

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY**

-----X

F.F. on behalf of her minor children, Y.F., E.F. Y.F.; INDEX NO.
M. & T. M. on behalf of their minor children, C.M.
and B.M.; E.W., on behalf of his minor son, D.W.;
Rabbi M., on behalf of his minor children I.F.M,
M.M & C.M.; M.H. on behalf of W.G.; C.O., on behalf
of her minor children, C.O., M.O, Z.O. and Y.O;
Y. & M. on behalf of their minor children M.G.,
P.G., M.G., S.G., F.G. and C.G.; J.M. on behalf of
his minor children C.D.M. & M.Y.M.; J.E., on
behalf of his minor children, P.E., M.E., S.E., D.E.,
F.E. and E.E.; C.B. & D.B., on behalf of their
minor children, M.M.B. and R.A.B.; T.F., on behalf
of her minor children, E.F., H.F. and D.F.; L.C., on
behalf of her minor child, M.C.; R.K., on behalf of her
minor child, M.K.; R.S. & D.S., on behalf of their minor
children, E.S. and S.S.; J.M. on behalf of her minor
children, S.M. & A.M.; F.H., on behalf of her minor
children, A.H., H.H. and A.H.; M.E. on behalf of his
minor children, M.E. & P.E.; D.B., on behalf of her
minor children, W.B., L.B. & L.B.; R.B., on behalf
of her minor child, J.B.; L.R., on behalf of her minor
child, E.R.; G.F., on behalf of his minor children, C.F.
& A.F.; D.A., on behalf of her minor children, A.A. &
A.A.; T.R., on behalf of her minor children, S.R. and
F.M.; B.N., on behalf of her minor children, A.N., J.N.
& M.N.; M.K. on behalf of her minor child, A.K.; L.B., on behalf
of her minor children, B.B., A.B. & S.B.; A.V.M., on
behalf of her minor children, B.M. and G.M.; N.L., on
behalf of her minor children, H.L. & G.L.; L.G., on
behalf of her minor children, M.C. and C.C.; L.L., on
behalf of her minor child,, B.L.; C.A., on behalf of her
minor children, A.A., Y.M.A., Y.A. and M.A.; K.W., on
behalf of her minor child, K.W.; B.K., on behalf of her
minor children, N.K., S.K., R.K. and L.K.; W.E. and C.E.,
on behalf of their minor child, A.E.; R.J. & A.J., on behalf
of their minor child, A.J.; S.Y. & Y.B., on behalf of their
minor children, I.B. and J.B.; T.H., on behalf of her
minor child, J.H.; K.T., on behalf of her minor children,
A.J.T. & A.J.T.; L.M., on behalf of her minor child, M.M.,
D.Y.B., on behalf of her minor child, S.B.; A.M., on
behalf of her minor child, G.M.; F.M., on behalf of his
three minor children, A.M.M., D.M.M. and K.M.M.;
H.M., on behalf of her minor child, R.M.; M.T. & R.T.,

**VERIFIED COMPLAINT
[CLASS ACTION]**

on behalf of their minor child, R.T.; E.H., on behalf of her minor children M.M.S.N. and L.Y.N., Rabbi M.B. on behalf of his minor child, S.B. and S.L. & J.F. on behalf of their minor child C.L., A-M.P., on behalf of her minor child, M.P.; R.L, on behalf of her minor children G.L, A.L and M.L.; N.B., on behalf of her minor child M.A.L.; B.C., on behalf of her minor child, E.H. and J.S. & W.,C. on behalf of their minor children M.C. and N.C., S.L., on behalf of his three minor children, A.L., A.L. and A.L., L.M., on behalf of her two minor children, M.M. and M.M., N.H., on behalf of his three minor children, J.H., S.H. and A.H., on their own behalves and on behalf of thousands of similarly-situated parents and children in the State of New York,

Plaintiffs,

vs.

STATE OF NEW YORK; ANDREW CUOMO, GOVERNOR
LETITIA JAMES, ATTORNEY GENERAL,

Defendants.

-----x

INTRODUCTION

1. By and through this action, plaintiffs challenge the constitutionality and legality of the action, taken on June 13, 2019 by defendants, to repeal the religious exemption to vaccinations for children in the State of New York, hereby referred to as the “challenged action”.

2. Plaintiffs bring this action on their own behalves and on behalf of all those similarly situated, that is, all parents who obtained religious exemptions or would have qualified and used such exemptions, allowing their children to access either a public or private school in the State of New York, a day care or nursery facility or a day camp or sleep-away camp which meets their families' needs.

3. As they suffer irreparable harm and as the challenged action violates the plaintiffs' constitutional rights, plaintiffs seek a temporary restraining order, as well as a preliminary and permanent injunction with regard to the challenged action.

PARTIES

4. Plaintiff F.F. brings this action on behalf of her unvaccinated minor children, YF, age 17, who attends Yeshiva Dmonsey, EF, age 14, and YF, age 8, both of whom attend Yeshiva Adas Yereim and all of whom had religious exemptions from vaccinations and are currently excluded from their schools, which may no longer honor that exemption in light of the challenged action, and any other public or private school in the State of New York.

5. Plaintiffs M. and T.M. bring this action on behalf of their unvaccinated minor children, C.M., age 14 Yeshiva U Mesivta Torah Vodaath and B. M., age 16 Yeshiva Toras Emes, both of whom have religious exemptions from all vaccinations, are fully unvaccinated and are currently excluded from their schools, which may no longer honor that exemption, and, due to the challenged action, from any other public or private school in the State of New York

6. Plaintiff E.W. brings this action on behalf of his unvaccinated minor son, D.W., age 8, who attended Congregation Nooam M. Lisensk, a year-round yeshiva from which he is currently excluded because he is unvaccinated and the school may no longer honor his religious exemption due to the challenged action which precludes his enrollment at any public or private school in New York State.

