UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

BRANDON BONNER, Plaintiff, v. STAMFORD BOARD OF EDUCATION; DARLINE GASPARD, in her official capacity only; CORINE MATARASSO, in her official capacity only; BROOKE PELLI, in her official capacity only; KENDRA BROWN, in her official capacity only; Defendants.	:	DKT No.: 25-cv-2137-KAD June 4, 2026

MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

The Plaintiff, Brandon Bonner, respectfully asks the Court to deny the Defendants' motion to dismiss (Dkt. 16) in its entirety.

This case is about whether the government may force a disabled, four-year child out of the only school that can educate her — and then threaten her father with a child services investigation — unless he abandons his faith. Brandon Bonner is a church elder and the father of a four-year-old girl who is autistic, completely nonverbal, and dependent on specialized public special education services to have any chance of progressing educationally. The Defendants recognized that dependency. They evaluated his daughter, found her eligible for special education services required by federal law, developed an individualized education plan for her, and enrolled her in a preschool specially dedicated to meeting her needs and those of similarly situated

Oral Argument Requested

students. That was the right thing to do, and it reflected their legal obligation under federal law.

The Defendants then began denying Bonner's daughter education and federally mandated services because she is unvaccinated. Bonner, however, may not vaccinate his daughter without violating his religious beliefs because he believes that receiving vaccines tested or manufactured using cell lines derived from aborted human fetal cells is a sin before God — a conviction that encompasses virtually every vaccine on Connecticut's mandatory schedule. Rather than explore a religiously tolerant solution as the First Amendment requires, the Defendants escalated their hostility toward Bonner's beliefs. Rather than offer remote services, home visits, or any alternative means of delivering the special education they are legally obligated to provide, the Defendants offered nothing. Rather than attempt to accommodate Bonner's religious beliefs, the Defendants escalated matters — threatening to report Bonner and his wife to the Connecticut Department of Children and Families for "educational neglect" despite knowing that they are the reason his daughter is not in school. They then revoked her special education services entirely on the false premise that Bonner had chosen to make her unavailable for services.

The Defendants' actions violate Bonner's First Amendment rights under *Mahmoud v. Taylor*, 606 U.S. 522 (2025) and *Mirabelli v. Bonta*, 146 S.Ct. 797 (2026). They also violate the federal Religious Freedom Restoration Act (RFRA) and the Individuals with Disabilities Education Act (IDEA). Thus, the Court should deny the Defendants' motion to dismiss Bonner's complaint.

BACKGROUND

Brandon Bonner is a Stamford father of a four-year-old daughter who suffers from autism. Dkt. 1, ¶ 51. He is also an elder at Bystorm Ministries – an affiliate of the Southern Baptist Convention. *Id*. at ¶ 51.

Bonner's autistic daughter is disabled within the meaning of the Individuals with Disabilities Education Act (IDEA) because she suffers from speech and language impairments that render her completely non-verbal. *Id*. at ¶ 52. Her disabilities adversely affect her academic performance, and she requires special education services in order to have any chance of progressing educationally. *Id*. at ¶ 53. Her disabilities render it impossible for her parents to adequately educate her because they lack the money and specialized training necessary. *Id*. at ¶ 55.

These obvious disabilities led the Stamford Board of Education to determine in 2024 that Bonner's daughter required special education services, and it developed an individual education plan (IEP) for her pursuant to the IDEA. *Id*. at ¶ 54. To provide the IEP, Stamford enrolled her in Apples Pre-K – a preschool specially designed to provide special education services to students in her circumstances. *Id*. at ¶ 54.

Brandon Bonner is a Christian and believes that abortion is a sin against God as a religious matter. *Id*. at ¶ 56. He also believes that receiving a vaccination that has been tested, manufactured, or otherwise developed through the use of cell lines derived from aborted fetal cells would be a sin before God. *Id*. at ¶ 57. Bonner also believes that Christians have a religious duty to God to abstain from act that they believe, and know, to be sinful. *Id*. at ¶ 58. Bonner and his wife are teaching these beliefs to their daughter.

Id. at ¶ 59. Lastly, Bonner believes that he has a religious responsibility to educate his daughter. *Id*. at ¶ 60.

Bonner's religious beliefs conflict with Conn. Gen. Stat. § 10-204a, which requires, as a condition of admittance, preschool and K-12 schoolchildren to receive a series of vaccinations unless they receive a medical exemption. *Id*. at ¶ 10. Because virtually every vaccination required by Connecticut law has been tested in some fashion on cell lines derived from aborted fetal cells, *Id*. at ¶ 49, Bonner could not allow his daughter to receive them. *Id*. at ¶¶ 56-59.

In October 2025, Stamford barred Bonner's daughter from attending Apples Pre-k because she was not vaccinated. *Id*. at ¶ 61. They remained impervious to Bonner and his wife's attempts to negotiate their daughter's return to Apples Pre-K in a manner that respected their religious beliefs. *Id*. at ¶¶ 62-63. When Bonner refused to vaccinate his daughter, the Defendants threatened to report him and his wife to the Connecticut Department of Children and Families for "educational neglect" despite knowing they are responsible for Bonner's daughter falling behind in her educational progress. *Id*. at ¶¶ 64-65. Such a report would institute a state investigation against Bonner and could implicate custody of his daughter. *Id*. at ¶ 66.

On December 17, 2025, the Defendants revoked Bonner's daughter's IEP. *Id*. at ¶ 67. Their email incorrectly claimed that Bonner was choosing not to make his daughter available to them so they could provide IEP services to her even though Bonner would make her available to them in any forum as long as it does not violate his religious beliefs. *Id*. at ¶ 68-70. She has remained out of school and without the services she desperately needs since.

LEGAL STANDARD

The Defendants seek dismissal under Fed. R. Civ. P. 12(b)(1), 12(b)(5), and 12(b)(6). The legal standards for each are below:

I. Lack of Subject Matter Jurisdiction – Fed. R. Civ. P. 12(b)(1):

When a Rule 12(b)(1) motion "is facial, *i.e.*, based solely on the allegations of the complaint or the complaint and exhibits attached to it…, the plaintiff has no evidentiary burden." *Carter v. HealthPort Technologies*, 822 F.3d 47, 56 (2d Cir. 2016). The Court's task "is to determine whether the Pleading alleges facts that affirmatively and plausibly suggest" that it has subject matter jurisdiction. *Id*. at 56-57 (cleaned up). The normal rules apply. The Court accepts "as true all material factual allegations of the complaint… and draw[s] all reasonable inferences in favor of the plaintiff." *Id*. at 57 (cleaned up).

A defendant may also make "a fact-based Rule 12(b)(1) motion, proffering evidence beyond the Pleading." *Id*. at 57. If the defendant's evidence reveals "factual problems in the assertion of jurisdiction," the plaintiff must present their own evidence in opposition to the defendants' evidence. *Id*. at 57 (cleaned up). The plaintiff, however, "are entitled to rely on the allegations in the Pleading if the evidence proffered by the defendant is immaterial because it does not contradict plausible allegations that are themselves sufficient to show standing." *Id*. at 57.

If the extrinsic evidence is material and contested, the Court must make findings of fact in its decision on subject matter jurisdiction. *Id*. at 57.

