No. 26-438

IN THE

Supreme Court of the United States

JOSEPH MILLER, *et al.*,

Petitioners,

v.

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

Respondents.

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

BRIEF OF *AMICUS CURIAE* ASSOCIATION OF AMERICAN PHYSICIANS AND SURGEONS IN SUPPORT OF PETITIONERS

ANDREW L. SCHLAFLY
939 Old Chester Road
Far Hills, NJ 07931
(908) 719-8608
aschlafly@aol.com

Counsel for Amicus Curiae

November 2, 2026

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20002

TABLE OF CONTENTS

Pages

Table of Contents i
Table of Authorities ii
Interests of *Amicus Curiae* 1
Background 2
Summary of Argument 3
Argument 5
I. The Petition Should Be Granted to Narrow the *Jacobson* Precedents in Light of *Barnette* and this Court's Rulings Against Forced Medical Treatment 5
A. *Barnette* Protects Religious Belief Against Compulsion of Schoolchildren 6
B. A Broad Interpretation of *Jacobson* Is Foreclosed by This Court's Decisions Against Forced Medical Treatment 8
II. Mandatory Vaccination Is an Affront to Many Major Religions, Not Merely the Amish .. 12
III. Many of New York's Mandated Vaccines Lack Any Medical Justification for Amish Schoolchildren 16
Conclusion 19

TABLE OF AUTHORITIES

Pages

Cases

Buck v. Bell, 274 U.S. 200 (1927) 9
Cantwell v. Connecticut, 310 U.S. 296 (1940) 5
Cruzan v. Dir., Missouri Dep't of Health, 497 U.S. 261 (1990) 8
District of Columbia v. Heller, 554 U.S. 570 (2008) 1
Dr. A. v. Hochul, 142 S. Ct. 2569 (2022) 3
Employment Div. v. Smith, 494 U.S. 872 (1990) 9
Jacobson v. Massachusetts, 197 U.S. 11 (1905) 2, 3, 4, 5, 6, 7, 8, 9, 10
Lukaszczyk v. Cook Cty., 47 F.4th 587 (7th Cir. 2022) 10
Mahmoud v. Taylor, 606 U.S. 522 (2025) 5, 7
Mast v. Fillmore Cty., 594 U.S. 946 (2021) 3
Phillips v. City of New York, 775 F.3d 538 (2d Cir. 2015) 9
Prince v. Massachusetts, 321 U.S. 158 (1944) 11-12
Roman Catholic Diocese v. Cuomo, 592 U.S. 14 (2020) 9
Sell v. United States, 539 U.S. 166 (2003) 9
Springer v. Henry, 435 F.3d 268 (3d Cir. 2006) 1
Washington v. Harper, 494 U.S. 210 (1990) 8
We the Patriots United States v. Conn. Office of Early Childhood Dev., 76 F.4th 130 (2d Cir. 2023) 15-16

West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943) 4, 5, 6, 7, 15
Wisconsin v. Yoder, 406 U.S. 205 (1972)..... 18
Zucht v. King, 260 U.S. 174 (1922) 4, 5, 6, 8, 11

Statutes

N.Y. Pub. Health Law § 2164..... 2
§ 2164(7)(a)..... 16

Other Authorities

1 Corinthians 3:17 (ESV)..... 14
Book of Daniel 1:8 (ESV) 14
CDC, *About Smallpox* (Oct. 22, 2024) https://www.cdc.gov/smallpox/about/index.html#:~:text=People%20who%20had%20smallpox%20had,Some%20are%20left%20blind 10
CDC, *Diphtheria Surveillance and Trends* (July 31, 2026) https://www.cdc.gov/diphtheria/php/surveillance/index.html..... 17
CDC, *Mumps Cases and Outbreaks* (Oct. 13, 2026) https://www.cdc.gov/mumps/outbreaks/index.html..... 17
CDC, *Protection Against Viral Hepatitis: Recommendations of the Immunization Practices Advisory Committee*, 39 Morbidity & Mortality Wkly. Rep. (No. RR-2) 1 (1990) https://www.cdc.gov/mmwr/preview/mmwrhtml/00041917.htm. 16-17
Children's Hospital of Philadelphia, *Polio: The Disease & Vaccines* https://tinyurl.com/mpaa3bzs 18

