

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

Jonas F. Stoltzfus, Individually and as Parent
And Natural Guardian of B.H.S., D.A.S. and R.H.S.,
Plaintiffs,

Index No.:

Against

VERIFIED COMPLAINT

ANDREW M. CUOMO, in his Official **Text**
Capacity as Governor of the State of New York,
ATTORNEY GENERAL OF THE STATE OF NEW YORK,
and STATE OF NEW YORK,

Defendants.

Plaintiff, by his attorney, The Mermigis Law Group, P.C., upon information and belief,
complains as follows:

INTRODUCTION

The Amish have been in America for a very long time. The first Amish arrived in the early 18th century to escape religious persecution in Europe and to find land to farm. The sect arose from a late 17th century schism in the Anabaptist Church by followers of Jakob Amman, a Swiss minister who believed that adherents should “conform to the teachings of Christ and His apostles” and “forsake the world” in their daily lives. The Amish *strongly* believe in the separation of church and state and the importance of the community to faith.

The Amish put God and community ahead of the individual. The Amish value life as a spiritual activity and believe in separation from, rather than integration with, modern worldly society.¹

The Amish base their daily life and religious practice on a literal interpretation of the Biblical instruction “be not conformed to this world.” (Romans 12:2). An Amish person will have no doubt about his basic convictions, his view of the meaning and purpose of life, but he cannot explain it except through his life.²

¹ The Amish, BBC.CO.UK, June 23, 2009

² John A. Hostetler, Amish Society, 1993.

The first Amish settlers arrived in New York state in 1831, in part because New York's Constitution protects free exercise of religion. New York has the fastest-growing Amish population, and 5th largest overall.³ Today, over 12,000 Amish live in New York, in 89 church districts.⁴

The New York State Constitution, Article I, Section III, reads:

*“The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall **FOREVER** be allowed in this state to all humankind ...”*

This broadly worded free exercise protection reflects New York's long tradition of tolerance and protection of religious liberty.⁵ The historical evidence of religious tolerance during the colony's early years, and the extremely broad language of the free exercise provision which the NY Constitutional Convention adopted after significant debate, suggest that New York's free exercise provision should be read broadly to protect religious freedom.⁶ Presently, the New York Court of Appeals holds that the New York Constitution is more protective of religious liberties than the First Amendment.⁷

The Bill of Rights was adopted in 1791. Religious liberty is the first freedom of the First Amendment. Article I Section III of the New York State Constitution describes religious liberty more broadly than the First Amendment, assuring religious liberty to citizens on New York to

³ AmishAmerica.com

⁴ *id.*

⁵ Peter J. Galie, *Ordered Liberty: A Constitutional History of New York* (1996), at 49.

⁶ Galie, at 50.

⁷ *Catholic Charities of the Diocese of Albany v. Serio*, 859 N.E.2d 459 (N.Y. 2006).

“all humankind”, “forever”. New York State’s Constitution was last amended in 1938. Every twenty years the New York Legislature may hold a Constitutional Convention to amend the Constitution.⁸ The Legislature declined to amend the state Constitution, which includes Article I Section III, in 1957, 1977, 1997 and 2017. In 2017, only two years ago, New Yorkers voted 76% to 16% against holding a Constitutional Convention to amend the Constitution,⁹ instead choosing to maintain religious liberty for New Yorkers forever.

NATURE OF THE CASE

1. On June 13, 2019, Governor Andrew M. Cuomo signed into law (S2994A/A2371A) “the Repeal,” eliminating the *religious* exemption from school vaccination mandates for children in public and private school in the State of New York, in violation of Article I Section III of the New York State Constitution.
2. Plaintiff has sincere and genuine religious beliefs, especially against the “*betrayal of faith in God*”, and has held religious exemptions for his children against mandated vaccinations since his children entered their private schools.
3. Plaintiff has three children, B.H.S., age 12, D.A.S., age 10, and R.H.S., age 8, and all attend the Cranberry Marsh School in Romulus, New York.
4. The Cranberry Marsh School is a private Amish School within the secluded Amish community, with an enrollment of 24 students between Kindergarten through 8th grade, all of whom are Amish.

⁸ An Overview of the New York State Constitutional Convention Process

⁹ Constitutional convention and New York’s 2017 ballot proposal results, City and State New York, November 7, 2017

5. Since the Amish have religious beliefs against vaccinations, the entire school is unvaccinated.

6. Plaintiff received notice that his children must be vaccinated within 14 days of the first day of school in September, or his children will be ***“banished”*** from the Cranberry Marsh School in Romulus, New York.

