No. 23-643

In the Supreme Court of the United States

WE THE PATRIOTS USA, INC., CT FREEDOM ALLIANCE, LLC; CONSTANTINA LORA, MIRIAM MIDALDGO AND ASMA ELIDRISSI,

Petitioners,

v.

CONNECTICUT OFFICE OF EARLY CHILDHOOD DEVELOPMENT; CONNECTICUT DEPARTMENT OF PUBLIC HEALTH, BETHEL BOARD OF EDUCATION, GLASONBURY BOARD OF EDUCATION AND STAMFORD BOARD OF EDUCATION.

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF IN OPPOSITION BY RESPONDENTS BETHEL BOARD OF EDUCATION AND STAMFORD BOARD OF EDUCATION

JOHANNA G. ZELMAN
PROLOY K. DAS
Counsel of Record
FORDHARRISON LLP
CITY PLACE II
185 Asylum Street, Ste. 820
Hartford, CT 06103
(860) 740-1355
jzelman@fordharrison.com
pdas@fordharrison.com

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

Whether Connecticut Public Act 21-6, which revised the Connecticut General Statutes to, *inter alia*, repeal religious exemptions for vaccination requirements for schoolchildren, violates the Free Exercise Clause of the First Amendment to the United States Constitution.

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INTRODUCTION

Connecticut General Statutes § 10-204a(a) prescribes that all public and private schools require students to be vaccinated against certain communicable diseases before permitting them to enroll.[1] Some form of this law has existed since 1882, the same year that the State of Connecticut ("the State" or "Connecticut") first required school attendance. In 1923, the Connecticut legislature carved out an exemption to this vaccination requirement for medical reasons. Religious exemptions were added to the statute in 1959. Thus, prior to enactment of the statute at issue in this case, Connecticut law provided exemptions from mandatory vaccination for either: (1) a medical reason, provided documentation showed that a vaccine was "medically contraindicated because of [a] physical condition;" or (2) for religious reasons, provide a statement was made that a vaccine "would be contrary to [the student's] religious beliefs" or those of the parent or

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[1] The mandatory vaccinations are listed by statute. The Connecticut Department of Public Health also is authorized to require additional vaccinations if certain public health institutions recommend them. See Conn. Gen. Stat. §§ 10-204a(a) (listing, as required vaccinations, "diphtheria, pertussis, tetanus, poliomyelitis, measles, mumps, rubella, haemophilus influenzae type B and any other vaccine required by the schedule for active immunization adopted pursuant to section 19a-7f"); 19a-7f (a) (Connecticut Department of Public Health "shall determine the standard of care for immunization," which "shall be based on the recommended schedules for active immunization for normal infants and children published by the National Centers for Disease Control and Prevention Advisory Committee on Immunization Practices, the American Academy of Pediatrics and the American Academy of Family Physicians.").

guardian. Conn. Gen. Stat. § 10-204a (Rev. to 2019) (a) (2) and (3).

On April 28, 2021, the Connecticut General Assembly enacted No. 21-6 of the 2021 Public Acts ("P.A. 21-6"). P.A. 21-6 § 1 repealed the religious exemption generally, but provided exceptions for children who had sought and received a religious exemption prior to the date of enactment. Children who were enrolled in grades kindergarten to twelfth ("K-12") as of the date of enactment were "grandfathered," i.e., were permitted to continue using their previously granted religious exemptions. *See* Conn. Gen. Stat. § 10-204a(b).[2] Students enrolled in preschool or prekindergarten ("pre-K") were not permitted to retain a previously granted exemption, but were given a one-year grace period to become vaccinated, until September 1, 2022, or 14 days after transferring to a public or private school program,

