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Honorable Phil Murphy
Governor, State of New Jersey
Trenton, New Jersey

Dear Governor Murphy:

Repealing religious exemptions is the wrong way to fight measles. The marginal gain, if any, from implementing this strategy is strongly countervailed by the message of intolerance toward those of faith such a repeal sends and cannot be justified by any rigorous analysis. I hope you will carefully analyze this and not get swept up in what is a wave of hysteria not grounded in fact.

I am a 1978 Harvard Law School graduate and have spent more than forty years litigating major civil rights cases. I also have seven children who are vaccinated. I have not personally used the religious exemption and do not hold religious beliefs which compel that decision. But I also firmly believe that our Constitution commits us to certain principles which control in this situation. I have been one of the attorneys fighting the ban on religious repeal in New York and will be the principal attorney appealing a recent lower court decision upholding our state's improvident religious repeal.

First, people have a constitutional right to practice their own religions. Those religions may have doctrinal roots in one or more major religion. But, our constitution does not make this mandatory or defining of a religion. And, the majority may not impose its practices and values on those who practice less popular religions. Nor may the majority enact laws based upon hostility toward religious practice. The Supreme Court has reiterated this in **Masterpiece Cakeshop**, decided less than two years ago.

Second, parents have the right to make decisions which affect their own children. Such decisions may relate to whether or not to vaccinate and where to attend school.

Third, people have the right to informed consent with respect to medical treatment. A parent exercises this right for his/her minor child.

Those advocating religious repeal claim that allowing a small fraction of the population to be unvaccinated poses too great a risk to others. But this argument contradicts the herd immunity theory which predicates mass vaccinations. That theory posits that, once 93% of a population is vaccinated, a contagious disease, including measles, cannot get traction in a human population. As those with religious and medical exemptions typically number fewer than 3% of the population, their status does not endanger the broader population.

In addition, our public policy often accepts risks so as to preserve human choice and freedom. As an example, your state permits the ownership of weapons which can and do kill. It also allows people to operate cars. It allows the purveying of alcohol despite the fact that, predictably, every year, thousands in your state are killed and injured by gun violence, fatal accidents caused by the consumption of alcohol and the excess speed of many drivers. These risks are necessarily and inexorably incurred in a free society which allows people to exercise their "right" to bear arms, their "right" to buy and use a substance of their choice and the privilege of driving a motor vehicle.

Arguing then that the miniscule risk that an "innocent" will contract a contagious disease from an unvaccinated child/person justifies evisceration of the fundamental rights referenced above is wholly inconsistent with the general principle of moderation and tolerance our public policies reflect. We do NOT generally proscribe activities that pose far greater risks to others than a failure to vaccinate.

During the Vietnam War, as a pacifist, I was a conscientious objector and my status was recognized by the local draft board. I demonstrated entitlement to a religious exemption from being conscripted on the basis of sincerely-held religious beliefs. Judaism did not bar my participation in combat, but my personal values and religious beliefs did.

Likewise, religious exemptions to vaccinations may not, and need not, be supported by any organized religion. However, many states, like yours, have a longstanding and well-settled set of rules which allow a person to assert entitlement to such an exemption. Those rules have worked well and health authorities have nonetheless successfully implemented policies which curb the risk of contagious diseases.

In New York, before the enactment of the religious repeal last June, County officials miserably failed to implement those public health policies and protocols intended to protect the public health. For instance, in Rockland County, the Health Commissioner and County Executive failed to quarantine and isolate those with measles or those exposed to the disease. New York State regulations provided this option and both officials testified it was not put into

place until mid-April 2019, some seven and one half months after the outbreak. By their accounts, after implementing this measure, the number of cases declined radically during the next five months.

In summary, I urge you to reject the “nuclear option” here, represented by repealing the religious exemption will displace thousands of children from your state’s schools and not improve public health. It will be a signal that your state does not respect essential constitutional principles and is prepared to expel thousands of students and make any education beyond their reach in your state.

Please reach out to me if you would like to discuss any of this or other related issues.

Respectfully,


Michael Sussman, Esq.