7. Plaintiff will not vaccinate his children against his genuine beliefs of “betrayal of faith in God,” because he believes God made his children “right and good” and to vaccinate his children is to lose faith in God. Plaintiff refuses to step “ahead of God in his masterful plan.”

8. Plaintiff also believes that accepting vaccinations shows that one is hoping to evade one’s obligation to faith as an Amish Christian. *To rely on a man made solution would be an act of disbelief in the power of our God to heal and protect us. “Thus says the Lord: “Cursed is the man who trusts in man and makes flesh his strength, whose heart departs from the Lord.” Jeremiah 17:5.*

9. By and through this action, Plaintiff challenges the constitutionality and legality of the Repeal, taken on June 13, 2019 by defendants, to repeal the religious exemption to vaccinations for children in the State of New York, under the ***New York State Constitution only***.

10. Plaintiff challenges the constitutionality of the Repeal under the New York Constitution’s Bill of Rights, Article I, Section III, which is broader than the First Amendment’s free exercise clause. Article I, Section III states that: “The Free Exercise and enjoyment of religious profession and worship, without discrimination or preference, ***shall forever be allowed*** in this state ***to all humankind.***”¹⁰

¹⁰ Article I, Section III, New York Constitution’s Bill of Rights

11. Plaintiff also challenges the constitutionality of the Repeal under Article XI, Section I, of the New York State Constitution which states that, “The Legislature shall provide for the maintenance and support of a system of free common schools, wherein all of the children of this state may be educated.”¹¹

12. Plaintiff also alleges that Defendants can only amend the New York Constitution through a convention process or through action by state legislature as set forth in Article XIX of the Constitution. The Repeal violates the New York Constitution because the proposed law violates both Article I, Section III (religious liberty, forever) and Article XI, Section I (free public schools).

13. As Plaintiffs suffer irreparable harm and as the Repeal violates Plaintiffs’ New York Constitutional Rights, Plaintiffs seek a preliminary injunction and permanent injunction with regard to the Repeal.

PARTIES

14. Plaintiff, Jonas F. Stoltzfus, is a citizen of the State of New York and resides in Seneca County. Plaintiff brings this action of behalf of his unvaccinated minor children, B.H.S., age 12, D.A.S., age 10, and R.H.S., age 8, who attend the Cranberry Marsh School in Romulus, N.Y. Plaintiff’s children had a religious exemptions from vaccinations and will be forcibly excluded from their aforementioned school this September, which will forcibly no longer honor his exemptions in light of the Repeal, and any other public or private school in the State of New York.

¹¹ Article XI, Section I, New York Constitution

15. Defendant Andrew M. Cuomo is the Governor of the State of New York and signed the challenged repeal into law on June 13, 2019. The State Constitution requires that the Governor ensure that the laws of the state are “faithfully executed.” Governor Cuomo’s office for the transaction of business is located at the New York State Capitol Building, Albany, New York 12224. Governor Cuomo is sued herein in his official capacity.

16. Defendant the Office of the Attorney General of the State of New York, pursuant to Executive Law § 60, is the head of the New York State Department of Law and prosecutes and defends all actions in which the state has an interest, and have charge and control of all the legal business of the departments and bureaus of the state, or of any office thereof which requires the services of attorney or counsel to protect the interest of the State.

STATEMENT OF FACTS

17. Plaintiff, his wife and three children live in a secluded Amish community in Romulus, New York. Plaintiff’s children attend Cranberry Marsh school. All 24 students and teachers in the school are NOT vaccinated. Despite the fact that the school is secluded and the students are all Amish, the State has threatened to close the school if the students are not vaccinated against their religious beliefs.

18. Plaintiff believes *accepting vaccination* shows that one is hoping to evade one’s obligation to faith as an Amish. Faith is demonstrated through righteous moral living which is the general prerequisite of people of faith seeking rewards of good health and prosperity as the Bible promises in Exodus 15:26, “***If you diligently heed the voice of the Lord your God and do what is right in His sight, give ear to His commandments and keep all His statutes. I will put none of his diseases on you which I have brought on the Egyptians.***” Plaintiff sincerely believes to rely on a man-made vaccination would be an act of unbelief in the power of God to heal and protect

us. The Amish are taught that we shall not worship any other god, but God. The Bible promises us good health in return for this unconditional faith.

