



West Virginia E-Filing Notice

CC-41-2025-C-230

Judge: Michael E. Froble

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NOTICE OF FILING

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

Miranda Guzman v. State Department of Education

CC-41-2025-C-230

The following order - case was FILED on 11/26/2025 10:40:55 AM

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In the Circuit Court of Raleigh County, West Virginia

**Miranda Guzman, individually and on behalf of
her minor child A.G., et al.,**
Plaintiffs,

v.

Case No. CC-41-2025-C-230
Judge Michael E. Froble

West Virginia Board of Education; et al.,
Defendants

and

Jane Doe,
Intervenor.

Joshua A. Hess; et al.,
Plaintiffs,

v.

Case No. CC-41-2025-C-346
Judge Michael E. Froble

West Virginia Department of Health, et al.,
Defendants.

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING
PERMANENT INJUNCTIVE AND DECLARATORY RELIEF**

Pending before this Court is Miranda Guzman's, individually and on behalf of her minor child A.G., and Carley Hunter's, individually and on behalf of her minor child E.G., and for a Class¹ of others similarly situated (collectively "**Plaintiffs**") request for

¹ This Court granted Plaintiffs' Motion for Class Certification on October 16, 2025. In that Order, this Court defined the "Class" as: "*All individuals and families in the State of West Virginia who have sought, obtained, or will in the future seek an exemption under the Equal Protection of Religion Act ("EPRA") for vaccination requirements, and whose children have been, are being, or will be denied access to public schools due to the enforcement of the Compulsory Vaccination Law ("CVL"), or who are otherwise subject to Defendants' policy refusing to recognize exemptions to the CVL.*" Excluded from the Class are: "any individuals or families who have obtained a final judgment on the merits in another court concerning the same claims or issues presented herein. Class members who are currently pursuing related actions in other courts may join this class upon voluntary withdrawal of their pending claims, with leave of the court in which those claims are pending. Any class member who wishes to be excluded from this class may elect to opt out by filing written notice of such election with this Court." This definition of the "Class" is again reiterated and used in this Order.

permanent injunctive and declaratory relief. This matter comes before the Court following extensive proceedings in which Plaintiffs sought both preliminary and permanent injunctive relief against the enforcement of W. Va. Code § 16-3-4, West Virginia's Compulsory Vaccination Law (the "**Compulsory Vaccination Law**" or "**CVL**") insofar as it burdens their sincerely held religious beliefs in violation of the West Virginia Equal Protection for Religion Act ("**EPRA**"), W. Va. Code § 35-1A-1.

Following a duly noticed preliminary injunction hearing on July 24, 2025, this Court granted interim relief permitting Plaintiffs' minor children to attend school while proceedings were pending. The Court found at that stage that Plaintiffs demonstrated a likelihood of success on the merits of their EPRA claim and that injunctive relief was warranted to preserve the status quo and prevent further irreparable harm during the pendency of this litigation. The Court then conducted multi-day evidentiary hearings regarding Plaintiffs' request for permanent injunctive and declaratory relief on September 10 and 11, 2025 as well as on October 8 and 9, 2025.

The Court heard testimony from expert witnesses for both parties, including public-health experts and state officials, officials of the West Virginia Board of Education, and other fact witnesses, and reviewed substantial documentary and testimonial evidence offered by both sides. The evidentiary record included testimony from state officials regarding the statewide policy barring recognition of religious exemptions to the CVL, as well as expert testimony addressing the public health implications, comparative state practices, and the feasibility of less restrictive alternatives consistent with Defendants' asserted interests.

The parties raised certain objections and made proffers during the foregoing hearings, which are noted.

Having now considered the complete record, the live testimony presented, the pleadings, arguments of counsel, and all other relevant evidence submitted at both the preliminary and permanent injunction phases, the Court now makes its findings of fact and conclusions of law, as required by W. Va. Civ. R. 52 and Syl. Pt. 4-5, *Reilley v. Bd. of Educ.*, 246 W. Va. 531, (2022).

COURT'S ANALYSIS OF THE RELEVANT ISSUES AND SUPPORTIVE FACTS

The following analysis reflects the Court's identification of the relevant issues presented, the considerations that guided its evaluation of the evidence, and the matters the Court did and did not consider in resolving Plaintiffs' claims under the West Virginia Equal Protection for Religion Act ("EPRA"). The Court reviewed all proposed findings of fact and conclusions of law submitted by the parties and, where appropriate, adopted, rejected, or amended those proposed findings to the extent incorporated into this Court's ruling.

The Court previously granted a preliminary injunction in favor of the *Guzman* Plaintiffs and thereafter permitted full presentation of expert testimony, expert reports, oral argument, written memoranda, and all relevant exhibits during four days of permanent injunction hearings. The Court ruled on all objections and indicated it was willing to extend the hearings had any party requested additional time; none did.

The Court consolidated the *Hess* matter with this case and granted the intervention of Jane Doe, allowing her full participation. Although the Court suggested that the *Hess*

plaintiffs consider intervention on behalf of vaccinated or immunocompromised students, no such motion was filed.

After reviewing the parties' briefing, the Court determined that EPRA makes no distinction between philosophical and religious objections and that self-attested religious-belief statements were sufficient for EPRA purposes. Accordingly, the Court found depositions or cross-examination of all 570 exemption holders unnecessary, despite allowing the parties to proffer evidence and proposed cross-examination topics.

The Court found that the State Board of Education maintained a universal, categorical policy of refusing to honor any religious exemptions granted by the Department of Health, without any inquiry into sincerity. This statewide policy vested the Court with statewide jurisdiction.

The Court concluded that Plaintiffs were not judicially estopped from seeking class certification and noted that Plaintiffs raised the issue at the September hearings before filing their motion. The Court also found that Defendants would not be prejudiced, as their litigation strategy had consistently argued that exemptions granted to the named Plaintiffs necessarily affected all 570 individuals statewide.

Although expert witnesses disputed the precise herd-immunity threshold, the Court found that recognizing 570 exemptions – less than 1% of the statewide student population – would not jeopardize herd immunity and that Defendants failed to present evidence of any geographic “clustering” of exemptions. The record also did not establish whether all 570 individuals granted exemptions would attend public schools, nor did Defendants prove that granting or withholding exemptions would materially reduce vaccination rates or substantially increase disease transmission within West Virginia.

The Court noted conflicting information available from state and federal agencies regarding vaccinations and found it plausible that individuals may sincerely object on religious or philosophical grounds. The Court also found Defendants' analogy to military chaplain procedures inapplicable, as the military's life-or-death context differs substantially.

Legislative inaction did not determine EPRA's applicability, and the Court does not accept Defendants' argument that religious exemptions can only be created by legislative action or that the Legislature's failure to amend the Compulsory Vaccination Law forecloses judicial relief. Legislative intent is not absolute nor controlling in interpreting a statute or determining its application; at most, it is a factor. The Legislature's decision not to amend the CVL during the most recent session does not establish that EPRA provides no protection.

The Court considered testimony concerning immunocompromised students and the intervening teacher but observed that similar concerns arise in other unavoidable contexts, and that Defendants' experts did not persuasively establish that recognizing the 570 exemptions would create a substantial health risk, reduce vaccination rates, or meaningfully increase transmission.

The Court exercised judicial restraint by not deciding the constitutionality of the CVL's absence of a religious exemption.

The Court found that Plaintiffs met their burden under EPRA, that Defendants' universal-denial policy substantially burdened Plaintiffs' religious exercise by forcing them to choose between vaccination and public education, and that Defendants treated

comparable or greater risks more leniently while failing to employ less restrictive alternatives.

While recognizing the State's compelling interest in protecting health, the Court found that such interest could be achieved while allowing the 570 exemptions, which constitute a small fraction of the statewide student population and would not meaningfully reduce vaccination rates or increase health risks. The Department of Health is charged with safeguarding public health, and the State Board should defer to it.

The Court declined to address the Governor's authority to issue an Executive Order, rejected the creation of any judicial procedure for evaluating sincerity, accepted the Department of Health's issuance of exemptions, and found it appropriate to request and consider relevant evidence in ensuring a complete record.

INTRODUCTION

The issue before this Court is whether school officials can exclude Plaintiffs 'and the Class's unvaccinated children from receiving a quality education in West Virginia because they possess sincere religious reasons for declining compulsory vaccination for their children, while simultaneously allowing other unvaccinated children to attend school and avoid vaccines because of medical and other reasons, and permitting other risky activities (from a disease prevention perspective) to occur.

Plaintiffs assert Defendants 'no-religious exemption policy facially violates EPRA on multiple fronts. West Virginia's Legislature enacted EPRA in 2023 to block government officials from substantially burdening a person's exercise of their religion. W. Va. Code § 35-1A-1(a)(1). West Virginia Governor Morrissey issued Executive Order 7-25 on January 14, 2025 ("**Executive Order**"), which, consistent with EPRA, required the West Virginia

Department of Health and Human Resources (the “**Health Department**”) to implement a religious exemption process for parents to opt their children out of compulsory vaccine laws based on religious beliefs because the state already allowed children to avoid mandatory vaccines for medical reasons. Pursuant to the Executive Order, the Health Department granted each named Plaintiff a religious exemption certificate for the upcoming 2025-26 school year. Plaintiffs then enrolled their children in Raleigh County Schools. Thereafter, Defendant school officials refused to honor Plaintiffs’ religious exemption certificates issued by the Health Department, which was the catalyst for the case at hand.

West Virginia’s Constitution and court precedent make “education ... a fundamental constitutional right in this State.” *Pauley v. Kelly*, 162 W. Va. 672, 707 (1979); see also *State v. Beaver*, 248 W. Va. 177, 196 (2022). West Virginia also requires that students take certain designated vaccines, and “[n]o person shall be allowed to enter school without at least one dose of each required vaccine.” W. Va. Code § 16-3-4 (c), (e). The CVL permits public health officials in the Health Department to grant discretionary secular medical exemptions. See *id.* at § 16-3-4 (h). Before the Governor’s Executive Order enforcing EPRA, the CVL was a radical outlier from the rest of the country because forty-five other states allow both medical and religious exemptions.

FINDINGS OF FACT

A. General Background of Defendants’ No-Religious-Exemption Policy

This matter came before the Court on Plaintiffs’ request for declaratory relief and a permanent injunction and on the evidence, the pleadings, the argument of counsel, and

the entire record, and the Court being duly advised in the premises, makes the following findings of fact:

1. In West Virginia, it is unlawful for any child to attend “any of the schools of the state or a state-regulated childcare center until he or she has been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and whooping cough” and “[n]o person shall be allowed to enter school without at least one dose of each required vaccine.” W. Va. Code § 16-3-4 (c), (e). The law allows for an alternative: that the child “produce[] a certificate from the commissioner granting the child or person an exemption from the compulsory immunization requirements.” W. Va. Code § 16-3-4 (c). West Virginia’s Secretary of Health, State Health Officer, and other public health officials within the Health Department regulate whether schoolchildren are properly following the CVL. See *generally* W. Va. Code § 16-3-4.
2. West Virginia is an outlier in terms of religious exemptions to childhood vaccination laws. Forty-five states (plus the District of Columbia) currently offer religious exemptions from their mandatory school vaccination law.²

² See Ala. Code § 16-30-3; Alaska Admin. Code tit. 7, § 57.550; Ariz. Rev. Stat. Ann. §§ 15-872(G), -873(A)(1); Ark. Code Ann. § 6-18-702(d)(4)(A); Colo. Rev. Stat. §§ 25-4-902, -903(b)(I); Del. Code Ann. tit. 14, § 131(a)(6); D.C. Code §§ 38-501, -506(1); Fla. Stat. § 1003.22(1); Ga. Code Ann. § 20-2-771(e); Haw. Rev. Stat. §§ 302A-1154, -1156(2); Idaho Code §§ 39-4801, -4802(2); 105 Ill. Comp. Stat. § 5/27-8.1(8); Ind. Code § 21-40-6; Iowa Code § 139A.8(4)(a)(2); Kan. Stat. Ann. § 72-6262(b)(2); Ky. Rev. Stat. Ann. § 214.036; La. Stat. Ann. § 40:31.16(D); Md. Code Ann., Educ. § 7-403(b)(1); Mass. Gen. Laws ch. 76, § 15; Mich. Comp. Laws §§ 333.9208, .9215(2); Minn. Stat. § 121A-15, Subd. 3(d); Mo. Rev. Stat. §§ 167.181(3), 210.003 2.(2)(b).; Mont. Code Ann. §§ 20-5-403(a)(d), -405(1)(a); Neb. Rev. Stat. §§ 79-217, 221(2); Nev. Rev. Stat. §§ 392.435(1), .437; N.H. Rev. Stat. Ann. § 141-C:20-a(II), :20-c; N.J. Stat. Ann. § 26:1A-9.1; N.M. Stat. Ann. § 24-5-1, -3(A)(2)(3); N.C. Gen. Stat. §§ 130A-155, -157; N.D. Cent. Code § 23-07-17.1(3); Ohio Rev. Code Ann. § 3313.671(B)(4); Okla. Stat. tit. 70, §§ 1210.191, .192(2); Or. Rev. Stat. § 433.267(1)(c)(A); 28 Pa. Cons. Stat. §§ 23.83, -84(b); 16 R.I. Gen. Laws § 16-38-2(a); S.C. Code Ann. § 44-29-180(D); S.D. Codified Laws § 13-28-7.1(2); Tenn. Code Ann. §

3. On January 14, 2025, Governor Patrick Morrisey issued Executive Order 7-25, pursuant to his exclusive chief executive power under the State Constitution's Take Care Clause to enforce West Virginia law, including the West Virginia Equal Protection for Religion Act, enacted by the Legislature in 2023, to the Health Department to process and issue religious exemptions to the CVL. (Pl.'s Ver. Second Am. Compl., ¶¶ 7-8; see also *Dunn v. Watson*, 211 W. Va. 418, 421, (2002) (verified allegations, unless controverted by defendants, are competent evidence).)

4. Executive Order 7-25 found that EPRA required exemptions to the Vaccine Law:

When—as directed by the Equal Protection for Religion Act of 2023, W. Va. Code § 35-1A-1 (2023)—the compulsory immunizations requirements violate a religious and moral objection, the Commissioner of the Bureau for Public Health, the State Health Officer, and all officials and employees of the State under their authority shall—consistent with the Equal Protection for Religion Act of 2023, W. Va. Code § 35-1A1 (2023)—take no action to enforce the compulsory school immunization requirements against the particular objector or his or her child.