Congregation for the Doctrine of the Faith, *Instruction Dignitas Personae on Certain Bioethical Questions* (Sept. 8, 2008) 13

Congregation for the Doctrine of the Faith, *Note on the Morality of Using Some Anti-Covid-19 Vaccines* (Dec. 21, 2020) ... 12-13

CPI Inflation Calculator https://www.in2013dollars.com/us/inflation/1905?amount=5 3

Frank Fenner et al., *Smallpox and its Eradication*, World Health Organization (1988) 10

S.M. Kadri, et al., "Should Mumps Be Higher Up on the Public Health Agenda in India? A Concern for Global Health Security," 6 Med Sci (Basel) 62 (Aug. 7, 2018) https://pmc.ncbi.nlm.nih.gov/articles/PMC6165091/ 17-18

Mayo Clinic, "Measles: Diagnosis and Treatment" https://www.mayoclinic.org/diseases-conditions/measles/diagnosis-treatment/drc-20374862 11

National Health Services (Wales), "Vaccines and porcine gelatine" (Sept. 2016) https://111.wales.nhs.uk/pdfs/WGGe.pdf 15

Rabbinical Alliance of America Expresses Concerns Over Elimination of Religious Exemption for Vaccinations, RABBINICAL ALL. OF AM. (June 14, 2019) https://rabbinicalalliance.org/2019/06/14/the-rabbinical-alliance-of-america-expresses-concerns-over-elimination-of-religious-exemption-for-vaccinations/ 14

Julia Rosebush, DO, FAAP, "How dangerous is a measles outbreak?" *UChicagoMedicine* (May 13, 2025) https://www.uchicagomedicine.org/forefront/pediatrics-articles/measles-is-still-a-very-dangerous-disease 10-11

Syed Muhammad Kamal Uddin, et al., "Halal and Kosher gelatin: Applications as well as detection approaches with challenges and prospects," 44 *Food Bioscience* 101422 (Dec. 2021) https://www.sciencedirect.com/science/article/abs/pii/S2212429221005472 15

INTERESTS OF *AMICUS CURIAE*[1]

Amicus curiae Association of American Physicians and Surgeons ("AAPS") is a non-profit corporation founded in 1943. AAPS defends the practice of private and ethical medicine, and the U.S. Supreme Court has made use of *amicus* briefs submitted by AAPS in high-profile cases. *See, e.g.*, *District of Columbia v. Heller*, 554 U.S. 570, 704 (2008) (Breyer, J., dissenting). U.S. Courts of Appeals have favorably cited amicus briefs by AAPS. *See, e.g.*, *Springer v. Henry*, 435 F.3d 268, 271 (3d Cir. 2006).

AAPS has members who are physicians in New York and in other states that have repealed their religious exemption from vaccination. This directly affects AAPS's members and their families. In addition, these state bans on the traditional religious exemption add pressure for patients to seek medical exemptions, which subjects AAPS physicians to discipline by state medical boards as they limit these exemptions. New York's law to allow some exemptions while banning the religious exemption puts AAPS physicians in a difficult situation of being asked to write a medical exemption when a religious exemption is preferred by a patient.

---

[1] *Amicus* provided timely notice of its intention to file this brief to counsel of record for all parties in compliance with Rule 37.2. Pursuant to Rule 37.6, no counsel for a party authored this brief in whole or in part, and no counsel for a party or party made a monetary contribution intended to fund its preparation or submission. No person other than *amicus*, its members, or its counsel made such a monetary contribution.

AAPS thereby has direct and vital interests in the issues presented here.

BACKGROUND

The penalty imposed by the compulsory vaccination in New York is far harsher than the penalty imposed in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), the precedent on which vaccine mandates rely. New York requires that:

> ***Each violation*** of [the vaccine mandate in] § 2164 is subject to a fine of up to $2,000. The [Department of Health] considers ***each day*** that an unvaccinated student attends school to be a violation.