19. Plaintiff and the Amish, believe that concern for the welfare of children, including their health, is entrusted by God to their parents. The State and society should respect the priority of parental rights and responsibilities, based on the presumption of their good faith. Parents should make decisions related to the upbringing of their children, their education and their healthcare.

20. Pursuant to prior New York State law and regulation that had been in effect since 1963, Plaintiff made written application to the Cranberry Marsh School explaining Plaintiff's belief which impelled Plaintiff not to vaccinate his children and the school approved the exemptions and admitted the children into school.

21. Forty six states other than New York recognize religious exemptions to vaccinations.

22. New York State's Constitution provides *broader protection* for religious freedom than the First Amendment of the United States Constitution.

23. New York State's Constitution recognizes religious freedom as a **FOREVER** fundamental right for all those who reside in the State of New York. Article 1, Section 3, which is why the Amish have settled in New York.

24. The Court of Appeals of New York presently holds that a party claiming an exemption to a law of general application on the grounds of religious beliefs or freedoms to demonstrate that the law is an unreasonable interference with his or her religious freedom. ¹²

¹² *Catholic Charities v. Serio*, 7 N.Y.3d 510 (2006).

25. The Court of Appeals held that it violated Article I, Section III of the New York Constitution's Free Exercise of Religion clause, to subject a male Muslim inmate to a pat frisk by a female correctional officer as an unreasonable interference with his religious belief.¹³

26. The Appellate Division held that the correctional department's termination of a Native American's employment as a correctional officer because of his refusal to cut his hair in conformity with the department's hair-length requirement violated his New York state free exercise rights as an unreasonable interference with his religious belief.¹⁴

27. Mandating that Plaintiff inoculate his children with vaccines against his sincere and genuine religious and conscientious beliefs and substantially restricts and burdens Plaintiff's religious practice and is an unreasonable and permanent interference with his religious freedoms.

28. The enforced injection of foreign material into every medically-able child in New York State, would inevitably substantially burden the sincerely held religious and conscientious beliefs of Plaintiff.

29. Mandating that Plaintiff inoculate his children with vaccines is an ***unreasonable*** and ***permanent*** interference with Plaintiff's religious practice because the inoculation cannot be undone and **permanently alters the immune system**.

30. The New York Constitution, Article XI, Section I, requires the legislature to provide for the maintenance and support of a system of free common schools wherein all children of the state may be educated.

¹³ *Rivera v. Smith*, 472 N.E.2d 1015, 1016-1022 (N.Y. 1984).

¹⁴ *Rourke v. New York State Dep't of Correctional Services*, 615 N.Y.S. 2d 470 (N.Y. App. Div. 1994).

31. The article is grounded in the principle "that the first great duty of the State is to protect and foster its educational interests". It requires "not simply schools, but a system", one whose foundation "must be permanent, broad and firm."¹⁵ As a result, New York has recognized a fundamental interest in education, as provided in its Constitution.

32. 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 § 3202 entitles persons between the ages of 5 and 21 to a free public education.

33. Parents residing in New York State who fail to comply with compulsory education laws may face civil and/or criminal sanctions, and there have been instances where school districts have threatened to notify Child Protective Services which may ultimately put the parental rights over their children at risk.

34. Plaintiff cannot abide with the Repeal and satisfy the compulsory education laws without violating his deeply held religious and conscientious beliefs which are guaranteed to him by Article I Section III of the New York State Constitution.

35. Prior to June 13, 2019, New York state successfully provided other means, measures and methods for insuring that contagious diseases did not spread while simultaneously providing access to public schools and protecting religious liberty.

36. Article 21 of the New York Public Health Law [PHL], supplemented by Articles 22 and 23 addressing specific diseases, governs the control of communicable diseases within the state.

¹⁵ Documents and Reports of the Constitutional Convention of the State of New York 1894, at 117-118 (1895).