II. Insufficient Service of Process – Fed. R. Civ. P. 12(b)(5):

Bonner bears "the burden of establishing that service was sufficient." *Khan v. Khan*, 360 Fed.Appx. 202, 203 (2d Cir. 2010). To decide Rule 12(b)(5) motions, courts look to Fed. R. Civ. P. 4, which governs the service of process.

III. Failure to State a Claim – Fed. R. Civ. P. 12(b)(6):

To survive a Rule 12(b)(6) motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (cleaned up). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. at 678. This standard is not "akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id*. at 678 (cleaned up). Mere legal conclusions and "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements" are not sufficient. *Id.* at 678.

When reviewing a motion to dismiss, courts must accept all well-pleaded factual allegations as true and draw "all reasonable inferences in the non-movant's favor." *Interworks Sys. Inc. v. Merch. Fin. Corp.*, 604 F.3d 692, 699 (2d Cir. 2010).

ARGUMENT

I. The Court Should Not Dismiss Bonner's Claims For Defective Service of Process.

The Defendants move the Court to dismiss Bonner's claims for insufficient service of process because service was made 2 days after the deadline set by Fed. R. Civ. P. 4(m) expired. Dkt. 16-1, p. 8. Other than its lateness, the Defendants do not raise any

other challenge to the sufficiency of the process served. The Court should deny their motion.

First, the main facts are not in dispute. Bonner filed the complaint on December 22, 2025. Dkt. 1. The deadline to serve it under Fed. R. Civ. P. 4(m) was March 23, 2026. The complaint was served on March 25, 2026. Dkt. 11.

Second, the undersigned lost track of the service deadline in this case because of a combination of personal circumstances. He filed this case shortly before the Christmas and New Year holiday, and made a reminder to arrange for service after he returned from travel after the holiday. **Decl. of Cameron Atkinson, ¶ 3**. At the time, his firm did not have support staff, and only had his wife/law partner and himself. *Id*. at ¶ 4. Over the Christmas holiday, the undersigned's wife suffered a completely debilitating flareup related to a serious and unknown medical condition. *Id*. at ¶ 6. Upon return to Connecticut, the undersigned sought to balance caring for her, running his busy criminal practice, and handling his civil cases, and he simply lost track of service of process in this case. *Idi. At* ¶¶ 6-7. His wife's medical condition then compounded and ultimately led to a serious and deeply personal tragedy in February 2026, which, in turn, led to the discovery of her medical issue and treatment. *Id*. at ¶ 8. The undersigned's wife took time off to recover and then returned to light responsibilities when she did eventually return. *Id*. at ¶ 9. The undersigned could not take time off and attempting to balance grief, household responsibilities, and his practice's demands. *Id*. at ¶¶ 10-11. He simply lost track of service in this case until he received a notification from his case management system on March 21, 2026 reminding him that service was due on March 22, 2026. *Id*. at ¶¶ 12-13. He looked to see if service had been made, and, when he found that it was not, he and his

wife quickly located a marshal to make expedited service. *Id*. at ¶¶ 14-15. The undersigned takes responsibility for this situation and apologizes to the Court.

That said, dismissal is not warranted here. Fed. R. Civ. P. 4(m) does not require automatic dismissal for late service. Instead, it contains two avenues by which the Court may exercise its discretion to extend the time for service. Fed. R. Civ. P. 4(m). An extension of time for service is mandatory under the first avenue if the plaintiff "shows good cause for the failure." Fed. R. Civ. P. 4(m) (stating that "the court must extend the time for service for an appropriate period" upon showing of good cause). The second avenue is wholly discretionary and allows the Court to "order that service be made within a specified time." Fed. R. Civ. P. 4(m).

Bonner first submits that good cause exists to *nunc pro tunc* extend the time for service and deem service timely. This Court (Shea, J.) recently explained that "an illness can constitute good cause for a delay in service…." *O'Brien v. Rushmore Loan Management Services, LLC*, 2025 WL 964813, at *10 (D. Conn. 2025) (recounting prior rulings, but denying relief due to prior warnings about delayed service) (cleaned up). While in this case the undersigned did not suffer from the illness himself, his wife did, and caring for her and managing his practice did cause him to lose track of the service deadline in this case. Moreover, his wife's illness compounded into a personal tragedy that affected both of them. Once the undersigned discovered his oversight, he immediately acted to fix it. Also pertinent to the good cause finding, the Defendants have not claimed any prejudice from the 2-day tardiness of service. None exists because the matters alleged by this case occurred within the last year, and they are still ongoing. Memories and evidence are still fresh, and the Defendants were ultimately properly

served and can fully defend this lawsuit on the merits. Thus, Bonner submits that good cause exists, and asks the Court *nunc pro tunc* to extend the deadline.

Even without a showing of good cause, the Court should still exercise its discretion to extend the deadline for service. New York district courts evaluate such exercises of their discretion using a five-factor test: (1) whether the plaintiff make diligent efforts to effect service; (2) whether the statute of limitations bar the refiled action; (3) whether the defendant had actual notice of the claims; (4) whether the defendant attempts to conceal the defect in service; (5) whether the defendant would be prejudiced by an extension. *See Arch Insurance Co. v. Golden Bridge Fire Department*, 2018 WL 1725225, at *4 (S.D.N.Y. 2018).

With respect to the first factor, the plaintiff did act diligently after the undersigned discovered his error. The undersigned acted quickly to locate a marshal to effectuate speedy service, and he did make speedy service that was proper in all other respects. To the extent that there was delay, it was caused by human frailty of the kind that the Connecticut bar has long been understanding and sympathetic too.

Second, the statute of limitations does not bar the refiled action, which typically would not weigh against a requirement to refile.

Third, the Defendants have actual notice of the claims in this case. They were served with the complaint, and have appeared to defend the case. The “core function of service” has thus been fulfilled by providing the Defendants “a fair opportunity to answer the complaint and present defenses and objections. *Id*. at *5 (cleaned up).

Fourth, the Defendants did not conceal the defect in service. They properly raised it.

Fifth, the Defendants have not claimed any prejudice in their opening memorandum of law or otherwise hinted at how they are prejudiced. "[W]here, as here, a defendant received actual notice and had the opportunity to address the merits of the action, prejudice is minimal." *Id*. at *5. Moreover, the delay here is also minimal. Two days makes no major difference in how the Defendants appeared and defended this case. Indeed, most extensions of time to file motions and other papers require longer.

In weighing these factors, the Court should bear in mind that Fed. R. Civ. P. 1 directs courts and parties to administer the rules of civil procedure "to secure the just, speedy, and inexpensive determination of every action and proceeding." If the Court dismisses Bonner's action, he will simply refile it immediately and reserve the Defendants. The only purpose dismissal would serve would be to impose additional costs on Bonner and delay the determination of this action. In the absence of identifiable prejudice to the Defendants, the Court should decline a result that only increases the cost of determining this action and delays its resolution.

Thus, Bonner respectfully asks the Court to deny the Defendants' motion to dismiss for insufficient service of process and *nunc pro tunc* extend the time to deem his service of process timely.

II. Bonner Concedes That His Official Capacity Claims Against The Individual Defendants Are Duplicative And Has Filed A Voluntary Dismissal Of Them.