(Pet. App. 6a–7a n.9) (emphasis added). Even with enforcement that the New York Commissioner of Health considered to be conservative, the fines imposed on elementary schools were devastating:

> $52,000 fine against Dygert Road School, a $46,000 fine against Twin Mountain School, and a $20,000 fine against Shady Lane School. To calculate the fines against Dygert Road and Twin Mountain, the DOH multiplied the number of out-of-compliance students in each school by the maximum penalty (under the modest assumption that each of those students was out of compliance for only one day). Because Shady Lane provided no documentation for its students, the DOH assumed that only one student was not compliant for at least ten days.

Id. Contrast these large fines, which total more than $100,000, with the mere $5 fine this Court upheld in *Jacobson* for declining a smallpox vaccine during a deadly epidemic. Even with inflation since 1905, the

Jacobson fine is equivalent to only $191.44 today,[2] less than the cost of most traffic tickets.

These draconian fines in the Empire State, without allowing any religious exemption, force the Amish to choose between three unacceptable options:

(1) Abandon New York by selling their farms and moving their entire community to another state;

(2) Abandon their elementary schools that are intrinsic to their faith; or

(3) Abandon their faith.

As Justice Gorsuch has stated, "In this country, neither the Amish nor anyone else should have to choose between their farms and their faith." *Mast v. Fillmore Cty.*, 594 U.S. 946, 951 (2021) (Gorsuch, J., concurring).

SUMMARY OF ARGUMENT

Three Justices of this Court persuasively dissented from the denial of certiorari in *Dr. A. v. Hochul*, 142 S. Ct. 2569, 2570 (2022) (Thomas, J., dissenting, joined by Alito and Gorsuch, JJ.). There, a New York Covid vaccine mandate against medical workers did not allow for religious exemptions, and the workers were "[o]rdered to choose between their jobs and their faith." *Id.* That vaccine mandate was arguably justified by the crisis of the Covid pandemic, and by petitioners' occupational work that put them at risk of spreading the virus due to their contact with patients.

---

[2] *CPI Inflation Calculator*, https://www.in2013dollars.com/us/inflation/1905?amount=5 (viewed Nov. 1, 2026).

Here, the case for New York's vaccine mandate is far weaker, and reasons to grant certiorari are stronger. Petitioners are subjects of an onerous vaccine mandate in their insular Amish religious communities; there is no epidemic of the diseases to be vaccinated against; and the illnesses themselves are relatively harmless, not contagious in school, or entirely non-existent in the U.S. The flawed logic of the decision below in ruling against religious liberty, without any compelling state interest, would justify forcing schoolchildren to eat pork or betray their faiths in other ways as a condition of attending school. The Constitution stands against such tyranny.

At the height of the crisis of World War II, this Court considered the religious liberty of a schoolchild to be important enough to grant certiorari on an issue that the Court had just addressed three years earlier. *See West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943). The issue presented by the Petition here is no less important, and the proper outcome here is no less clear. If states are given carte blanche to impose without limitation mandates against bodily integrity in schoolchildren, then ancient barbarism decried in the Bible and other sacred texts has returned.

After the GVR by this Court, the Second Circuit then repeated almost verbatim its same flawed overreliance on *Jacobson* and another decision that long predated application of the Free Exercise Clause against the states. *Zucht v. King*, 260 U.S. 174, 175-77 (1922) (cited by Pet. App. 10a). These decisions should not be stretched beyond their narrow scope and factual bases. Neither of these precedents has any application to forcing schoolchildren to abandon their faith, which

Barnette subsequently protected. This Court's teachings against forced medical treatment also stand firmly against extending *Jacobson* and *Zucht* broadly as the Second Circuit erroneously did.

