NEW JERSEY COALITION FOR VACCINE CHOICE, MARIA QUIGLEY, DREW CIFRODELLI, AND JEFF SCHREIBER, Plaintiffs-Appellants vs. NEW JERSEY DEPARTMENT OF HEALTH; DR RAYNARD E. WASHINGTON, COMMISSIONER OF HEALTH; THE PUBLIC HEALTH COUNCIL; AND ALL CURRENT MEMBERS OF THE PUBLIC HEALTH COUNCIL IN THEIR OFFICIAL CAPACITIES, Defendants-Respondents.	) SUPERIOR COURT OF) NEW JERSEY) APPELLATE DIVISION) Docket No. A-1729-25)) CIVIL ACTION))) ON APPEAL FROM STATE) AGENCY DECISION) ENTERED ON) January 20, 2026

[PROPOSED] BRIEF OF AMICUS CURIAE CHILDREN'S HEALTH DEFENSE IN SUPPORT OF PLAINTIFFS-APPELLANTS AND URGING VACATUR AND REMAND

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IDENTITY AND INTEREST OF THE AMICUS

Children's Health Defense ("CHD") is a nonprofit organization whose mission is to end the childhood chronic disease epidemic by reducing the toxic environmental exposures that underlie it, especially where those exposures are involuntary. CHD seeks to hold responsible parties accountable and to establish safeguards to prevent future harm to children's health and wellbeing, including, but not limited to, the prohibition of vaccine mandates that threaten the ability of parents to exercise fundamental liberties on behalf of their children.

At the core of its mission, CHD advocates to protect fundamental liberties related to religious freedom, parental rights, and health freedom, by regularly challenging in both state and federal courts nationwide attempts to constrain these fundamental rights. CHD has supported extensive litigation in this domain–protecting the religious rights and other fundamental liberties of children and their families subject to vaccination requirements. This experience gives CHD a substantial interest in ensuring that procedures impacting fundamental liberties, such as the legislatively mandated process for amending the New Jersey Sanitary Code at issue here, are consistent with constitutional principles, including protection of fundamental parental rights to control the religious, educational, and medical upbringing of their children.

INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiffs-Appellants seek to vacate and remand a rule adopted by Defendant-Respondent New Jersey Department of Health ("NJDOH") Commissioner Washington (the "Commissioner"), who unilaterally adopted modifications to the New Jersey Sanitary Code. Importantly, the legislature did not delegate rule-making authority to the Commissioner's office. Rather, the legislature purposefully delegated rule-making authority for public health measures (including forced vaccination of children entering school) only to Defendants-Respondent Public Health Council ("PHC"). Indeed, the Commissioner's unilateral, *ultra vires* adoption of the rule at issue which gave rise to this appeal not only circumvented the legislatively-mandated vote by a properly constituted PHC, it also denied a public hearing before the Council. The right to a public hearing is guaranteed to New Jersey citizens prior to any such rule changes. In addition to New Jersey's own "turn square doctrine" requiring strict compliance with such rules, dispensing with the rule-making requirements violated the separation of powers guaranteed in the New Jersey Constitution.

The process-oriented guarantees enacted by the New Jersey legislature at issue also invoke constitutionally protected fundamental liberties related to the exercise of religious beliefs and parental rights not addressed by Plaintiffs-

Appellants brief and to which CHD seeks to focus the Court's attention. Indeed, protecting the exercise of these fundamental liberties necessarily depends upon enforcement of the legislatively-mandated processes by which they are guaranteed.

The United States Supreme Court has protected parental rights to secure these liberties on behalf of their children since at least the 1920s, and more recently has strengthened those protections in *Mahmoud v. Taylor*, 606 U.S. 522 (2025) and in *Mirabelli v. Bonta*, 607 U.S. 492 (2026) (per curiam). Protection of parental rights are grounded in two areas of the Constitution. The first is a "liberty" interest protected by the Fourteenth Amendment's Due Process Clause (substantive due process), which protects the fundamental right of parents to direct the upbringing of their children, including with respect to religion, education, and medical care. The second is the First Amendment's Free Exercise Clause, which protects parents' rights to raise their children according to religious belief. CHD respectfully requests the Court to consider these long-standing precedents when ruling on this appeal, and to grant Plaintiffs-Appellants' requested relief.