After reviewing the Defendants' authorities, the undersigned has realized that the official capacity claims against the individual defendants are duplicative and has filed a voluntary dismissal of them. To the extent that dismissal does not resolve the issue, Bonner does not oppose dismissal without prejudice to him being able to readd them if some sort of governmental immunity be asserted as to the municipal defendant.

III. The Court Should Deny The Motion To Dismiss Bonner's Free Exercise Claim (Count One) Because *Mahmoud v. Taylor* and *Mirabelli v. Bonta* Justify It.

The Defendants' motion to dismiss Bonner's Free Exercise Claim for failure to state a claim lacks merit for four reasons: (1) *Mirabelli v. Bonta*, 146 S.Ct. 797 (Mar. 2, 2026) clarified that *Mahmoud v. Taylor*, 606 U.S. 522 (2025) applies even when government asserts a public health interest; (2) the principal precedents that the Defendants present as controlling are neither controlling nor on point, and are readily distinguishable; (3) they make no effort to factually contest whether the burden on Bonner's right to direct the religious upbringing of his daughter is substantial, and (4) Conn. Gen. Stat. § 10-204a, as applied to Bonner, does not survive strict scrutiny. Accordingly, the Court should deny their motion as to Count One.

A. *Mirabelli v. Bonta*, 146 S.Ct. 797 (Mar. 2, 2026) clarified that *Mahmoud v. Taylor*, 606 U.S. 522 (2025) applies even when government asserts a public health interest.

After *Mahmoud*, litigation across the country immediately presented courts with the question of whether *Mahmoud* applied beyond the school curricula context. In another religious exemption case, this Court (Bolden, J.) ruled, without the benefit of *Mirabelli*, that *Mahmoud* only applied to school instruction and curricula. *See Milford Christian Church v. Bye*, 2025 WL 2300788, at *8 n.2 (D.Conn. Aug. 8, 2025) ("*MCC*"). *Mirabelli*, however, reversed a similar conclusion by the Ninth Circuit, and clarified that *Mahmoud* applies in the public health context too. Beyond *Mirabelli*, *Mahmoud* itself clearly instructed courts and lawyers not to narrowly limit its principles as courts had previously done with *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

Moreover, in the vaccination context, the Supreme Court has already signaled that *Mahmoud* applies. *See Miller v. McDonald*, 146 S.Ct. 879(Mem) (2025). In *Miller*, it summarily vacated the Second Circuit's decision[1] rejecting free exercise challenge to New York's vaccination law and remanded for reconsideration in light of *Mahmoud*. If *Mahmoud* were categorically inapplicable to vaccination cases, that summary reversal would make no sense.

1. *Mirabelli* rejected narrow readings of *Mahmoud* and applied *Mahmoud* in the public health context.

In *Mirabelli*, the U.S. Supreme Court considered an application to vacate the Ninth Circuit's stay of a permanent injunction against (1) a California law that prevented schools and teachers from telling parents about their children's efforts to engage in gender transitioning at school unless the child consented and (2) a California law that required schools to use children's preferred names and pronouns regardless of parental wishes. *Mirabelli*, 146 S.Ct. at 800. It granted the application to vacate the Ninth Circuit's stay as to the parents' claims, which were Free Exercise and Due Process claims, by finding that they were likely to prevail on the merits. *Id*. at 801, 803.

Two aspects of *Mirabelli* are critical.

First, the Supreme Court specifically noted that the Ninth Circuit minimized *Mahmoud* by describing it as "a narrow decision focused on uniquely coercive curricular requirements." *Id*. at 802 (cleaned up). *Mirabelli* rejected that narrowing of *Mahmoud* and held that the burden before it – the "unconsented facilitation of a child's gender transition" – posed a greater "intrusion" on the parents' free exercise rights than that at issue in

[1] *Miller v. McDonald*, 130 F.4th 258 (2d Cir. 2025)

Mahmoud. *Id*. at 802. Put differently, *Mirabelli* considered central issue in post-*Mahmoud* free exercise litigation in the context of a non-instructive, non-curricular policy and squarely rejected any attempt to narrowly confine *Mahmoud*.

Second, *Mirabelli* indisputably considered laws and policies addressing government public health interests at their zenith because life was at stake. It acknowledged that "[g]ender dysphoria is a condition that has an important bearing on a child's mental health." *Id.* at 803. It discussed how John and Jane Poe's daughter began presenting as a boy and using a male name and pronouns at school during her seventh-grade year. *Id*. at 801. Her parents were never told during any parent-teacher meetings. *Id*. at 801. The Court noted that she "attempted suicide and was hospitalized" at the beginning of her eighth-grade year. *Id*. at 801. Only then did her parents learn of her gender dysphoria. *Id*. at 801. Mere months later, she was "rehospitalized and held there involuntarily because she was at risk for self-harm." *Id*. at 801. After she moved to a new school for the ninth grade, her gender dysphoria surface again, and her parents had to obtain "therapy" and "psychiatric care for her." *Id*. at 801.

Nonetheless, *Mirabelli*'s analysis did not change, and it did not limit *Mahmoud* to the curricula or instructional context. It applied *Mahmoud* as a general principle protecting parental, free-exercise rights. *Id.* at 802.

2. *Mahmoud* established a general Free Exercise principle from existing precedent.

Mahmoud itself established what *Mirabelli* made clear. It reaffirmed the principle that parents have the right "'to direct the religious upbringing of their children,' and that this right can be infringed by laws that pose 'a very real threat of undermining' the religious beliefs and practices that parents wish to instill in their children." *Mahmoud*, 606 U.S. at

543 (quoting *Yoder*, 406 U.S. at 218). It also announced that the right is violated by "'government policies that substantially interfere with the religious development of children.'" *Id.* at 546 (quoting *Espinoza v. Montana Dept. of Revenue*, 591 U.S. 464, 486 (2020)). In particular, it focused on the First Amendment's protection of "'the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through the performance of religious acts.'" *Id.* at 546-47 (quoting *Kennedy v. Bremerton Sch. Dist.*, 597 U. S. 507, 524 (2020)).

Mahmoud's analysis under these principles examined the religious practices before it and why the Montgomery School Board's LGBTQ+ storybook policies burdened them. The Supreme Court noted that, "for many Christians, Jews, Muslims, and others, the religious education of children is not merely a preferred practice but rather a religious obligation." *Id*. at 547. It also noted that the First Amendment's protections on this score extend to choices "outside the home." *Id.* Lastly, the Supreme Court recognized that, "due to financial and other constraints…, many parents have no choice but to send their children to a public school."[2] *Id.* (quotation marks omitted). Thus, the Supreme Court recognized that the First Amendment limits "the government's ability to interfere with a student's religious upbringing," even "in a public school setting." *Id.*

To give life to these principles, *Mahmoud* instructs courts to conduct a fact-intensive inquiry into whether "a law substantially interferes with the religious

[2] *Mahmoud* also recognized that homeschooling is never a legally sound alternative: "And homeschooling comes with a hefty price as well; it requires at least one parent to stay at home during the normal workday to educate children, thereby forgoing additional income opportunities. It is both insulting and legally unsound to tell parents that they must abstain from public education in order to raise their children in their religious faiths, when alternatives can be prohibitively expensive and they already contribute to financing the public schools." 606 U.S. at 562.

development of a child…." *Id.* at 550 (cleaned up). It necessarily allowed that such an inquiry "will depend on the specific religious beliefs and practices asserted, as well as the specific nature of the educational requirement or curricular feature at issue." *Id.* at 550. The focus of the inquiry though is the "very real threat of undermining the religious beliefs that the parents wish to instill in their children" posed by the requirement at issue. *Id.* at 543.

