

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

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JANE DOE., as the parent and guardian of her minor  
unvaccinated daughter, BABY DOE,

ARTICLE 78  
VERIFIED PETITION

Petitioner,

Index No. \_\_\_\_\_

-against-

ED DAY (in his official capacity as County Executive)  
and the COUNTY OF ROCKLAND,

Respondents.

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**Nature of the Proceeding**

Petitioner, alleges through counsel, the following:

This proceeding is brought pursuant to CPLR Articles 78 and 3001 to challenge an Executive Order issued on March 26, 2019, pursuant to Executive Law 24, by the County of Rockland through its County Executive, the Honorable Ed Day. Petitioner seeks an immediate injunction, and to nullify and void the Executive Order, that involves the banning of children who are not vaccinated from public places in Rockland County for thirty (30) days that began on midnight on March 26, 2019. See *Exh. One, Executive Order dated March 26, 2019.*

**BACKGROUND**

1. Petitioner alleges the Executive Order at issue in this proceeding is unlawful because it is *ultra vires*, arbitrary and capricious, and a violation of lawful procedure violating petitioner's civil rights, state and federal laws, warranting the sought after temporary, preliminary and permanent relief, as more fully set forth herein, and in the attached supporting papers.

2. Petitioner is seeking to enjoin and nullify the terms of the Executive Order that is banning infants, toddlers, adolescents and teenagers from public places in Rockland, allegedly, because of a perceived public health "disaster" by County Executive Ed Day involving four (out of 352,000 people) measles cases, reported in Rockland County by the health department. *CPLR Article 78, Executive Law 24.*

3. Pursuant to the Executive Order now in effect in Rockland County, all persons under the age of 18 years are to be vaccinated with the measles, mumps and rubella [MMR] vaccine, and if they are not vaccinated they may not go to any churches, synagogues, mosques, other places of worship, restaurants, hospitals, shopping places, schools, etc., anywhere in Rockland County while the Order is in effect. *See Exh. One, Executive Order dated March 26, 2019.*

4. For the banned individuals who are adherents with religious exemptions to vaccinations to attend school in Rockland County, granted to them under NYS PHL 2164 (9), they will not be able to celebrate this year's Passover and Easter

celebrations at their houses of worship anywhere in Rockland County because of the negative effects of Ed Day's Executive Order. *Id.*

5. Under the Executive Order at issue, any alleged parent-violator of the *de facto* quarantine now in effect will be criminally prosecuted as a Class B Misdemeanor by the Rockland County District Attorney's Office, and face a six month jail sentence and/or a \$500 fine if the parent should be caught violating the challenged Order. *Id.*

### **PARTIES**

6. Petitioner Jane Doe, resides with her husband and children in Rockland County, and files this petition on behalf of Baby Doe, as the natural parent and guardian of her minor daughter, who was prior to March 26, 2019, attending school in Rockland County with a religious exemption to vaccinations provided under NYS PHL 2164 (9). *See Affidavit of Jane Doe dated April 4, 2019.*

7. Respondents are the County Executive Ed Day, in his official capacity, and the County of Rockland, a duly organized municipal corporation under the laws of the State of New York.

### **JURISDICTION**

8. As the challenged orders are final orders entered by the County of Rockland, this Court has jurisdiction under CPLR Article 78, to review them and under CPLR 3001, to declare them arbitrary, capricious and contrary to state law, and to enjoin the Executive Order upon a showing of irreparable harm which petitioner has demonstrated.

**AS AND FOR A FIRST CAUSE OF ACTION**  
**VIOLATIONS OF STATE AND FEDERAL LAW**

9. The Executive Order should be enjoined because it is *ultra vires*, arbitrary and capricious, violates lawful procedure, violates state and federal law, and thus is voidable by this Honorable Court warranting the temporary, preliminary and permanent injunctive relief sought in the petition. *CPLR Articles 78 & 3001*.

10. The Executive Order violates petitioner's First Amendment rights to the statutory religious exemption available in §2164 (9) of the public health law, violates petitioner's Fourteenth Amendment rights of equal protection and due process of law, through which a Ninth Amendment right of bodily autonomy is implicated, warranting immediate injunctive relief. *Id.*

11. Upon information and belief, in a clear dereliction of duty to protect public health, the respondents have failed to quarantine the alleged, affected persons with

the reported active measles cases within Rockland County, even though the state law specifically authorizes the respondent to do so.

12. In striking contrast, respondent has and instead quarantined healthy people, specifically, children who are not affected and have not been exposed to measles.

*See Exh. One.*

13. The Executive Order violates Supreme Court precedent, federal and state law by mandating a childhood vaccination outside of the school required vaccinations under §2164(9), and in the Order the County of Rockland is specifically targeting, and discriminating against children in Rockland, who are unvaccinated due to religious reasons. §2164 (9) Also see, *Jacobson vs. Massachusetts*, 197 U.S. 11 (1905)<sup>1</sup>.