7. Plaintiff Rabbi M. brings this action on behalf of his unvaccinated minor children: I.F.M. age 12, M.M., age 9, and C.M., age 5, each of who attended the Yeshiva of Brooklyn with a religious exemption and is now excluded from this school, which may no longer honor their exemption and from any other public or private school in the State of New York by force of the challenged action.

8. Plaintiff M.H. brings this action on behalf of her unvaccinated minor son, W.G., age 12 who attended the Destiny Christian School with a religious exemption since 2012 and has now been officially excluded from attendance at said school because of the passage of the challenged law. M.H. may not attend any other public or private school in the State of New York by force of the challenged action.

9. Plaintiff C.O. brings this action on behalf of her unvaccinated minor children, C.O. age 9, Tzoin Yosef Pupa, M.O. age 6, Tzoin Yosef Pupa, Z.O. age 7, Bnos Esther Pupa, Y.O. age 3, Tzoin Yosef Pupa, all of whom have recognized religious exemptions and have now been excluded from attending their respective schools or nursery programs in Spring Valley, New York. These children would be attending their school twelve months/year but for the revocation of the religious exemption and they may not attend any other public or private school or nursery in the State of New York by force of the challenged action.

10. Plaintiffs Y. and M. bring this action on behalf of their unvaccinated minor children, M.G., age 16, who attended Bnos Yisroel Viznits [10 months], P.G. age 13 and M.G., age 12, who both attended Talmud Torah Kasho [a 12

months/year school], S.G., age 10, F.G. age 8, and & C.G. age 5, all of whom attended Bnos Yisroel Viznits with religious exemptions but have now been excluded from their schools and cannot attend any other public or private school in the State of New York by the force of the challenged action.

11. Plaintiff J.M. brings this action on behalf of his unvaccinated minor children, C.D.M., age 6, and M.Y.M., age 7, both of whom attended Central UTA in Williamsburg, New York before being excluded from school as they are unvaccinated and now cannot attend any other public or private school in the State of New York by force of the challenged action.

12. Plaintiff J.E. brings this action on behalf of his minor children, P.E., M.E. S.E. and D.E, each of whom was enrolled in Talmud Torah of Kasho, a 12 month school, until excluded because they never received vaccinations and F.E. and E.E., who were enrolled in B'nos Ahavas Yisroel, also a twelve month program in Brooklyn, New York from which they, too, are now excluded from attendance. These children are barred from attending any other public or private school in the State of New York by force of the challenged action.

13. Plaintiffs C.B. & D.B bring this action on behalf of M.M.B. age 6, who is unvaccinated and attended Ohr Menachem, a 12 month/year school in Brooklyn, New York before being excluded therefrom since he is not vaccinated, and R.A.B., age 3, who attends a nursery program at Beis Chaya Mushka in Brooklyn and has been excluded because she is not vaccinated. These children cannot attend any other public or private school or nursery in the State of New York by force of the challenged action.

14. Plaintiff T.F. brings this action on behalf of her unvaccinated minor children, E.F., age 10, H.F., age 9 and D.F., age 4, each of whom had a religious exemption and attended the United Talmudical Academy in Spring Valley before being expelled since they were unvaccinated. These children cannot attend any other public or private school in the State of New York by force of the challenged action.

15. Plaintiff L.C. brings this action on behalf of her unvaccinated minor child, M.C., age 6, who attended the Valley Cottage Elementary School and had a religious exemption but has now been excluded from school attendance because she is not vaccinated. She cannot attend any other public or private school in the State of New York by the force of challenged action.

16. Plaintiff R.K. brings this action on behalf of her unvaccinated minor child, M.K., who had a religious exemption, attended Yeshiva Derech Eretz, but has been excluded from school attendance because he is not vaccinated. She cannot any other public or private school in the State of New York by force of the challenged action.

17. Plaintiffs R.S. and D.S. bring this action on behalf of their unvaccinated minor children, E.S., age 10, and S.S., age 7, both of whom had religious exemptions and attended Oceanside Oaks School #3 Elementary before being excluded since they are unvaccinated. They cannot attend any other public or private school in the State of New York by force of the challenged action.

18. Plaintiff J.M. brings this action on behalf of her unvaccinated minor children, S.M., age 7, Bais Yaakov Orot Sarah, A.M., age 5, Yeshivat Mekor

Haim, both of whom had religious exemptions, but are now excluded from school because they are not vaccinated. These children cannot attend any other public or private school in the State of New York by force of the challenged action.

19. Plaintiff F.H. brings this action on behalf of A.H., age 7, who is unvaccinated and attended Bet Yaakov Orot Sarah, H.H., age 5, and A.H., age 4, both of whom are unvaccinated and attended Yeshivat Mekor Haim with a religious exemption before being expelled as s/he was not vaccinated. These children cannot attend any other public or private school in the State of New York by force of the challenged action.

20. Plaintiff M. E. brings this action on behalf of her unvaccinated minor children M.E., age 9, who attended Yeshiva Arugath Habosem Tzelem, and P.E., age 6, who attended Bnos Nitra; both had religious exemptions and have now been expelled from school attendance because they are unvaccinated. These children cannot attend any other public or private school in the State of New York by force of the challenged action.

21. Plaintiff D.B. brings this action on behalf of her unvaccinated minor children, W.B., age 10, L.B., age 8, and L.B., age 6, each of whom attended a public elementary school in Bay Shore with a religious exemption and all of three of whom have now been excluded from attendance as they are unvaccinated. These children cannot attend any other public or private school in the State of New York by force of the challenged action.