Mahmoud held that the books used by the Montgomery School Board did pose such a real threat because they imposed "upon children a set of values and beliefs that are hostile to their parents' religious beliefs…" and "exert upon children a psychological pressure to conform to their specific viewpoints." *Id.* at 553-554 (cleaned up). Further, the presentation of the books by authority figures and the normative discussions exacerbated the "objective danger" that the books would substantially interfere with the parents' ability to direct their children's religious upbringing. *Id.* (cleaned up).

After this discussion establishing general principles, *Mahmoud* addressed how courts had limited *Yoder* in the past and cautioned them not to make the same mistake with its holding: "We have never confined *Yoder* to its facts. To the contrary, we have treated it like any other precedent. We have at times relied on it as a statement of general principles…. And we have distinguished it when appropriate." *Id.* at 558.

Mahmoud itself took a similar approach with Supreme Court precedent to establish its rule by relying on precedent which did not involve public-school curricula choices. It relied not only on *Yoder* but also on *Espinoza v. Montana Department of Revenue* for the proposition that "we have long recognized the rights of parents to direct 'the religious upbringing' of their children.'" *Mahmoud*, 606 U.S. at 546 (quoting *Espinoza v. Montana*

Dept. of Revenue, 591 U.S. 464, 486 (2020) (quoting in turn *Yoder*, 406 U. S., at 213–214)). *Espinoza* involved neither public schools nor any issue of curriculum or instruction. Instead, parents of students at private Christian school sued the Montana Department of Revenue to challenge a rule that excluded religiously affiliated private schools from state scholarship program for students attending private schools. *See Espinoza*, 591 U.S. at 467-68.

Mahmoud also cited *Pierce v. Society of Sisters*, 268 U. S. 510, 532–535 (1925) as protecting the right to send a child "to a private religious school instead of a public school." *See Mahmoud*, 606 U.S. at 547. Nothing in *Pierce* required the Supreme Court to assess curriculum at public schools.

Mahmoud then identified *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943) as an early example of "recognized limits on the government's ability to interfere with a student's religious upbringing in a public school setting." *Mahmoud*, 606 U.S. at 548. *Barnette* considered a public school policy that required students to salute the flag. It was not about curriculum. The policy at issue in *Barnette* violated the First Amendment because it required "that students make an affirmation contrary to their parents' religious beliefs." *Id*. at 548. *Barnette* clearly established that the State could not "condition access to public education on making a prescribed sign and profession and at the same time… coerce attendance by punishing both parent and child." *Mahmoud*, 606 U.S. at 548 (cleaned up).

Even *Yoder* was not about a public school curriculum. Rather, *Yoder* represents a "more subtle form[] of interference with the religious upbringing of children," where "the threat to religious exercise was premised on the fact that high school education would

'expos[e] Amish children to worldly influences in terms of attitudes, goals, and values contrary to [their] beliefs.'" *Mahmoud*, 606 U.S. at 549 (quoting *Yoder*, 406 U.S. at 218). Instead, *Yoder* stands for the proposition that a government policy may substantially interfere with the religious development of a child even when the policy does not compel the child to affirm a belief or commit a forbidden practice, if it involves "pressure to conform to contrary viewpoints and lifestyles." *Id.* (cleaned up).

Mahmoud's lengthy journey through case law and its use of it left no doubt that *Mahmoud* established a broader rule applicable to every parental rights' claim that a law substantially burdens. It does not permit the government to treat First Amendment precedent establishing religious-based parental rights like a collection of buckets, where principles that restrain the government in one bucket do not matter in another bucket. The First Amendment's protections exist everywhere for every law that burdens them. *Mahmoud*, 606 U.S. at 545 (quoting *Tinker v. Des Moines Ind. Comm. Sch. Dist.*, 393 U.S. 503, 506-07 (1969)). *Mahmoud* left little doubt as to this principle, and *Mirabelli* placed it beyond doubt.

3. The Defendants' interpretation of *Mahmoud* and their reliance on *Perry v. Marteney* is wrong.

The Defendants minimize *Mahmoud* and relegate *Mirabelli* to a footnote in their memorandum of law. Dkt. 16-1, pp. 16-20 & n.4. As they see it, *Mahmoud* only protects against ideological indoctrination and does not apply in the vaccination context. *Id*. at pp. 18-19. They are incorrect.

First, if the Defendants' theory is correct, the Supreme Court furthered a colossal waste of judicial resources when it summarily vacated the Second Circuit's decision in *Miller v. McDonald*, 130 F.4th 258 (2d Cir. 2025) – a free exercise challenge to New York's

school vaccination law – and required reconsideration in light of *Mahmoud*. *See Miller v. McDonald*, 146 S.Ct. 879(Mem) (2025).

Second, the Fourth Circuit case that the Defendants rely on – *Perry v. Marteney*, 172 F.4th 315 (4th Cir. Apr. 8, 2026) (challenging West Virginia's lack of a religious exemption to its school vaccination requirement) – is legally unsound. It distinguished *Mirabelli* on the grounds that it "did not involve a public health measure" without explaining why the Supreme Court's discussion of "gender dysphoria" and the tragic facts of the Poes' daughter did not implicate public health. *Perry*, 172 F.4th at 327 n.1. Instead, it chose to characterize it as simply dealing, on a preliminary posture, "with whether schools could facilitate children's efforts to identify as the opposite gender without notifying their parents." *Id*. at 327 n.1. *Perry* also held that *Mahmoud* was not applicable because the West Virginia law concerned an issue of community health: "The need for some to protect the health and well-being of all was not present in *Yoder* or *Mahmoud*." *Id*. at 327.

Ultimately, *Perry*'s biggest error, however, was to do exactly what *Mahmoud* and *Mirabelli* held violates the Free Exercise Clause. It relied on *Prince v. Massachusetts*, 321 U.S. 158 (1944) to hold that "a state's authority as parens patriae" supersedes the parental rights recognized by *Mahmoud* and *Mirabelli* – not as a reasoned legal conclusion under the strict scrutiny framework, but rather categorically in the vaccination context in a manner that "cut[s] out the primary protectors of children's best interests: their parents." *Mirabelli*, 146 S.Ct. at 802. This is precisely the reasoning that *Mahmoud* and

Mirabelli ended, and *Perry* grossly erred by reaching that conclusion.[3] The Court should not make the same error.[4]

Lastly, even if the Court accepts *Perry*'s rationale that *Mahmoud* and *Mirabelli* applied only to educational requirements or curricula, Conn. Gen. Stat. § 10-204a and the Defendants' enforcement has become an educational requirement because it is a precondition to attendance at a Connecticut preschool or K-12 school. In addition, there can be no doubt that requiring a child to be vaccinated over a parent's religious objection to attend daycare, preschool, or any other school, teaches something. It teaches that vaccines are morally acceptable. It teaches that the government's say-so is more important than God's commandments. It teaches that those who feel liberty of conscience need not honor the sensitive consciences of others. In other words, Connecticut's vaccination requirement violates a parent's right to mold their child's priorities and physical development consistent with their biblical beliefs on complicity in immorality, the supremacy of God's commandments, and matters of conscience.