Article 13 of the PHL governs the handling of nuisances that affect the public health. The PHL also sets forth the roles of officials who exercise the authority under both Articles.¹⁶

37. Enforcement of the provisions of the PHL governing threats to public health is primarily addressed at the local level. The provisions of the PHL leave to local government how local enforcement should be handled, especially with respect to the administrative process for regulating enforcement. The result is a multiplicity of enforcement procedures among the localities that are contained in local ordinances.¹⁷

38. The provisions of the PHL governing nuisances (Article 13) and communicable diseases (Article 21) for the most part do not apply to New York City. Instead, the authority to regulate both is contained in various sources of New York City law. Notably, section 556 of the New York City Charter provides the New York City Department of Health and Mental Hygiene with the authority to "regulate all matters affecting health in the city of New York and to perform all those functions and operations performed by the city that relate to the people of the city." Section 556(c) of the NYC Charter authorizes the Department of Health to supervise the reporting and control of communicable diseases and conditions hazardous to life and health, as well as to exercise control over and supervise the abatement of nuisances affecting or likely to affect the public health.¹⁸

39. New York City had 177 cases of measles in April, 2019 and as of July, 2019, there is only 1 case of measles in New York City.¹⁹ New York City used the methods and means in place to

¹⁶ New York Public Health Law, Articles 13, 21, 22, 23.

¹⁷ New York State Public Health Legal Manual, pg. 3-4

¹⁸ New York State Public Health Legal Manual, pg. 3.

¹⁹ www1.nyc.gov/site/doh/health/health-topics/measles.page

insure that measles did not spread and it was *successful* because there is only 1 case of measles in New York City as of July, 2019.

40. A "Local Health Officer" can be the commissioner of health of a county or a city having a population greater than 50,000 or a public health director (a person who administers and manages the public health programs within a county) or a county health director appointed pursuant to PHL 356 in counties having a population less than 150,000.²⁰

41. "Local Health Officers" have the statutory authority to enforce the provisions of the PHL and are required to "immediately investigate" and outbreaks of contagious diseases, and to make an "immediate and thorough" investigation of "a nuisance that may affect public health."²¹

42. The State Commissioner of Health exercises general supervision over local health officers. The State Commissioner (a) monitors the control of contagious diseases by the local health officers through the requirement that all such diseases be reported by the local health officers to the State Commissioner; and (b) retains the reserved power to intervene directly in a health crisis to enforce the Public Health Law and State Sanitary Code.²²

43. Control of public health is primarily handled on a local level. Ideally, local health departments and officers are staffed and equipped to be the first line of defense for control of disease outbreaks and other public health emergencies. The State Commissioner retains the reserved power to step in to exercise an active role where local intervention is inadequate.

²⁰ New York State Public Health Legal Manual, pg 4.

²¹ 10 NYCRR 2.16(a), 10 NYCRR 8.1.

²² PHL 206

44. In the event of an outbreak, New York authorizes County commissioners of health, local health officers and school officials to exclude students exempt from vaccination due to religious beliefs until said state and school officials determine that the danger of transmission has passed.²³

45. New York State County Health Commissioners and other Local Health Officers can also isolate or quarantine those infected with a contagious disease and to seal off and clean places where those with such contagious diseases frequented.²⁴

46. Isolation is "the physical separation of persons who have contagious disease or are suspected of having a contagious disease from other persons who do not have such contagious disease." Health Code [24 RCNY] Sec. 11.01(o).

47. Quarantine is "the physical confinement, separation, detention or restriction of activities, including entry or exit to or from premises or other places, of individuals who have been or are suspected of having been exposed to a contagious disease or possibly contagious disease, from other persons who have not been exposed to that contagious disease." Health Code [24 RCNY] Sec. 11.01(q).

48. In part due to these measures in place, there has NOT been an epidemic in New York for a very long time.

49. New York adopted the Free Exercise provision after significant debate in 1777,²⁵ but between January 2019 and June 2019, despite multiple requests from plaintiffs and constituents, neither the Senate nor the Assembly convened any public hearings on the proposed bills prior to eliminating the religious exemption.

²³ 10 CRR-NY 66-1.10

²⁴ Public Health Law Sections 2100(2)(a) and (b).

²⁵ Constitutional History of New York, The First Constitution, 1777.