22. Plaintiff R.B. brings this action on behalf of her unvaccinated minor child, J.B., age 5, who was enrolled in the Stratford Road Elementary School in

the Plainview-Old Bethpage School District and has now been excluded because he is unvaccinated and his religious exemption nullified by the challenged action. J.B. cannot attend any other public or private school in the State of New York by force of the challenged action.

23. Plaintiff L.R. brings this action on behalf of her unvaccinated minor child, E.R., age 10, who would have attended fifth grade at the Pulaski Street School in the Riverhead School District in September 2019, but has been barred from doing so because her religious exemption has been declared null and void by and through the challenged action. E.R. cannot attend any other public or private school in the State of New York by force of the challenged action.

24. Plaintiff G.F. brings this action on behalf of his unvaccinated minor children, C.F., age 14, and A.F., age 12, who would have attended public schools in the Riverhead School District in September 2019 but cannot do so because the district may no longer honor their religious exemptions. These children cannot attend any other public or private school in the State of New York by force of the challenged action.

25. Plaintiff D.A. brings this action on behalf of her unvaccinated minor children, A.A., age 7, & A.A., age 4, both of whom were scheduled to attend P.S. 84 in Williamsburg, New York, but can no longer do so because the New York City Department of Education will no longer honor their religious exemptions to vaccinations. These children cannot attend any other public or private school in the State of New York by force of the challenged action.

26. Plaintiff T.R. brings this action on behalf of her unvaccinated minor children, S.R., age 16, Northport High School, and F.M., age 4, Weekday Nursery School, both of whom are now excluded from their schools because, while having a religious exemption, they are unvaccinated. These children cannot attend any other nursery school, public or private school in the State of New York by force of the challenged action.

27. Plaintiff B.N. brings this action on behalf of her unvaccinated minor children, A.N., age 11, who attended Harbor Country Day School, J.N., age 10 and M.N., age 5, both of whom attended Peconic Community School and all of whom are now excluded from schools which may not honor their religious exemption and require vaccinations which they have not received due to religious beliefs. These children cannot attend any other public or private school in the State of New York by force of the challenged action.

28. Plaintiff M.K. brings this action on behalf of her unvaccinated minor child, A.K., age 7, who attended Medford Elementary School but has now been excluded therefrom because she will not vaccinate based on sincerely-held religious beliefs. A.K. cannot attend any other public or private school in the State of New York by force of the challenged action.

29. Plaintiff L.B. brings this action on behalf of her unvaccinated minor children, B.B., age 9, A.B., age 7, and S.B., age 5, each of whom is not vaccinated for religious reasons and has now been excluded from school attendance at the Hebrew Day School of Sullivan County. These children cannot attend any other public or private school in the State of New York by force of the challenged action.

30. Plaintiff A.V.M. brings this action on behalf of her unvaccinated minor children, B.M., age 10, and G.M., age 8, both of whom attended school in the Harborfields Central School District before being excluded despite their religious exemptions because they are non-vaccinated and will not be based upon sincerely-held religious beliefs. These children cannot attend any other public or private school in the State of New York by force of the challenged action.

31. Plaintiff N.L. brings this action on behalf of her unvaccinated minor children H.L., age 7, and G.L., age 5, both of whom were to attend Ogden Elementary School, Hewlett-Woodmere School District with religious exemptions to vaccinations, but are now excluded based upon sincerely-held religious beliefs. These children cannot attend any other public or private school in the State of New York by force of the challenged action.

32. Plaintiff L.G. brings this action on behalf of her unvaccinated minor children, M.C., age 11, and C.C., age 9, both of whom attended public schools in the Greenville Central School District in Greene County and are now barred from such attendance despite their religious exemptions because they are unvaccinated. These children cannot attend any other public or private school in the State of New York by force of the challenged action.

33. Plaintiff L.L. brings this action on behalf of her unvaccinated minor child, B.L., age 7, who has never been vaccinated for religious reasons and is now excluded from attendance at P.S. 42 in Staten Island, New York. B.L. cannot attend any other public or private school in the State of New York by force of the challenged action.

34. Plaintiff C.A. brings this action on behalf of her unvaccinated minor children, A.A., age 13, Y.M.A., age 1, Y.A. age 8 and M.A., age 6, each of whom attended Yeshiva Bais Dovid in Monsey, New York until their expulsion on June 30, 2019; each child had religious exemptions and is not vaccinated and is now excluded from the eleven-month curricula offered by the school. These children cannot attend any other public or private school in the State of New York by force of the challenged action.

35. Plaintiff K.W. brings this action on behalf of her unvaccinated minor child, K.W., age 5, who was a student at the Coram Elementary School in the Longwood School District, but has not been excluded despite religious exemption because she remains unvaccinated. K.W. cannot attend any other public or private school in the State of New York by force of the challenged action.

36. Plaintiff B.K. brings this action on behalf of her unvaccinated minor children, N.K., age 14, S.K., age 11, R.K, age 9 and L.K., age 6, each of whom attends a Yeshiva in Rockland County which provides a twelve month/year education from which s/he has been excluded despite having a religious exemption because they remain unvaccinated. These children cannot attend any other public or private school in the State of New York by force of the challenged action.

37. Plaintiffs W.E. and C.E. bring this action on behalf of their unvaccinated minor child, A.E., age 9, who has attended the Fallsburg Cheder Yeshiva and intended to continue attendance through the summer of 2019 and into 2019-20 school year until being excluded for failure to vaccinate after

the challenged enactment despite having a religious exemption based on sincerely-held religious beliefs. A.E. cannot attend any other public or private school in the State of New York by force of the challenged action.