Accordingly, this case fits even within the erroneously narrow view of *Mahmoud* and *Mirabelli* that *Perry* advanced.

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[3] So too did *Grimsby v. Pan*, 2025 WL 2829502 (C.D. Cal. Aug. 29. 2025), which the Defendants rely on. Dkt. 16-1, p. 19.

[4] Defendants also rely on *Kondilis v. City of Chicago*, 160 F.4th 866, 871 n.4 (7th Cir. 2025), *see* Dkt. 16-1, p. 19, but it is difficult to see how *Kondilis*'s brief discussion of *Mahmoud* is relevant. It did not consider a religious-based, parental rights claim, but rather free exercise claims by Chicago police officers seeking religious exemptions from inputting their vaccination status into a database and entering COVID-19 testing results. *Kondilis*, 160 F.4th at 869. Accordingly, *Kondilis* did not consider a situation where *Mahmoud* was triggered.

B. The principal precedents that the Defendants present as controlling are neither controlling nor on point, and are readily distinguishable.

To elude the strict scrutiny inquiry that inevitably flows from *Mahmoud* and *Mirabelli*, the Defendants implicitly ask the Court to take the same route that *Perry* did and find that other cases hold more weight than *Mahmoud* and *Mirabelli* do. Dkt. 16-1, pp. 12-20. As already explained, *Perry* was wrong the moment it was conceived, and the Defendants' other cases lack merit.

First, the Defendants appeal to *Jacobson v. Massachusetts*, 197 U.S. 11 (1905) and *Zucht v. King*, 260 U.S. 174 (1922). Both *Jacobson* and *Zucht* failed to present free exercise challenges to the vaccination laws at issue. Instead, both presented substantive process claims, and *Zucht* added an equal protection claim. *See generally Jacobson*, 197 U.S. 11; *Zucht*, 260 U.S. 174. As Justice Gorsuch noted in his *Cuomo* concurrence when he compared *Jacobson* to the Free Exercise claims before the Court, "*Jacobson*… involved an entirely different mode of analysis, [and] an entirely different right…." *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 23 (2020) (Gorsuch, J., concurring). He noted that the claim at issue was an implied substantive due process right to bodily integrity that *Jacobson* properly applied the equivalent of rational basis scrutiny to. *Id*. at 23-24 (Gorsuch, J., concurring). The same goes for *Zucht*.

Second, the Defendants turn to *Prince v. Massachusetts*, 321 U.S. 158, 166-67 (1944)'s dicta that the Free Exercise Clause did not provide religious protection from compulsory vaccination. Dkt. 16-1, p. 13. *Prince*'s dicta, however, differed substantially from what it actually did. It first addressed the presumption of validity that applied to generally applicable laws and acknowledged that Massachusetts' child labor law was not generally applicable. *Prince*, 321 U.S. at 167. *Prince* then applied the prevailing test for

Free Exercise claims at the time: "clear and present danger." *Id*. at 167 (naming the test); *Id*. at 168-70 (applying it). The fact that Massachusetts' child labor law was a public health law did not immunize it from what was the prevailing, heightened scrutiny of that era. Instead, the Supreme Court properly looked to see whether a feature of the law would trigger heightened scrutiny, and, when it found that feature (lack of general applicability), it applied heightened scrutiny without stopping to assess whether a countervailing consideration – public health – mandated a different form of analysis. *Id*. at 167-70. This approach is perfectly consistent with *Mahmoud* and *Mirabelli*, which establish what triggers heightened scrutiny today.

Third, the Defendants point to *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990) and several cases applying its neutrality and general applicability principles to Free Exercise challenges to vaccination requirements. Dkt. 16-1, pp. 13-16. They place heavy reliance on *We The Patriots USA, Inc. v. Connecticut Office of Early Childhood Development*, 76 F.4th 130 (2d Cir. 2023) and *Spillane v. Lamont*, 350 Conn. 119 (2024) as applying these principles to Conn. Gen. Stat. § 10-204a. These cases, however, are inapplicable to this case.

Mahmoud explained that it establishes a separate path to strict scrutiny than *Smith* did. *Mahmoud*, 606 U.S. at 564. Under *Smith*, strict scrutiny is triggered "if the burdensome policy is [not] neutral and generally applicable." *Mahmoud*, 606 U.S. at 564. Under *Yoder* and *Mahmoud*, "[w]hen the burden imposed is of the same character as that imposed in *Yoder*, we need not ask whether the law at issue is neutral or generally applicable before proceeding to strict scrutiny." *Id*. at 564. In other words, all Bonner must show to trigger strict scrutiny under *Mahmoud* is that the policies at issue here

"substantially interfere" with his right to direct "the religious development" and "upbringing" of his daughter. *Id*. at 546.

Bonner's complaint is clear that he has only brought a Free Exercise claim under *Mahmoud*. Dkt. 1, ¶¶ 73-80. All of his allegations in Count One are directed towards the burden on his right to direct the religious upbringing of his daughter. *Id*. He did not bring a claim alleging that Conn. Gen. Stat. § 10-204a is not generally applicable as applied to him even though he could have. Thus, the Defendants' reliance on *Smith*, *We The Patriots USA, Inc.*, *Spillane*, and a plethora of cases applying neutrality and general applicability principles to mandatory vaccination laws are simply irrelevant to this case. They do not control this case or bar Bonner's claims in any way because none of them addressed the issue that he has raised under *Mahmoud* and *Mirabelli*.

C. The Defendants make no effort to factually contest whether the burden on Bonner's right to direct the religious upbringing of his daughter is substantial.

The Defendants make no effort to contest whether Bonner's factual allegations establish that the burden they have imposed on his right to direct his daughter's religious upbringing is substantial. Instead, they rely primarily on *Perry* for the proposition that, as a matter of law, Connecticut's vaccination mandate does not impose a substantial burden on Bonner's right because it is not of the same character of the burdens at issue in *Yoder* and *Mahmoud*. Dkt. 16-1, pp. 16-20. Their plea for dismissal is incorrect for at least two reasons.

First, *Mahmoud* held that the question of whether a law or policy imposes a substantial burden on parents' right to direct their children's religious upbringing "will always be fact-intensive" because it "will depend on the specific religious beliefs and

practices asserted, as well as the specific nature of the educational requirement or curricular feature at issue." *Mahmoud*, 606 U.S. at 550. As discussed above, *Mirabelli* makes clear that this principle applies outside of curricula context.

Despite *Mahmoud*'s express command that these claims are fact-intensive, the Defendants chose not to argue this case's facts. They do not discuss Bonner's factual allegations pertaining to his religious beliefs. They do not dispute Bonner's factual allegations on how they impact him and his daughter. Instead, they pivot to broad, non-binding precedent from other federal circuits and essentially ask the Court to avoid the factual analysis altogether. The Court may not avoid Bonner's specific factual allegations – which it must credit as true at this stage – to eject him from the courthouse without trampling *Mahmoud* underfoot.