5. The Executive Order directed the State Health Officer and other public health officials in the Health Department to establish a religious exemption process so parents could request that their children be exempt from the CVL based on their religious beliefs. See Executive Order.³

49- 6-5001(b)(2); Tex. Educ. Code Ann. § 38.001(c)(1)(B); Utah Code Ann. § 53G-9-303(3); Vt. Stat. Ann. tit. 18, §§ 1121, 1122(3); Va. Code Ann. §§ 22.1-271.2(C), 32.1-46(D)(1); Wash. Rev. Code § 28A.210.080, .090(1)(b), (c); Wis. Stat. § 252.04(3); Wyo. Stat. Ann. § 21-4-309(a). Mississippi now offers a religious exemption after a federal court issued a permanent injunction following a free exercise challenge requiring Mississippi to provide a religious exemption process. See *Bosarge v. Edney*, 669 F. Supp. 3d 598, 625 (S.D. Miss. 2023).

³ <https://apps.sos.wv.gov/adlaw/executivejournal/readpdf.aspx?DocID=97525>.

6. In response, West Virginia Health Department officials implemented the Executive Order and began to issue certificates of exemption from mandatory vaccination to children so they could attend school, including for Plaintiffs Guzman and Hunter and members of the Class. (Pl.'s Ver. Second Am. Compl. ¶¶ 9, 20-23.) Named Plaintiffs' children received religious exemption certificates from the Health Department. (*Id.* ¶¶ 10, 20-23.) Record evidence reflects that, at present, approximately 570 students in the state have been granted a religious exemption from the Health Department. (Permanent Injunction Transcript, September 10, 2025, at 210-211; Permanent Injunction Transcript, Transcript, September 11, 2025, at 61-62, 158-159.)

7. After receiving a certificate of religious exemption from the Health Department, Plaintiffs then presented the religious exemption certificates and attempted to enroll their children in Raleigh County schools. (Pl.'s Ver. Second Am. Compl., ¶¶ 86, 88-89.)

8. However, the West Virginia Board of Education directed county boards of education, including Defendant Raleigh County Board of Education, to continue enforcing the Vaccine Law as written and to recognize only medical exemptions to the Vaccine Law, which are provided for in the text of the Law.

9. Defendant Raleigh Board of Education, through its agent and co-Defendant Raleigh County Superintendent Serena Starcher, rejected the Health Department-issued religious exemptions, explaining to Plaintiff Guzman that Raleigh County Schools would "accept medical exemptions only" per "direction provided by the West Virginia Board of Education." (*Id.* ¶ 87.) Similarly, Plaintiff Hunter's husband,

Corey Hunter, received notification from Kari Vicars, the Principal of Shady Spring High School where Plaintiff's daughter E.G. attends school, stating: "effective IMMEDIATELY. No student should be participating in flex days without required immunizations. We are not accepting religious exemptions at this time!" (*Id.* ¶ 89.)

10. Record evidence demonstrates Defendants have instituted a categorical rule that any religious accommodations to the CVL will be and have been automatically denied by Defendants. Defendant West Virginia Board of Education, by and through its members Nancy White, Victor Gabriel, F. Scott Rotruck, L. Paul Hardesty, Robert W. Dunlevy, Christopher Stansbury, Deborah Sullivan, Gregory Wooten, Sarah Armstrong Tucker, Cathy Justice, and State Superintendent Michele Blatt, (collectively, the "**State Board**"), issued a directive to local school districts in West Virginia advising them to not honor Governor Morrissey's Executive Order, and to not permit unvaccinated children—like Plaintiffs' children and those in the Class—to attend school despite them receiving religious exemption certificates from the State Health Officer. (*Id.* ¶ 12.)

11. More specifically, consistent with Plaintiffs' verified allegations in the Complaint, State Board President Mr. Paul Hardesty ("**Mr. Hardesty**") confirmed in his testimony on October 8, 2025, that the State Board made the determination in a 9-0 vote to implement a statewide policy not to accept any religious exemptions to the CVL to enroll in West Virginia schools. (Transcript of Testimony of Paul Hardesty, October 8, 2025, at 33:11-17 (Q: "Sir, the Board of -- the State Board of Education made that determination not to honor religious exemptions, regardless

of whether someone had a sincerely-held religious belief against vaccination, correct?" A: "Yes, sir. The Board of Education voted in a 9-0 fashion to do so....").)

12. The State Board's categorical rule to reject all religious exemptions applies statewide. (*Id.* at 34:2-6 (Q: "And everyone who asks for a religious exemption will receive the same common answer back from the State Board of Education, which is no; correct?" A: "Until the Legislature or this Court clarifies the situation, yes, sir.").) The State Board communicated this no-religious-exemption policy to the public and local school boards. (*Id.* at 34:7-10.)

13. The State Board has undertaken no processes or procedures to review the religious sincerity of any applicant who has requested a religious exemption through the Health Department. (*Id.* at 34:11-21.) Thus, the State Board has not made any assessments of religious sincerity for anyone who has sought a religious exemption. (*Id.*)

14. The State Board acknowledges it possesses obligations to comply with West Virginia law. (*Id.* at 34:22-35:4.) Notwithstanding the Executive Order and EPRA,⁴ however, the State Board's no-religious-exemption policy applies the same way to all individuals seeking a religious exemption to the CVL, regardless of whether they possess sincere religious beliefs in conflict with vaccinating their children. (*Id.* at 34:2-6; 11-21.) Everyone who asks the State Board to honor their

⁴ EPRA places two stringent requirements on government action when it comes to religious exercise in this state. First, EPRA dictates that the government cannot substantially burden religious exercise when there are "less restrictive" alternatives available that would not burden citizens' religious beliefs and practices. W. Va. Code § 35-1A-1(a)(1). Second, the government also cannot treat "religious conduct more restrictively than any conduct of reasonably comparable risk." W. Va. Code § 35-1A-1(a)(2).

religious exemption receives the same answer—an unequivocal “no.” (*Id.* at 34:2-6.)

15. Defendants refuse to honor EPRA’s requirements or permit or accept religious accommodations to the CVL. (Transcript of Testimony of Paul Hardesty, October 8, 2025, at 33:19-22 (Q: “Okay. And it is the -- that is the policy, that 9-0 vote was taken notwithstanding the fact that West Virginia has an EPRA statute; correct?” A: “Yes, sir.”).) The State Board will not observe EPRA’s requirements until “the Legislature or this Court clarifies the situation.” (*Id.* at 34:5-6.) Even after this Court’s issuance of a preliminary injunction on July 24, 2025, and certification of the class action under EPRA and W. Va. Civ. R. 23(b)(1) and (b)(2) on October 16, 2025, the State Board continues to enforce its no-religious exemption policy statewide.

B. Plaintiffs’ Backgrounds and Defendants’ Rejection of Plaintiffs’ Religious Exemptions Issued by the Health Department

16. Plaintiff Guzman is a widow and sole provider for her family and resides in the unincorporated community of Clear Creek, West Virginia in Raleigh County (“**Plaintiff Guzman**”). (Pl.’s Ver. Second Am. Compl., ¶¶ 20, 115.) In the verified Complaint, Plaintiff Guzman details her religious objections to injecting her four-year-old child, A.G., with the vaccinations required under the CVL’s schedule. (Pl.’s Ver. Second Am. Compl., ¶¶ 98-113.) Plaintiff Guzman obtained a religious exemption certificate from the Health Department exempting A.G. from the CVL’s vaccination requirements for the 2025-26 school year. (*Id.* ¶ 21; *see also* Pl.’s Ver. Second Am. Compl., Exhibit 2.) The Health Department also issued a copy of

A.G.'s religious exemption certificate to Clear Fork District Elementary School, a public school within the Raleigh County Schools. (*Id.*)

17. Plaintiff Carley Hunter resides in Daniels, West Virginia in Raleigh County ("**Plaintiff Hunter**"). (Pl.'s Ver. Second Am. Compl., ¶ 22.) Plaintiff Hunter maintains profound religious objections to injecting her seventeen-year-old child, E.G., with the vaccinations required under the CVL's schedule. (*Id.* ¶¶ 128-131.)

18. Plaintiffs Hunter and Guzman went through the process required by the Health Department to obtain their religious exemptions: they submitted a letter, signed and in writing, attesting to their request for a religious exemption. (Transcript of Testimony of Shannon McBee, October 8, 2025, at 187-188, 192-193, Plaintiffs' Hearing Exhibit 13.)

19. Like other exemption requests, the Department of Health took Hunter and Guzman at their word, as the Department of Health is not equipped to assess theology, and recognized that effort was required to seek and obtain the exemptions and that pressure was already involved on parents to either vaccinate or forgo school attendance. (*Id.* at 174-175, 194.)

20. These religious exemption certificates exempted A.G. and E.G. from the CVL's vaccination requirements for the 2025-26 school year. (*Id.* ¶¶ 21-22; see *also* Pl.'s Ver. Second Am. Compl., Exhibit 2; Transcript of Hearing, October 8, 2025 at 191-192, Exhibit 13 – Plaintiffs' Religious Exemptions.) The Health Department also issued a copy of A.G.'s religious exemption certificate to Clear Fork District Elementary School and E.G.'s religious exemption certificate to Shady

Spring High School, both public schools within the Raleigh County Schools. See *id.*; see also Pl.'s Ver. Second Am. Compl., Exhibit 2.

21. After obtaining their respective exemptions, Plaintiffs then attempted to enroll their children in various Raleigh County public schools for the upcoming 2025-26 school year, but Defendants refused to honor those certificates in mid-June 2025. (Pl.'s Ver. Second Am. Compl., ¶¶ 88-89; Transcript of Testimony of Paul Hardesty, October 8, 2025, at 33-34.)

C. Procedural History

22. On June 24, 2025, Plaintiffs filed their complaint against the Defendants, the State Board, its respective members, the State Superintendent, the Raleigh County Board of Education, its respective members, and the Raleigh County Superintendent, for refusing to honor Plaintiffs' requested vaccine exemptions.

23. On July 14, 2025, Plaintiffs amended their complaint to add additional Plaintiffs with children in Raleigh County schools.

24. On July 23, 2025, Jane Doe, a teacher in Raleigh County, moved to intervene as a defendant in this case, and the court formally granted the motion on August 12, 2025.

25. This court held a preliminary injunction hearing on July 24, 2025, attended by all parties' counsel. The court heard argument from counsel but took no evidence. At that hearing, the court granted a preliminary injunction limited to the named Plaintiffs' children to allow them to attend school during the pendency of this case.

26. On August 19, 2025, the West Virginia Department of Health, its Cabinet Secretary, the West Virginia Bureau for Public Health, and its Interim Commissioner filed an emergency motion to consolidate and transfer the case *Hess v. West Virginia Department of Health*, No. 25-C-969, then pending in the Kanawha County Circuit Court, to this court and to consolidate it with this action. The court granted the motion, and the cases were merged on September 3, 2025.

27. The Court held permanent injunction proceedings on September 10 and 11, 2025 and October 8 and 9, 2025, during which it received evidence and heard argument, with expert testimony presented in September and fact-witness testimony presented in October.

28. Plaintiff proffered the testimony of a single expert witness, Dr. James Neuenschwander, a physician in Michigan. Dr. Neuenschwander opined that the government should not mandate vaccination and that non-medical exemptions in other states have not been a serious or consequential public health issue in those states.

29. Defendants presented expert testimony through three witnesses: Dr. John Fernald, a pediatrician in Raleigh County, West Virginia; Dr. Catherine Slemple, former West Virginia State Health Officer; and Dr. Jacob Kilgore, a pediatric infectious diseases doctor in Cabell County, West Virginia.

30. During the second half of the permanent injunction hearing on October 8 and 9, 2025, the Court heard the testimony of the President of the West Virginia Board of Education, Paul Hardesty, as well as Joshua Hess and Marisa Jackson, the plaintiffs in the consolidated *Hess* case. The Court also heard the testimony of

State Epidemiologist Shannon McBee, and acting State Health Officer, Mark McDaniel.

31. On September 16, 2025, Plaintiffs moved to amend their complaint for a second time to add class allegations, and for class certification. Defendants and Intervenor objected to both motions.

32. The Court granted Plaintiffs' motion to amend their complaint and to certify the class from the bench during the second half of the permanent injunction hearing on October. The court confirmed the class certification ruling through a class certification order entered on October 16 and supplemented on November 7, 2025. The Court did not order dissemination of class notice.

D. Plaintiffs' Religious Beliefs and Practices in Conflict with Vaccination Have Been Substantially Burdened by Defendants' CVL-Related Policies

33. Both Plaintiffs Hunter and Guzman submitted sworn declarations that their religious beliefs and practices in conflict with vaccination have been severely burdened and negatively impacted in other regards by Defendants' policies. *See, e.g.*, PI's Ver. Second Am. Compl., ¶¶ 117-119; 132-137; *see also* PI's Ver. Second Am. Compl., PI. Verifications, at 53-54 of 198; *Dunn*, 211 W. Va. at 421 (verified allegations, unless controverted by defendants, are competent evidence).

34. Plaintiffs' and the Class's children have been categorically excluded from West Virginia's educational system. Their minor children cannot access the educational benefits other West Virginia children enjoy, including unvaccinated children who possess a medical exemption pursuant to W. Va. Code § 16-3-4(h).

E. Defendants Permit "Comparable" Activity from a Risk Perspective

1. General Principles of Disease Transmission

26. Viruses and bacteria, including those that are sought to be prevented through the CVL, cannot and do not distinguish between a school classroom and a dance class, do not distinguish where the school building ends and the community begins, do not distinguish or spread based on whether someone is an adult or a child, and the risk of transmission is not dependent on the type of vaccine exemption (i.e. religious or medical or non-compliance), or the reason someone is not vaccinated. (Transcript of Hearing, September 10, 2025, Testimony of Dr. James Neuenschwander at 87-89.)

2. Non-Vaccination Permitted Through Non-Compliance with the CVL

27. For example, in response to requests under the West Virginia Freedom of Information Act, W. Va. Code § 29B-1-1, *et seq.*, (“FOIA”), Defendant Superintendent Starcher, the Raleigh County Superintendent, reported 16 students out 10,330 who did not have all required vaccinations but who were enrolled in in-person classes for more than 30 days. See Pl.’s Ver. Second Am. Compl., Exhibit 5.

28. The Monongalia County School District reported 147 children who did not have all required vaccinations but who were enrolled in in-person classes for more than 30 days. See Plaintiffs’ Exhibit 9 to Permanent Injunction Hearing, Monongalia County FOIA Response. In Fayette County for the 2024 school year, 440 children who did not have all required vaccinations were enrolled in in-person classes for more than thirty days. See Plaintiffs’ Exhibit 10 to Permanent Injunction

Hearing, Fayette County FOIA Response. Collectively, the total number of unvaccinated children permitted to attend school from just three of West Virginia's 55 counties eclipses the total number of religious exemptions statewide—around 570—issued by the Health Department.