Compulsory vaccination is an affront to multiple major religions, not merely the Amish. This is conceptually no different from forcing people to ingest foods that their religions consider to be unclean, or engage in other practices like flag-saluting which are prohibited by their beliefs. To allow such compulsion in the absence of a compelling state interest, as here, is to shred the religious liberty that has been the very basis for our country. The national importance of this issue is immense, and the Petition should be granted.

ARGUMENT

I. The Petition Should Be Granted to Narrow the *Jacobson* Precedents in Light of *Barnette* and this Court's Rulings Against Forced Medical Treatment.

In its initial decision below, the Second Circuit relied on *Jacobson v. Massachusetts* (1905) and *Zucht v. King* (1922), even though those decisions never addressed the religious liberty at issue here. (Pet. App. 35a) It was not until decades later that this Court even applied the Free Exercise Clause against the states. *See Cantwell v. Connecticut*, 310 U.S. 296 (1940).

This Court's GVR instructed the Second Circuit to reconsider its initial decision in this case in light of this Court's decision in favor of parental rights in the school context, in *Mahmoud v. Taylor*, 606 U.S. 522 (2025). But on remand, the Second Circuit then copied verbatim its same flawed reliance on *Jacobson* and *Zucht*, and held as it did before. (Pet. App. 10a) This

puts the issue of the continuing overreliance on the outdated *Jacobson* and *Zucht* decisions, now more than a century old amid enormous advances in medicine and greater judicial solicitude for religious freedom against state encroachment, squarely before this Court.

A. *Barnette* Protects Religious Belief Against Compulsion of Schoolchildren.

In *Barnette*, this Court emphatically rejected the notion that a state can use its coercive power over education to compel a schoolchild to violate principles of his faith. While this landmark decision is sometimes viewed as merely a ruling in favor of freedom of speech, it stands for more than that. The students were compelled to take an action – saluting the flag – that was contrary to their faith as Jehovah's Witnesses. It did not matter whether anyone was watching that action, or whether the child was trying to communicate something by it; the essence of the ruling was that a schoolchild should not be forced to breach his faith. As this Court decried in its decision:

> Children of this faith have been expelled from school and are threatened with exclusion for no other cause. Officials threaten to send them to reformatories maintained for criminally inclined juveniles. Parents of such children have been prosecuted and are threatened with prosecutions for causing delinquency.

Barnette, 319 U.S. at 630.

In rebuttal of a quotation of Abraham Lincoln cautioning against a government that is "too weak to maintain its own existence," the Court explained that:

> It may be doubted whether Mr. Lincoln would have thought that the strength of government to maintain itself would be impressively vindicated by our confirming power of the State to expel a handful of children from school.

Id. at 636.

Advocates of vaccine mandates for schoolchildren insist that their requirements are essential to society, but this Court in *Barnette* was not persuaded by analogous arguments against allowing exemptions based on conscience or religious belief.

In the decision that was the basis for the GVR, this Court construed *Barnette* as a prohibition against direct coercion of schoolchildren to act contrary to their parents' religious beliefs. *See Mahmoud*, 606 U.S. at 548. This Court left open in *Mahmoud* whether *Barnette* also applies to religious objections by families to childhood vaccines. The Petition here should be granted to harmonize these precedents by recognizing a parental right to religious exemptions to school vaccine mandates.

The dissenting opinion in *Barnette* reinforces how its majority decision serves to protect religious objections to vaccination. Justice Frankfurter explained that the flag saluting requirement was far less of an offense to "deep religious scruples" than the compulsory vaccination was in *Jacobson*. *Barnette*, 319 U.S. at 655 (Frankfurter, J., dissenting). Despite this, the Court majority in *Barnette* invalidated the mandatory flag salute, without carving out vaccine mandates from the scope of its decision. Although subsequently this Court has cited *Jacobson* favorably, it has not, in a post-*Barnette* decision squarely

adjudicating a Free Exercise challenge to a school vaccination mandate, held that the State may compel vaccination of religiously objecting schoolchildren.