38. Plaintiffs R.J. and A.J. bring this action on behalf of their unvaccinated minor child, A.J., age 7, who has attended the Fallsburg Cheder Yeshiva and intended to continue attendance through the summer of 2019 and into 2019-20 school year until being excluded for failure to vaccinate after the challenged enactment despite having a religious exemption based on sincerely-held religious beliefs. A.J. cannot attend any other public or private school in the State of New York by force of the challenged action.

39. Plaintiffs S.B. and Y.B. bring this action on behalf of their unvaccinated minor children, I.B., age 8, and J.B., age 7, who have attended the Fallsburg Cheder Yeshiva and intended to continue attendance through the summer of 2019 and into 2019-20 school year until being excluded for failure to vaccinate after the challenged enactment despite having a religious exemption based on sincerely-held religious beliefs. These children cannot attend any other public or private school in the State of New York by force of the challenged action.

40. Plaintiff T.H. brings this action on behalf of her unvaccinated minor child, J.H., age 5, who was scheduled to commence kindergarten at the Harold D. Fayette Elementary School in Merrick, New York, but is now excluded from doing so despite his religious exemption as he is not vaccinated. J.H. cannot attend any other public or private school in the State of New York by force of the challenged action.

41. Plaintiff K.T. brings this action on behalf of her unvaccinated minor children, A.J.T., age 6, and A.J.T, age 4, both of whom were to attend the Maria Regina Elementary School in Seaford, New York before being excluded due to challenged action. Both have never been vaccinated due to the religious beliefs of their parents. These children cannot attend any other nursery, public or private school in the State of New York by force of the challenged action.

42. Plaintiff L.M. brings this action on behalf of her unvaccinated child M.M., age 6, who was scheduled to attend the Waldorf School in Garden City but is now excluded from such attendance because her religious beliefs disallow vaccination. M.M. cannot attend any other public or private school in the State of New York by force of the challenged action.

43. Plaintiff D.Y.B. brings this action on behalf of her unvaccinated child, S.B., age 17, who long had a religious exemption and due to the challenged action will now not be permitted to complete her senior year of high school in the Onteora Central School District or attend any other public or private school in the State of New York.

44. Plaintiff A.M. brings this action on behalf of her unvaccinated child, G.M., age 10, who heretofore has been permitted to attend the New York City Public Schools with his religious exemption but has now been barred from school attendance as he remains unvaccinated. G.M. cannot attend any other public or private school in the State of New York by force of the challenged action.

45. Plaintiff F.M. brings this action on behalf of his unvaccinated three children, A.M.M., who attends- Our Lady of Lourdes High School, D.L.M. and

K.M.M. who attend Holy Trinity Elementary School and who have religious exemptions based upon the family's religious beliefs and now shall be disallowed from continuing their education in Dutchess County and attending any other public or private school in the State of New York by the challenged action.

46. Plaintiff H.M. brings this action on behalf of her unvaccinated son, R.M., age 11, who has had a religious exemption and so attended school in the City of Newburgh, but has now been disallowed from doing so and attending any other public or private school in the State of New York by the challenged action. H.M. also long attended a municipally-sponsored summer day camp which long honored his religious exemption and allowed him to register as a camper, but has now excluded him on the ground that there is no religious exemption.

47. Plaintiff M.T. and R.T. bring this action on behalf of their unvaccinated child, R.T., who has enjoyed a religious exemption, but has now been barred from future school attendance in Fort Ann, New York and any other public or private school in the State of New York by the challenged action.

48. Plaintiff E.H. brings this action on behalf of his unvaccinated children, M.M.S.N., age 5, and L.Y.N. age 3, both of whom were scheduled to attend Congregation Ohr Menachem, a twelve month educational program in Brooklyn, New York, but who have now been excluded from such attendance and any other public or private school in the State of New York by the challenged action.

49. Rabbi M.B. bring this action on behalf of his unvaccinated son, S.B., age 8, who attended Congregation Ohr Menachem in Brooklyn year-round, but is now barred from doing so and attending any other public or private school in the State of New York by the challenged action.

50. Plaintiffs S.L. and J.F. bring this action on behalf of their unvaccinated child, C.L., who is nearly 5 years of age, and been barred from attendance at his Rockland County Nursery School, Peace through Play and from enrolling at the South Orangetown School District because of the challenged action.

51. Plaintiff A-M.P. brings this action on behalf of her unvaccinated child, M.P., who is 11 years of age and has been barred from attendance at I.S. 75 and any other public or private school in the State of New York because of the challenged action.

52. Plaintiff R.L. brings this action on behalf of her three unvaccinated children, G.L., age 9, A.L., age 7, and M.L., age 5, each of whom has been barred from attending P.S. 36 in Staten Island and any other public or private school in the State of New York because of the challenged action.

53. Plaintiff N.B. brings this action on behalf of her unvaccinated child M.A.L., age 9, who is barred from attending 4th grade at P.S. 36 in Staten Island and any other public or private school in the State of New York because of the challenged action.

54. Plaintiff B.C. brings this action on behalf of her unvaccinated child, E.H., age 5, who is barred from attending P.S. 45 and any other public or private school in the State of New York because of the challenged action.

55. Plaintiffs J.S. and W.C. bring this action on behalf of their unvaccinated children, M.C., age 10, and N.C., age 7, both of who are barred from attending School 36 in Staten Island and cannot attend any other public or private school in the State of New York by force of the challenged action.

56. Plaintiff L.M. brings this action on behalf of her unvaccinated children, M.M., age 8, and M.M., age 4, who are barred from the William Ward Elementary School in New Rochelle and cannot attend any other public or private school in the State of New York by force of the challenged action.