PROCEDURAL BACKGROUND AND FACTS

Amicus Curiae CHD adopts the Procedural History, Statement of Facts, and Standard of Review set forth in Plaintiffs-Appellants' opening brief (*see*

Plaintiffs-Appellants' Brief at 3-14). CHD further notes that the challenged amendments to the Sanitary Code affect vaccination requirements for childcare centers, primary schools, and institutions of higher learning. Indeed, the rules at issue specifically address the criteria and methods that must be used by administrators to evaluate religious and medical exemptions, and therefore directly affect protected constitutional liberties, including the free exercise of religion and parental rights to the care, custody, and control of their children.

LEGAL ARGUMENT

THE COURT SHOULD VACATE AND REMAND THE RULE ADOPTED BY DEFENDANT-RESONDENT COMMISSIONER WASHINGTON BECAUSE BOTH HIS ACTIONS AND THE ACTIONS OF THE PHC VIOLATED BOTH THE STATUTORY RULE-MAKING PROCEDURES AS WELL AS THE FUNDAMENTAL LIBERTIES OF NEW JERSEY PARENTS AND THEIR CHILDREN.

A. The Acting Commissioner Lacked Unilateral Authority to Amend the State Sanitary Code in Violation of Separation of Powers.

In 1947, the New Jersey Legislature delegated Sanitary Code rulemaking authority to the PHC under N.J.S.A. 26:1A-7. The Sanitary Code broadly encompasses public health measures, including vaccines mandated for school entry. The legislature required this body to consist of eight, and later ten, individuals, each with specific professional expertise. N.J.S.A. 26:1A-4 Though this quasi-legislative body is encompassed within the NJDOH, the legislature did not delegate authority to the DOH Commissioner to make unilateral changes

to the code – in fact, his office was afforded no authoritative participation in PHC decisions. N.J.S.A. 26:1A-6. Moreover, while the governor must appoint members of the PHC, the Sanitary Code was originally structured so that PHC appointments would be staggered across administrations, with Senate confirmation, presumably to insulate the PHC from undue political influence. *Id;* N.J.S.A. 26:1A-4.

In addition, the legislature ensured that the PHC must answer to the public when attempting to make changes to the Code, through both public commentary and public hearings. N.J.S.A. 26:1A-7. These procedural rights give New Jersey citizens the opportunity to confront the PHC on the record, with objections and questions, and seek dialogue and reasoned decisions. Given the important citizens' rights at stake, this legislative framework created a check on executive authority, including the exercise of unfettered authority by the NJDOH. If the court upholds the rule at issue, the legislature's framework of checks and balances will have been destroyed. CHD requests that the Court require strict compliance with N.J.S.A. 26:1A-4 and N.J.S.A. 26:1A-7, especially because the failure to do so impacts important liberty interests.

First, concentrating rule-making authority solely in the Acting Commissioner through executive reorganization, as advocated by Defendants-Respondents, violates basic separation-of-powers principles. N.J. Const. Art.

III, ¶1. Indeed, an agency action that alters statutory procedure to bypass deliberation by an independent, credentialed, Senate-confirmed board is *ultra vires*. *See e.g.*, *New Jersey Guild of Hearing Aid Dispensers v. Long,* 75 N.J. 544, 561–62 (1978)*; Bergen Pines County Hosp. v. N.J. Dep't of Human Servs.,* 96 N.J. 456, 477–78 (1984);*Communications Workers of America v. Christie*, 413 N.J. Super. 229 (App. Div. 2010). Additionally, it violates New Jersey's "turn square corners" doctrine, which requires administrative bodies to act with utmost fairness and strict compliance with statutory procedures regarding decisions which bind the public. *See e.g., F.M.C. Stores Co. v. Borough of Morris Plains*, 100 N.J. 418, 426 (1985). Dispensing with statutory notice, public hearings, and a vote by a properly constituted PHC violates this mandatory procedural standard.