The Petition is an ideal vehicle for resolving this open question of whether *Jacobson* or *Zucht* has any vitality against a religious objection to a vaccine mandate for school admission. Nearly every state, including New York and California, long recognized religious objections to vaccine mandates, until a lobbying push in the last decade has eliminated the exemptions for religious belief in these and only a few other states. Rather than allow continuing uncertainty about the application of religious liberty to vaccine mandates, this Court should grant the Petition and resolve this issue of immense national importance.

B. A Broad Interpretation of *Jacobson* Is Foreclosed by This Court's Decisions Against Forced Medical Treatment.

Jacobson, as construed broadly to authorize mandatory vaccination without exemptions, is foreclosed by subsequent Supreme Court decisions. For example, this Court has inferred that a "competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment." *Cruzan v. Dir., Missouri Dep't of Health*, 497 U.S. 261, 278 (1990). *See also Washington v. Harper*, 494 U.S. 210, 221-22, 229 (1990) (recognizing that prisoners possess "a significant liberty interest in avoiding the unwanted administration of antipsychotic drugs under the Due Process Clause of the Fourteenth Amendment" and stating that the "forcible injection of medication into a nonconsenting person's body represents a substantial interference with that person's liberty") (citations omitted).

It has been at most a minority view on this Court that mandatory vaccination can override religious objections. Justice Scalia cited mandatory vaccination as part of his rationale for weakening the Free Exercise Clause in *Employment Div. v. Smith*, 494 U.S. 872, 889 (1990). Similarly, Justice Scalia was in dissent, albeit primarily on procedural grounds, in *Sell v. United States* where this Court held that "the present orders authorizing forced administration of anti-psychotic drugs cannot stand." 539 U.S. 166, 186 (2003). In the rare instances where the Court has allowed a state to compel a medical procedure, the decision has since been widely criticized and discredited. *See, e.g.*, *Buck v. Bell*, 274 U.S. 200, 207 (1927) (upholding forced sterilization of a woman by declaring, "Three generations of imbeciles are enough.").

Justice Gorsuch has aptly characterized *Jacobson* as a "modest decision" that has been "mistaken ... for a towering authority that overshadows the Constitution." *Roman Catholic Diocese v. Cuomo*, 592 U.S. 14, 25 (2020) (Gorsuch, J., concurring). A decision by the Second Circuit itself recognized that *Jacobson* "did not address the free exercise of religion" and thus does not "control [plaintiffs'] free exercise claim" against compulsory vaccination. *Phillips v. City of New York*, 775 F.3d 538, 543 (2d Cir. 2015).

Contrary to a misperception that *Jacobson* allows denial of a religious exemption from vaccines, the Court emphasized a right to object in *Jacobson* itself:

> There is, of course, a sphere within which the individual may assert the supremacy of his own will and rightfully dispute the authority of any human government, especially of any free

> government existing under a written constitution, to interfere with the exercise of that will.

Jacobson, 197 U.S. at 29.

The facts in *Jacobson* concerned an epidemic of the very deadly and untreatable smallpox disease, which had a very high mortality rate 100 times higher than diseases for which New York requires vaccination today. As the CDC explains on its website about smallpox:

> 3 out of every 10 people with the disease died. Many smallpox survivors have permanent scars over large areas of their body, especially their faces. Some are left blind.

CDC, *About Smallpox* (Oct. 22, 2024).[3] *See also Lukaszczyk v. Cook Cty.*, 47 F.4th 587, 600 (7th Cir. 2022) ("the smallpox fatality rate among the unvaccinated was about 26 percent") (citing Frank Fenner et al., *Smallpox and its Eradication*, World Health Organization (1988)). And "[w]hile some antiviral drugs may help treat smallpox disease, there is no treatment for smallpox that has been tested in people who are sick with the disease and proven effective." *Id.*

Contrast that with the diseases for which New York requires vaccination today, which Amish are not at risk of contracting and are nowhere near the fatality rate of smallpox. Measles outbreaks are highly publicized in the news, but only "[t]hree in 1,000 people who contract measles will die." Julia Rosebush,

---

[3] https://www.cdc.gov/smallpox/about/index.html#:~:text=People%20who%20had%20smallpox%20had,Some%20are%20left%20blind (viewed Oct. 31, 2026).