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[2]The new subsection (b) of §§ 10-204a provides: "The immunization requirements provided for in subsection (a) of this section shall not apply to any child who is enrolled in kindergarten through twelfth grade on or before the effective date of this section if such child presented a statement, prior to the effective date of this section, from the parents or guardian of such child that such immunization is contrary to the religious beliefs of such child or the parents or guardian of such child, and such statement was acknowledged, in accordance with the provisions of sections 1-32, 1-34 and 1-35, by (1) a judge of a court of record or a family support magistrate, (2) a clerk or deputy clerk of a court having a seal, (3) a town clerk, (4) a notary public, (5) a justice of the peace, (6) an attorney admitted to the bar of this state, or (7) notwithstanding any provision of chapter 6, a school nurse." (emphasis added)

whichever is later. *See* Conn. Gen. Stat. § 10-204a(c).[3] All other children had to be vaccinated to enroll in public or private school for the 2021-22 school year.

The instant lawsuit alleged that Public Act 21-6, and, specifically, the repeal of the religious exemption, violates the First Amendment's Free Exercise Clause.[4] The United States District Court for

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[3]The new subsection (c) of § 10-204a provides: "Any child who is enrolled in a preschool program or other prekindergarten program prior to the effective date of this section who presented a statement, prior to the effective date of this section, from the parents or guardian of such child that the immunization is contrary to the religious beliefs of such child or the parents or guardian of such child, which statement was acknowledged, in accordance with the provisions of sections 1-32, 1-34 and 1-35, by (1) a judge of a court of record or a family support magistrate, (2) a clerk or deputy clerk of a court having a seal, (3) a town clerk, (4) a notary public, (5) a justice of the peace, (6) an attorney admitted to the bar of this state, or (7) notwithstanding any provision of chapter 6, a school nurse, but did not present a written declaration from a physician, a physician assistant or an advanced practice registered nurse stating that additional immunizations are in process as recommended by such physician, physician assistant or advanced practice registered nurse, rather than as recommended under guidelines and schedules specified by the Commissioner of Public Health, shall comply with the immunization requirements provided for in subparagraph (A) of subdivision (1) of subsection (a) of this section on or before September 1, 2022, or not later than fourteen days after transferring to a program operated by a public or nonpublic school under the jurisdiction of a local or regional board of education or similar body governing a nonpublic school or schools, whichever is later." (emphasis added)

[4] The plaintiffs alleged in their complaint that the Act violates: (1) the free exercise clause of the First Amendment; (2) their "rights to privacy and medical freedom" as established in *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood v. Casey*, 505

the District of Connecticut (*Arterton, USDJ*) granted Defendants' motion to dismiss. In affirming that decision, the United States Court of Appeals for the Second Circuit joined a *near unanimous* consensus of courts that reject constitutional challenges to a state's school vaccination mandate on account of the absence or repeal of a religious exemption. *See Phillips v. City of New York*, 775 F.3d 538, 542-43 (2d Cir. 2015) (*per curiam*); *Workman v. Mingo Cnty. Bd. of Educ.*, 419 F. App'x 348, 352-54 (4th Cir. 2011) (unpublished disposition); *Whitlow v. California*, 203 F. Supp. 3d 1079, 1085-89 (S.D. Cal. 2016); *Love v. State Dep't of Educ.*, 29 Cal.App.5th 980, 240 Cal. Rptr. 3d 861, 868 (2018); *F.F. ex rel. Y.F. v. State*, 194 A.D.3d 80, 143 N.Y.S.3d 734, 742 (3d Dep't 2021), *cert. denied sub nom. F.F. ex rel. Y.F. v. New York*, —— U.S. ——, 142 S. Ct. 2738, 212 L.Ed.2d 797 (2022). *But see Bosarge v. Edney*, —— F. Supp. 3d ——, No. 22-cv-233, 2023 WL 2998484 (S.D. Miss. Apr. 18, 2023) (entering preliminary injunction requiring state officials to offer religious exemption from school immunization mandate). The Second Circuit declined Plaintiffs' petition for *en banc* review.

U.S. 833 (1992); (3) the equal protection clause of the Fourteenth Amendment; (4) the "Fourteenth Amendment right to child rearing"; and (5) the Individuals with Disabilities Education Act ("IDEA"). Only the First Amendment claim is at issue in the instant petition.