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<sup>1</sup> *Jacobson* requires courts to assess the constitutionality of vaccination mandates; courts may not defer blindly to state authorities. *Jacobson v. Commonw. of Mass.*, 197 U.S. 11 (1905). The *Jacobson* decision requires that vaccination mandates are possible only in highly circumscribed situations: when there is “an emergency,” “imminent danger,” when “an epidemic of disease...threatens the safety of [society’s] members” and when the epidemic “imperil[s] an entire population.” *Id.* at 29, 27, 29, 31. Compulsory vaccination under the Massachusetts statute in *Jacobson* was for all adults, not a subgroup of youngsters, and Massachusetts even excluded many children because of their greater vulnerability. *Id.* at 12.

*Jacobson* requires that state vaccination mandates be (1) necessary, (2) non-discriminatory, (3) harm avoidant, and (4) proportionate to the risk of disease. *Id.* *Jacobson* hardly offers states *carte blanche*, and it goes further still. It requires that if vaccination mandates are arbitrary and unreasonable, then courts must “interfere for the protection” of those affected. *Id.* at 28. *Jacobson* foresaw that there might be vaccination mandates that were “a plain, palpable invasion of rights secured by the fundamental law,” and in such cases, the Supreme Court considered it “the duty of the courts to so adjudge.” *Id.* at 31.

12. By virtue of the Executive Order, respondent is now excluding from public places, including all schools in Rockland County, healthy, non-vaccinated children whose parents hold religious beliefs contrary to the practice of vaccinating, effectively extinguishing their statutory religious exemptions provided to them under §2164(9). *Id.*

13. Notably, although quarantined under the Executive Order, Baby Doe does not have measles. Upon information and belief, Baby Doe has not been exposed to measles, and poses no perceived health risks to others.

14. Upon information and belief, the reason for the Executive Order, involves some misguided attempt on Ed Day's part to coerce a vaccination compliance rate of 100% at Rockland County schools, through an alleged illegal quota system that contravenes the religious exemption provisions in §2164(9), with a strong armed vaccination mandate that discriminates against non-vaccinated children in Rockland County, who have sincere religious beliefs contrary to the practice of vaccinating. *Id.*

15. Contrary to the Executive Order and under current New York State law, if every parent in the state held religious beliefs contrary to the practice of vaccinating, then every child in the state would be entitled to the exemption available in §2164(9). The applicable provision of the PHL §2164(9) provides:

*“This section shall not apply to children whose parent, parents, or guardian hold genuine and sincere religious beliefs which are contrary to the practices herein required, and no certificate shall be required as a prerequisite to such children being admitted or received into school or attending school.”*

This applies equally in Rockland County schools. Id.

16. Respondent has offered no independent, verifiable evidence the MMR vaccination mandate he has ordered, or the quarantining of healthy children subject to the Executive Order, is actually working to suppress measles cases in Rockland, or tied to any legitimate public health purpose. *Exh. Two, Polland, published in Vaccine 30 (2012) 103-104.*

17. Indeed a wealth of current medical research on MMR safety and efficacy, shows that the push to vaccinate children who are not suitable for vaccinations may very well be the cause of the four recently, reported alleged measles cases. *Exh. Three, The Emerging Risks of Live Virus & Virus Vectored Vaccines; Vaccine Strain Virus Infections, Shedding and Transmission.*

18. Upon information and belief, these four alleged cases are the underpinnings of the non-existent measles catastrophe in Rockland, that ED Day relied upon to invoke his executive powers under Executive Law 24, and to quarantine healthy

kids who have the statutory religious exemptions available under PHL 2164 (9), and wrongfully excluding them from schools and other public places.

18. Upon information and belief, 25% of the measles cases in Rockland occurred in fully vaccinated individuals, and half of the reported cases were in adults over 18, underscoring a very important point, demonstrating the challenged Executive Order banning non vaccinated, healthy children from public places will not work because it is not sufficiently tied to a legitimate public health purpose as required by law.

19. Since the 1960's, the Supreme Court has established clear precedents under Fourteenth Amendment due process clause requiring states to prove that their interference in medical autonomy is "necessary, and not merely rationally related to, the accomplishment of a permissible state policy." *Griswold v. Connecticut*, 381 U.S. 479, 497 (1965) (citing *McLaughlin v. Florida*, 379 U.S. 184 (1964)).

20. The MMR vaccine which is a live virus, may be spread to others for up to 28 days after administration of the vaccination through a phenomenon known as "shedding" of the live virus. See *Exh. Three*.