3. *Non-Vaccination Permitted Through Medical Exemptions*

30. West Virginia also allows for medical exemptions to the CVL. See W. Va. Code § 16-3-4 (h). The statute dictates in relevant part that the health commissioner “is authorized to grant ... exemptions to the compulsory immunization requirements ... on a statewide basis, upon sufficient medical evidence that immunization is contraindicated or there exists a specific precaution to a particular vaccine.” *Id.* While the Executive Order allows for religious exemptions, Defendants allow for no similar pathway for an exemption where the requirement substantially burdens a sincerely held religious belief. Medical exemptions are granted across the state.

31. Dr. Catherine Slempp, a witness for the State Board Defendants testified that approximately 50 medical exemptions per year are granted statewide. (Transcript of Testimony of Dr. Catherine Slempp, September 11, 2025, at 51-52.) These exemptions are cumulative and add to the number of medical exemptions each year. (*Id.* at 62.)⁵

⁵ The Court notes that Defendants submitted affidavits from Susan Haslebach, Andrew Pense, and Superintendent Serena Starcher on July 22, 2025, demonstrating that: (i) medical exemptions exist and are granted throughout the state, including for children in Raleigh County; and (ii) there is a degree of CVL non-compliance permitted by Defendants, though Defendants contend that permitted non-compliance is not for extended periods of time.

32. Dr. Slemp hypothesized that religious exemptions may differ from medical exemptions through a concept known as “clustering,” where a number of religious exemptions are found together, so as to potentially create a heightened risk of granting religious exemptions versus medical exemptions. (*Id.* at 59-60.) However, that has not been the outcome or actual experience in West Virginia, and Shannon McBee, the West Virginia State Epidemiologist, who is responsible for disease control and prevention in West Virginia, confirmed that there was no clustering of religious exemptions. (Transcript of Testimony of Shannon McBee, October 8, 2025, at 124-125, 189.)

4. No Vaccination Requirements for Homeschooling, “Microschools,” or “Learning Pods”

33. West Virginia offers education alternatives through homeschooling, for those parents who oppose vaccination on religious grounds.

34. West Virginia permits an unlimited number of children to congregate in “learning pods” and “microschools” to be educated without showing proof of vaccination. Under W. Va. Code § 18-8-1(n), the government permits unvaccinated children—whatever their reasons for declining vaccination—to be educated in these “learning pods” and “microschools.”

35. Further, there are no vaccination requirements for the State’s approximately 24,000 homeschooled students. See Transcript of Testimony of Paul Hardesty, October 8, 2025, at 40:3-8; Transcript of Testimony of Shannon McBee, October 8, 2025, at 197-198. And Defendant Hardesty testified, and the Court finds, that these homeschooled children are permitted to be educated in large group settings—learning pods and microschools—under W. Va. Code § 18-8-1. (*Id.* at

40:9-23.) Notably, Dr. Slemple acknowledged that infectious disease is transmitted outside of the school setting, which would of course include microschools and learning pods. (Transcript of Testimony of Dr. Catherine Slemple, September 11, 2025, at 154:22-155:1.)

5. Hope Scholarship Funding to send West Virginia Students Out of State to have Religious Exemptions Honored

36. West Virginia offers education alternatives through the Hope Scholarship, for those parents who oppose vaccination on religious grounds.

37. West Virginia appropriated \$22,000,000 in Hope Scholarship money to permit West Virginia parents to send their children out of state to be educated in out-of-state schools without vaccination requirements (or that honor religious exemptions). (Transcript of Testimony of Paul Hardesty, October 8, 2025, at 44-45.)

38. West Virginia allocates funding to public schools based on an attendance formula. (*Id.* at 44.)

6. Non-Vaccination Allowed for Adults Working in the School System

37. Defendants also permit adults regularly working in the school system—teachers, coaches, administrators, janitors, lunch staff, bus drivers, etc.—to altogether disregard the CVL’s vaccination requirements. The Court recognizes that prior to 1986, when many of the adults in the school system were themselves in school, West Virginia required vaccination only for diphtheria, polio, measles, rubella, tetanus, and whooping cough (i.e. pertussis).⁶ After 1986, additional

⁶ See https://code.wvlegislature.gov/signed_bills/1973/1973-RS-HB569-ENR_signed.pdf.

vaccines were added to the list of required vaccines, including recombinant Hep-b vaccine, the varicella vaccine, and the conjugate meningococcal vaccine for school. See Legislative history of W. Va. Code § 16-3-4. These more recently required vaccines were not required for the many adults working in the school system today, and adults comprise 80% of the state's population.⁷

38. Dr. Slemp did not contest that adults may be missing some of vaccines more recently added to the routine childhood vaccines schedule. (Transcript of Testimony of Dr. Catherine Slemp, September 11, 2025, at 121:21-122:7.)

39. Mr. Hardesty testified, and the Court finds, that there were approximately 18,000 teachers in West Virginia's public school system and that they interact in "close proximity" to children attending school. (Transcript of Testimony of Paul Hardesty, October 8, 2025, at 38:14-20.)

40. Mr. Hardesty testified, and the Court finds, further that there are over 10,000 non-teaching staff, including coaches, administrators, bus drivers, cafeteria workers, librarians, guidance counselors, and others employed by West Virginia public schools, that these adults also are not required to be vaccinated, but that they too interact in close proximity to schoolchildren. (*Id.* at 39:5-20.)

41. The State Board's non-vaccination policy for adults employed in the school system is applied at the local level. In response to a FOIA request asking for "the number of school employees (including, but not limited to administrators, teachers, coaches, bus drives, etc.)" who have proof of vaccination records for the vaccines

⁷ See UNITED STATES CENSUS BUREAU, *QuickFacts, West Virginia, United States*, <https://www.census.gov/quickfacts/fact/table/WV,US/PST045223>.

required under the CVL, Defendant Superintendent Starcher responded that such “information is not required to be reported to the schools by such individuals.” See Plaintiffs’ Exhibit 8 to Permanent Injunction Hearing, at 4, Raleigh County FOIA Response. Notably, Plaintiff Hunter’s husband is the head women’s soccer coach at Shady Springs High School in Raleigh County, but he has not been required to vaccinate in accordance with the CVL’s vaccination schedule despite his frequent interactions with players, students, and staff. (Pl.’s Ver. Second Am. Compl., ¶¶ 88, 134.) Yet, under Defendants’ policies, his child cannot attend school.

7. *West Virginia Students Are Permitted to Travel Out-of-State, Including to Areas of Low Vaccination Coverage*

42. Defendants also do not prohibit West Virginia’s schoolchildren from traveling out-of-state to compete in sporting events or to go to other school-sponsored events in areas with low vaccination coverage. (Transcript of Testimony of Paul Hardesty, October 8, 2025, at 41:4-18.) This includes states surrounding West Virginia, such as Kentucky, Virginia, Ohio, and Pennsylvania, each of which allows for religious exemptions. (Pl.’s Ver. Second Amended Complaint ¶ 37 n.6 (detailing religious exemption in surrounding states); Transcript of Testimony of Dr. Catherine Slemple, September 11, 2025, at 53:2-3; 55:16-18).)

43. The West Virginia Board of Education does not track travel out of West Virginia. (Transcript of Testimony of Paul Hardesty, October 8, 2025, at 42.) And they do not track whether such travel is to areas with infectious disease outbreaks. (*Id.* at 43.)

8. No Vaccination Requirements to Attend School Events, Including High-Density Events on School Campuses

44. Defendants also permit the public, including unlimited numbers of West Virginia citizens who remain unvaccinated or partially unvaccinated for any reason they choose, including secular reasons, to freely access school campuses throughout the State without vaccination-based entry restrictions. According to Board President Hardesty, this includes lack of vaccination requirements at high school and college basketball, football games, and other high-density events. See Transcript of Testimony of Paul Hardesty, October 8, 2025, at 39:21-40:2 (Q: “Has the West Virginia State Board of Education ever required people to attend school events, like high school football games, basketball games, sporting events, school plays, musicals, band performances, to be vaccinated?” A: “No, sir.”).

9. No Influenza or COVID-19 Vaccination Requirements

45. Defendants also do not require children or adults in the school system to be vaccinated against influenza or COVID-19. (*Id.* at 38:10-13.) Defendants’ expert, Dr. Catherine Slemper, testified that in her former position as the Public Health Officer at the Health Department, she dealt with a very small number of cases of vaccine preventable diseases covered by the CVL, such as pertussis, and that such cases were “relatively small”—e.g., three minor outbreaks including one “that was two cases and one was four, [and] one was six.” See Transcript of Testimony of Dr. Catherine Slemper, September 11, 2025, at 89:19-90:14. Dr. Slemper noted that the annual rate of both polio and diphtheria in West Virginia is 0, and the annual rate of tetanus is 0.1 per 100,000. (Transcript of Testimony of Dr. Catherine Slemper, September 11, 2025, at 109:16-24, 111:20-112:3, 112:24-113:2.) Dr. Slemper then

testified there were “much larger outbreaks” of COVID-19 and influenza in the State, while acknowledging vaccines were available for these infectious diseases. (*Id.* at 90:11-14, 152:6-14.) Dr. Slemple testified further that COVID-19 and the flu were dangerous infectious diseases that would endanger immunocompromised individuals in the school system. (*Id.* at 152:6-14.)

10. *Non-vaccinated People, Including Adults and Children, Do Not Stop Being Present in the Community*

46. As Defendants’ expert, Catherine Slemple testified, and the Court finds as to the 24,000 home schooled/microschool, learning pod students and disease risk, that “schools don’t stop at their -- at their walls,” and “[t]hose same kids are elsewhere in the community and are playing soccer and are at church and those kinds of things.” (Transcript of Testimony of Dr. Catherine Slemple, September 11, 2025, at 62.)

47. In fact, Dr. Slemple conceded, and the Court finds, that these children, by not being able to attend school and being potentially clustered in learning pods and microschools with hundreds of children, may pose more of a public health risk through than if they were spread out. (*Id.* at 134-135.) And, again, Ms. McBee confirmed that religious exemptions in West Virginia have not, in actuality, been clustered. (Transcript of Testimony of Shannon McBee, October 8, 2025, at 188:17-189:19.)

11. *The Risks of Affording 570 Religious Accommodations*

50. Dr. Neuenschwander testified that, aside from the MMR and chickenpox vaccine, none of the vaccines required by the CVL contribute to herd immunity in a classroom setting. (Transcript of Testimony of Dr. James Neuenschwander,

September 10, 2025, at 90:7-91:23, 108:2-114:19, 116:4-117:14, 118:12-23, 120:9-12, 192:7-10; see *also* Pl.'s Exhibit 5 to Permanent Injunction Hearing, Dr. Neuenschwander Expert Report, at 3-9 (discussing inability for polio, meningococcal, tetanus, diphtheria, pertussis, and hep b vaccines to contribute to herd immunity in a classroom setting).)

51. Dr. Neuenschwander additionally testified that if the vaccines required by the CVL are effective, then Plaintiffs' children pose no danger to vaccinated children in school. (Transcript of Testimony of Dr. James Neuenschwander, September 10, 2025, at 126:22-127:2.) To the extent that any danger is posed, Dr. Neuenschwander testified that it is actually the vaccinated children who pose a danger to the unvaccinated children for reasons that include the vaccinated individuals' ability to asymptotically spread pertussis. (*Id.* at 127:3-11.)

52. Mr. Hardesty testified that there is approximately 240,000 students presently enrolled in West Virginia Schools, with another 15,000 in private schools, and approximately 24,000 students that are presently homeschooled. (Transcript of Testimony of Paul Hardesty, October 8, 2025, at 38-40.)

53. There is no dispute that there have been 570 religious accommodations granted by the Department of Health to date. See Transcript of Testimony, September 10, 2025, at 210:24-211:17 (Counsel for W. Va. Dept. of Health Holly J. Wilson detailing religious exemption rates and enrollment numbers in the state and in Raleigh County); Transcript of Testimony of Dr. Catherine Slemple, September 11, 2025, at 135.)

54. Dr. Slemp also testified, and the Court finds, that there is no material risk to public health, to children in schools, or to others, for exemptions under a 1% rate. (Transcript of Testimony of Dr. Catherine Slemp, September 11, 2025, at 157.)

55. The current exemption rate of 570, divided by 240,000 students enrolled in public schools, is 0.2375%—less than one quarter of even Dr. Slemp’s cutoff for risk; if the 570 exemptions include public and private schools, it is 570 divided by 255,000 students enrolled in public and private schools, or 0.22353%.

E. Disease Prevention Alternatives That Would Not Extinguish Religious Freedoms in the State Are Available, But Have Not Been Implemented

56. Forty-five states (plus the District of Columbia) currently offer religious exemptions from their mandatory school vaccination laws. (See Pl.’s Ver. Second Amended Complaint ¶ 16 n.1.) Many of these states, including every state surrounding West Virginia, deal with an infectious disease outbreak (if one were ever to occur), through quarantining unvaccinated children who have medical and religious exemptions for a period until the threat subsides.⁸

⁸ See, e.g., 28 Pa. Code § 27.77(e) (Pennsylvania: “Whenever one of the diseases ... has been identified within a child care group setting, the [health] Department ... may order the exclusion from the child care group setting ... which is determined to be at high-risk of transmission of that disease, of an individual susceptible to that disease in accordance with public health standards ...”); Kentucky Exemption Form (“In the event that the county health department or state health department declares an outbreak of a vaccine-preventable disease for which proof of immunity for a child cannot be provided, he or she may not be allowed to attend childcare or school for up to three (3) weeks, or until the risk period ends.”) form available at <https://www.chfs.ky.gov/agencies/dph/dehp/imm/EPID230a.pdf>; Md. Code Regs. 10.06.04.05(B) (Maryland: “The exemption allowed under ... this regulation does not apply when the Secretary declares an emergency or epidemic of disease”); Oh. Rev. Code § 3313.671(C) (Ohio: “a school may deny admission to a pupil otherwise exempted from the chicken pox immunization requirement if ... a chicken pox epidemic exists in the school’s population. The denial of admission shall cease when the director notifies the principal ... that the epidemic no longer exists”); 12 Va. Admin Code 5-110-80(A)(3) (Virginia: “Upon the identification of an outbreak, potential epidemic, or epidemic of a vaccine-preventable disease in a public or private school, the commissioner has the authority to require the exclusion from such school of all children who are not immunized against that disease.”).

57. Mr. Hardesty testified that the State Board has no quarantine protocols regarding unvaccinated adults or children in the school system (e.g., children who are willfully non-compliant but allowed to attend school, and children with medical exemptions) in the event of an outbreak. (Transcript of Testimony of Paul Hardesty, October 8, 2025, at 54:18-55:5.)

58. Mr. Hardesty also testified that the State Board Defendants did not contact or communicate with their board of education counterparts in Ohio, Pennsylvania, Maryland, Virginia, or Kentucky regarding their experiences with religious exemptions or quarantine protocols. (*Id.* at 50:2-5.)