STATEMENT

The Respondents who join this brief in opposition are the Bethel and Stamford Boards of Education, who oppose Plaintiffs' petition for a writ of certiorari to appeal the decision below by a divided panel of U. S. Court of Appeals for the Second Circuit (*Level*, *Chin, J's*) (*Bianco, J.*, dissenting).

I. BACKGROUND

A. The Parties

The Plaintiffs are two associations and three parents suing on behalf of their children. The associations, We the Patriots ("WTP") and CT Freedom, alleged that they are organizations that advocate for the protection of constitutional rights and freedoms, and that their members are Connecticut parents "affected by P.A. 21-6 § 1." The three parents alleged that their children attend, or would have been eligible to attend, kindergarten and various prekindergarten programs, including in the Bethel and Stamford Public Schools. They further alleged that vaccinating their children would be contrary to their personal religious beliefs.

Respondents are three state agencies and three local school boards. Specifically, the appellees include the Connecticut Office of Early Childhood Development, the Connecticut State Department of Education, the Connecticut Department of Public Health, the Bethel Board of Education, the Stamford Board of Education, and the Glastonbury Board of

Education. This brief in opposition is filed on behalf of the Bethal[5] and Stamford Boards of Education.

B. The District Court's Decision

On January 12, 2022, the United States District Court for the District of Connecticut (*Arteton, J.*) entered a final order dismissing the Plaintiff-Appellee's Complaint in its entirety under Federal Rules of Civil Procedure 12(b)(1) and (6).

Specifically and as relevant here, the District Court held that: (1) the defendant state agencies were entitled to Eleventh Amendment immunity; (2) the two plaintiff organizations failed to plead facts showing that an identified member had or would suffer harm, as necessary to demonstrate associational standing; (3) Public Act 21-6 was neutral for purposes of Free Exercise Clause, so as to support finding that law was subject to rational basis review; (4) it was a generally applicable law for purposes of Free Exercise Clause, so as to support finding that law was subject to rational basis review; (5) it was rationally related to the state's interest in protecting public health, such that law withstood rational basis review in claim that law violated Free Exercise Clause; and (6) the legislature's actions in enacting challenged law was not irrational, such that law survived rational basis review in claim that law violated Equal Protection clause.

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[5] With respect to the Bethel Board of Education, it should also be noted that there is a mootness issue with the Plaintiff's claim as the parents did not ultimately attempt to register a child who would have been subject to the vaccination requirement for school in the district.

C. The Court of Appeals' Decision

A panel of the Second Circuit (*Leval, Chin, Bianco, J*'s) heard oral argument on October 13, 2022. On August 4, 2023, the Court issued a divided opinion affirming the District Court's decision.

1. Majority opinion

The majority opinion, authored by Judge Chin and joined by Judge Leval, held, *inter alia*, that: (1) Public Act 21-6 was neutral with respect to religion, as required for it to be subject to rational-basis review under Free Exercise Clause; (2) it was generally applicable, as required for it to be subject to rational-basis review under Free Exercise Clause; and (3) it satisfied rational-basis review and was thus not invalid under Free Exercise Clause. For these reasons, the Court affirmed the District Court's decision on the Free Exercise claim. *See We The Patriots USA, Inc. v. Connecticut Off. of Early Childhood Dev.*, 76 F.4th 130 (2d Cir. 2023)

2. Dissenting opinion

Judge Bianco issued an opinion, concurring in part and dissenting in part. The dissent agreed with most of the panel's decision. It parted ways only with respect to the panel's Free Exercise Clause analysis. Although the dissent agreed that a mandatory vaccination law for schoolchildren is within the State's police powers, it concluded that because Connecticut's law repealed a previously existing religious exemption and allows for some to be "grandfathered" but excludes other students who are unvaccinated due to religious objections, the complaint plausibly raises a First

Amendment claim. In the dissent's own words, this was a very "narrow" question.