57. Plaintiff S.L. brings this actions on behalf of his three unvaccinated children, A.L., age 10, A.L., age 7 and A.L., age 4, each of whom were barred from attending school in the Plainview-Old Bethpage School District and cannot attend any other public or private school in the State of New York by force of the challenged action.

58. Plaintiff N.H. brings this action on behalf of his three unvaccinated children, J.H., age 16, S.H., age 14, and A.H., age 12, who are barred from the East Aurora School District, where they would otherwise have enrolled for the 2019-20 school year, and any other public or private school in the State of New York by force of the challenged action.

59. Plaintiffs are all parents whose children had religious exemptions allowing them to attend public and/or private schools or nursery programs in the State of New York. Plaintiffs' children are also being systematically denied entrance to camps, whether day camps or sleeping camps, throughout the State of New York though, in prior years, the same camps accepted and honored their religious exemptions.

60. The plaintiffs represent a class of persons similarly situated which is too numerous to name each affected person as party plaintiffs, that is parents with religious exemptions for sincerely-held religious beliefs who have children who, by dint of the challenged action, are now excluded from public and private schools, nurseries and summer camps throughout the State of New York. It is efficient to litigate that matter on behalf of such a class and the participation of each affected person is not necessary for adjudication of the common issues which plainly predominate over others in challenging the legality of the challenged action.

61. Defendant State of New York is governed by a Governor and has a bi-cameral legislature [Assembly and Senate] which both enacted legislation revoking the long-standing religious exemption to vaccinations on June 13, 2019, sent that legislation to the Governor who promptly signed it into law.

62. Defendant Governor Andrew Cuomo signed the challenged repeal into law on June 13, 2019.

63. Defendant Letitia James is the New York State Attorney General.

JURISDICTION

64. Pursuant to 42 U.S.C. section 1983, this court has jurisdiction to enforce the provisions of the United States Constitution.

65. Pursuant to the authority vested in it by state law, this court has jurisdiction to enforce the New York State Constitution and its statutes and to find and declare any unconstitutional either on their face or as applied.

STATEMENT OF FACTS

66. Plaintiffs are parents from throughout the State of New York, each of whom hold a *bona fide* and sincerely-held religious belief against vaccinating their children and have not vaccinated their child[ren] based upon that belief.

67. Plaintiffs are persons from different and diverse religions and some are not affiliated with any organized religion; what binds them are religious beliefs which compel them to not vaccinate their children as well as the effect of the challenged action – exclusion of their children from any school-based education in the State of New York.

68. Under prior and longstanding New York State law and regulation, all plaintiffs made written application to their school district or school explaining those religious beliefs which impelled them to not vaccinate and, in each instance, school authorities approved their religious exemption and admitted their children to school, whether public or private. Such approval is not automatic in New York as many school districts deny the vast majority of such applications.

69. Forty seven states other than New York recognize religious exemptions to vaccinations.¹

70. New York has recognized a religious exemption to vaccinations since 1963.

71. The First Amendment to the United State Constitution recognizes a separation between church and state and the right of each person to engage in

¹ The only other states without a religious exemption are California, Mississippi, and West Virginia. Maine has restricted such exemptions commencing in two years.

the free exercise of religion and to not be compelled to engage in affirmative acts which violate religious beliefs absent a compelling state interest.

72. The First Amendment requires States to demonstrate a compelling state interest to deny a religiously-based accommodation, to overrule religiously-compelled practices or to force a person to act in a manner contrary to his/her personal religious beliefs.

73. New York State's Constitution recognizes religious freedom as a fundamental right for all those who reside in our state. Article 1, section 3.

74. New York State requires a party claiming an exemption to a law of general application on the ground of religious beliefs to demonstrate that the law is an unreasonable interference with his/her religious freedom.

75. In New York, thousands of persons of the Jewish faith, including many plaintiffs and many in the class they represent, educate their children in religious schools, Yeshivas, which inculcate religious and secular education and provide a setting for them to engage in daily prayer and worship with their peers.

76. Such daily worship commences when children are four years of age and continues in and throughout their schooling.

77. Denying these plaintiffs attendance at such schools substantially restricts and burdens their religious practice which cannot be replicated in another setting absent these children's peers.

78. Although an actual public health emergency may constitute a compelling state interest allowing the state to override sincerely-held religious beliefs, New York's highest court has held that "history teaches that

constitutional protections do not readily yield to blanket assertions of exigency.”²

79. The New York State Constitution requires the legislature to provide for the maintenance and support of a system of free common school wherein all children of the State may be educated. N.Y. Const., Art. 9 section 1.

80. Through its compulsory attendance law, New York State requires students aged 6-16 to attend school or to receive home instruction and New York Education Law section 3202 entitles persons between the ages of five and twenty-one to a free public education.

81. Parents residing in New York State who fail to comply with compulsory education laws may face serious civil and/or criminal sanctions, including potentially, the loss of parental rights over their children.

82. Each plaintiff cannot abide by the repeal law and satisfy the compulsory education laws without violating deeply-held religious beliefs.

83. New York State law and regulation have balanced religious exemptions from vaccinations with a concern for public health for more than fifty years.

84. Accordingly, before June 13, 2019, New York allowed state authorities to exclude those students holding religious and medical exemptions from a school after another student in the same school presented with a case of a vaccine-targeted contagious disease.

85. In such an instance, New York authorized County commissioners of health and school officials to exclude a student exempted from vaccination due

² *Ware v. Valley Stream High School Dist.*, 75 N.Y.2d 114,129 (1989).

to religious beliefs until a reasonable time had passed following the discovery that a student in the school was infected.