59. Ms. Shannon McBee, employed by the Health Department as the State Epidemiologist, testified that the Health Department enforced quarantine protocols in the event of an outbreak and that such processes were feasible and already implemented (while acknowledging quarantine could be inconvenient “for the individual” quarantined). (Transcript of Testimony of Shannon McBee, October 8, 2025, at 159:16-160:16.)

60. Removing unvaccinated children and having them learn virtually for a period in the event of an outbreak is also an alternative option to Defendants’ no-religious exemption policy, but Defendants’ policy extends to virtual students. (Transcript of Testimony of Paul Hardesty, October 8, 2025, at 50:6-11.)

61. More rigorous enforcement of the CVL against non-compliant children who do not have a medical or religious reason to decline vaccination is an additional disease prevention alternative to Defendants’ no-religious exemption policy. In the 2024 school year, official government records reflect that for just 3 of West

Virginia's counties, 604 children lacked vaccines required by the CVL but were allowed to attend school. See Pl.'s Ver. Second Am. Compl., Exhibit 5 (detailing 17 unvaccinated children enrolled in Raleigh County school district); Plaintiffs' Exhibit 9 to Permanent Injunction Hearing (detailing 147 unvaccinated children enrolled in Monongalia County school district); Plaintiffs' Exhibit 10 to Permanent Injunction Hearing (detailing 440 unvaccinated children enrolled in Fayette County school district). Defendant State Board could more rigorously enforce the CVL against the hundreds of unvaccinated children lacking medical or religious reasons for non-vaccination but who are allowed to attend school. Such a policy, especially if enforced statewide, would realistically generate higher vaccination rates amongst schoolchildren without discriminating against families with religious objections to vaccination by preventing their children from obtaining a quality education.

62. The goal of achieving higher vaccination rates could also be achieved were Defendants to implement a campaign to encourage teachers and staff to increase vaccination uptake. Defendants, however, do not know the vaccination rates of adults in the school system because that metric is not tracked. See Transcript of Testimony of Paul Hardesty, October 8, 2025, at 38:14-20, 39:5-20.

F. Other Relevant Testimony

63. Plaintiffs' expert, Dr. James Neuenschwander, testified that many of the vaccines required under the CVL do not contribute to "herd immunity." See Transcript of Testimony of Dr. James Neuenschwander, September 10, 2025, at 90:7-91:23, 108:2-114:19, 116:4-117:14, 118:12-23, 120:9-12, 192:7-10; *see also*

Pl.'s Exhibit 5 to Permanent Injunction Hearing, Dr. Neuenschwander Expert Report, at 3-9 (discussing inability for polio, meningococcal, tetanus, diphtheria, pertussis and hep b vaccines to contribute to herd immunity in a classroom setting). Accordingly, Dr. Neuenschwander testified that the vaccines that do not contribute to herd immunity operate largely as personal protection devices for the recipient. (*Id.* at 118:12-19; 192:7-11; Pl.'s Exhibit 5 to Permanent Injunction Hearing, Dr. Neuenschwander Expert Report at 3-9.)

64. And West Virginia documents one of the highest childhood vaccination rates in the country, with around 98% coverage rates. Plaintiffs' and Defendants' experts agree these children have some potential protection against the targeted pathogens.

65. Dr. Neuenschwander testified that the only vaccines that can potentially impact herd immunity are the MMR and Varicella (chickenpox) vaccines. See Transcript of Testimony of Dr. James Neuenschwander, September 10, 2025, at 192:7-10 ("Well, again, herd immunity only applies to MMR and chickenpox."). Dr. Neuenschwander's Expert Report details, through judicially noticeable sources, why most vaccines required under the CVL do not contribute to herd immunity. See Pl.'s Exhibit 5 to Permanent Injunction Hearing, Dr. Neuenschwander Expert Report. For example, Dr. Neuenschwander noted in his Declaration that the polio, meningococcal, tetanus, diphtheria, and pertussis vaccines all do not contribute to herd immunity in a classroom setting for the respective diseases they are intended to protect against and, nor does the Hep B vaccine which is a blood borne virus that is not transmitted through activities that occur in a school setting. (*Id.*)

66. Dr. Neuenschwander testified that herd immunity for measles is reached when between 80% and 85% of the population is vaccinated. See Transcript of Testimony of Dr. James Neuenschwander, September 10, 2025, at 197:4-23.

67. Defendants' expert Dr. Catherine Slemple opined the number is higher: "the target for measles is 95 percent" coverage across the population. (Transcript of Testimony of Dr. Catherine Slemple, September 11, 2025, at 78:17-23.) There was no meaningful evidence presented indicating that herd immunity requires greater than 95% update for any of the vaccines implicated by the CVL.

68. Drawing on her experience as Commissioner and State Health Officer with the West Virginia Department of Health and Human Resources, Bureau for Public Health, Dr. Slemple testified that West Virginia's long-standing vaccination policies and immunization rates play an essential role in safeguarding the health of West Virginians, particularly children.

69. Dr. Slemple further testified that scientific evidence showed high rates of immunization are critical for herd immunity, reduce and/or prevent incidents and outbreaks of vaccine-preventable diseases. Dr. Slemple also opined about the human and public health costs associated with outbreaks.

70. Defendants' expert, Dr. John Fernald testified about his experiences treating vaccine-preventable diseases overseas. Based on his expertise and firsthand experience treating children in West Virginia, he testified that the vaccines required under the Vaccine Law have been effective in reducing the incidence of these diseases among West Virginia's children.

71. Record evidence demonstrates that the student population in Raleigh County is 10,330. See Pl.'s Ver. Second Amended Complaint, Exhibit 5, Raleigh County FOIA Response. For the entire state in the 2024-25 school year, there were approximately 241,000 students enrolled in the public school system. See Transcript of Testimony of Paul Hardesty, October 8, 2025, at 38:21-24. Thus, under Defendants' expert opinions regarding herd immunity, even if all 570 statewide religious exemptions at issue here involved Raleigh County schoolchildren, herd immunity would hardly be endangered in Raleigh County. But record evidence shows that religious exemptions are spread across the state—not just across Raleigh County—and that only around 20 religious exemptions have been requested in Raleigh County. See Transcript of September 10, 2025 Permanent Injunction Hearing, at 210:24-211:17 (Counsel for W. Va. Dept. of Health Holly J. Wilson detailing religious exemption rates and enrollment numbers in the state and in Raleigh County). The 20 religious exemptions in Raleigh County comprise approximately 0.19% of the County's 10,330 student population, and the 570 religious exemptions statewide comprise around 0.2% of the State's approximately 241,000 public school students. (*Id.*)

72. Dr. Kilgore is an Associate Professor at the Marshall University School of Medicine with specialties in pediatrics and pediatric infectious diseases. Dr. Kilgore testified about the vectors of transmission of contagious disease and how vaccines reduce the risk of transmission. Dr. Kilgore opined about the importance of childhood immunization against vaccine-preventable diseases.

73. By agreement, Intervenor Defendant Jane Doe later submitted into evidence two additional expert reports: one from Dr. Jesse Hackell, a pediatrician who has served on, and chaired, various committees of the American Academy of Pediatrics (AAP), and one from Lawrence Gostin, J.D., a public health scholar.⁹

74. Dr. Hackell opined about how vaccines protect individuals, the effects of decreasing immunization rates on the larger population, and the harm that immunocompromised individuals face in light of non-medical exemptions.

75. Dr. Hackell also explained how attendance by “unvaccinated adults” at public gatherings is not comparable to interactions between unvaccinated and vaccinated individuals in the school setting “where children are in [] close contact for [a] prolonged a period of time. This prolonged, close contact facilitates the spread of communicable organisms.” (See *id.* at 5.) He articulated that Plaintiffs also ignore the risk posed to teachers like Jane Doe and others “who are in close contact with students each day for a prolonged period.” (See *id.*)

76. Dr. Hackell also testified that “that laws that require immunization as a condition for school entry increases immunization rates and dramatically decreases the incidence of [vaccine preventable diseases or ‘VPDs’] such as measles and chickenpox.

77. Dr. Hackell, in his expert report, offered several peer-reviewed authorities in favor of his arguments on vaccine efficacy, including the Salzburg Statement on Vaccine Acceptance which demonstrates the importance of vaccination to protect against infectious disease in children:

⁹ Plaintiffs agreed to the submission of the reports and were permitted to respond in writing. The court has reviewed the plaintiffs’ response and Intervenor Jane Doe’s reply.

One of the world's most devastating diseases – smallpox – was eradicated in 1980 following a global immunization campaign led by the World Health Organization.[] Vaccines have prevented hundreds of millions of childhood infectious diseases such as polio, measles, mumps, rubella, diphtheria, pertussis, tetanus, hepatitis B, 9 meningitis, rotavirus, and HPV infections that lead to cervical cancer. Vaccines save up to 3 million lives yearly. Every USD\$1 spent on childhood immunization returns up to USD\$44 in benefits.[]

These data are based on decades of peer-reviewed scientific studies that unequivocally support the safety, efficacy, and positive benefit-risk ratios of childhood vaccines.

- Measles once killed 2 million people globally every year.
- Measles can have serious consequences, with 30% of cases having complications, especially in those who are undernourished and immune compromised, including pneumonia, encephalitis, and hearing loss.
- Following the discovery of a measles vaccine in the mid-1960s, deaths plummeted to 110,000 globally in 2017. In 2000, there were no reported cases of measles in the United States.

...

In the case of highly-communicable diseases such as measles, “herd immunity” requires a 95% immunization rate to protect the group. [] Even then there is never full immunity. Exposure to the virus from outside the herd puts every non immunized person at risk. Many children under the age of 12 months, and any child who is immunosuppressed, are at risk of disabilities or death if vaccination rates fall too low.

The re-emergence of measles can be predictably replicated in other childhood illnesses, like rubella, which not only threatens children but also pregnant women and their unborn babies with well-documented consequences that include heart disease, deafness, and brain damage.

(See *id.*, App’x 3 at 1).

78. During the hearing on September 10, this court found that “it is inescapable that the State does have a compelling interest to protect the children in the school.”

79. West Virginia Code § 16-3-4(h)(1) provides the only statutory exception to the Vaccine Law. Certain children who are at medical risk if they take a vaccine can request a medical exemption, which must be “accompanied by the certification

of a licensed physician stating that the physical condition of the child is such that immunization is contraindicated or there exists a specific precaution to a particular vaccine.” W. Va. Code § 16-3-4(h)(1).

80. Defendants’ experts explained, for example, that some children cannot receive certain live virus vaccines because their immune system is weakened, so those children can request a medical exemption from those vaccines.

81. Dr. Slemp explained that officials within the Bureau stringently review medical exemption requests and then decide whether to grant or deny them.

82. Evidence showed that during the 2024 school year, the State Immunization Officer, a Bureau employee, received ninety-seven medical exemption requests. Of those requests, twenty were permanently granted, forty-two were temporarily granted, and thirty-five were denied outright.

83. For the last eleven years, approximately 500 medical exemption requests were granted, with the majority of those exemptions granted on only a temporary basis.

84. For the 2024-25 school year, the Bureau received 331 religious exemption requests.

85. For the 2025-26 school year, the Bureau has received over 570 religious exemption requests.

86. The evidence at the hearing also showed in evaluating religious or moral exemptions, the Bureau did not assess sincerity at all. The Bureau only requires that parents or guardians “request a religious exemption by sending a signed letter to VaccineExemption@wv.gov,” and provide demographic information: “In order

for religious exemption requests to be processed, please include the following in the signed letter: Name and date of birth of student requesting religious exemption, Name of parent/guardian of student, Name of school or childcare center parent/guardian intends to enroll student in, and Mailing address of parent/guardian of student.”

87. The State Epidemiologist, Ms. McBee, admitted that the Bureau does nothing to assess the sincerity of any requester’s religious beliefs; in fact, the Bureau has routinely granted every single exemption request it received.

88. Record evidence regarding religious exemption rates in surrounding states also indicate those states, like West Virginia, also experience very low incidences of vaccine preventable diseases covered by the CVL. For example, in Pennsylvania, Virginia, and Maryland, the rate of diphtheria cases from 2016 to 2022 was a statistical zero, like in West Virginia, regardless of religious exemptions in those states. See Transcript of Testimony of Dr. Catherine Slemph, September 11, 2025, at 109:6-111:5 (discussing Defendants’ Exhibit B-1 to Permanent Injunction Hearing); see *also* Transcript of Testimony of Dr. Jacob T. Kilgore, September 11, 2025, at 207:22-208:3 (agreeing the last case of respiratory diphtheria was in the 1990s). Similarly, for Pennsylvania, Ohio, and Maryland, the rates of tetanus in those states, notwithstanding the religious exemption option, is .01 out of 100,000 examined cases which is the same for West Virginia. See Transcript of Testimony of Dr. Catherine Slemph, September 11, 2025, at 111:20-112:7). The rates of polio in West Virginia and surrounding states with religious exemption options is the same—zero. (Transcript of Testimony of Dr. Catherine

Slomp, September 11, 2025, at 112:24-113:2; see *also* Transcript of Testimony of Dr. Jacob T. Kilgore, September 11, 2025, at 208:24-209:1 (acknowledging never having seen a case of polio).) For hepatitis B, West Virginia actually recorded higher rates than surrounding states with religious exemptions. (*Id.* at 113:2-6.) And for rubella, West Virginia and surrounding states with religious exemption options all recorded a statistical zero rate. (*Id.* at 113:7-9.) Similarly, regarding the meningococcal vaccine, rates of meningitis were the same in West Virginia and in at least one other state, while it was slightly higher in other states. (*Id.* at 113:10-13.)

89. Notwithstanding that West Virginia has one of the highest vaccination rates in the country, West Virginia, like surrounding states, also observes minor outbreaks of infectious diseases from time to time. See Transcript of Testimony of Dr. Catherine Slomp, September 11, 2025, at 89:19-90:14 (testifying there are minor outbreaks of pertussis, including one “that was two cases and one was four, [and] one was six.”).

90. Record evidence also indicates vaccination rates could be significantly reduced if Defendants continue with the no-religious exemption policy. The federal government, through the United States Department of Health and Human Services Office for Civil Rights sent a letter to the West Virginia Health Department on August 21, 2025 stating that funding for its federal Vaccines for Children Program (“**VCP**”) vaccination program will realistically be endangered if the State does not honor religious freedom relative to religious exemptions pursuant to EPRA. See Plaintiffs’ Exhibit 6 to Permanent Injunction Hearing, U.S Department of Health and

Human Services Office of Civil Rights Letter. The letter detailed that West Virginia is a participant in the VCP and receives \$1.37 billion federal funding from the Centers for Medicare & Medicaid Services each year. (*Id.* at 2.)¹⁰

G. Conclusions of Other West Virginia Circuit Courts

91. Several West Virginia circuit courts have rejected plaintiffs’ attempts to avoid the Vaccine Law. On September 10, 2025, the Circuit Court of Mineral County, West Virginia, in a case nearly identical to this one, denied the plaintiff’s request for a preliminary injunction and dismissed the case with prejudice. See *Hansford v. Ravenscroft*, No. CC-29-2025-0-48 (Mineral Cty. Sept. 10, 2025). 112.