On September 11, 2023, the Court denied a petition for a re-hearing *en banc*.

D. Petition for a Writ of Certiorari

On December 11, 2023, Plaintiffs filed a petition for a writ of certiorari with this Court. Specifically, the Plaintiff's presented the following questions for review: (1) whether a mandate is neutral and generally applicable if it provides for a medical exemption but not a religious one; (2) whether a legacy exemption is required in order to prevent the creation of an ex-post facto law when eliminating a prior existing exemption; (3) whether *Employment Division v. Smith* needs to be reconsidered; and (4) whether a newly decided Tenth Circuit Court of Appeals decision is meritorious.

In response, the Respondents all filed waivers of their right to respond. On February 5, 2024, this Court issued an order directing Respondents to file briefs in opposition to Plaintiffs' petition. In the instant brief in opposition, the undersigned defendants reframe the issue as: whether Connecticut Public Act 21-6, which revised the Connecticut General Statutes to, *inter alia*, repeal religious exemptions for vaccination requirements for schoolchildren, violates the Free Exercise Clause of the First Amendment to the United States Constitution. The gravamen of the Plaintiff's petition

is directed only at this straightforward and narrow question.[6]

REASONS FOR DENYING THE PETITION

I. THE SECOND CIRCUIT PROPERLY HELD THAT CONNECTICUT'S VACCINATION MANDATE IS A NEUTRAL LAW OF GENERAL APPLICABILITY SUBJECT TO RATIONAL BASIS REVIEW

The question at issue in this case is "whether a State, having previously accommodated religious objections to vaccination by providing a mechanism for objectors to obtain exemptions, may repeal that mechanism without offending the Free Exercise Clause." *We the Patriots*, 76 F.4th at 147. The Court correctly concluded the statute at issue satisfies both prongs of the test set forth by this Court for determining whether a law that "incidentally burdens religious exercise is constitutional." *Id.* at 144 (citing *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872, 879

[6] With respect to the Tenth Circuit's recent decision in *Jane Does 1-11; John Does 1, 3-7 v. The Board of Regents of the University of Colorado*, 2024 WL 2012317 (10th Cir. May 7, 2024), this Court should only consider reviewing that decision if and when the University in that case seeks *certiorari*. To the extent Plaintiffs argue that the Tenth Circuit's decision presents a circuit split, they are incorrect. Indeed, that decision is not relevant to question presented here as it dealt with a COVID-era vaccination requirement for university employees, not schoolchildren as is at issue in the case *sub judice*. Nor did it address a complete bar to all religious exemptions, but instead analyzed differential treatment of religions for purposes of determining whether a religious exemption applied.

(1990)). *Smith* explains that a law that incidentally burdens religious practices is subject only to rational basis review if it is both "neutral" and "generally applicable." *See also Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 531 (1993).

In *Phillips*, the Second Circuit held that that school vaccination requirements are subject only to rational basis review. *Phillips*, 775 F.3d at 543. In reaching this conclusion, the Court in *Phillips* specifically applied this Court's decision in *Smith*. *Smith* itself lists "compulsory vaccination laws" as an example of the type of law that should not be subject to strict scrutiny. *Smith*, 494 U.S. at 888-89. Indeed, as the Court below explained, Public Act 21-6 is constitutional because it is both neutral and generally applicable and satisfies rational basis review.

A. Neutrality

"A law is not neutral . . . if it is 'specifically directed at [a] religious practice.'" *Cent. Rabbinical Cong. of U.S. & Canada v. N.Y.C. Dep't of Health & Mental Hygiene*, 763 F.3d 183, 193 (2d Cir. 2014) (quoting *Smith*, 494 U.S. at 878). A law can fail this requirement by discriminating "on its face," such as by explicitly referring to a religious practice, *id.*, or if it is facially neutral but nonetheless "targets religious conduct for distinctive treatment . . . ."[7] *Id.* (emphasis omitted).