The Defendants' failure to make any arguments on this point in their opening memorandum of law means that they have waived the right to make those arguments in their reply brief. "Arguments may not be made for the first time in a reply brief." *Knipe v. Skinner*, 999 F.2d 708, 711 (2d Cir. 1993). This is particularly true when "[t]here is no apparent reason Defendant could not have made this argument in its Motion and thus it should be deemed waived because it was raised for the first time in a reply brief." *Cadoret v. Sikorsky Aircraft Corp.*, 323 F.Supp.3d 319, 326 n.7 (D.Conn. 2018) (finding an issue should be considered waived where the plaintiff articulated his theory in his complaint and the defendant failed to address it).

Here, Bonner plainly alleged within the context of his *Mahmoud* claim that the "Defendants' enforcement of Connecticut's vaccination mandate against Bonner's daughter overwhelmingly interferers with Bonner's right to direct the religious upbring of

his daughter by forcing him to choose between her education and raising her in a manner consistent with his faith." Dkt. 1, ¶ 78. Bonner also further alleged that the threat of criminal prosecution, civil penalties, and the potential loss of custody further burdened his rights under *Mahmoud*. *Id*. at ¶ 79. In other words, Bonner plainly put his allegations in his complaint and specifically referenced the *Mahmoud* "substantial interference standard in his complaint. *Id*. at ¶¶ 73-80. The Defendants had every opportunity to test them on a motion to dismiss and chose not to.

The Court should not litigate this case for the Defendants by assessing the sufficiency of those allegations *sua sponte*. The party-presentation rule requires courts to decide the issues that parties present for decision, not "sally forth each day looking for wrongs to right." *United States v. Sineneng-Smith*, 590 U.S. 371, 376 (2020). While a modest initiating role is normally appropriate for a court, those circumstances are limited. *Id*. at 376. Exceptional circumstances that would require the Court to reach this issue are not present here, and the Court should decline to do so.

Second, even if the Court does reach the merits of whether the burden on Bonner's rights is substantial, *Mahmoud*'s "fact-intensive" standard dictates that his claim of a substantial burden is plausible and is entitled to proceed. His factual allegation that the Defendants' enforcement of Conn. Gen. Stat. § 10-204a against him and his daughter overwhelmingly interferes with his right to direct her religious upbringing is a well-pleaded factual allegation on its own. Dkt. 1, ¶ 78. It is buttressed by additional well-pleaded factual allegations that align perfectly with *Mahmoud*'s requirements.

At the outset, Bonner alleges his religious beliefs in detail: (1) Christian; (2) abortion is a sin against God; (3) receiving a vaccination that has a connection to cell

lines derived from aborted fetal cells is a sin before God; (4) he has a religious duty to God to abstain from acts he believes, and knows, are sinful; and (5) he has a religious duty to educate his daughter. *Id*. at ¶¶ 56-60.

Bonner also alleges his four-year old daughter's disabilities in detail: (1) she suffers from autism; (2) she suffers from speech or language impairments that render her completely non-verbal; (3) those impairments adversely affect her educational performance; and (4) she requires special educational services to have any chance of progressing educationally. *Id*. at ¶¶ 51-53. Those allegations are further supported by his allegations that the Defendants (1) determined in 2024 that his daughter needed special education services, (2) developed a individual education plan for her to meet her needs, and (3) enrolled her in a specialized educational setting to implement that plan. *Id*. at ¶ 54.

In the context of his daughter's disabilities, Bonner alleges the substantial burden on his religious beliefs: (1) he and his wife lack the specialized training and financial resources to help their daughter progress educationally; (2) he has a legal obligation under Connecticut law to adequately educate her when she turns 5 – Conn. Gen. Stat. § 10-184; and (3) the Defendants have already threatened to report him to the Connecticut Department of Children and Families for "educational neglect," which would open an invasive investigation into him and potentially implicate custody of his daughter. *Id*. at ¶¶ 55, 65-66, 79. Beyond these allegations, Bonner also alleges that he is a church elder and would make his daughter available to the Defendants in any other context to ensure that his daughter would have a fighting chance to progress educationally and wholistically. *Id*. at ¶¶ 50, 70.

These well-pleaded facts and the reasonable inferences to be drawn from them lead to the conclusion that the burden on Bonner's religious beliefs is substantial under *Mahmoud*. First, his daughter's disabilities render it impossible for him to provide her an alternative education. Second, the Defendants have categorically refused to provide her necessary special education in any forum except the one that would require Bonner to abandon his free exercise rights. Third, Bonner has a legal responsibility to adequately educate his daughter as soon as she turns five, and, if he does not, he will face criminal prosecution and the potential loss of custody of his daughter. *See* Conn. Gen. Stat. § 10-198a. Fourth, Bonner has already been threatened with a DCF investigation that could implicate custody of his daughter if he does not provide her the education that it is impossible for him to provide on his own and which the Defendants are denying her. Fifth, the Defendants have created a bright-line situation where Bonner's only choice is to abandon his religious convictions or watch his daughter suffer lasting educational and personal consequences.

These consequences place an enormous amount of coercive pressure on Bonner to abandon his religious beliefs and the choices that he and his wife want to make on how to raise their daughter in their faith. If Bonner vaccinates his daughter, he will lose any future moral authority to raise her to stay strong in her faith when life gets rough. He will also compromise his ability to continue to teach his Christian faith as he believes it in his position as a church elder.

The practical burden is also worse than that posed by *Mahmoud*. Indoctrination from LGBTQ+ storybooks can be countered and even reversed. Vaccination cannot. It is irreversible. Forced vaccination is just as much of an indoctrination as forced flag-saluting

and forced recitation of the Pledge of Allegiance was in *Barnette*. It forces an act that expressively affirms that vaccines are morally acceptable. It compels the view that the government's say-so takes precedence over God's commandments. It mandates religious intolerance. It replaces parental decisions on how to mold a child's religious priorities with an attitude of religious convenience that excuses complicity in morality. It teaches children to elevate the government's mandate over the supremacy of God's commandments and the most sacred dictates of their consciences. Parents have no way to reverse these effects, especially when those effects are achieved by forcing parents to compromise their own moral integrity.

Thus, there is no question that the burden imposed on Bonner in this case is far worse than the one imposed in *Mirabelli* and *Mahmoud*. That triggers strict scrutiny.

D. The Court should deny the Defendants' motion to dismiss because their enforcement of Conn. Gen. Stat. § 10-204a does not survive strict scrutiny.

The Defendants claim that their enforcement of Conn. Gen. Stat. § 10-204a survives strict scrutiny for two reasons: (1) protecting public health through childhood vaccination is a compelling state interest, and (2) Conn. Gen. Stat. § 10-204a is narrowly tailored. Dkt. 16-1, pp. 20-22. They are wrong on both points.

It is the government's burden to prove both prongs of the strict scrutiny analysis. "To survive strict scrutiny, a government must demonstrate that its policy advances interests of the highest order and is narrowly tailored to achieve those interests." *Mahmoud*, 606 U.S. at 565 (cleaned up).