86. At the same time, New York did not allow the exclusion of any non-vaccinated students from school based on more generalized and less specific concerns for public health.

87. New York State provides other means, measures and methods for insuring that contagious diseases did not spread.

88. Specifically, New York State law allowed county health commissioners and the State Commissioner of Health to isolate or quarantine those infected with a contagious disease and to seal off and clean places where those with such contagious diseases frequented.

89. In late September 2018, seven cases of measles, one of the vaccine-targeted contagious disease covered by the afore-cited regulatory structure, were reported in Rockland County.

90. The cases did not originate in the United States or the State of New York, and the persons so infected were identified and known to public health authorities, as was the source of their infection.

91. The Commissioner of Health for Rockland County did not isolate or quarantine these seven persons or utilize any such authority until April 2019.

92. In October 2018, cognizant of the outbreak of measles in Rockland County and following existing state regulations, both the State and County Commissioners of Health advised certain schools where cases of measles had been reported, to exclude non-vaccinated children with religious exemptions.

93. At the same time, following existing state regulations, both the State and County Commissioners of Health advised other schools that they were NOT to exclude non-vaccinated children with religious exemptions since there were no reported measles cases in their schools.

94. In the counties in New York where measles cases were reported between late September 2018 and late April 2019, neither the State nor County Health Commissioners ordered the quarantining or isolation of persons infected with measles nor those living with such persons who were thereby exposed to the contagious disease.

95. Instead, without legal authority, in early December 2018, the Commissioner of Health for Rockland County issued an order which required certain schools with "low vaccination rates" to exclude non-vaccinated children with religious exemptions from schools in which no case of measles had presented or reported. The same did not apply to students with medical exemptions.

96. New York State law did not contemplate entry of any such order which was *ultra vires* and beyond the Commissioner's authority.

97. Said order lacked any legal basis or authority and kept from their schools hundreds of healthy children despite the fact that these schools had no reported or known cases of measles.

98. Between September 2018 and June 13, 2019, the State Commissioner of Health did not promulgate any directive or order preventing unvaccinated children from attending nurseries of private or public schools in the State.

99. In short, New York State and the affected counties did not utilize the means, measures and methods provided by state law and regulation to meet the outbreak of measles in the State.

100. In January 2019, as in at least the prior three sessions, legislation to repeal the religious exemption was introduced in the State Assembly, and, later that month, a companion bill was introduced in the State Senate.

101. Both proposed bills were referred to the respective Health Committees in the Assembly and Senate, which are each charged with considering all bills that deal with the health of New Yorkers.

102. Between January 2019 and June 2019, despite multiple requests from plaintiffs and constituents, no legislative committee convened a single public hearing on either proposed bill

103. The State Legislature did not take any action, let alone expedited action, to repeal the religious exemption during the months when the number of active measles cases was at its highest in those few areas of the State which experienced an outbreak.

104. Had public health concerns animated passage of this legislation and had legislators believed that repeal would have measurably abated the outbreak, the State Legislature should have swiftly enacted the repeal legislation.

105. Not only did the legislation languish for months but, before their votes, neither the Assembly nor the Senate, nor any committee of either chamber, held hearings on the proposed repeal of the religious exemption first

enacted in New York more than fifty years ago or gathered any information which would inform debate on the repeal measure.

106. Neither the Assembly nor the Senate, nor either of their Health Committees, engaged in any fact-finding process to determine [a] the number of active cases of measles in New York State; [b] the proportion of New York state's population which is vaccinated; [c] the proportion of unvaccinated individuals that hold religious exemptions; [d] the actual risk, if any, posed to vaccinated persons by those who do not vaccinate based on their sincerely-held religious beliefs; [e] whether those who had contracted measles were, or were not, vaccinated against the disease; [f] whether those who contracted measles did, or did not, have religious exemptions to vaccination; [g] whether any case of measles likely had been contracted from such an unvaccinated minor; and [h] whether “herd immunity” had been achieved in and throughout the State of New York.

107. The legislative history of the law revoking section 2164(9) is barren with respect to each of these vital questions.

108. Likewise, neither the Assembly nor the Senate debated or provided answers to questions critically inter-related to the elimination of the religious exemption, including: [a] what enforcement action could or would be taken against parents whose sincerely-held religious belief prevents them from allowing the vaccination of their children; [b] what local school districts and the State Education Department are to do with regard to the thousands of children throughout the State who are at once obliged to attend a public or private school and who are now disallowed from such attendance and [c] what doctors

thought about the “effective immediately” clause and the health and safety ramifications of such a clause.

109. Neither the Assembly nor the Senate possessed any factual information which provided any basis for members to conclude that a compelling state interest existed which might have supported the elimination of the religious exemption. To wit, there was no showing that those with religious exemptions had in fact spread a single case of measles nor that other less restrictive or narrowly tailored measures, as were then permitted by the laws of the State of New York, insufficiently responded to the outbreak of measles.

110. Indeed, in the floor debates on the bills, proponents repeatedly avoided any mention to the number of active cases of measles in the State and deceptively referred to the cumulative number of cases since September 2018, as if this represented the number of active cases.

111. On or about June 13, 2019, absent any legislative hearings, both health committees and, subsequently, both chambers of the New York State legislature voted to eliminate religious exemptions theretofore codified at section 2164(9) of the Public Health Law and to require parents to administer a panoply of vaccinations to their children, depending on age,, including vaccines against measles, mumps, rubella, diphtheria, tetanus, polio, chickenpox, meningitis, **hepatitis B, haemophilus influenza Type B and pneumococcal disease.**

112. Said legislation was intended to regulate the religious conduct of those who had been granted an exemption to vaccinate on the basis of their religious beliefs and its enforcement will trammel their religious beliefs and

practices or cause their children to be deprived of a free public education or a religious education, as chosen by parents in accordance with their religious beliefs.