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[7] The latter is, in fact, exactly why the Tenth Circuit ruled in the plaintiff's favor in *Does 1-11* – the policy at issue in that case specifically treated religions differently. *Doe 1-11*, 2024 WL 2012317 at * 12-13.

As amended, § 10-204a is not directed at religion generally, nor does it single out any specific religion, either by its terms or in its operation. It requires "each child" to be vaccinated before enrolling in school unless the child submits adequate documentation establishing that the vaccination is "medically contraindicated" because of the child's "physical condition . . . ." Conn. Gen. Stat. § 10-204a (a)(2). Except for a limited number of K-12 students who fall within the grandfather provision, the statute excludes all children from enrollment who have not been vaccinated for any reason, regardless of whether that reason is because of a religious objection or some secular consideration (e.g., ideological beliefs, a general mistrust of government or of vaccines, financial reasons). Because the statute does not "single out [religion] for especially harsh treatment," *Roman Catholic Diocese of Brooklyn v. Cuomo*, --- U.S. ---, 141 S. Ct. 63, 66 (2020), it meets the "neutrality" required by *Smith*.

B. General Applicability

General applicability does not require universality, as "[a]ll laws are selective to some extent." *Lukumi*, 508 U.S. at 542-43; *see also Mich. Catholic Conference v. Burwell*, 755 F.3d 372, 394 (6th Cir. 2014) ("[g]eneral applicability does not mean absolute universality"), *vacated on other grounds by* 126 S. Ct. 2450 (2016) (internal quotation marks omitted). Rather, "[t]he general applicability requirement prohibits the government from 'in a selective manner impos[ing] burdens only on conduct motivated by religious belief.'" *Cent. Rabbinical Cong.*

of the United States, 763 F.3d at 196 (quoting *Lukumi*, 508 U.S. at 542-43) (emphasis added).

Section 10-204a imposes the same obligations regardless of religion, and certainly does not impose any special obligations only on those children whose parents' opposition to vaccines is religiously motivated. If a child's parents object to vaccines for secular reasons unrelated to their child's health, that child must comply with the requirements to the same extent as children whose parents object for religious reasons. Thus, § 10-204a is "generally applicable." *See Commack Self-Service Kosher Meats, Inc. v. Hooker*, 680 F.3d 194, 210-11 (2d Cir. 2012) (holding that law regulating sale of kosher goods was generally applicable because it "applies to any seller who offers products for sale as 'kosher' regardless of the seller's religious belief or affiliation"); *Mich. Catholic Conference*, 755 F.3d at 394 (law requiring contraceptive coverage was generally applicable where it "does not pursue the governmental interest . . . only against entities with a religious motivated objection to providing such coverage; that interest is pursued uniformly," including against "entities that object for non-religious reasons"); *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1134-35 (9th Cir. 2009) ("Pharmacies and pharmacists who do not have a religious objection . . . must comply with the rules to the same extent—no more and no less—than pharmacies and pharmacists who may have a religious objection . . . .. Therefore, the rules are generally applicable.").

Nor does the fact that § 10-204a(a) permits medical exemptions render it "substantially

underinclusive." "[A] law is . . . not generally applicable if it is substantially underinclusive such that it regulates religious conduct while failing to regulate secular conduct that is at least as harmful to the legitimate government interests purportedly justifying it." *Cent. Rabbinical Cong. of the United States*, 763 F.3d at 197 (emphasis added).

Permitting health exemptions is not "at least as harmful," id., to the state's interest in requiring vaccinations as permitting religious exemptions would be. First, the purpose of § 10-204a(a) is to protect the health and safety of Connecticut schoolchildren. That purposes would be undermined by endangering the health and safety of a child with a medical contraindication to nevertheless be vaccinated. Providing an exemption for that child is, however, consistent with protecting that child's health and safety. In contrast, requiring all students to otherwise be vaccinated, irrespective of religious belief, is consistent with the purpose of protecting all students' health and safety to prevent the spread of communicable diseases on a large scale.[8] Second, health exemptions pose far less of a threat to vaccination rates than religious exemptions. According to the Immunization Data, which the Plaintiffs incorporate as part of their Complaint, see Compl., ¶ 19 and Exhibit D, the percentage of incoming students claiming health exemptions