92. The Mineral County Circuit Court concluded that the Vaccine Law “provides for only one type of exemption: a medical exemption” and “that EPRA does not provide a religious exemption to the” Law. *Id.* at 4 ¶¶ 4–5. The Mineral County court further concluded that “there is an overwhelming governmental interest in the widespread immunization of public schoolchildren,” and that if he refused to vaccinate, the plaintiff “could avail himself of other educational options in lieu of public education.” *Id.* ¶¶ 6, 12, 14. 113.

93. On September 24, 2025, the Circuit Court of Berkeley County, West Virginia, in another nearly identical case, similarly denied the plaintiffs’ request for a preliminary injunction. See *M. E.-P v. West Virginia Board of Education*, No. CC-02-2025-C-470 (Berkeley Cty. Sept. 24, 2025).

¹⁰ Full hearing transcripts were not available when the Court made its October 16, 2025 ruling on class certification. As the Court duly considered testimony when making its class certification ruling, the Court incorporates by reference these findings of fact where pertinent into its class certification ruling.

94. The Berkeley County court similarly found “[t]he West Virginia Constitution and applicable case law prohibit EPRA from being used in the way that Plaintiffs seek” because “EPRA’s stated purpose was not to amend the CVL to add a religious exemption.” *Id.* at 13. The Court found that even if EPRA applied to the CVL, the “protection of public health and the prevention of communicable disease in schools are among the most compelling of state interests,” and “the CVL is the least restrictive means of achieving the State’s compelling interest of protecting students in public schools.” *Id.* at 14. 115.

95. The Circuit Court of Kanawha County, West Virginia, also held that EPRA does not graft a religious exemption onto the Vaccine Law and that even if EPRA applied to the Vaccine Law, the Vaccine Law would survive strict scrutiny review. See *Watson v. Kanawha Cty. Bd. of Educ.*, CC-20-2025-C-1112 (Kanawha Cty. Oct. 20, 2025).

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

A. Preliminary Conclusions on Qualifications of and Motions Regarding Experts

Pursuant to West Virginia Rule of Evidence 702, this Court qualifies the following witnesses to offer expert opinion on the following subject matters:

1. Dr. Fernald is an expert in day-to-day clinical use of vaccines;
2. Dr. Slemp is an expert in public health and vaccines;
3. Dr. Kilgore is an expert in pediatrics, pediatric infectious disease, and general medicine practice;
4. Dr. Hackell is an expert in pediatric medicine, vaccines, and immunization policy;

5. Mr. Gostin is an expert in public health law and public health policy.

This Court reviewed Plaintiffs' *Motion in Limine to Preclude or Limit Defendants' Expert Witnesses* and Defendants' *Motion to Exclude the Testimony of James Neuenschwander*, and denied those motions; this order memorializes that those motions are **DENIED**.

B. Permanent Injunction Standard

"[T]he power to grant or refuse or to modify, continue, or dissolve a temporary or a permanent injunction, whether preventive or mandatory in character, ordinarily rests in the sound discretion of the trial court, according to the facts and the circumstances of the particular case. . . ." Syl. Pt. 1, *G Corp, Inc. v. MackJo, Inc.*, 195 W. Va. 752 (1995) (citing Syl. pt. 11, *Stuart v. Lake Washington Realty*, 141 W.Va. 627 (1956)).

To determine whether to grant a preliminary injunction, West Virginia courts use a balance of hardship test. *Jefferson County Bd. of Educ. v. Jefferson County Educ. Ass'n*, 183 W.Va. 15, 24, 393 S.E.2d 653, 662 (1990). The court must consider, in flexible interplay, the following four factors: (1) the likelihood of irreparable harm to the plaintiff without injunction; (2) the likelihood of harm to the defendant with an injunction; (3) the plaintiff's likelihood of success on the merits; and (4) the public interest. *Camden-Clark Mem. Hosp. Corp. v. Turner*, 212 W. Va. 752, 756, 575 S.E.2d 362, 366 (2002). (citing *Jefferson*, 183 W. Va. at 24, 393 S.E.2d at 662).

Preliminary injunction arguments and determinations are not binding in relation to final judgments. *University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). Under West Virginia Rule of Civil Procedure 54(b), the court may revise non-final orders at any time "before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities."

C. EPRA Applies to Plaintiffs 'Claims

Defendants have argued throughout these proceedings that EPRA is inapplicable to legal challenges to the CVL because, they claim, EPRA did not explicitly repeal or modify the CVL, including in the title during enactment of EPRA. Consequently, Defendants claim Plaintiffs cannot access EPA's protections for their claims.

The Court is unpersuaded. To accept Defendants' arguments would render EPRA functionally meaningless in every circumstance where religious beliefs are burdened in the State by any government action, including enforcement of the CVL.

In 1937, the West Virginia Legislature passed the Vaccine Law, West Virginia Code § 16-3-4, which requires children entering public schools to be vaccinated against certain dangerous and preventable diseases. West Virginia's Vaccine Law has been amended six times since 1937. As vaccines were developed and recommended for schoolchildren, the Legislature gradually added to the Vaccine Law's list of required vaccines. The Vaccine Law currently requires students attending public school to become "immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and whooping cough." W. Va. Code § 16-3-4(b). Over the years, and as recently as the 2025 Legislative Session, the Legislature has vigorously debated amending the Vaccine Law to allow religious exemptions. The Legislature has ultimately never done so

The Court finds that EPRA does in fact apply to the CVL and, for the reasons detailed more fully below, that declaratory and permanent injunctive relief is appropriate in this case.

The CVL states in relevant part:

(c) No child or person may be admitted or received in any of the schools of the state or a state-regulated child care center until he or she has been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and whooping cough or produces a certificate from the commissioner granting the child or person an exemption from the compulsory immunization requirements of this section.

(d) Any school or state-regulated child care center personnel having information concerning any person who attempts to be enrolled in a school or state-regulated child care center without having been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and whooping cough shall report the names of all such persons to the commissioner.

(e) Persons may be provisionally enrolled under minimum criteria established by the commissioner so that the person's immunization may be completed while missing a minimum amount of school. No person shall be allowed to enter school without at least one dose of each required vaccine.

(h) The commissioner is authorized to grant, renew, condition, deny, suspend or revoke exemptions to the compulsory immunization requirements of this section, on a statewide basis, upon sufficient medical evidence that immunization is contraindicated or there exists a specific precaution to a particular vaccine.¹¹

W. Va. Code § 16-3-4.

In 2023, the Legislature passed the Equal Protection for Religion Act. EPRA effectively codifies the strict scrutiny standard and forbids government action that

¹¹ The Governor and State Health Commissioner were permitted to file an Amicus brief. In part, they argue that the CVL, W. Va. Code § 16-3-4(c), does not cabin the ability of the Commissioner to issue exemptions beyond the medical exemptions explicitly authorized in (h) of the CVL, and thus does not explicitly prevent the granting of religious exemptions. (Amicus Br. for Gov. Morrisey in Supp. of Mot. for Prelim. Inj. at 7-8.) The Court need not reach this argument, however, because it has determined that EPRA's protections extend to Plaintiffs' claims and require a religious exemption where the government substantially burdens religious beliefs and practices or where the government permits comparable activity from a risk perspective. W. Va. Code § 35-1A-1(a)(1) & (2).

“[s]ubstantially burden[s] a person’s exercise of religion unless applying the burden to that person’s exercise of religion in a particular situation is essential to further a compelling governmental interest; and is the least restrictive means of furthering that compelling governmental interest.” W. Va. Code § 35-1A-1. The West Virginia Equal Protection for Religion Act, W. Va. Code § 35-1A-1 was enacted in 2023. Its title states:

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §35-1A-1, all relating to forbidding excessive government limitations on exercise of religion; forbidding government from treating religious conduct more restrictively than any conduct of reasonably comparable risk; forbidding government from treating religious conduct more restrictively than comparable conduct because of alleged economic need or benefit; ensuring that, in all cases where state action is alleged to substantially burden the exercise of religion, that a compelling interest test is mandated, and strict scrutiny is applied; providing remedies; and addressing applicability and construction.¹²

This Court’s Constitutional role “is to interpret the statute, not to expand or enlarge upon it.” *State ex rel. Riffle v. Ranson*, 195 W. Va. 121, 126, 464 S.E.2d 763, 768 (1995); see also *Neidig v. Valley Health Sys.*, No. 24-27, 2025 WL 1638102, at *7 (W. Va. June 10, 2025) (citing Syl. Pt. 11 *Brooke B. v. Ray C.*, 230 W. Va. 355, 738 S.E.2d 21 (2013)) (“Just as courts are not to eliminate through judicial interpretation words that were purposely included, we are obliged not to add to statutes something the Legislature purposely omitted.”).

¹² See https://code.wvlegislature.gov/signed_bills/2023/2023-RS-HB3042-SUB%20ENR_signed.pdf. Defendants also appear to misapprehend that the Title is the “An Act” statement, and not the short form “Equal Protection of Religion Act.” See C.C. “Spike” Copley *Garage v. Public Serv. Comm’n*, 171 W. Va. 489, 491-92 (1983) (discussing the title as that statement that follows “AN ACT”).

Under Article 6, Section 30 of the West Virginia Constitution (Section 30), the Legislature must identify the purpose of a bill in the title of that bill. Section 30 serves a dual purpose:

First, it is designed to give notice by way of the title of the contents of the act so that legislators and other interested parties may be informed of its purpose. Second, it is designed to prevent any attempt to surreptitiously insert in the body of the act matters foreign to its purpose which, if known, might fail to gain the consent of the majority.

Syl. Pt. 1, in part, *State ex rel. Walton v. Casey*, 179 W. Va. 485, 485, 370 S.E.2d 141, 141 (1988); see also *Elliott v. Hudson*, 117 W. Va. 345, 349, 185 S.E. 465, 466 (1936) (“To submerge an important proposition in the body of an act with wholly inadequate reference thereto, if any, in the title, . . . is destructive of the American concept of the necessity of open consideration of legislative matters.”)

Section 30 ensures that the Legislature accurately describes what a bill does and prevents the Legislature from hiding the purpose or effects of a bill. To ensure that a bill complies with Section 30, “A title must, at a minimum, furnish a ‘pointer’ to the challenged provision in the act. The test to be applied is whether the title imparts enough information to one interested in the subject matter to provoke a reading of the act.” *Casey* at Syl. Pt. 2, in part.

Defendants have argued that, in order to comply with the West Virginia Constitution, the title of an act must enumerate each act or provision of the West Virginia Code that the act repeals or modifies and, so their argument goes, because EPRA does not explicitly mention the CVL (or any other law), it cannot under any circumstances modify the application of any other law.

This Court finds that argument fails for several reasons. First, it is a misstatement of the law. Rather, “[i]f the title of an act states its general theme or purpose and the substance is germane to the object expressed in the title, the title will be held sufficient.” Syl. Pt. 1, *State ex rel. Graney v. Sims*, 144 W. Va. 72 (1958); Syl. Pt. 5, *Huntington v. Chesapeake & Potomac Tel. Co.*, 154 W. Va. 634 (1970); accord *Walter Butler Bldg. Co. v. Soto*, 142 W. Va. 616, 639 (1957).

Second, later enactments need not explicitly repeal or modify prior acts, lest the doctrine of repeal by implication would not exist in our law. See *State ex rel. Thomas v. Board of Ballot Comm’rs*, 127 W. Va. 18, 32-33 (1944) (Rose, P.J., dissenting) (citing cases).

Third, the Court’s ruling does not repeal or modify the CVL. Rather, the Court holds that it is Defendants’ enforcement of its no-religious-exemption policy that violates the law (here, EPRA). The CVL remains intact otherwise. As such, the Court finds that EPRA’s protections of religious freedom in West Virginia extends to cases, including the matter currently before this Court, where the government substantially burdens a family’s religious objections to complying with the CVL or where the government permits comparable activity from a risk perspective. W. Va. Code § 35-1A-1(a)(1), (2).

Defendants have also taken issue with the “notwithstanding” language in EPRA. It is true that such “notwithstanding” clauses signal the Legislature’s intent to supersede conflicting laws. See *State v. Schober*, 251 W. Va. 34, 909 S.E.2d 69, 76 (2024). That takes the Court to the text of EPRA in W. Va. Code § 35-1A-1, which states in relevant part:

(a) Notwithstanding any other provision of law, no state action may:

(1) Substantially burden a person's exercise of religion unless applying the burden to that person's exercise of religion in a particular situation is essential to further a compelling governmental interest; and is the least restrictive means of furthering that compelling governmental interest; nor

(2) Treat religious conduct more restrictively than any conduct of reasonably comparable risk; ...

(b) (1) A person whose exercise of religion has been substantially burdened, or is likely to be substantially burdened, in violation of this article may assert such violation or impending violation, including against the state or its political subdivisions, as a claim or as a defense in any judicial or administrative proceeding: *Provided*, That relief is limited to injunctive or declaratory relief and reimbursement of costs and reasonable attorney fees.

This Court finds that EPRA unambiguously dictates that the government cannot substantially burden religious beliefs and practices in the State without satisfying strict scrutiny. "A statutory provision which is clear and unambiguous and plainly expresses the legislative intent will not be interpreted by the courts but will be given full force and effect." Syl. Pt. 2, *State v. Epperly*, 135 W. Va. 877 (1951). "When a statute is clear and unambiguous and the legislative intent is plain, the statute should not be interpreted by the courts, and in such case it is the duty of the courts not to construe but to apply the statute." Syl. Pt. 5, *State v. General Daniel Morgan Post No. 548*, V.F.W., 144 W. Va. 137 (1959). "A statute, or an administrative rule, may not, under the guise of 'interpretation,' be modified, revised, amended or rewritten." Syl. Pt. 1, *Consumer Advocate Div. v. Public Serv. Comm'n*, 182 W. Va. 152 (1989). "In ascertaining legislative intent, effect must be given to each part of the statute and to the statute as a whole so as to accomplish the

general purpose of the legislation.” Syl. Pt. 2, *Smith v. State Workmen’s Compensation Comm’r*, 159 W. Va. 108 (1975).