113. Rather than being motivated by any serious concern for public health and despite the rhetoric of the Governor, in the public debate and discourse which preceded passage of this repeal legislation, numerous leading proponents of the legislation expressed active hostility toward the religious exemption and ridiculed and scorned those who held such exemptions.

114. Illustrative of this fact, in her closing remarks at the end of the legislative session, Senate Majority Leader Andrea Stewart-Cousins mocked and minimized plaintiffs' religious beliefs in stating, "We've chosen science over rhetoric." <https://www.gothamgazette.com/state/8629-historic-productive-session-democrats=albany-cuomo-transform-new-york>. Published 6/24/19.

115. In supporting the repeal, one of its Senate sponsors, James Skoufis, stated, "Let me be clear: There is not one religious institution, not one single one that denounces vaccines. So, here is a religious exemption pretending as if there is a religion out there that has a problem with the vaccines. Whether you are Christian, Jewish or Scientologist, none of these religions have texts or dogma that denounce vaccines. Let's stop pretending like they do." Skoufis later mockingly tweeted, "Stay classy, anti-vaxxers...In a few moments, I look forward to casting a 'yes' vote on this important bill." https://youtu.e/U_4551sC5n4?=13m22s.

116. In an op-ed, Senator Skoufis referred to the "so-called 'religious exemption,'" writing that "the time is now to end the state's nonsensical and

dangerous religious exemption.” He concluded that “We’ve already wasted too much time debating this issue,” despite the fact that the Senate never convened a single hearing on the topic. <https://patch.com/new-york/midhudsonvalley/op-ed-vaccines-protecting-our-children-measles>, Patch, May 3, 2019.

117. Another principal proponent, Senator Carlucci from Rockland County, explained the repeal this way, “We are removing this religious notion to it [vaccination]. Not everybody is the same. Religion cannot be involved here. We have to govern by science. Removing all non-medical exemptions will help to lower the stigma that happens.” <http://fios1news.com/uncategorized/state-sen-carlucci-on-measles-seat-belts-and-marijuana/>. Video, May 18, 2019, Fios, 11:15-11:40

118. Senator Carlucci from Rockland County, explained the repeal this way: “[A] group of people has decided their ideological beliefs are more important than public health. Putting people in harm's way...is selfish and misguided. Vaccines save lives and with the current measles outbreaks, legislation to end non-medical exemptions is paramount.”

119. Another prominent proponent of repeal, State Senator Brad Hoylman, further deprecated those who hold religious exemptions, stating, “Let’s face it. Non-medical exemptions are essentially religious loopholes, where people often pay a consultant to worm their way out of public health requirements that the rest of us are following.” <https://youtu.be/wn5CI071U2w?t=8m11s> Youtube, NY Legislative Press Conference, May 6, 2019, 8:13-8:30

120. Senator Hoylman manifested the same hostility in other remarks, “The goal should be to take religion out of the equation...We can’t put our public health officials or our school officials into that position of deciding if a

religious belief is sincere or not. That is why we need to remove it altogether.”

Same Press Conference as immediately above, 31:47-32:34

121. The leading Assembly sponsor of the repeal legislation, Assemblyman Jeffrey Dinowitz, echoed and extended this sentiment, “There are other people who don’t get the vaccinations because of the religious exemption. There is a provision in the law that says that anyone who has legitimate and truly religious reasons for not doing it, they can be exempt as well. The problem is that most people in my opinion use that as an excuse not to get the vaccinations for the kids. There is nothing in the Jewish religion, the Christian religion, or Muslim religion that suggests that you can’t get vaccinated. It is just utter garbage.” <https://youtu.be/X99d27D-mZo?t=2m52s>. Clip on Youtube published March 19, 2019. 2:52-3:28

122. In other public comments, Assemblyman Dinowitz continued his hostile comments toward religion and persons who hold such beliefs, “Even if people may think they have a religious problem with it, the truth is that the overwhelming majority of these people are exercising what is in fact a personal belief exemption.”

<https://www.youtube.com/watch?v=wn5CI071U2w&feature=youtu.be&t=29m30s>, Youtube, May 6, 2019, NYS Legislative News Conference

123. On another occasion, Mr. Dinowitz remarked, “There are many people who are claiming religious exemption when it fact it has nothing to do with religion.” <https://www.nydailynews.com/news/politics/ny-measles-exemption-bill-20190429-ldtsgxug4jhctbmczcsugupu2m-story.html>, Daily News, April 29, 2019

124. Ed Day, the Rockland County Executive, was a major proponent of repeal and repeatedly expressed antipathy toward those who obtained religious exemptions.

125. Day stated without any factual basis, “The religious exemption has been abused and it has been used as a personal preference exemption.”

<https://www.nydailynews.com/news/politics/ny-measles-exemption-bill-20190429-ldtsgxug4jhctbmczcsugupu2m-story.html>, PIX News, June 14, 2019, 1:05.

126. Day further stated, “The truth is that the purported religious exemption for vaccinations as a requirement to enter public and private schools is a total myth and fabrication. In fact, it has become a “personal belief” exemption and that is NOT allowable under existing law.”

<https://drive.google.com/file/d/1F74xfYygJWtj1kjT4ZZqEc3XsBzAx5pX/view>, Day’s Facebook post, May 10, 2019.