[8] For vaccines to prevent the spread of disease, a critical mass of all people must be vaccinated. Religious exemptions undermine reduce the number of vaccinated people, thus placing the health and safety of those with medical contraindications to vaccination at increased risk.

remained constant and very low from 2012 to 2020 (never rising above 0.3%), whereas the percentage of students claiming religious exemptions was much higher and had been steadily increasing (from 1.4% to 2.3%). Immunization Data (Doc. 1-4), pp. 3-4. Third, under longstanding precedent, the state arguably is constitutionally required to permit medical exemptions, *see Jacobson v. Massachusetts*, 197 U.S. 11, 38-39 (1905), whereas religious exemptions have never been constitutionally required. *See Phillips*, 775 F.3d at 543. Because health exemptions are far less harmful to the state's interest, the provision for health exemptions has no impact on the general applicability of § 10-204b.[9]

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[9] The fact that P.A. § 21-6 permits students with existing religious exemptions either to keep their exemptions (if enrolled in K-12) or to have an additional year to become vaccinated (if in pre-K) also does not render the law substantially underinclusive. If anything, these provisions make the law more inclusive of religious objections because they provide the objectors with greater accommodation than they otherwise would receive without the provisions. Moreover, these provisions are not based upon any religious preference, but instead the secular considerations of the students' grade levels and when (i.e., before or after the Date of Enactment) they had sought the religious objection. *See Mich. Catholic Conference*, 755 F.3d at 394 ("[T]he availability of the exemption and the accommodation means that the law imposes a lesser burden on those who object for religious reasons because they do not have to pay for the coverage. Accordingly, the program is generally applicable.") (emphasis in original); *Korte v. United States HHS*, 912 F. Supp. 2d 735, 744 (S.D. Ill. 2012) ("[T]his Court does not perceive how a gradual transition undercuts the neutral purpose or general applicability of the mandate. And, Plaintiffs do not link the grandfathering mechanism to any sort of religious preference.").

Because § 10-204a is a neutral law of general applicability, the Second Circuit properly concluded that it is subject only to rational basis review.

C. Rational basis

First, it should be noted that the Plaintiffs conceded below that Public Act 21-6 satisfies rational basis review. *We the Patriots*, 76 F.4th at 156. Moreover, there cannot be any serious dispute that a rational basis exists for the underlying legislation.

Rational basis review requires merely that the law be "rationally related to a legitimate [government] interest." *Neary v. Gruenberg*, 730 F. App'x 7, 10 (2d Cir. 2018). So long as "there is any reasonably conceivable state of facts that could provide a rational basis for the classification," the law must be upheld. *FCC v. Beach Commc'ns*, 508 U.S. 307, 313 (1993). To withstand a motion to dismiss under Rule 12(b)(6), a plaintiff must plead sufficient facts that, taken as true, establish that the law "is so unrelated to the achievement of any combination of legitimate purposes that [the court] can only conclude that [it is] irrational." *Neary*, 730 F. App'x at 10.

The School Immunization Survey Data ("Immunization Data") published by the Connecticut Department of Public Health ("CDPH") (Exhibit D to Plaintiffs' Complaint, Doc. 1-4),[10] shows that over the

[10] Because the Plaintiffs incorporated the Immunization Data as an exhibit to their Complaint and rely on it in support of their claims, *see* Compl., ¶ 19 and Exhibit D, the courts below properly considered the Immunization Data when ruling on the legal sufficiency of the Plaintiffs' claims under Rule 12(b)(6). *See McCarthy v. Dun & Bradstreet Corp.,* 482 F.3d 184, 191 (2d Cir.