First, Bonner has pleaded ample facts to show that the interests underlying Conn. Gen. Stat. § 10-204a are not compelling because of the numerous loopholes that

Connecticut placed in the law and how complacent it is in enforcing the law. The government interest in Conn. Gen. Stat. § 10-204a is to protect school populations by achieving sufficient levels of herd immunity through vaccination to prevent the spread of communicable disease. Dkt. 1, ¶¶ 15-19. Connecticut law continues to honor all religious exemptions that existed before April 28, 2021 and provides numerous provisional exemption categories and medical exemptions. *Id*. at ¶¶ 10-11. Enforcement is amorphous to say the least. In 2022-2023, more than 10% of public schools remain out of compliance with Connecticut's stated goal of maintaining a 95% MMR vaccination rate. *Id*. at ¶ 34. Some schools have simple non-compliance rates of more than 30%. *Id*. at ¶ 35. In other schools, medical exemptions and grandfathered religious exemptions and medical exemptions drive the MMR vaccination rate below 95%. *Id*. at ¶¶ 36-37. 44% of private schools have MMR vaccination rates below 95%. *Id*. at ¶ 39. Connecticut takes no steps to cure this substantial non-compliance in both public and private schools. *Id*. at ¶ 40. That is simply not reflective of a compelling state interest when the state itself has little to no interest in actually enforcing its own law.

Second, the Defendants gloss over narrow tailoring despite acknowledging that government must demonstrate that the law is the least restrictive means of achieving its objective. Dkt. 16-1, pp. 21-23. The Defendants and Connecticut had numerous options to preserve their public health interests while accommodating religious believers such as Bonner. Connecticut legislators articulated a concern that parents were exploiting religious exemptions for improper purposes. They could have easily redressed that concern by reforming the religious exemption process to require parents to complete sworn statements explaining their religious beliefs and requiring a presentation on the

importance of taking vaccinations and common misconceptions about them. If Connecticut's concern is that too many exemptions to vaccination requirements pose a danger to public health, it could have articulated a threshold percentage of vaccinated students needed to achieve herd immunity and divided exemptions to the vaccination requirement in a non-discriminatory manner between secular and religious objectors. It chose not to do that.

More specifically to individual students, Connecticut and the Defendants could have permitted religiously unvaccinated students to attend school just like medically unvaccinated or other unvaccinated students do, and quarantined them at home if there was a case of contagious disease.

In other words, Connecticut and the Defendants had less onerous options that would have equally served their interests in protecting public health and chose not to. That is fatal to the Defendants' arguments under strict scrutiny, and the Court should reject them.

IV. The Court Should Not Dismiss Bonner's RFRA Claim Because RFRA Applies To The Administration of Federal Programs And Is A Proper Spending Clause Condition To The IDEA.

The Defendants argue that, as state and local actors, they are not subject to the federal Religious Freedom Restoration Act (RFRA) under the Supreme Court's precedent in *City of Boerne v. Flores*, 521 U.S. 507, 513-14 (1997). Dkt. 16-1, pp. 23-26. They also argue that it is well-established that RFRA does not apply to them under the Constitution's Spending Clause. *Id*. at p. 24 n.8. The Defendants' second argument overstates the caselaw. Their first argument only represents the beginning, not the end, of the analysis because it conflates two distinct legal questions: (1) whether RFRA, by its own force,

reaches state and local actors through the Fourteenth Amendment's Enforcement Clause – which it does not, after *Flores* – and (2) whether the IDEA, as valid Spending Clause legislation, independently conditions the Defendants receipt of federal education funds on compliance with RFRA, and whether the Defendants' administration of the IDEA statutory scheme brings them within RFRA's residual reach over federal law. *Flores*, *Cutter v. Wilkinson*, 544 U.S. 709 (2005), and Second Circuit precedent do not resolve Question 2. Because Bonner's RFRA theory is firmly grounded in a sound statutory interpretation of RFRA and has not been foreclosed by binding precedent, the Court should deny the Defendants' motion to dismiss Count 3.

A. *Flores* only held that RFRA is inapplicable to local actors under the Fourteenth Amendment's Enforcement Clause.

As Defendants see it, *Flores* categorically bars any application of RFRA to state and local entities in any legal context. This significantly overreads *Flores*. *Flores* issued a holding on a specific legal issue. Congress lacked authority under Section 5 of the Fourteenth Amendment to impose RFRA's "*Sherbet*" standard on state and local governments. *Flores*, 521 U.S. at 532-36. The Supreme Court's reasoning was specific to Section 5's remedial limits – Congress may use Section 5 to enforce rights the Court has already recognized, but may not use it to substantively redefine those rights. *Id*. at 519, 527. Because RFRA's original universal application went beyond enforcing established Free Exercise doctrine and instead attempted to reinstate the strict scrutiny standard for free exercise claims from *Sherbert v. Verner*, 374 U.S. 398 (1963) in the face of *Smith*'s rejection of that standard, it exceeded Congress's Section 5 power. *Flores*, 521 U.S. at 529-536. That conclusion only resolved arguments pertaining to the Section 5 argument and said nothing about Congress's other enumerated powers.

The post-*Boerne* landscape thus has a clear structure. RFRA remains fully operative as applied to the federal government. *See Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006) (applying RFRA against federal drug enforcement). Congress may impose equivalent protections on state and local actors through the Spending and Commerce Clauses, as it did in the Religious Land Use and Institutionalized Persons Act (RLUIPA). *See Cutter v. Wilkinson*, 544 U.S. 709 (2005). And RFRA's own text continues to govern "the implementation" of all federal law, 42 U.S.C. § 2000bb-3(a) – a provision whose meaning in the context of federally administered grant programs like the IDEA has never been authoritatively resolved. What *Flores* foreclosed was a specific mechanism for a specific statute based on a specific constitutional theory. It did not, and could not, foreclose Congress's other enumerated powers, the reach of RFRA's implementation clause, or the question this case presents.

RFRA as applied to the IDEA, enacted and reauthorized after *Flores*, operates through the same Spending Clause mechanism that Congress deployed in RLUIPA. Accordingly, the Court should reject the Defendants' effort to extend *Flores* beyond its actual holding.

B. *Cutter*'s dicta does not settle the question.

Cutter v. Wilkinson contains a single sentence of dicta that describes, in passing, why Congress's enactment of RLUIPA differed from RFRA: "Universal in its coverage, RFRA applied to all Federal and State law…, but notably lacked a Commerce Clause underpinning or a Spending Clause limitation to recipients of federal funds." 544 U.S. at 715 (cleaned up). This observation is accurate as far as it goes, but it does not resolve this case for two reasons.

First, *Cutter*'s dicta is not a holding, but rather a broad description of why RLUIPA differed from RFRA. *Cutter* did not address, and had no occasion to address, whether a separate Spending Clause statute – such as the IDEA – might, through its own grant conditions, independently obligate a federal funding recipient administering the grant to comply with RFRA. That question was simply not before the Court.

Second, Bonner does not argue that RFRA, standing alone, applies to the Defendants. Instead, he argues that it applies to them in two ways: (1) they subjected themselves to it by voluntarily shouldering the burden of administering federal law, and (2) the IDEA – undisputedly valid Spending Clause legislation, *see Arlington Cent. Sch. Dist. v. Murphy*, 548 U.S. 291, 295 (2006) – is subject to RFRA compliance as a condition of acceptance and administration of federal special education grants.

C. The IDEA, as valid Spending Clause legislation, conditions the Defendants' receipt of federal funds on compliance with federal law, including RFRA.

Congress's power under the Spending Clause "is much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions." *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981). A grant condition is enforceable when, among other requirements, it is unambiguous in a manner where states can make their choice with knowledge of the consequences. *South Dakota v. Dole*, 483 U.S. 203, 207 (1987). Congress may even condition federal grants on compliance with federal statutes, including statutes that would not independently bind the states. *Id*. at 208-11.