50. Assemblymember Andrew Raia expressed the *serious* issue of lack of hearings: ***"I think at the very least we should be holding hearings on this! I'd like to hear from the medical professionals. I'd also like to hear from the medical professionals that are afraid to speak up because they are chastised by the others in the medical profession."***²⁶

51. Assemblymember Colton shared similar concerns about lack of evidence stating, ***"I have heard no evidence that any of these measles were related to somebody who was not vaccinated because of a religious exemption and that troubles me."***²⁷

52. Senator Antonacci shared similar concerns by stating, ***"This (bill) didn't come before the health committee. I think there's some important information that we need."***²⁸

53. Senator Lanza summarized the lack of hearings and lack of fact finding with this chilling observation, ***"This bill says we don't even want to hear you. Your beliefs are so foreign to me that I reject them out of hand. You don't get a hearing, you don't get a conversation, you get nothing. I believe what I believe, you believe what you believe, and that's your problem. I think that's wrong. And it's a terrible precedent."***²⁹

54. Prior to eliminating religious freedom for 20 million New Yorkers, neither the Senate nor the Assembly engaged in any fact-finding process- let alone rigorous fact finding and input from stakeholders- to determine:

- (a) the number of active measles cases in New York State;
- (b) the proportion of New York state's population which is vaccinated;

²⁶ NYS Assembly Transcript, June 13, 2019 pg. 37.

²⁷ NYS Assembly Transcript, June 13, 2019 pg. 54.

²⁸ NYS Senate Transcript, June 13, 2019, pg 5406.

²⁹ NYS Senate transcript, June 13, 2019, pg. 5425-5426.

- (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 and genuine 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 vaccinations;
- (g) whether any case of measles likely had been contracted from such an unvaccinated minor;
- (h) what were the causes of the current outbreaks in Rockland and New York City;
- (i) the safety of the recommended "catch-up" schedule via testimony from medical professionals;
- (j) a hearing as to whether the current measures and means in place could produce the same state health objective without having to restrict religious liberties;
- (k) an historical analysis of the effectiveness of the current means and measures to control communicable diseases;
- (l) whether there were additional means and measures to achieve law's objective without burdening fundamental rights;
- (m) whether the legislature "narrowly tailored" the law or sought the "least restrictive means" in drafting the legislation;
- (m) whether "herd immunity" had been achieved in and throughout the State of New York.
- (n) whether the state actually confirmed the measles case; and
- (o) whether it was prudent to impose this law on the 60 counties out of 62 counties that had ZERO outbreaks or relatively minimal cases.

The Senate, Assembly and Governor violated the free exercise religious freedom provisions of Article I, Section III without first undertaking the procedures required to amend the New York State Constitution.

55. The Senate and the Assembly did not seek any data, information or testimony to balance a law of general applicability with any unreasonable and permanent burden on religious freedom and liberty. In addition, the Senate and Assembly did not explore any *non-compulsory means* to achieving the objective set forth by the "challenged actions."

56. While the State does have an interest in public health, it also has an interest in protecting religious freedom and a duty to provide free education to *all* students.

57. Because there were no hearings and no additional information gatherings, neither the assembly nor the senate possessed any factual information which provided any basis for members to conclude whether the religious repeal law's burden on religious liberty and freedom was justified, in addition to whether there was a less restrictive means to get the same result, or whether the repeal was narrowly tailored to avoid an unreasonable and permanent burden on religious liberty.

58. There was not even a showing that those with religious exemptions had in fact spread a single case of measles.³⁰ In fact, Seneca County had 219 students who held religious exemptions, yet there hasn't been a single measles case in Seneca County in a long time.

59. The bill Sponsor, Hon. Jeffrey Dinowitz did **NOT** even know how many students there were statewide and states that purpose of bill was that vaccination rates are low in "*certain areas of state.*"³¹ Dinowitz admits that this is NOT a statewide problem, therefore there should have been hearings to discuss least restrictive means or a narrowly tailored means to avoid

³⁰ Assemblymember William Colton, June 13, 2019 on the NYS Assembly Floor.

³¹ New York State Assembly Floor, Hon. Jeffrey Dinowitz. June 13, 2019

unreasonable and permanent burdens on religious freedoms which are broadly protected under the New York State Constitution.

60. A New York State Supreme Court Judge has already ruled on children attending schools that have no reported cases of measles, as in 99.9% of schools in New York state schools in 2019. Judge Rolf M. Thorsen ordered that unvaccinated children who were excluded from schools, to immediately return to schools because the Judge ***found that the children posed no immediate threat to other children at schools***, where there had been no reported cases of measles. In a County where there were 166 cases of measles, Judge Thorsen ruled that unvaccinated children did not pose an immediate threat to other children in schools.³² If a Supreme Court Judge ruled that unvaccinated children did not pose an immediate threat to other children in Rockland where there were 166 cases, what threat would these children pose to the other 59 out of 62 counties of New York that did not have any measles cases, especially Nassau and Suffolk counties?

