establish that the resulting classroom attendance presents less risk of transmission than attendance pursuant to a religious accommodation. Under *Tandon*, comparability turns on the risks the permitted conduct presents, rather than the reasons for permitting it. 593 U.S. at 62. Protecting homeless children's education is a weighty secular concern. The constitutional question is why protecting religious exercise cannot likewise warrant accommodation, with appropriate safeguards.

The guidance also underscores why the actual scope of administrative authority matters under *Fulton*. A mechanism authorizing individualized exceptions need not have produced a granted exception before it defeats general applicability. 593 U.S. at 535–37. The inquiry is what officials are empowered to permit. Together with the medical-review process, NYSED's express provision for case-specific eligibility and enrollment without completed

immunization requirements calls for examination of how the scheme operates, rather than an assumption that exclusion is an unyielding public health necessity.

III. Public health objectives must be tested under the governing constitutional standard.

The Court need not find that parental rights are absolute or that vaccination requirements are categorically impermissible. *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), and *Zucht v. King*, 260 U.S. 174 (1922), recognize substantial public-health authority. *Prince v. Massachusetts*, 321 U.S. 158, 166–67 (1944), expressly recognizes limits on religious and parental claims where children or the community face harm, including in its discussion of vaccination. Those authorities, while predating modern constitutional frameworks, convey an important point. But they do not decide whether the particular burdens and distinctions challenged here satisfy this Court's subsequent tiers of scrutiny framework.

The distinction between a family's internal decision and a risk imposed on others must be confronted. New York may invoke the safety of classmates who cannot be vaccinated and the risk of concentrated susceptibility. CHD does not ask the Court to presume those concerns away. It asks that the State justify the accommodation it denies under the standard triggered by the rights burdened and the exceptions it permits. The significance of the comparators is not that every unvaccinated student presents identical circumstances, but that the State must identify relevant differences rather than infer or assume them from the secular reason for attendance.

Roman Catholic Diocese of Brooklyn v. Cuomo applied constitutional scrutiny in an actual public health emergency. 592 U.S. 14, 16–19 (2020) (per curiam). *Tandon* likewise required examination of comparable secular activities and less restrictive measures. 593 U.S. at 62–64. Public health supplies an important asserted interest; it does not remove the judicial obligation to identify the proper level of scrutiny and exercise it.

Under strict scrutiny, the inquiry concerns the justification for denying the particular accommodation, not merely the importance of vaccination in general. *Fulton*, 593 U.S. at 541. Petitioners' allegations, the settings in which their children are educated, the scope of the requested relief, and available protective measures require consideration under that standard.

The question is why denying an accommodation to these parents and these schools is necessary, not whether vaccination generally serves an important public purpose. That is all that is being requested here. The State's concerns about clusters of unvaccinated children deserve evaluation, but their seriousness does not permit courts to bypass the threshold constitutional questions and dispense with the required showing of necessity and narrow tailoring. *See* Pet. App. 16a–17a.

The posture favors review now. Petitioners' as-applied challenge was dismissed without application of the scrutiny they seek, and this Court's earlier remand has already produced a renewed judgment resting on the same threshold exclusion. The Court need not adjudicate the medical disputes in *Oceanside* or the statutory reach disputed in *Chorba*. Those proceedings demonstrate

the practical reach of the rule adopted below: families lose educational opportunities while courts treat *Miller* as foreclosing inquiries into particular burdens and particular accommodations.

That is CHD's distinctive contribution at the petition stage. The related cases are not additional adjudicative facts establishing Petitioners' entitlement to judgment. They show how the legal rule operates and why its consequences require review. The Court can grant certiorari to resolve the threshold constitutional standard without deciding the collateral cases or announcing that every requested exemption must be granted.

The petition offers the Court an opportunity to enforce existing precedent before deciding whether *Smith* must be reconsidered. The parental religious protection *Smith* preserved supplies one route to strict scrutiny; *Fulton* and *Tandon* supply another. If those decisions cannot prevent the categorical exclusion of Petitioners' claim from heightened review, the case squarely presents the need to reconsider *Smith*. *See Smith*, 494 U.S. 872; *Fulton*, 593 U.S. at 543 (Barrett, J., concurring), 553 (Alito, J., concurring in the judgment).

CONCLUSION

For more than a century, this Court has protected parents' role in directing their children's religious, educational, and medical upbringing. That protection requires courts to examine the rights burdened and the necessity of the State's infringing policies. Neither a public health label nor the option to abandon religious schooling answers that inquiry. The petition for a writ of certiorari should be granted.

Respectfully submitted,

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