DO, FAAP, "How dangerous is a measles outbreak?" *UChicagoMedicine* (May 13, 2025).[4] That is a mortality rate of only 1/100th that of the smallpox. Unlike for smallpox in early America, there are ways to mitigate these diseases available today. Measles, for example, is inexpensively treated with Vitamin A: "Children with low levels of vitamin A who get measles are more likely to be very sick than are children with recommended levels." Mayo Clinic, "Measles: Diagnosis and Treatment."[5] Additionally, antibiotics can combat the complication of pneumonia.

The Second Circuit relied on another smallpox-era case, *Zucht v. King*, which focused on the regulatory authority of the state rather than individual rights. 260 U.S. 174, 175-77 (1922) (holding that "it is within the police power of a state to provide for compulsory vaccination"). There was no claim of religious freedom in that case; there was no mention of any First Amendment right. The Court unremarkably held that "a State may, consistently with the Federal Constitution, delegate to a municipality authority to determine under what conditions health regulations shall become operative." *Id.* at 176. *Zucht* should not be extended to force medical treatment for conditions that are not dangerous or even non-existent in the U.S.

Finally, in *Prince v. Massachusetts*, this Court stated that "[t]he right to practice religion freely does

---

[4] https://www.uchicagomedicine.org/forefront/pediatrics-articles/measles-is-still-a-very-dangerous-disease (viewed Oct. 31, 2026).

[5] https://www.mayoclinic.org/diseases-conditions/measles/diagnosis-treatment/drc-20374862 (viewed Oct. 31, 2026).

not include liberty to expose the community or the child to communicable disease or the latter to ill health or death." 321 U.S. 158, 166-67 (1944). But that was dicta entirely unrelated to the dispute in that case, which was about a 9-year-old girl preaching in public contrary to child labor laws. Moreover, the dissent in that case by Justice Murphy was persuasive:

> We should therefore hesitate before approving the application of a statute that might be used as another instrument of oppression. Religious freedom is too sacred a right to be restricted or prohibited in any degree without convincing proof that a legitimate interest of the state is in grave danger.

Id. at 176 (Murphy, J., dissenting).

There is no "grave danger" justifying this assault by New York on the Amish way of life, which is older than our Nation itself. The Petition should be granted to curb the misuse of decisions that predate the modern recognition of robust individual rights, including religious liberty.

II. Mandatory Vaccination Is an Affront to Many Major Religions, Not Merely the Amish.

Mandatory vaccination is opposed by many religious groups, not merely the Amish. It is a misperception to conclude that the Amish are out of step with modern society when they assert a right to decline vaccination.

The Vatican, for example, made clear in 2020 that "vaccination is not, as a rule, a moral obligation and that, therefore, ***it must be voluntary***." Congregation for the Doctrine of the Faith, *Note on the Morality of*

Using Some Anti-Covid-19 Vaccines ¶ 5 (Dec. 21, 2020) (emphasis added). At the height of Covid, when the pressure was the greatest to embrace mandatory vaccination, the Vatican thereby rejected the compulsory approach, and instead recognized a moral alternative:

> Those who, however, for reasons of conscience, refuse vaccines produced with cell lines from aborted fetuses, must do their utmost to avoid, by other prophylactic means and appropriate behavior, becoming vehicles for the transmission of the infectious agent.

Id. (emphasis added).

The Vatican fully explained why it is entirely proper to reject a vaccine made in a religiously objectionable manner, as many vaccines are by using aborted fetal tissue:

> "When the illicit action is endorsed by the laws which regulate healthcare and scientific research, it is necessary to distance oneself from the evil aspects of that system in order not to give the impression of a certain toleration or tacit acceptance of actions which are gravely unjust. Any appearance of acceptance would in fact contribute to the growing indifference to, if not the approval of, such actions in certain medical and political circles."