The statutory requirements for altering the State Sanitary Code operate as a necessary constitutional check. Bypassing these procedures in the present case not only endorses the unfettered authority of the Commissioner, it deprives parents of the statutory opportunity to seek accommodations, and results in administrative mandates that ignore protected liberties, including but not limited to First Amendment rights (Free Exercise Clause) and the substantive due process rights of parents.

B. The Court Should Review the Improper Actions of the Commissioner and PHC Which Conflict With United States Supreme Court Precedents Concerning Parental Rights and Religious Liberty.

When administrative shortcuts as described above undermine public health codes, particularly those that affect children, the resulting procedural injury also gives rise to potentially unconstitutional and unfair restrictions upon the fundamental liberties of parents. Currently, the circumvention of legislative mandates by Defendants-Respondents has effectively extinguished the only procedural safeguards afforded parents in the Sanitary Code rule-making process to protect those liberties. The end result accomplishes indirectly what long-standing precedent cautions against. Indeed, at issue are not simply benign administrative formalities, but also New Jersey citizens' due process rights under the Fourteenth Amendment and Free Exercise rights under the First Amendment. CHD respectfully requests that the Court give consideration to the well-established precedent detailed below, regarding parents' fundamental liberties, when reaching a decision in this case.

In particular, it is well-settled that the Fourteenth Amendment protects "the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel v. Granville*, 530 U.S. 57, 66 (2000). This interest may be "perhaps the oldest of the fundamental liberty interests recognized by the Supreme Court," and it unequivocally embodies the

authority of parents – absent a finding of parental unfitness – to direct their children's religious upbringing, education, medical care. *Id*.; *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925); *Parham v. J.R.,* 442 U.S. 584, 602-03 (1979).

In fact, the Supreme Court's long history of protecting parental rights began in 1923 with *Meyer v. Nebraska*, 262 U.S. 390 (1923), followed by *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). In *Meyer*, the Court struck down a Nebraska law forbidding school instruction in any language other than English until after a child had passed eighth grade. *Meyer*, 262 U.S. at 397. The Court found that the liberty interests protected by the Fourteenth Amendment "[w]ithout doubt, [ ] denote[ ] not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." *Id*. at 399. *Meyer* opened the door to explicit acknowledgement of parental due process rights, further articulated only two years later in *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), where the Court unanimously struck down an Oregon law that essentially outlawed private and religious schools. In its holding the Court found

"[t]he child is not the mere creature of the State" and that the law "unreasonably interfere[d] with the liberty of parents and guardians to direct the upbringing and education of children under their control." *Id.* at 534-535.

Wisconsin v. Yoder, 406 U.S. 205 (1972), expanded the doctrine of parental rights well beyond the *Meyer-Pierce* doctrine and created a bridge between parent rights and free exercise concerns. The Court found in favor of Amish parents, convicted for non-compliance with compulsory education law (refusing to send their children to school past the eighth grade), holding that a facially neutral school attendance requirement can unconstitutionally burden and encroach upon parents' religious beliefs and the religious formation of their children. The Court recognized that "a State's interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on fundamental rights and interests, such as those specifically protected by the Free Exercise Clause of the First Amendment, and the traditional interest of parents with respect to the religious upbringing of their children so long as they, in the words of *Pierce*, 'prepare (them) for additional obligations.'" *Id*. at 214 (citation omitted). Importantly, *Yoder* applied strict scrutiny in reviewing the constitutionality of Wisconsin's law. *Id*. at 215 ("The essence of all that has been said and written on the subject is that only those

interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion.").

Several years later, in *Parham v. J.R.*, 442 U.S. 584 (1979), the Court reaffirmed the supremacy of parental authority when reviewing a Georgia law that allowed parents to voluntarily admit their minor children to state psychiatric hospitals, subject to review by the admitting physician. Finding that the children challenging the law were not entitled to a formal adversarial hearing first, the Court made clear that parents retain "a substantial, if not the dominant, role" in the decision, and the law historically "presume[s] that parents possess what a child lacks in maturity, experience, and capacity for judgment." *Id.* at 602. *Parham* represents a clear statement by the Court that parental rights extend to a child's medical and mental-health care, and that parents are entitled to a presumption that they act in the best interests of their children.

