

February 22, 2020

To: Rep. David Steinberg, State Senator Abrams and other members of Public Health Committee

From: Michael H. Sussman, Esq.

re: Religious Repeal

I am an attorney in New York State who successfully challenged Rockland County Executive Ed Day's "emergency" executive order barring unvaccinated children from public places in April 2019. I attended five hours of your legislative hearing on Wednesday and heard the testimony of your state's health commissioner, members of her staff and numerous doctors who support religious repeal. I write today in advance of your vote because other commitments prevented me from staying to testify Wednesday.

1. A compelling state interest is required to repeal the religious exemption repeal which plainly trespassed religious belief and practice.

The May 2019 Attorney General opinion acknowledges this.

2. A compelling state interest is not a rational basis, but a much more rigorous, fact-based showing. And, to show a compelling state interest in the repeal, you must establish that other means of stopping an outbreak are inefficacious.

3. In New York, contrary to the testimony of your chief state epidemiologist, the counties did NOT promptly or properly use the methods approved by our state laws and regulations. Indeed, quarantine was permitted by both and these state and county health officials never invoked this authority until after the Rockland County Supreme Court and the New York State Appellate Division for the Second Department struck down Ed Day's "public assembly" ban in April 2019. And, that ban was not a quarantine order; it was directed at ALL unvaccinated children, whether healthy or not.

4. In New York, there was NO evidence ever adduced that a single case of measles spread from a child unvaccinated due to a religious

exemptions. In a federal case I am now litigating, the federal court has directed the County of Rockland to make that information available.

I am still awaiting it. Your health officials misrepresented known facts when stating that the measles outbreak initiated with unvaccinated children. Wrong. The first seven cases were diagnosed in seven adults returning from a trip to Israel in late September 2019. Several of these adults were allegedly vaccinated.

5. Like more than forty five other states, Connecticut has long had a religious exemption. The predicate for this has NEVER BEEN the view that organized religions opposed vaccinations. Rather, as the Supreme Court has repeatedly held, religion is a personal matter and individuals define their own religious beliefs. A religious repeal significantly trespasses the beliefs of thousands of your constituents and this is without a compelling state interests because your state has never had an outbreak of a contagious disease linked to those who are unvaccinated. And, as Del Bigtree explained, you have an adult population which is substantially unvaccinated, making the focus on religious exemptions irrational, not merely unconvincing. Your health officials bemoaned the increment in religious exemptions, but, with that, less than 2.5% of your student population has this exemption. Herd immunity is not established or properly measured on a school by school basis, and, measured more generally and properly, your state has that immunity for measles. Indeed, your religious exemption was created 59 years ago, during the polio outbreak.

6. In light of the profound impact this repeal would have on children in your state, the claim that you are not taking away the right to a free public education by requiring vaccinations as a pre-condition for school attendance rings hollow. For many parents, especially those of limited means, forcing them from the public schools will have profoundly deleterious impacts on their children. These are predictable and disparate for those with limited means. No one convincingly explained how that tremendous and certain social cost is outweighed by any speculative gain from forcing some more people to vaccinate [after herd immunity has been established in your state].

I have been a civil rights and constitutional lawyer for 41 years. My seven children include some vaccinated and others not. Your decision

is monumental and should not be influenced by false claims about New York. Many of your constituents are deeply committed to religious freedom. Stating that this legislation is a "clarification" devalues them profoundly.

Yours sincerely,

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