past several years, the religious exemption has had a greater impact on school vaccination rates. From 2012 to 2020, the percentage of incoming kindergarten students claiming a religious exemption increased almost every year: from 1.4% during the 2012-13 school year to 2.3% by 2019-20, for a total increase of 0.9%. Immunization Data (Doc. 1-4), pp. 4-5. Meanwhile, the overall vaccination rate has decreased at a corresponding rate, see id., p. 4 (line graph), with 96.2% of kindergarteners being fully vaccinated against measles, mumps, and rubella ("MMR") in 2019-20, a 0.9% decrease since 2012-13. Id., p. 3. By contrast, the percentage of kindergarteners claiming health exemptions has remained constant, at 0.2% in 2019-20 compared with 0.3% during all previous years. *Id.*

Looking at individual schools, the decreased vaccination rates is even more dramatic. "Of the schools with more than 30 kindergarten students, 120 schools have MMR rates below 95%, and 26 schools have MMR rates below 90%." Id., pp. 3-4.

These trends prompted the General Assembly to enact P.A. 21-6 § 1.[11] Proponents in both chambers emphasized that the decreasing vaccination rates, as reflected in the Immunization Data, posed a public

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2007); *Cortec Indus., Inc. v. Sum Holding L.P.,* 949 F.2d 42, 47 (2d Cir. 1991). The Immunization Data is available online, *see* Compl., ¶ 19 n.1 (providing hyperlink), at: School Survey (ct.gov).

[11]In addition to the data, proponents of P.A. 21-6 also noted recent reported cases of the measles in Connecticut. See DPH Confirms A Second Case of Measles In Fairfield County Household (ct.gov).

health risk; that many schools had already fallen below the 95% vaccination threshold recommended by the United States Centers for Disease Control and Prevention ("CDC") for "herd immunity;" and that the repeal of all non-health exemptions was necessary to prevent vaccination rates from continuing to decline. See H.R., April 19, 2021, pp. 9-13, remarks of Representative Jonathan Steinberg; Sen., April 27, 2021, pp. 5-6, remarks of Senator Daugherty Abrams.

The Plaintiffs' Complaint makes no allegation to undermine the fact that the General Assembly's objective in enacting P.A. § 21-6—protecting school children, staff and the broader public from communicable diseases—is not merely a legitimate governmental interest, but a compelling one. *See Workman*, 419 F. App'x at 352 ("the state's wish to prevent the spread of communicable diseases [through school vaccine requirements] clearly constitutes a compelling interest").

Plaintiffs also have not pleaded any facts establishing that P.A. § 21-6 was not rationally related to that objective. Nor can they. *See Phillips*, 775 F.3d at 543. As the Second Circuit properly noted, it was not irrational for the General Assembly to have concluded that removing the religious exemption would increase the overall percentage of vaccinated students, thereby decreasing the likelihood of a disease outbreak. Indeed, the Immunization Data bears out that the religious exemption was having an outsized impact on vaccination rates. Over the past several years there has been a slow but steady decrease in vaccination rates among incoming kindergarteners—a decrease that has generally

corresponded with the increase in religious exemptions over that same time period. See Immunization Data (Doc. 1-4), pp. 3-4. Accordingly, P.A. § 21-6 easily meets rational basis review.

Because the Second Circuit's analysis and conclusion were proper and consistent with a near unanimous consensus in the jurisprudence, this case is not a good candidate for U.S. Supreme Court review.

CONCLUSION

For any and all of the reasons set forth herein, the Second Circuit's affirmance of the District Court's dismissal of Plaintiffs' complaint should stand. There is no reason for this Court to take the extraordinary step of granting a writ of certiorari in light of the record in this case. Plaintiffs' petition should be denied.

Respectfully submitted,

JOHANNA G. ZELMAN
PROLOY K. DAS
Counsel of Record
FORDHARRISON LLP
City Place II
185 Asylum Street, Ste. 820
Hartford, CT 06103
(860) 740-1355
jzelman@fordharrison.com
pdas@fordharrison.com

Attorneys for Respondents
Bethel Board of Education and
Stamford Board of Education

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