61. Judge Thorsen applied *simple math* to determine that there was no epidemic in Rockland County by asserting that in a population of 330,000 people, 166 cases is equal to .05% of the population, which does not appear, on the record before the Court, to rise to the level of an epidemic.³³

62. The 2017-2018 New York State School Immunization Survey measles vaccination rate for students in Pre-K through 12th Grade was 98%, well above the threshold of the herd

³² *W.D., et al. v. County of Rockland*, Index no. 031783/2019. Judge Thorsen's Decision and Order.

³³ *id.*

immunity theory.³⁴ In other words, 98 out of every 100 students in the State of New York have been vaccinated for measles. The statistics show that the challenged action is overreaching by targeting schools. According to the statistics, schools were already the safest place for children statewide.

63. Despite being sworn to uphold the Laws of the New York State Constitution, *Hon. Jeffrey Dinowitz, Hon. Jo Ann Simon and Hon. Monica Wallace* all justified the challenged action based on the First Amendment of the United States Constitution, and NEVER discussed the challenged action's impact on the much broader New York State Constitution.³⁵

64. They stood on the Floor in the New York State Assembly in Albany and cited cases that would not apply to the New York Constitution that they were sworn to uphold.

65. The Bill Sponsor, Hon. Jeffrey Dinowitz, cited *Prince v. Massachusetts*,³⁶ a Federal Supreme Court case which has no bearing on the New York State Constitution and the law on religious freedom under the New York Constitution. The current New York law in the Court of Appeals on religious freedom is “that the party claiming the exemption bears the burden of showing that the challenged legislation, as applied to that party, is an unreasonable interference with religious freedom.”

66. The Hon. Jo Ann Simon voted for the repeal of religious exemptions “challenged action” and erroneously based her decision on *Jacobson v. Massachusetts*,³⁷ which had nothing to do

³⁴ www.cdc.gov/MMR/volumes

³⁵ New York State Assembly, June 13, 2019.

³⁶ *Prince v. Massachusetts*, 321 U.S. 158 (1944).

³⁷ *Jacobson v. Massachusetts*, 197 U.S. 11 (1905).

with religious liberty, the rights of children to attend public school, or exemptions for that matter and also has nothing to do with the New York Constitution.

67. The Hon. Monica Wallace also voted for the “challenged action” and based her decision on *Employment Division v. Smith*,³⁸ which is the current Federal holding on the First Amendment, but does not apply to New York State Constitution. In fact, the Court of Appeals stated that the balancing test that they employ is **MORE** protective of religious liberties than the Federal *Smith* standard.³⁹

68. Finally and importantly, neither the Assembly nor the Senate debated, had hearings or provided answers to questions about the serious ramifications to 26,000 children and their families should the religious exemptions be eliminated, including:

(a) what local school districts and the State Education Department are to do with 26,000 children statewide who are no longer allowed to attend public or private school;

(b) testimony from doctors or health officials about the "effective immediately" clause and the health and safety ramifications of such a clause and whether the "catch up" schedule necessary for admission to school was tested for safety; and

(c) the mass exodus and uprooting of families whose religious beliefs prevent them from vaccinating their children and the pain, suffering and unnecessary stress these families would have to endure to relocate out of state in such a short period of time.

69. Neither the Assembly nor the Senate took the required steps necessary to amend New York State Constitution (specifically Article 1, Section 3) prior to repealing a free exercise of religion liberty right guaranteed to last “forever” from 20,000,000 New Yorkers.

³⁸ *Employment Division v. Smith*, 494 U.S. 872 (1990).

³⁹ *Catholic Charities v. Serio*, 7 N.Y.3d 510 (2006).

70. Neither the Assembly nor the Senate reviewed studies from the Institute of Medicine or the CDC to determine whether the "aggressive" "catch-up immunization schedule mandated for children with religious exemptions to attend school, was even safe.

71. In fact, according to the Institute of Medicine, studies designed to examine the long-term effects of the cumulative number of vaccines or other aspects of the immunizations schedule ***have not been conducted***.⁴⁰

72. Furthermore, key elements of the entire schedule- the number, frequency, timing, order, and age at administration of vaccines-have not been systematically examined in research studies.⁴¹

73. On June 13, 2019, applying *erroneous* legal precedent, absent legislative hearings and other fact finding measures and with reckless disregard to the safety of an aggressive "catch-up schedule," the Assembly health committee and both chambers of the New York State legislature voted to eliminate religious exemptions and promptly deny free public education to Plaintiff's children.