“It is always presumed that the legislature will not enact a meaningless or useless statute.” Syl. Pt. 4, *State ex rel. Hardesty v. Aracoma - Chief Logan No. 4523, VFW of the U.S., Inc.*, 147 W. Va. 645 (1963). Further, it is well-established that “courts are not to eliminate through judicial interpretation words [in a statute] that were purposely included.” Syl. Pt. 11, *Brooke B. v. Donald Ray C.*, 230 W. Va. 355 (2013); *In re R. S.*, 244 W. Va. 564, 573 (2021) (“Our rules of statutory construction do not permit us to disregard a statute without legislative direction to do so.”). “When faced with two conflicting enactments, this Court and courts generally follow the black-letter principle that effect should always be given to the latest . . . expression of the legislative will.” *Wiley v. Toppings*, 210 W. Va. 173, 175 (2001) (citation modified).

“It is a fundamental rule of constitutional adjudication that constitutional questions are avoided unless absolutely necessary.” *Harshbarger v. Gainer*, 184 W. Va. 656, 660 (1991). However, where statutory interpretation involves one reasonable interpretation that might render a statute or a statutory scheme unconstitutional, and another that avoids constitutional problems, it is the duty of the Court to interpret statutes in a manner that renders them constitutional. See *Hartley Hill Hunt Club v. Ritchie County Comm’n*, 220 W. Va. 382, 387 (2007).

The “notwithstanding” clause “signals the Legislature’s intent to supersede conflicting law.” *State v. Schober*, 909 S.E.2d 69, 76 (2024); see also *State ex rel. W. Va. DOT v. Burnside*, 790 S.E.2d 655, 661 n.4 (2016) (explaining that such language “leav[es] no doubt of [the relevant statute’s] primacy”). And, while Defendants have made

arguments about floor speeches by certain legislators, here, the Court finds that EPRA is unambiguous. The “notwithstanding” provision is immediately followed by “any other provision of law.” The Court applies this plain meaning and concludes that “any other provision of law” includes the CVL. Thus, EPRA’s reach extends to the CVL when it burdens religious exercise in the State.

In interpreting EPRA, the Court recognizes that there is no case law given the recency of the statute’s passage. The Court, however, begins its analysis with the substantial guidance offered by EPRA’s federal analogue, the Religious Freedom Restoration Act (“**RFRA**”), 42 U.S.C. § 2000bb. *Cf.* W. Va. Code § 35-1A-1 and 42 U.S.C. § 2000bb-1. While legislative history is not necessary to interpret EPRA given the unambiguous language of EPRA, the Court observes that state legislators, including the bill sponsors, explained that EPRA “simply codifies the existing U.S. Supreme Court case law and the U.S. Supreme Court of Appeals here in this state’s rulings.” W. Va. House of Delegates Com. Sub. for H.B. 3042 (Feb. 27, 2023).¹³ Because the U.S. Supreme Court has provided significant guidance that interprets the federal RFRA and the corresponding Free Exercise Clause to the United States Constitution, this Court determines that reliance upon decisions of the U.S. Supreme Court on RFRA is appropriate.

Further, Plaintiffs correctly claim the CVL violates EPRA in two distinct manners. First, W. Va. Code § 35-1A-1(a) provides EPRA is violated where state action: “(1) Substantially burden[s] a person’s exercise of religion unless applying the burden to that person’s exercise of religion in a particular situation is essential to further a compelling

¹³ See, e.g., Floor remarks on the passage of EPRA, <https://www.youtube.com/live/Ezccny9hW4I?t=3068s> at 57:15.

governmental interest; and is the least restrictive means of furthering that compelling governmental interest.” And second, there is a separate and distinct violation of W. Va. Code § 35-1A-1(b) when state action: “(2) Treat[s] religious conduct more restrictively than any conduct of reasonably comparable risk.”

Either vehicle will establish an EPRA violation. Having considered the totality of the record in this matter, this Court finds that EPRA applies to the claims at issue, and has been violated under both subsections as set forth and analyzed more fully below.

D. The Injunctive Relief Factors Have Been Satisfied and EPRA Has Been Violated by Defendants

A party seeking a permanent injunction must demonstrate “actual success” on the merits, rather than a mere “likelihood of success” required to obtain a preliminary injunction. *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 546 n.12 (1987).

A plaintiff must also demonstrate: “(1) that [she] has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.” See *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).

“Unless an absolute right to injunctive relief is conferred by statute, the power to grant or refuse or to modify, continue, or dissolve a temporary or a permanent injunction, whether preventive or mandatory in character, ordinarily rests in the sound discretion of the trial court, according to the facts and the circumstances of the particular case; and its action in the exercise of its discretion will not be disturbed on appeal in the absence of a clear showing of an abuse of such discretion.” Syl. Pt. 1, *G Corp, Inc. v. MackJo, Inc.*,

195 W. Va. 752 (1995) (citing Syl. Pt. 11, *Stuart v. Lake Washington Realty*, 141 W. Va. 627 (1956)).

E. The Court Has Jurisdiction to Enter Permanent Injunctive and Declaratory Relief

Defendants argue that this Court lacks authority to issue statewide declaratory or injunctive relief because “the circuit court of one county does not have the authority to enjoin the acts of citizens occurring in other counties, except where the judge of the other county is interested in the proceeding and unable to act.” Syl. Pt. 2, *Meadows on Behalf of Prof'l Emps. of W. Va. Educ. Ass'n v. Hey*, 184 W. Va. 75, 79–80, 399 S.E.2d 657, 661–62 (1990). They further contend that circuit courts may issue extraterritorial injunctions only where a “judgment or proceeding” is implicated, rather than an “act,” and that *Meadows* limited circuit court authority when it held that a circuit court exceeded its jurisdiction in enjoining teacher strikes in counties beyond the circuit where it sat. *Id.*

The Court finds Defendants’ reliance on *Meadows* misplaced. As discussed below, this case involves a judicial “proceeding” under EPRA and W. Va. Code §§ 53-5-3 and - 4 – not the enjoining of isolated “acts” of private citizens. EPRA expressly authorizes courts to issue injunctive or declaratory relief “against the state or its political subdivisions” in any judicial proceeding. W. Va. Code § 35-1A-1(b)(1). Thus, *Meadows* does not limit this Court’s jurisdiction here.

This Court finds that it has jurisdiction under EPRA and Rule 23 to issue statewide declaratory and, if necessary, injunctive relief as to the putative class. EPRA’s text is broad and expansive in protecting West Virginians’ exercise of their religion and expressly confers jurisdiction upon *any judicial or administrative proceeding*—which includes this Court’s jurisdiction over the current case—to issue *injunctive or declaratory relief against*

the state or its political subdivisions. Indeed, the plain meaning of EPRA's text authorizes this Court to issue the statewide injunctive and declaratory relief against Defendants that Plaintiffs seek in their Second Amended Complaint. And this Court further maintains jurisdiction under West Virginia Rule of Civil Procedure 23 to certify the putative class.

Relevant here, EPRA states that:

A person whose exercise of religion has been substantially burdened, or is likely to be substantially burdened, in violation of this article ***may assert such violation or impending violation, including against the state or its political subdivisions, as a claim or as a defense in any judicial or administrative proceeding: Provided, That relief is limited to injunctive or declaratory relief*** and reimbursement of costs and reasonable attorney fees.

W. Va. Code § 35-1A-1(b)(1) (emphasis added).

Further, W. Va. Code § 53-5-4 provides that Circuit Courts have "general jurisdiction in awarding injunctions, whether the judgment or proceeding enjoined be in or out of his circuit, or the party against whose proceeding the injunction be asked reside in or out of the same." W. Va. Code § 53-5-3 states: "Jurisdiction of a bill for an injunction to **any judgment**, act or proceeding shall, unless it be otherwise specially provided, be in the circuit court of the county **in which the judgment is rendered**, or the act or proceeding is to be done, or is doing, or is apprehended, and the same may be granted to a judgment of a justice in like manner and with like effect as to other judgments." (emphasis added).

Moreover, *Meadows ex rel. Professional Employees of W. Va. Educ. Ass'n v. Hey*, 184 W. Va. 75, 81 (1990) makes clear that if an injunction is in aid of "a judgment or proceeding," (here in aid of this judgment entered for declaratory and injunctive relief under EPRA), statewide injunctive relief can be entered.

And the limitations on jurisdiction in W.Va. Code 53-5-3 are not applicable to actions that are not strictly bills for an injunction, which is the case here. *State v. Fredlock*, 52 W. Va. 232 (1902); *Lewis, Hubbard & Co. v. Pugh*, 115 W. Va. 232 (1934); *Shobe v. Latimer*, 162 W. Va. 779 (1979).

Courts have routinely certified class actions under the federal RFRA with identical language. See *Doster v. Kendall*, 54 F.4th 398 (6th Cir. 2022); *Colonel Fin. Mgmt. Officer v. Austin*, 622 F. Supp. 3d 1187 (M.D. Fl. 2022); *Seals v. Austin*, 594 F. Supp. 3d 767 (N.D.T.X. 2022); *Deotte v. Azar*, 332 F.R.D. 188 (N.D.T.X. 2019); *Vita Nuova, Inc. v. Azar*, No. 4:19-cv-00532, 2020 U.S. Dist. LEXIS 250182 (N.D.T.X. 2020). Accordingly, considering the foregoing, the Court has jurisdiction to enter declaratory and injunctive relief, including on a class-wide basis here.

F. Plaintiffs Have Established Success on Their W. Va. Code § 35-1A-1(a)(1) Claim

Plaintiffs argue that the Vaccine Law “[t]reat[s] religious conduct more restrictively than any conduct of reasonably comparable risk.” W. Va. Code § 35-1A-1(a)(2). EPRA states in relevant part that the government shall not “[s]ubstantially burden a person’s exercise of religion unless applying the burden to that person’s exercise of religion in a particular situation is essential to further a compelling governmental interest; and is the least restrictive means of furthering that compelling governmental interest.” W. Va. Code § 35-1A-1(a)(1). The Court finds Plaintiffs have satisfied their burdens under this provision.

1. *There Is a Substantial Burden on Plaintiffs’ Exercise of Religion*

EPRA liability turns on individualized determinations of (1) whether a claimant holds a sincerely held belief and (2) whether that belief was substantially burdened.

Whether a belief is sincerely held depends on a person's specific faith, conduct, and motivations. See, e.g., *United States v. Manneh*, 645 F. Supp. 2d 98, 111–12 (E.D.N.Y. 2008) (quoting *Int'l Soc. for Krishna Consciousness, Inc. v. Barber*, 650 F.2d 430, 441 (2d Cir. 1981)) (“An individual’s ‘belief would not be ‘sincere’ if he acts in a manner inconsistent with that belief . . . or if there is evidence that the adherent materially gains by fraudulently hiding secular interests behind the veil of religious doctrine.”); *Gardner-Alfred v. Fed. Rsrv. Bank of N.Y.*, 143 F.4th 51, 69 (2d Cir. 2025) (“Gardner-Alfred has provided no evidence that she has ever acted consistently with her professed religious beliefs other than her refusal to get the Covid-19 vaccine.”)).

Defendants contend that there is no substantial burden, within the meaning of W. Va. Code § 35-1A-1(a)(1), on Plaintiffs’ religion for excluding the children from school. Finding a “substantial burden” under ERPA exists here, the Court rejects Defendants’ argument.

A substantial burden includes penalties on the exercise of religion. See *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 720-23 (2014). A substantial burden also includes the loss of government benefits for the exercise of religion and extends to the so-called unconstitutional conditions doctrine. See *Sherbert v. Verner*, 374 U.S. 398, 403-04 (1963) (violation for placing unconstitutional conditions on the exercise of religion and a substantial burden exists when someone is forced to choose between receipt of government benefits and their religion); *Thomas v. Review Bd. of Ind. Employment Sec. Div.*, 450 U.S. 707, 717-18 (1981) (“Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on

an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists. While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial.”).

Both Plaintiffs Hunter and Guzman have submitted sworn declarations and statements in writing to state officials, that their religious beliefs and practices in conflict with vaccination have been severely burdened and negatively impacted in other regards by Defendants’ policies. See, e.g., Pl.’s Ver. Second Am. Compl. ¶¶ 117-119, 132-137; Transcript of Testimony of Shannon McBee, October 8, 2025, at 174-175, 187-194, Exhibit 13, Exhibit 13; *Dunn*, 211 W. Va. at 421 (verifications constitute competent evidence).

Every member of the Class has submitted statements in writing to the state affirming that they have religious beliefs conflicting with vaccination that makes them potentially criminally liable under West Virginia law. These documents, both the requests and the granting of the exemptions, are public records. (*Id.* at 181-182). That is significant, because a false utterance to the government to obtain a benefit triggers potential criminal penalties. See *State v. Phalen*, 192 W. Va. 267 (1994) (finding valid convictions for forgery, W. Va. Code § 61-4-5, and forgery of a public record, W. Va. Code § 61-4-1 for submitting false information to the government); *Jordan v. Ballard*, No. 12-1015, 2013 W. Va. LEXIS 1001 (Va. Oct. 1, 2013) (signing a fingerprint card, which is a public record, is a valid felony conviction of W. Va. Code § 61-4-1).

Plaintiffs’ children (and those of other Class members) have also been categorically excluded from West Virginia’s educational system. Their minor children cannot access the educational benefits other West Virginia children enjoy, including

unvaccinated children who possess a medical exemption pursuant to W. Va. Code § 16-3-4(h). This is despite the West Virginia's Constitution and court precedent which dictates "education [] a fundamental constitutional right in this State." *Pauley v. Kelly*, 162 W. Va. 672, 707 (1979). And excluding children from school denies these children, and their parents, a government benefit of the sort that has long been held to be a substantial burden. See *Carson v. Makin*, 596 U.S. 767, 778 (2022) (a state violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits); see also *Sherbert*, 374 U.S. at 404; *Thomas*, 450 U.S. at 717-18.

In order to receive the benefit of a public school education, Plaintiffs and the Class are subjected to ongoing coercion to violate their religious convictions. Considering the foregoing, the Court finds that the exclusion of Plaintiffs 'and the Class's children from school constitutes a substantial burden on their religious beliefs and practices under EPRA.

2. Defendants' Decision to Burden Religious Exercise Is Not "Essential" to Furthering a "Compelling" Governmental Interest As to Plaintiffs

Defendants have argued that the compelling governmental interests at issue are curbing the prevention of communicable diseases and protecting public health and safety. (State Board Defs. 'Resp. in Opp'n to Pls. 'Mot. for Prelim. Inj. at 14; Local Board Defs. 'Resp. in Opp'n to Pls. 'Mot. for Prelim. Inj. at 6.)