Id. n.4 (quoting Congregation for the Doctrine of the Faith, *Instruction Dignitas Personae on Certain Bioethical Questions* n.35 (Sept. 8, 2008)).

Yet under the decision below, millions of Catholics in New York can be forced to forgo their education if they decline to take a vaccine derived from aborted

fetal cells, as mandated by the state.

The Rabbinical Alliance of America – Igud HaRabbonim, having a membership of more than 950 Orthodox Rabbis in North America – has spoken out against the elimination by New York of a religious exemption from vaccination. *See Rabbinical Alliance of America Expresses Concerns Over Elimination of Religious Exemption for Vaccinations*, RABBINICAL ALL. OF AM. (June 14, 2019).[6]

The biblical Book of Daniel is revered in multiple religions, including Judaism, Christianity, and the Bahá'í Faith, while Islam recognizes Daniel as a prophet. A prominent passage recounts how young men accepted the risk of execution rather than consume foods they considered unholy:

> But Daniel resolved that he would not defile himself with the king's food, or with the wine that he drank. Therefore he asked the chief of the eunuchs to allow him not to defile himself.

Book of Daniel 1:8 (ESV). The objection by the prophet Daniel would not have been any less valid if the unclean material were to be injected into his body, rather than served as dinner.

Christianity expressly teaches that one's body is his or her temple of God, and thus not to be defiled: "If anyone destroys God's temple, God will destroy him. For God's temple is holy, and you are that temple." *1 Corinthians* 3:17 (ESV). Some denominations of Christianity nearly entirely reject the practice of

---

[6] https://rabbinicalalliance.org/2019/06/14/the-rabbinical-alliance-of-america-expresses-concerns-over-elimination-of-religious-exemption-for-vaccinations/ (viewed Oct. 30, 2026).

medicine on their bodies, which is what vaccination is. For example, Christian Scientists, who have long operated the Pulitzer Prize-winning newspaper *The Christian Science Monitor* and many high schools throughout the country, reject blood transfusions and allow medical treatment for only essential problems like broken bones. This faith relies on healing through spirituality and prayer. Jehovah's Witnesses, the same Christian denomination that prevailed in *Barnette*, rejects whole blood transfusions for a different reason: to them blood is sacred and thus forbidden to be used for the purposes of medicine.

Porcine gelatin, derived from pork, is used in multiple vaccines, particularly as a stabilizer in vaccines carrying live viruses. But this use of pork is objectionable to some adherents of Judaism (as non-Kosher), Islam (because Halal prohibits consuming pork and its derivatives, which include porcine gelatin), and some followers of Hinduism and Jainism (due to their belief in *ahimsa*, or non-harm, they avoid animal-derived products such as porcine gelatin).[7] *See, e.g.*, *We the Patriots United States v. Conn. Office of Early Childhood Dev.*, 76 F.4th 130, 142 (2d Cir. 2023)

---

[7] Syed Muhammad Kamal Uddin, et al., "Halal and Kosher gelatin: Applications as well as detection approaches with challenges and prospects," 44 *Food Bioscience* 101422 (Dec. 2021) https://www.sciencedirect.com/science/article/abs/pii/S2212429221005472 (viewed Oct. 30, 2026). *See generally* National Health Services (Wales), "Vaccines and porcine gelatine" (Sept. 2016) https://111.wales.nhs.uk/pdfs/WGGe.pdf (viewed Oct. 30, 2026).

(concerning Muslim parents who object to vaccines because "they abstain from consuming pork products, which they allege are used as a stabilizer in some vaccines").

Religious bans against defiling one's own body, as defined by doctrines of faith, are not new. Vaccine development and mandates should not be unrestrained without regard to what people of faith will accept. The Petition should be granted to clarify that, in this Nation founded on religious liberty, people cannot be forced to receive injections containing whatever scientists may devise.