74. Said legislation was intended to regulate the religious conduct of Plaintiff who had been granted an exemption to vaccination on the basis of his sincere and genuine religious beliefs. Its enforcement will unreasonably and permanently burden Plaintiff's religious beliefs, and will cause his children to be deprived of a constitutionally protected free public education.

75. Said legislation must be invalidated because it functions to suppress religious freedoms and one would agree that inoculating a child with vaccines, which are obtained in the most

⁴⁰ Institute of Medicine, The Childhood Immunization Schedule and Safety, pg. 6

⁴¹ Institute of Medicine, The Childhood Immunization Schedule and Safety, pg. 11

immoral, evil and abhorrent manner is a much greater burden on Plaintiff's religious beliefs and an unreasonable interference with his religious freedoms than "than cutting one's hair against his/her religion" or a "pat frisk."

76. The state interest in protecting public health could be addressed by restrictions stopping far short of flat prohibition of religious freedoms. As of August 19, 2019, there were 391 confirmed cases of Measles in New York State.⁴² New York State has a population of 19.88 million.⁴³ If you apply the 391 measles cases to the population of New York (391/19,880,000), 0.00001967% of the population of New York had the measles. The numbers show that there is ***NO health emergency*** in New York state to warrant the elimination of religious liberties and a child's right to a free public education. In addition, there is NO public health emergency in Nassau County since there hasn't been a measles case since 2013. This is further proof that ***the state failed to tailor the law narrowly so that they would be using the least restrictive means to achieve their purposes*** to avoid any burden on Plaintiff's sincere religious liberties.

77. The Repeal is causing Plaintiff irreparable harm by forcing Plaintiff to choose between violating her strong religious and conscientious beliefs and depriving her children of a free public education as guaranteed by the New York State Constitution.

78. The challenged action will result in Plaintiff's children being excluded from school and the exclusion of school, standing alone, is "***well settled***" to constitute irreparable harm.⁴⁴

⁴² health.ny.gov

⁴³ World Population Review-states

⁴⁴ The NYC Department of Education did not dispute that excluding a child from kindergarten or school would constitute irreparable harm. *Check v. NYC Dept of Ed.*, 2013 WL 2181045.

79. The challenged action is causing Plaintiff irreparable harm, because irreparable harm is presumed from a constitutional violation.⁴⁵

80. If Plaintiff's child is excluded from their school, the child will be deprived of the critical development that occurs in school, including social, emotional and basic building block skills, and will also be removed from environments in which the children have thrived and created bonds with their classmates. Because all of the foregoing harms are difficult to measure, and hard to compensate with monetary damages, they are irreparable as a matter of law.⁴⁶

81. The Repeal is causing Plaintiff irreparable harm because if a preliminary injunction is not granted, Plaintiff will be forced to uproot his family in addition to the entire Amish community, move to another state or to Canada, where the Amish religious beliefs are accepted. In addition, the Amish are farmers and cannot just sell their homes and move. The process of moving to a more religious tolerant state can take several years.

82. The Repeal is causing irreparable harm to the Amish community because the State is imposing martial law on these non-confrontational secluded people by sending agents to terrorize the Amish communities, by knocking on their doors and threatening to take their children if they do not comply with mandatory vaccinations.

83. In fact, the State terrorized one family in the community which forced them to vaccinate their children against their beliefs and one child was forced to go to the hospital while the other child had a seizure.

⁴⁵ See *Lily Pond Lane Corp. v. Technicolor, Inc.*, 98 Misc.2d 853 (1979).

⁴⁶ See *Int'l Union of Operating Engineers*, 191 Misc.2d 380 (finding irreparable injury where compensation cannot be safely measured).

84. The Appellate Division Second Department has ruled that "*where denial of injunctive belief would render the final judgment ineffectual, the degree of proof required to establish the element of likelihood of success on the merits should be accordingly reduced.*"⁴⁷ If this injunction is not granted, children can miss 2-3 years of critical development by not attending school in which harms are difficult to measure which would make a reversal ineffectual.

85. The Repeal is causing Plaintiff irreparable harm because moving to another state or country will undeniably require considerable expenditures and impose significant financial strains to Plaintiff and his family.