In support, they have cited *D.J. v. Mercer Cnty. Bd. of Educ.*, No. 13-0237, 2013 WL 6152363 at *4 (W. Va. Nov. 22, 2013), and *W. Va. Parents for Religious Freedom et al. v. Christiansen et al.*, 124 F.4th 304, 311 n.9 (4th Cir. 2024), for the proposition that Defendants possess a compelling interest under W. Va. Code § 35-1A-1(a)(1) to deny

Plaintiffs' religious exemption requests. The Court observes that *D.J. v. Mercer Cnty. Bd. of Educ.* does indeed stand for the generalized proposition that “the protection of the health and safety of the public” is a compelling state interest. *Id.* at *4.¹⁴ In other words, the Court finds that Defendants have advanced a compelling, population-wide government interest in curbing the spread of infectious disease.

However, in the RFRA and, by extension, EPRA context, “invocation of such general interests, standing alone, is not enough.” *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 438 (2006). Just as the U.S. Attorney General in *Gonzales* could not rely on the generally dangerous nature of the drugs barred by federal drug laws to stop a specific religious sect from using a prohibited tea (*id.* at

¹⁴ *Christiansen*, 124 F.4th at 311 n.9, directed the district court to evaluate the Plaintiffs' Free Exercise claims, including consideration of the unpublished case of *Workman v. Mingo Cnty. Bd. of Educ.*, 419 Fed. App'x 348 (4th Cir. 2011). *Workman* did not, as Defendants suggest, make a determination about the constitutionality of the vaccination requirement. *Workman* applied rational basis review to West Virginia's vaccination regime. In *dicta*, the Fourth Circuit mentioned that it thought the requirements might satisfy strict scrutiny. However—in light of *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021), which holds that permitting discretionary exemptions triggers strict scrutiny, *Tandon v. Newsom*, 593 U.S. 61 (2021), which holds that that permitting any comparable activity triggers strict scrutiny (and similarly that doing so would not satisfy strict scrutiny and that strict scrutiny in the infectious disease context is “not watered down”), and more recently *Mahmoud v. Taylor*, 145 S. Ct. 2332 (2025), which provides that if the state permits any opt outs of requirements it must provide a religious opt out—the holding of *Workman* must be considered in light of more recent U.S. Supreme Court precedent. The Court need not ascertain whether the West Virginia CVL triggers strict scrutiny, because EPRA already answers that question: the CVL must do so or permit religious exemptions.

Defendants have also purported to rely upon *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), a case that did not invoke or involve fundamental rights, and was later used to justify the forced sterilization of “imbeciles” in *Buck v. Bell*, 274 U.S. 200, 207 (1927). *Jacobson* itself took pains to explain that if a violation of a substantive or fundamental right guaranteed in the Constitution was at issue, the answer would be different. 197 U.S. at 31. Defendants also rely upon *Prince v. Massachusetts*, 321 U.S. 158 (1944), a case about pamphleteering, for its *dicta* statement on childhood vaccination, and suggest that there is a disease prevention exception to the Free Exercise Clause. But that contention runs contrary to the holdings in *Tandon*, 593 U.S. 61, and *Roman Catholic Diocese v. Cuomo* 592 U.S. 14 (2020), which found Free Exercise violations in connection with disease related restrictions during what has been described as the most dangerous pandemic (COVID-19) in more than a century.

432-33), the Defendants here likewise cannot rely on a generalized governmental interest in “the protection of the health and safety of the public” to refuse to honor religious exemption certificates issued by the Health Department to Plaintiffs.

EPRA, like RFRA, contemplates a “more focused” inquiry and “requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law “to the person”—the particular claimant whose sincere exercise of religion is being substantially burdened.” *Burwell*, 573 U.S. at 726 (quoting *O Centro*, 546 U.S. at 430-31). That requires Courts to “scrutiniz[e] the asserted harm of granting specific exemptions to particular religious claimants” and “to look to the marginal interest in enforcing” the challenged government action in that particular context. *Burwell*, 573 U.S. at 726-27.

It is notable that the Health Department, the agency tasked with public health in the state and oversight of the CVL, including the processing exemptions to the CVL, has determined the government’s interest is not so compelling as to deny religious exemptions to 570 schoolchildren. Even if Defendants were more qualified than the Health Department to speak to the state’s interests in curbing the spread of infectious disease (a questionable proposition), the Health Department’s determination that religious freedom and disease prevention goals can co-exist in West Virginia severely undermines Defendants’ positions.

The Court also notes that Defendants have also largely achieved the government’s general interest in achieving high vaccination rates, as evidenced by vaccination rates exceeding the herd immunity levels within West Virginia advanced by Defendants’ experts for the diseases related to the vaccines on the CVL schedule. Defendants’ expert Dr.

Catherine Slemp opined that the goal for herd immunity should be 95% across the population. See Transcript of Testimony of Dr. Catherine Slemp, September 11, 2025, at 78:17-23.

There was no evidence submitted that herd immunity for any vaccine preventable disease implicated by the CVL was greater than 95%. Record evidence shows that religious exemptions are spread across the state, and that only around 20 religious exemptions have been requested in Raleigh County. See Transcript of Testimony, September 10, 2025, at 210:24-211:17. The 570 religious exemptions statewide comprise around 0.2% of the State's approximately 241,000 public school students, well under the 1% rate that Dr. Slemp testified started to be risky. (See Transcript of Testimony of Dr. Catherine Slemp, September 11, 2025, at 157.) As such, through its no-religious exemption policy, Defendants are chasing fractional percentage gains to its disease prevention goals, casually sacrificing religious freedom in the process. See *Brown v. Entm't Merchs. Ass'n*, 564 U.S. 786, 803 n.9 (2011) (holding that while the government may have a compelling interest in the abstract, that does not mean that it has one "in each marginal percentage point by which" it achieves its general objectives).

Just because Defendants might have a compelling interest in the abstract does not mean that they have one "in each marginal percentage point by which" they achieve this abstract interest. *Brown*, 564 U.S. at 803 n.9. This conclusion flows directly from the text of EPRA, which requires not only a compelling government interest but, additionally, that "applying the burden to that person's exercise of religion in a particular situation is essential to further a compelling governmental interest." W. Va. Code § 35-1A-1(a)(1) (emphasis added).

In RFRA cases, the U.S. Supreme Court has directed lower courts to ask an objective question to uncover whether the Government actually considers its interests to be sufficiently compelling: Does it discriminate against religious conduct by permitting other conduct that undercuts its interests in the same way? The Supreme Court held, for example, that an exemption in the drug laws for the use of peyote undercut the claim that the Attorney General had a compelling safety interest in stopping another religious sect's use of tea containing a schedule 1 substance. See *O Centro*, 546 U.S. at 433.

Here, the record establishes that Defendants freely accept medical exemptions from their vaccine mandate and, additionally, not only do they permit school staff and visitors to be present in school unvaccinated, but they also let potentially hundreds of unvaccinated children to congregate – in fact approximately 24,000 unvaccinated home school, learning pod, and microschool students across the state. (Transcript of Testimony of Paul Hardesty, October 8, 2025, at 39-40; see *also* W. Va. Code § 18-8-1; Transcript of Testimony of Shannon McBee, October 8, 2025, at 197-198.)

It is equally problematic to claim that vaccination is essential to curbing the spread of disease, when West Virginia has funded \$22,000,000 for West Virginians to send their children out of state to be educated in a manner that avoids vaccination requirements, and then to return home and readily interact with other children and adults in the community. (Transcript of Testimony of Paul Hardesty, October 8, 2025, at 434-45).

In terms of both homeschooled, microschool, and learning pod students, as well as Hope Scholarship students obtaining their education outside state lines, Dr. Slemp testified, “schools don’t stop at their -- at their walls,” and “[t]hose same kids are elsewhere

in the community and are playing soccer and are at church and those kinds of things.”
(Transcript of Testimony of Dr. Catherine Slemp, September 11, 2025, at 62.)

The record is also clear that West Virginia likewise does not require adults to be vaccinated at all, even in school settings or other environments where adults regularly interact with children. (Transcript of Testimony of Paul Hardesty, October 8, 2025, at 38-40.)

Viruses and bacteria, including those that are sought to be prevented through the CVL, cannot and do not distinguish between a school classroom and a dance class, do not distinguish where the school building ends and the community begins, do not distinguish or spread based on whether someone is an adult or a child, and the risk of transmission is not dependent on the type of vaccine exemption (i.e. religious or medical or non-compliance), or the reason someone is not vaccinated. (Transcript of Hearing, September 10, 2025, Testimony of Dr. James Neuenschwander at 87-89.)

Moreover, West Virginia has prohibited COVID-19 vaccine requirements by school employers, and even by covered private employers for religious and medical reasons. W. Va. Code §§ 16-3-4b, 16-3-4c. West Virginia reported more than 7,500 deaths in West Virginia through the end of 2022 for COVID-19,¹⁵ and Defendants’ experts have acknowledged the dangers of COVID-19. However, West Virginia has determined that religious exemptions to COVID-19 vaccination requirements are appropriate for millions of adults in work settings and it does not require COVID-19 vaccinations for attendance in school. West Virginia additionally prohibits government entities from even inquiring into

¹⁵ <https://dhhr.wv.gov/News/2022/Pages/COVID-19-Daily-Update-12-30-2022.aspx>.

COVID-19 vaccination status as a condition for entry or gathering in government buildings or events. W. Va. Code § 16-3-4c.

Collectively, the Court finds the aggregation of individual behaviors the government permits (including those set forth in the findings of fact above), to include without limitation, medical exemptions; students who are permitted to attend school on a daily basis while willfully out of compliance with the CVL; teachers, coaches, and staff who are not subject to the CVL; the learning pod, homeschool, and microschool option for unvaccinated children; and members of the general public who have not received vaccines required under the law but who regularly intermingle on school campuses and mass gatherings throughout the State—pose a greater threat to West Virginia’s claimed goals than would permitting Plaintiffs’ children to attend school with a religious exemption. These other activities “produc[e] substantial harm” to the protection of the health and safety of the public, which Defendants assert is their compelling interest. *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 547 (1993).

In *Dahl v. Bd. of Trs. of Western Mich. Univ.*, 15 F.4th 728, 734-35 (6th Cir. 2021)—a First Amendment case with less demanding standards than RFRA (and EPRA) requires of the government—the granting of secular exceptions to a vaccination policy at issue undermined any argument of a “compelling” governmental interest in refusing religious exemptions. Moreover, as the Fifth Circuit observed in *U.S. Navy Seals 1-26 v. Biden*, 27 F.4th 336, 351 (5th Cir. 2022), merely asserting generalized interests is “nevertheless insufficient under RFRA.” *Id.* Instead, a government defendant must “scrutinize[] the asserted harm of granting specific exemptions to particular religious claimants.” *Id.* (citing *O Centro*, 546 U.S. at 431). “The question, then, is not whether [Defendants have] a

compelling interest in enforcing its [vaccination] policies generally, but whether it has such an interest in denying an exception to [each Plaintiff].” *U.S. Navy Seals 1-26*, 27 F.4th at 351 (citing *Fulton v. City of Philadelphia*, 593 U.S. 522, 541 (2021)).

“RFRA ‘demands much more[] ’than deferring to ‘officials ’mere say-so that they could not accommodate [a plaintiff’s religious accommodation] request.” *Id.* at 351 (citing *Holt v. Hobbs*, 574 U.S. 352, 369 (2015)). “That is because ‘only the gravest abuses, endangering paramount interests, give occasion for permissible limitation[] ’on the free exercise of religion.” *Id.* (citing *Sherbert*, 374 U.S. at 398).

Considering these factors, Defendants have failed to demonstrate that “the protection of the health and safety of the public” will be undermined in any material way by granting religious exemptions, particularly given the bevy of comparable activity that the state permits. Thus, the Court determines that requiring these children to be vaccinated is not “essential”—within the meaning of W. Va. Code § 35-1A-1(a)(1)—“to further a compelling governmental interest,” with that interest here being the protection of the health and safety of the public.

3. Defendants Have Also Failed to Satisfy the Least Restrictive Means Test

Having considered the full record before it, the Court also concludes that Defendants have failed to satisfy the least restrictive means test. Even assuming that vaccination of these children was essential to a compelling governmental interest, as provided in W. Va. Code § 35-1A-1(a)(1), EPRA then requires the Court to ascertain

whether requiring the children to be vaccinated is “the least restrictive means of furthering that compelling governmental interest.” *Id.*

“The least-restrictive-means standard is exceptionally demanding,” and it requires the government to “show[] that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting part[y].” *Burwell*, 573 U.S. at 728. “[I]f a less restrictive means is available for the Government to achieve its goals, the Government must use it.” *United States v. Playboy Entm’t Group.*, 529 U.S. 803, 815 (2000); *see also Holt v. Hobbs*, 574 U.S. 352, 364-65 (2015). The Court finds EPRA, like RFRA, “demands much more[]” than deferring to “officials’ mere say-so that they could not accommodate [a plaintiff’s religious accommodation] request.” *Holt*, 574 U.S. at 369.

Defendants cannot satisfy this standard given that forty-five states with a religious exemption process deploy a variety of alternative tactics, such as quarantine in the event of an outbreak, temporary exclusion from school, and other measures to effectively control vaccine preventable diseases while simultaneously respecting religious freedoms. *See supra* note 10 (detailing disease prevention alternatives in surrounding states that accept religious exemptions).

Indeed, Ms. McBee was clear in her testimony that West Virginia was capable of implementing exclusion in the event of an outbreak. (Transcript of Testimony of Shannon McBee, October 8, 2025, at 196.) Moreover, if vaccination is effective against transmission of disease—the undergirding justification for the CVL—then a handful of religious exemptions for in-person students would present no material risk to the remaining vaccinated students who attend school in person.

Defendants fail to explain how they “seriously undertook to address the problem with less intrusive tools readily available to it.” *McCullen v. Coakley*, 573 U.S. 464, 494 (2014); *see also Reynolds v. Middleton*, 779 F.3d 222, 231 (4th Cir. 2015) (holding that a regulation fails strict scrutiny where the government never tried or considered less restrictive alternatives).

Defendants failed to do that here. Mr. Hardesty testified that the State Board Defendants did not contact or communicate with their board of education counterparts in Ohio, Pennsylvania, Maryland, Virginia, or Kentucky regarding their experiences with religious exemptions or quarantine protocols. (Transcript of Testimony of Paul Hardesty, October 8, 2025, at 50:2-5.)

In addition, where, as here, utilization of less restrictive means is required, the government “may no more create an underinclusive statute, one that fails truly to promote its purported compelling interest, than it may create an overinclusive statute, one that encompasses more protected conduct than necessary to achieve its goal.” *Lukumi*, 508 U.S. at 578. When strict scrutiny applies, a government policy survives “only if it advances ‘interests of the highest order’ and is narrowly tailored to achieve those interests,” meaning that “so long as the government can achieve its interests in a manner that does not burden religion, it must do so.” *Fulton*, 593 U.S. at 541. The CVL cannot withstand heightened scrutiny because it is both over-inclusive and under-inclusive relative to the government objectives it purportedly attempts to achieve.