The IDEA is indisputably Spending Clause legislation. *Murphy*, 548 U.S. at 295. The Stamford Board of Education has accepted IDEA grant funds and thereby subjected

itself to the full range of conditions Congress has attached to those funds. The Defendants, however, protest that nothing in the IDEA alerts them that it conditions the funds on compliance with RFRA. Dkt. 16-1, p. 24 n.8.

RFRA, however, provides that it "applies to all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after November 16, 1993." 42 U.S.C. § 2000bb-3(a). The federal government administers the IDEA – setting standards, conducting oversight, disbursing grants, and enforcing IDEA through the Department of Education. The Defendants implement the IDEA on the federal government's behalf, using federal dollars, under a comprehensive federal regulatory framework, 34 C.F.R. Part 300, that is itself federal law. Dkt. 1, ¶¶ 51-54, 92. When Congress enacted RFRA and directed that it apply to the "implementation" of all federal law, it captured within RFRA's scope the administration of federal grant programs — including the IDEA — by those who implement them. The Defendants' decision to deny Bonner's daughter the free appropriate public education mandated by the IDEA because her father will not abandon his religious beliefs is an action taken in the implementation of the IDEA, and is governed by RFRA.

To the extent that the Defendants claim a lack of clear notice under *Pennhurst*, they misread it. *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212 (2022) addressed a *Pennhurst* situation where federal spending statutes were silent on remedies, and held that states could be reasonably found to be aware that traditional contract principles would provide remedies even though they were not expressly articulated in the statute. This rationale applies with equal force to clear statutory statements of federal law. Notice of a of a grant condition does not require a provision-

by-provision cross-reference to every federal statute. Congress enacted RFRA in 1993. The IDEA has been reauthorized twice since then — in 1997 and 2004 — with Congress fully aware that RFRA governed the implementation of all federal law. A state or local entity that voluntarily accepts federal special education grants necessarily accepts those grants against the backdrop of federal law that specifically governs its implementation. Accordingly, the Defendants had plenty of notice that implementing the IDEA means implementing it consistently with RFRA.

D. Dismissal is also inappropriate under RFRA's plain text.

Even the Court does not agree with Bonner's Spending Clause arguments, dismissal is still inappropriate under RFRA's plain text. Three sections are applicable. First, 42 U.S.C. § 2000bb-1 prohibits "[g]overnment" from "substantially burden[ing] a person's exercise of religion even if the burden results from a rule of general applicability" unless it satisfies strict scrutiny. 42 U.S.C. § 2000bb-2(1) defines "government" as "a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States, or of a covered entity." 42 U.S.C. § 2000bb-3(a) makes RFRA applicable "to all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after November 16, 1993."

The IDEA and 34 C.F.R. Part 300 are indisputably federal law.

The Defendants do not merely receive federal money and spend it as they see fit. Instead, they administer a comprehensive federal regulatory scheme – the IDEA and its implementing regulations, 34 C.F.R. Part 300 – that dictates in granular detail how the Defendants must identify eligible children, develop individualized education programs, deliver services, resolve disputes, and report outcomes to federal authorities. The

Defendants act under federal authority, pursuant to federal standards and direction, subject to federal oversight, using federal funds allocated through a federal formulate. Their decision to deny Bonner's daughter access to special education mandated by the IDEA is a decision made within the administration of the IDEA. That is "implementation" of federal law.

42 U.S.C. § 2000bb-3(a)'s plain text does not merely encompass implementation by federal agencies and officers. It refers to "the implementation" of federal law – not "federal implementation" of federal law. Where Congress enacts a comprehensive federal program and enlists local entities to implement it under federal supervision, those entities implement federal law within the ordinary meaning of that phrase. This is qualitatively different from a state actor simply complying with a background federal legal requirement – it is affirmatively administering a federal entitlement program on behalf of the federal government. Accordingly, RFRA's plain text precludes dismissal.

V. The Court Should Not Dismiss Bonner's IDEA Claim (Count 2) For Failure To Exhaust Administrative Remedies.

The Defendants move to dismiss Bonner's IDEA claim (Count 2) for failure to exhaust his administrative remedies before filing suit. Dkt. 16-1, pp. 9-12. They are incorrect.

The IDEA's exhaustion requirement is not absolute. In *Honig v. Doe*, 484 U.S. 305 (1988), the Supreme Court considered the IDEA's predecessor: the Education of the Handicapped Act (EHA). *Honig* held that parents may bypass the administrative process where exhaustion would be futile or inadequate. 484 U.S. at 327. The Second Circuit applied this reasoning to the IDEA and held that exhaustion is futile when "administrative procedures do not provide adequate remedies." *Heldman on behalf of T.H. v. Sobol*, 962

F.2d 148, 158 (2d Cir. 1992). *Heldman* also noted the extensive legislative history that hypothesized scenarios in which Congress thought exhaustion was futile:

> It is important to note that there are certain situations in which it is not appropriate to require the exhaustion of [IDEA] administrative remedies before filing a civil law suit. These include complaints that: First, an agency has failed to provide services specified in the child's individualized educational program [IEP]; second, an agency has abridged or denied a handicapped child's procedural rights—for example, failure to implement required procedures concerning least restrictive environment or convening of meetings; three, an agency has adopted a policy or pursued a practice of general applicability that is contrary to the law, or where it would otherwise be futile to use the due process procedures—for example, where the hearing officer lacks the authority to grant the relief sought; and four, an emergency situation exists....

Heldman, 962 F.2d at 159 n.12 (quoting 131 Cong.Rec. 21392–93 (1985)) (cleaned up).

Bonner's case aligns well with *Honig*, *Heldman*, and the congressional hypotheticals. The Defendants concede that "seeking a declaration that § 10-204a violates the First Amendment and RFRA is not relief that can be received through the administrative process." Dkt. 16-1, p. 12 n.2. They also fail to specify in any manner how a Connecticut State Department of Education hearing officer has any authority to grant the relief Bonner actually seeks: a determination that the Defendants must permit Bonner's daughter to attend school notwithstanding her unvaccinated status and declaratory and injunctive relief that the Defendants' enforcement of Conn. Gen. Stat. § 10-204a is unconstitutional. Hearing officers applying IDEA standards simply do not have that authority. 20 U.S.C. § 1415(f)(3)(E) (limiting hearing officers to determinations of whether the child received a free adequate public education); Conn. Gen. Stat. § 10-76h(d)(1) (same). Since the hearing officer is a state officer, he is bound by state law – in this case, Conn. Gen. Stat. § 10-204a. Only the courts have the power to determine that the Defendants' conduct in enforcing § 10-204a violated the IDEA. Requiring Bonner to

exhaust an administrative process that cannot afford him the relief he seeks would be a mere formality, and is not required under *Honig* and *Heldman*.

Thus, the Court should deny the motion to dismiss Count 2.

CONCLUSION

For the foregoing reasons, the Court should deny the Defendants' motion to dismiss.

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CERTIFICATION OF SERVICE

The undersigned hereby certifies that, on the foregoing date, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties and counsel of record who have appeared by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's system.

/s/ Cameron L. Atkinson /s/