86. The balance of the equities ***strongly favors*** a preliminary injunction against enforcement of the challenged action because a preliminary injunction preserving the *status quo* will not prevent anyone from getting vaccinated and the state already has means and measures in place to control communicable diseases which have already been proven effective; in contrast, without a preliminary injunction, the Plaintiff's children will be excluded from attending an Amish private school, Plaintiff may have to uproot his family and "maintenance of the *status quo* is the object of the grant of provisional injunctive relief."⁴⁸

87. According to the highly regarded Institute of Medicine, during outbreaks, officials have removed unvaccinated children from schools, which has proved to be a successful control measure.⁴⁹

88. Preliminary injunctions have been granted in state courts when plaintiffs' predicated their right to ultimate relief "when a newly enacted New York State law" was in violation of important

⁴⁷ *Sai Thi Ma v. Xuan T. Lien*, 198 AD2d 186, 187.

⁴⁸ *Nassau Roofing & Sheet Metal Co. v. Facilities Dev. Corp.*, 70 A.D.2d 1021 (3rd Dept. 1979).

⁴⁹ Institute of Medicine, *The Childhood Immunization Schedule and Safety*

principles contained in the New York Constitution. The Court asserted that "this is precisely the situation in which a preliminary injunction should be granted to hold the parties in *status quo* while the legal issues are determined in a deliberate and judicious manner."⁵⁰

89. There are several important New York Constitutional issues with the Repeal. First and foremost, Article I, Section III of the New York Constitution states that "the Free Exercise of Religion shall *forever* be allowed in New York." In addition, the Repeal violates Article XI, Section I of the New York Constitution, which guarantees "free public education to all children in the state." Finally, by targeting religious freedom and removing a fundamental right, the Repeal violates Article XIX of the New York Constitution whereby Defendants can only amend the New York Constitution through a Constitutional Convention or through action by state legislature.

90. Accordingly, since the Repeal violates several principles of the New York Constitution, a preliminary injunction should be granted to hold the parties in *status quo* while these constitutional issues are determined in a judicious manner.

AS AND FOR A FIRST CAUSE OF ACTION

91. Plaintiff incorporates paragraphs 1-90 as if set forth herein.

92. The Repeal violates Article I Section III of the New York State Constitution or New York's Free Exercise clause.

⁵⁰ *Tucker v. Toia*, 54 A.D.2d 322, 325 (4th Dept. 1976).

AS AND FOR A SECOND CAUSE OF ACTION

93. Plaintiff incorporates paragraphs 1-92 as if set forth herein.

94. The Repeal is an unreasonable and permanent interference in the religious freedoms of plaintiff and those similarly situated and thereby violates the New York Constitution.

AS AND FOR A THIRD CAUSE OF ACTION

95. Plaintiff incorporates paragraphs 1-94 as if set forth herein.

96. Since the Repeal banishes B.H.S., D.A.S. and R.H.S. from school, it violates their constitutional rights to a free public education.

97. The Repeal violates Article XI, Section I of the New York State Constitution, which states that, "the Legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of the state may be educated."

AS AND FOR A FOURTH CAUSE OF ACTION

98. Plaintiff incorporates paragraphs 1-97 as if set forth herein.

99. All of the acts of Defendants, their officers, agents, employees, and servants were executed and are continuing to be executed by Defendants under the color and pretense of the Repeal.

100. Plaintiff and his family are suffering irreparable harm from the conduct of Defendants.

101. Plaintiff and his children have no adequate remedy at law to correct or redress the deprivation of their rights by Defendants.

102. Unless the enforcement of the Repeal is enjoined, Plaintiff and his family will continue to suffer grave irreparable harm.

WHEREFORE, this Honorable Court should find and declare that the Repeal is unconstitutional as it violates the Free Exercise Clause of the New York Constitution which guarantees religious freedoms *forever*; that the Repeal unreasonably and permanently interferes in the sincere and genuine religious beliefs and practices of plaintiff; that the Repeal is unconstitutional since it violates Article XI, Section I of the New York Constitution by denying Plaintiff and her daughter, E.C., their constitutional right to a free public education.

This Honorable Court should further preliminarily and permanently enjoin the Repeal, award Plaintiff reasonably incurred attorneys' fees to remedy Defendants' unconstitutional, unlawful practices and such other and further relief as the Court may deem equitable, just and proper to remedy Defendants' unlawful and unconstitutional practices.

Dated: Syosset, New York
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