III. Many of New York's Mandated Vaccines Lack Any Medical Justification for Amish Schoolchildren.

New York requires these schoolchildren to be vaccinated against nine different diseases, including polio, mumps, diphtheria, and Hepatitis B. *See* N.Y. Pub. Health Law § 2164(7)(a). All nine of the targeted diseases are either relatively harmless or virtually non-existent in the Amish community. There is a lack of a rational basis for requiring Amish schoolchildren to receive any of these vaccines, let alone all of them, and there is no justification for denying the religious exemption for these vaccines.

Hepatitis B, for example, is a bloodborne disease spread only by promiscuous sex, IV drug abuse, perinatal transmission, and exposure to contaminated blood. It is not contagious through the air, or by touching classroom or playground surfaces. Hepatitis B is not spread in an elementary school environment. *See* CDC, *Protection Against Viral Hepatitis: Recommendations of the Immunization Practices Advisory Committee*, 39 Morbidity & Mortality Wkly.

Rep. (No. RR-2) 1 (1990) ("Persons in casual contact with carriers in settings such as schools and offices are at minimal risk of HBV infection, and vaccine is ***not routinely recommended*** for them.") (emphasis added).[8]

As to diphtheria, "[t]he last U.S. case of confirmed respiratory diphtheria was in 1997." CDC, *Diphtheria Surveillance and Trends* (July 31, 2026).[9] There is no justification for denying a religious exemption from this vaccine. Nearly 30 years without a single case of this disease in the U.S. is more than enough time to be confident that allowing a religious exemption now for this vaccine would not place New York at any risk for an epidemic of diphtheria.

As to mumps, there are only a few hundred cases of mumps annually in the U.S., except for a greater incidence during the period from 2016 to 2019, which was nearly entirely before New York's denial of the religious exemption took effect. CDC, *Mumps Cases and Outbreaks* (Oct. 13, 2026).[10] The mortality rate of mumps is only about 1 per 10,000 infected persons. S.M. Kadri, et al., "Should Mumps Be Higher Up on the Public Health Agenda in India? A Concern for

---

[8] https://www.cdc.gov/mmwr/preview/mmwrhtml/00041917.htm (viewed Oct. 30, 2026).

[9] https://www.cdc.gov/diphtheria/php/surveillance/index.html (viewed Oct. 30, 2026).

[10] https://www.cdc.gov/mumps/outbreaks/index.html (viewed Oct. 30, 2026).

Global Health Security," 6 Med Sci (Basel) 62 (Aug. 7, 2018).[11]

Poliomyelitis was eradicated from the United States by 1979, and from the entire Western Hemisphere by 1991, with very few, isolated discoveries of wild polio since then. Only an inactivated polio vaccine is administered in the U.S. today. *See* Children's Hospital of Philadelphia, *Polio: The Disease & Vaccines*.[12] The herd immunity for polio occurs at an 80% vaccination rate, while the assertion of the religious exemption is nowhere near 20%. Pretending that removal of the religious exemption is necessary to prevent the spread of polio is pure fiction.

By requiring that Amish schoolchildren be vaccinated against non-existent or relatively harmless diseases, and against a sexually transmitted disease not contagious in a classroom or playground environment, New York is destroying the Amish religion. The Second Circuit implicitly shifted the burden back on the Amish by saying it is their own choice to have elementary schools, rather than homeschool by which they could avoid this mandate. (Pet. App. 7a) But the Amish educational system is central to their faith (Pet. 7 n.3), as this Court recognized in *Wisconsin v. Yoder*, 406 U.S. 205 (1972). To deny certiorari here would be to signal the end of the Amish way of life which this Court defended in *Yoder*.

---

[11] https://pmc.ncbi.nlm.nih.gov/articles/PMC6165091/ (viewed Oct. 30, 2026).

[12] https://tinyurl.com/mpaa3bzs (viewed Oct. 30, 2026).

CONCLUSION

For the above reasons, as well as those set forth in the Petition and in other amicus briefs, this Court should grant the requested writ of certiorari.

Respectfully submitted,

ANDREW L. SCHLAFLY
939 OLD CHESTER ROAD
FAR HILLS, NJ 07931
(908) 719-8608
aschlafly@aol.com

Counsel for Amicus Curiae

Dated: November 2, 2026