127. A majority of legislators who took leadership positions on the repeal bills in both the Assembly and Senate were substantially motivated by a hostility toward the religious beliefs underlying the religious exemption and those who utilized it. Their comments reflect this active hostility.

128. In that the means, measures and methods already authorized by New York State were generally NOT implemented to reduce the spread of measles before June 13, 2019, neither the State Assembly nor Senate had any basis to conclude that those means, measures and methods were inadequate or insufficient to combat the spread of the contagious disease, specifically measles, without eliminating the religious exemption and burdening the plaintiffs’ free exercise of religion.

129. The challenged action is causing plaintiffs irreparable harm by forcing them to choose between violating their religious beliefs and depriving their children of an education, be it either a free public education as guaranteed by NY State Law or a religious education as their religious beliefs may mandate.

130. The challenged action is causing plaintiffs irreparable harm by forcing them to find ways to home school their children which will undeniably require additional expenditures on childcare, disrupt their careers and impose financial strains on many families.

131. The challenged action is causing plaintiffs irreparable harm by forcing them to choose between violating their religious beliefs and depriving their children of summer activities incident to childhood, including summer day and sleep-away camps and other recreational activities like sports leagues, which did, but no longer, honor their children's religious exemptions.

132. The challenged action does not address the fact that 7-8% of primary and secondary students in the State of New York are unvaccinated and without either a religious or medical exemption and the repeal does not do anything to address their school attendance.

133. No compelling state interests exists or was shown to exist to justify the elimination of the religious exemption and to burden plaintiffs' free exercise of their religious beliefs.

134. No compelling state interest exists to selectively eliminate the religious exemption where, as here, the State maintains both the medical exemption from vaccinations, has allowed college students to retain their

religious exemptions under Public Health Law section 2165 and has allowed adult staff and personnel at the same public and private schools to remain un- or under-vaccinated by its standards.

135. No compelling state interest exists to compel persons to vaccinate their children against their sincerely-held religious beliefs and to deprive healthy non-vaccinated children of an education.

CAUSES OF ACTION

AS AND FOR A FIRST CAUSE OF ACTION

136. Plaintiffs incorporate paras. 1-135 as if fully rewritten herein.

137. The challenged repeal violates the First Amendment to the United States Constitution as made actionable against defendants by 42 U.S.C. section 1983 because it represents state action motivated by active hostility toward religion.

AS AND FOR A SECOND CAUSE OF ACTION

138. Plaintiffs incorporate paras. 1-137 as if fully rewritten herein.

139. The challenged repeal is an unreasonable interference in the religious freedom of plaintiffs and those similarly-situated and thereby violates the New York State Constitution.

AS AND FOR A THIRD CAUSE OF ACTION

140. Plaintiffs incorporate paras. 1-139 as if fully rewritten herein.

141. Without a compelling state interest, the challenged repeal burdens plaintiffs in the Free Exercise of their religious faiths in violation of the First Amendment to the United States Constitution, as made actionable by 42 U.S.C. section 1983 Constitution.

AS AND FOR A FOURTH CAUSE OF ACTION

142. Plaintiffs incorporate paras. 1-141 as if fully rewritten herein.

143. The challenged repeal violates the Equal Protection clause of the 14th Amendment to the United States Constitution as made actionable by 42 U.S.C. section 1983 because it eliminates the religious exemption for children while allowing students enrolled higher education as well as employees of schools, both private and public, either to maintain their religious exemptions or to continue their employment without vaccinations.

AS AND FOR A FIFTH CAUSE OF ACTION

144. Plaintiffs incorporate paras. 1-143 as if fully rewritten herein.

145. The challenged repeal violates the First Amendment to the United States Constitution as made actionable by 42 U.S.C. section 1983, because, *absent a compelling state interest*, it requires plaintiffs to engage in compelled speech or violate a state law which requires them to send their children, ages 6-16, to a public or private school, which they are unable to do without violating their sincere and *bona fide* religious beliefs.

PRAYER FOR RELIEF

WHEREFORE, this Honorable Court should find and declare that the challenged action was enacted based upon impermissible and active hostility to the freedom of religion which is a fundamental right; that it further burdens and offends the First Amendment without a compelling state interest in that New York failed to utilize those measures set forth in State law and regulation to combat the outbreak of a contagious disease; that the repeal unreasonably interferes in the religious beliefs and practices of plaintiffs because its

enactment was not supported by any empirical evidence that unvaccinated minors holding a religious exemption played any role in the spread of measles and because the process by which the New York State Legislature adopted the repeal belies any sense that a public health emergency justified this action; that the repeal violates the Equal Protection Clause because the legislature has concurrently retained the medical exemption and the religious exemption for students enrolled in higher education and allowed unvaccinated staff in both public and private schools in New York and taken no meaningful measures to alter the 7-8% of students who attend public schools in New York without vaccinations or any form of exemption. In this light, no rational basis supports these exemptions if public health concerns for those who could not be vaccinated actually motivated the repeal; and finally the Court should find and determine that the repeal compels speech and acts repugnant to plaintiffs' religious beliefs and if plaintiffs do not engage in such cases, this will cause their children to be deprived of a free public education or a religiously-mandated education and may cause harsh consequences for them including a finding of parental neglect.

This Honorable Court should further temporarily, preliminarily and permanently enjoin the repeal legislation, enter any additional orders which the interests of law and equity require and award the reasonably incurred attorneys' fees and costs to plaintiffs and their counsel.

Yours, etc.

MICHAEL H. SUSSMAN

SUSSMAN & ASSOCIATES
PO BOX 1005

GOSHEN, NEW YORK 10924
(845)-294-3991

ROBERT F. KENNEDY, JR.
HURLEY, NEW YORK
OF COUNSEL