More recently, in *Mahmoud v. Taylor*, 606 U.S. 522 (2025), involving parents' rights to opt-out of LGBTQ curriculum, the Court unequivocally took parental rights through the schoolhouse doors. The Court recognized that "the right of parents 'to direct the religious upbringing of their' children would be an empty promise if it did not follow those children into the public school classroom. We have thus recognized limits on the government's ability to

interfere with a student's religious upbringing in a public school setting." *Id.* at 547 (citation omitted).[1]

Following closely on the heels of *Mahmoud*, the Court decided *Mirabelli v. Bonta*, 607 U.S. 492 (2026) (per curiam). *Mirabelli* further expanded the parental rights doctrine, in the context of a challenge to a school district's policies requiring staff to use students' chosen names and pronouns in school and barred staff, absent a student's consent, from advising parents about a student's gender transition. The *Mirabelli* Court's grant of summary judgment and issuance of a statewide permanent injunction demonstrated that *Mahmoud's* reasoning is not confined to either curricular issues or religious claims. Indeed, the court held that parents – including parents asserting no religious objection – were likely to succeed on an independent Fourteenth Amendment claim against school policies that displaced their role in consequential decisions about their children's health. 607 U.S. at 497

[1] Moreover, *Mahmoud* made clear that *Yoder* was not meant to be read narrowly, indicating "there is no reason to conclude that the decision is 'sui generis' or 'tailored to [its] specific evidence,' as the courts below reasoned…Contrary to the suggestions of the courts below, *Yoder* embodies a robust principle of general applicability." 606 U.S. at 525. Thus, these principles apply to compulsory vaccination policies. As *Mahmoud* explains, a case "is of the exact same character as the burden in *Yoder* where it "substantially interfer[es] with the religious development' of the parents' children. . . . [a]nd those policies pose 'a very real threat of undermining' the religious beliefs and practices that the parents wish to instill in their children." 606 U.S. at 565 (quoting *Yoder*).

Importantly, the per curiam opinion held that the parents in *Mirabelli* were likely to succeed on two independent grounds. First, free exercise. The opinion found that, under *Mahmoud*, California's gender transition "policies likely trigger strict scrutiny under [the Free Exercise Clause] because they substantially interfere with the 'right of parents to guide the religious development of their children.'" *Id.* at 496 (citing *Mahmoud,* 606 U.S. at 559 (citing *Yoder*)). Per the Court, the policies fail despite the state's asserted interest in student safety and privacy, because they "cut out the primary protectors of children's best interests: their parents." Id. at 496-97 (citing *Troxel*). Second, due process. The Court recognized that "[u]nder long-established precedent, parents – not the State – have primary authority with respect to 'the upbringing and education of children.'" *Id.* at 497 (quoting *Pierce* and citing *Meyer*). The opinion further harkened back to *Parham*, noting that "[t]he right protected by these precedents includes the right not to be shut out of participation in decisions regarding their children's mental health." *Id.* Likewise, strict scrutiny applies to the due process claims. *Id*.

In the present case, Defendants-Respondents, through adoption of the rule at issue, have effectively interfered in parental upbringing of New Jersey children with changes to vaccine-related rules in the Sanitary Code, giving rise to concerns about the unconstitutional burden placed on parents' fundamental

rights under the First and Fourteenth Amendments. At a very minimum, they should be afforded the procedural guarantees set forth in the Sanitary Code which require the vote of a properly constituted PHC and a right to public commentary and a public hearing. The Code requirements provide a due process mechanism that operates as a constraint on the State, preventing fundamental liberty interests from being extinguished by an executive act that displaces a board the Legislature created to make that decision independently.

CONCLUSION

For the foregoing reasons, CHD supports Plaintiffs-Appellants' application and respectfully urges the Court to vacate and remand Defendants-Respondent's' January 20, 2026 adoption of rules related to N.J.A.C. 8:57, published at 58 N.J.R. 654(a). That adoption, which implicates and undermines fundamental liberties, was made without statutory authority, rested on an invalid transfer of Public Health Council's rule-making authority and proceeded without the public hearing required by N.J.S.A. 26:1A-7.

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