The State Board of Education required vaccination of its 18,000 teachers or 10,000 additional staff members, who interact closely with students. (*Id.* at 38-40.) Similarly, the State Board of Education has not required people coming into schools for crowded

sporting events or performances to be vaccinated. (*Id.* at 39-40.) And the State Board of Education has not even inquired about or tracked travel out of state, including to areas with disease outbreaks, of students or staff. (*Id.* at 43.) Equally problematically, the Defendants do not regulate or prohibit students or staff from interacting with unvaccinated children, even with knowledge that children regularly congregate in social settings out of school. (*Id.* at 43-44.)

Here, the record establishes that Defendants freely accept medical exemptions from their vaccine mandate and permit school staff and visitors to be present in school unvaccinated without limitation. (Transcript of Testimony of Paul Hardesty, October 8, 2025, at 39-40.). Moreover, they also let potentially hundreds of unvaccinated children to congregate – in fact approximately 24,000 children across the state – in homeschool settings, learning pods, and microschools across the state. (Transcript of Testimony of Paul Hardesty, October 8, 2025, at 40-41; see *also* W. Va. Code § 18-8-1; Transcript of Testimony of Shannon McBee, October 8, 2025, at 197-198.)

In terms of both homeschooled, microschool, and learning pod students, as well as Hope Scholarship students obtaining their education outside state lines, and as Dr. Slemple testified, “schools don’t stop at their -- at their walls,” and “[t]hose same kids are elsewhere in the community and are playing soccer and are at church and those kinds of things.” (Transcript of Testimony of Dr. Catherine Slemple, September 11, 2025, at 62.)

Viruses and bacteria, including those that are sought to be prevented through the CVL, cannot and do not distinguish between a school classroom and a dance class, do not distinguish where the school building ends and the community begins, do not distinguish or spread based on whether someone is an adult or a child, and the risk of

transmission is not dependent on the type of vaccine exemption (i.e. religious or medical or non-compliance), or the reason someone is not vaccinated. (Transcript of Hearing, September 10, 2025, Testimony of Dr. James Neuenschwander at 87-89.).

Moreover, West Virginia has prohibited COVID-19 vaccine requirements by school employers, and even by covered private employers for religious and medical reasons. W. Va. Code §§ 16-3-4b, 16-3-4c. West Virginia reported more than 7,500 deaths in West Virginia through the end of 2022 for COVID-19,¹⁶ and Defendants' experts have acknowledged the dangers of COVID-19. However, West Virginia has determined that religious exemptions to COVID-19 vaccination requirements are appropriate for millions of adults in work settings and it does not require COVID-19 vaccinations for attendance in school. West Virginia additionally prohibits government entities from even inquiring into COVID-19 vaccination status as a condition for entry or gathering in government buildings or events. W. Va. Code § 16-3-4c.

Defendants have suggested that vaccination requirements on others – to include adults or visitors in schools – is more restrictive. But that is an incorrect analysis: EPRA asks whether it is a more restrictive burden on religious exercise, not whether it is burdensome on other people generally. W. Va. Code § 35-1A-1(a).

On this record, then, the least restrictive means requirement in W. Va. Code § 35-1A-1(a)(1) also has not been met. Therefore, having considered the entirety of the record before it, this Court finds Plaintiffs have demonstrated success on their W. Va. Code § 35-1A-1(a)(1) claim.

¹⁶ <https://dhhr.wv.gov/News/2022/Pages/COVID-19-Daily-Update-12-30-2022.aspx>.

4. *Plaintiffs Have Established Success on Their W. Va. Code § 35-1A-1(a)(2) Claim*

EPRA establishes that there is an independent violation of EPRA when the government “[t]reat[s] religious conduct more restrictively than **any conduct** of reasonably comparable risk.” W. Va. Code § 35-1A-1(a)(2) (emphasis added).

Collectively, the record evidence of the aggregation of individual secular behaviors the government permits—medical exemptions, teachers, coaches, and staff who are not subject to the CVL, the learning pod option for unvaccinated children, and members of the general public who have not received vaccines required under the law but who regularly intermingle on school campuses and mass gatherings throughout the State—pose a significantly greater to Defendants’ stated disease prevention goals than would permitting Plaintiffs’ children to attend school with a religious exemption. In other words, Defendants have permitted conduct of a “reasonably comparable risk” to permitting religious exemptions to the CVL.

The record has established that Defendants accept medical exemptions to the CVL, as well as permit school staff and visitors to be present in school unvaccinated; they also permit potentially hundreds of unvaccinated children to congregate for purposes of education in group learning pods, W. Va. Code § 18-8-1. There is no limitation on the number of unvaccinated children who may gather together in West Virginia to receive group instruction in a learning pod. *Id.* West Virginia also does not require adults to be vaccinated at all, even in school settings or other environments where adults regularly interact with children. See Transcript of Testimony of Paul Hardesty, October 8, 2025, at 38:14-20; see *also id.* at 39:5-20. Further, Defendants do not require children, visitors, or

others to be vaccinated to attend sporting events at schools, or other events on school campuses.

Moreover, it has also been established that West Virginia has outright prohibited COVID-19 vaccine requirements, including by school employers, and even by covered private employers for religious and medical reasons. W. Va. Code §§ 16-3-4b, 16-3-4c. And record evidence demonstrates that Defendants permit additional comparable activity from a risk perspective. See *supra* Findings of Fact, pp. 4-26, for full discussion.

Therefore, considering these factors, the Court concludes that the government has “[t]reat[ed] religious conduct more restrictively than” conduct of “reasonably comparable risk.” W. Va. Code § 35-1A-1(a)(2). The Court finds that, on the present record, Plaintiffs have established an ongoing violation of W. Va. Code § 35-1A-1(a)(2) on this separate and distinct ground warranting permanent injunctive and declaratory relief in this case.

G. Irreparable Harm Will Occur to the Plaintiffs and the Class Without Permanent Injunctive Relief

This Court finds that irreparable harm will occur to Plaintiffs and the Class without permanent injunctive relief. “Injunctive relief is designed to meet a real threat of a future wrong or a contemporary wrong of a nature likely to continue or recur.” *Northeast Nat. Energy LLC v. Pachira Energy LLC*, 243 W. Va. 362, 371 (2020). “West Virginia law is clear that equity will entertain jurisdiction to prevent a threatened injury[.]” *Id.* at 369 (citation modified). “An irreparable injury is one that is actual and imminent and it is likely that the past offensive conduct will recur.” *Id.* (citation modified). “[T]he term ‘irreparable’ does not always mean what it seems to signify, that is, a physical impossibility of reparation.” *Mullens Realty & Ins. Co. v. Klein*, 85 W. Va. 712, 718 (1920). West Virginia

law is clear that “[e]quity will entertain jurisdiction to prevent a threatened injury[.]” *Summers v. Parkersburg Mill Co.*, 77 W. Va. 563, 565 (1916).

The U.S. Supreme Court has held that “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). And the Supreme Court has specifically applied its irreparable harm jurisprudence to the freedom of religion context, holding that a plaintiff may be “irreparably harmed by the loss of free exercise rights ‘for even minimal periods of time.’” *Tandon*, 593 U.S. at 64 (quoting *Roman Cath. Diocese*, 592 U.S. at 19); *Mahmoud*, 145 S. Ct. 2332 (denying parents educational choice constitutes irreparable harm).

The Fourth Circuit and U.S. District Court for the Northern District of West Virginia have held similarly: “[T]he denial of a constitutional right . . . constitutes irreparable harm for purposes of equitable jurisdiction.” *Ross v. Meese*, 818 F.2d 1132, 1135 (4th Cir. 1987); *see also Recht v. Justice*, No. 5:20-CV-90, 2020 U.S. Dist. LEXIS 193166, at *17 (2020) (Bailey, J.). *See also Ramirez v. Collier*, 595 U.S. 411, 433 (2022) (irreparable harm met in RFRA claim because of inability to freely exercise religion).

Other federal appellate courts have concluded that the Supreme Court’s First Amendment irreparable harm analysis would extend to EPRA’s federal analogue—RFRA, 42 U.S.C. § 2000bb—when courts are considering a preliminary injunction. *See Korte v. Sebelius*, 735 F.3d 654, 666 (7th Cir. 2013) (concluding the First Amendment’s irreparable harm analysis would extend to RFRA, a law that the people’s representatives passed to protect against the violation of free-exercise rights); *Kikumura v. Hurley*, 242

F.3d 950, 963 (10th Cir. 2001) (“[C]ourts have held that a plaintiff satisfies the irreparable harm analysis by alleging a violation of RFRA.”).

It is also established that this intangible injury (the coerced violation of religious beliefs) is irreparable even when the coercion comes from such lesser forms of pressure than the deprivation of educational opportunities for one’s children, such as the threatened loss of a civilian job or the loss of the ability to play a college sport. *See Dahl*, 15 F.4th at 730, 736; *see also TransUnion LLC v. Ramirez*, 594 U.S. 413, 425-26 (2021); *Elrod*, 427 U.S. at 373. The Court finds that here, too, the injury is irreparable.

In addition to the violation of statutory rights, EPRA itself is clear that money damages are not available under the statute. W. Va. Code § 35-1A-1(b). The West Virginia Supreme Court of Appeals has held that the unavailability of money damages (as is the case here) leads to a conclusion that there is irreparable harm. *See Pachira Energy LLC*, 243 W. Va. at 371. And, again, the court finds that the harm here is further irreparable because we deal with the loss of educational opportunities that are a fundamental constitutional right in this State. *See Pauley*, 162 W. Va. at 707.

There is no method other than permanent injunctive and declaratory relief to permit Plaintiffs’ children to obtain these educational opportunities and no monetary remedy against the officials depriving them of religious freedoms. Accordingly, considering record before it, the Court finds that Plaintiffs have demonstrated irreparable harm on multiple fronts such that permanent injunctive and declaratory relief is appropriate.

H. The Likelihood of Harm to the Defendants Does Not Militate Against Permanent Injunctive Relief

The Court also finds that the likelihood of harm to the Defendants does not militate against permanent injunctive and declaratory relief. Generally, when the government is

the nonmovant, these last two injunction factors merge. See *Miranda v. Garland*, 34 F.4th 338, 365 (4th Cir. 2022). An injunction will not disserve the public interest where it will prevent statutory or constitutional deprivations. See *Newsom v. Albemarle County Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003) (explaining that “upholding constitutional rights serves the public interest”); *Centro Tepeyac v. Montgomery Cnty.*, 722 F.3d 184, 191 (4th Cir. 2013). Similarly, Defendants will in no way be “harmed by issuance of an injunction that prevents the state from enforcing unconstitutional restrictions.” *Legend Night Club v. Miller*, 637 F.3d 291, 302-03 (4th Cir. 2011).

In RFRA cases—as in other cases involving free-exercise rights—the likelihood of success on the merits is typically the dispositive factor when assessing injunctive relief. Here, the public interest factor is heightened because it is in the public’s interest to issue a permanent injunction to stop Defendants’ ongoing illegal conduct and violations of statutory rights for which there is no monetary remedy.

The government usually cannot rely on any alleged harms from stopping unconstitutional or illegal conduct. See *Bays v. City of Fairborn*, 668 F.3d 814, 825 (6th Cir. 2012). Equity arguments advanced by the government can never justify a violation of the law. *Cooper v. Gwinn*, 171 W. Va. 245 (1981) (explaining that it is “mischief and injustice” that results from “the failure of government to follow the law of the land”). Plainly, people have an interest in ensuring that their government follows the law. *Id.*; see generally *Dahl*, 15 F.4th at 735-36. This Court recognizes that this analysis extends to violations of EPRA, a law that the people’s representatives passed to protect religious freedom in West Virginia. See, e.g., *Korte v. Sebelius*, 735 F.3d 654, 666 (7th Cir. 2013); *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1145-46 (10th Cir. 2013) (en banc).

Moreover, this Court finds that Defendants have not adduced evidence that the particular children at issue pose a risk to anyone else or that there is an increased prevalence, likelihood, or present outbreaks of disease of concern that could not be addressed by alternative measures in the event of such outbreaks. See Transcript of Testimony of Dr. James Neuenschwander, September 10, 2025, at 126:22-127:11; Transcript of Testimony of Dr. Catherine Slemp, September 11, 2025, at 62, 135-135, 154-155. Accordingly, the Court finds that the likelihood of harm to Defendants does not militate against permanent injunctive relief in this case such that permanent injunctive and declaratory relief is therefore warranted.

I. A Paramount Public Interest Exists to Ensure Defendants Comply With EPRA

Lastly, this Court finds that a paramount public interest exists to ensure Defendants comply with EPRA. An injunction will not disserve the public interest where it will prevent statutory or constitutional deprivations. See *Newsom*, 354 F.3d at 261 (explaining that “upholding constitutional rights serves the public interest”). And the public interest is well-served by ensuring that government actors comply with the law. See *Cooper*, 171 W. Va. 245 (explaining that it is “mischief and injustice” that results from “the failure of government to follow the law of the land”).

While the record before the Court shows that Defendants have pointed to generalized public interests in enforcing the CVL against Plaintiffs, this Court finds that those interests are not so compelling as to justify violations of EPRA. Accordingly, the Court concludes that permanent injunctive and declaratory relief is appropriate in this case.

ORDERS ENTERED AND RELIEF GRANTED

For the reasons set forth herein, Plaintiffs' requested relief for declaratory relief and a permanent injunction is **GRANTED**.

1. The Court **DECLARES** that Defendants' no-religious exemption policy to the CVL violates EPRA, for the reasons set forth herein;
2. Further, pursuant to W. Va. Civ. R. 65, Defendants, the West Virginia Board of Education, and its members Nancy White, Victor Gabriel, F. Scott Rotruck, L. Paul Hardesty, Robert W. Dunlevy, Christopher Stansbury, Deborah Sullivan, Gregory Wooten, Sarah Armstrong Tucker, Cathy Justice, and Superintendent Michele Blatt, and Defendants Raleigh County Board of Education, and its members Larry Ford, Richard Snuffer, Charlotte Hutchens, Marie Hamrick, Marsha Smith, and Superintendent Serena Starcher (all sued in their official capacity), and Defendant Intervenor Jane Doe, as well as their officers, agents, servants, employees, and attorneys, and persons who are in active concert or participation with them who receive notice of this order (collectively, "**Enjoined Defendants**"), are hereby **PERMANENTLY ENJOINED** from enforcing, in any manner whatsoever, the CVL (including pursuant to their own interpretation of, or policies related to, same), against the Plaintiffs, members of the Class, or their minor children. For the avoidance of all doubt, the Enjoined Defendants shall not prevent the Plaintiffs, members of the Class, or their minor children from enrolling in school, attending school, or participating in extracurricular sports because of their vaccination status.

IT IS SO ORDERED.

/s/ Michael E. Froble

Circuit Court Judge
14th Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.