20. It follows and is highly plausible the vaccine itself could very well, quite conceivably be, the actual cause of the measles cases in Rockland County, and the intensive vaccination on going in Rockland County is only exacerbating the



problem by the artificial manipulation of the disease, coupled with so many people in one isolated locale being forced to vaccinate with the same vaccination, from the same batches and lots of vaccines, being distributed to children in the County, in a such a short and compressed period of time. *Id.*

21. More important, respondent has offered no evidence that non immunized children pose any greater risk to others, as compared to say people with active cases or the newly vaccinated adults and children, who are shedding the live virus from the vaccine and have not been quarantined.<sup>2</sup>

22. The Executive Order may not be said to be tied to a legitimate public health purpose as the law requires, but rather is tied to a discriminatory and arbitrary quota of 100% vaccination compliance rate among school aged children, that effectively obliterates the religious exemptions provided under state law violating §2164(9).

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<sup>2</sup> <https://www.eurosurveillance.org/content/10.2807/1560-7917.ES2013.18.49.20649>

[2] <https://www.ncbi.nlm.nih.gov/pubmed/23543773>

[3] <https://www.eurosurveillance.org/content/10.2807/es.15.35.19652-en>

[4] <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1525-1470.2005.22208.x>

[5] <https://www.ncbi.nlm.nih.gov/pubmed/28669617>

[6] <https://www.ncbi.nlm.nih.gov/pubmed/27923955>

[7] <https://www.ncbi.nlm.nih.gov/pubmed/24585562>

[8] <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5729920/>

[9] <https://www.nvic.org/vaccines-and-diseases/measles/measles-vaccine-injury-death.aspx>

[10] [https://www.jstor.org/stable/4461020?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/4461020?seq=1#page_scan_tab_contents)

[11] <https://www.ncbi.nlm.nih.gov/pubmed/7494055>

[12] <https://www.ncbi.nlm.nih.gov/pubmed/26698687>

[13] <https://www.sciencedirect.com/science/article/pii/S0264410X08009353?via%3Dihub>

[14] <https://www.ncbi.nlm.nih.gov/pubmed/16266774>

[15] <https://jcm.asm.org/content/55/3/735>

23. Under state law, respondent could have chosen to quarantine those in Rockland who have been exposed to measles or have the illness, but did not do so. Respondent is allowing those persons who are the real vectors to move freely within the confines of public places in the County, demonstrating the irrationality of the Executive Order.

#### EXECUTIVE LAW 24

24. Executive Law 24 permits a County Executive to declare a public emergency only “in the event of a disaster, rioting, catastrophe, or similar public emergency within the territorial limits of any county, city, town or village, or in the event of reasonable apprehension of immediate danger thereof, and upon a finding by the chief executive thereof that the public safety is imperiled thereby.”

*Executive Law 24.*

26. Upon information and belief, respondent’s motivation is to exert its authority over those who have chosen not to vaccinate for religious reasons, and to increase vaccination rates in Rockland County to a 100% threshold of vaccination compliance for all children, that eliminates by Executive Order, the religious exemption available under §2164 (9), irreparably harming petitioner and others similarly situated. *Id.*

27. By forcing those not suitable to obtain a vaccination under the Executive Order, the quarantine may be viewed as a punishment for those opposing vaccinations based on religious beliefs, and not a preventative health measure tied to a legitimate public health purpose as the law allows and requires.

28. The injuries sustained by petitioner are irreparable and cannot be compensated by money damages. Indeed, once vaccinated with MMR there is no way to reverse it. There is no way to undo a vaccination. There is no way to un-ring the bell, demonstrating a compelling need for immediate relief because even a 30 day Order under these circumstances can cause an irreversible negative, effect that can last a lifetime.

30. The Executive Order is over breath violating petitioner's civil rights in that it far exceeds the regulatory authority reposed in Respondents, which does not grant the power to Ed Day to do a run around of the legislative process in place for adding or removing school required vaccines from the schedule, and to eliminate religious exemptions in the process violating state law. Id.

31. §2164 provides for both medical and religious exemptions to school required vaccines, and they are not exclusive. A parent may have both reasons for refusing a vaccine, and there is no way to know if a child with a religious exemption being

forced to vaccinate under the edict may also have an underlying medical condition contraindicated for the MMR and suffer injury or death. §2164 (8)(9).

32. That is why there is a regulatory process in place enacted by the legislature in New York State, to add or remove the school required vaccinations from the schedule, and moreover, provides for exemptions under §2164 (8)(9).

37. Because the Executive Order infringes on petitioner's civil rights and right of bodily autonomy, this Honorable Court must apply intermediate scrutiny, if not heightened scrutiny in assessing the legality of the Executive Order, and the banning of public services and public access to non-immunized, religious adherents exempt from vaccinations under state law. §2164 (9).

#### HERD IMMUNITY

38. Upon information and belief, less than 2% of New York State children are non-vaccinated and either have exemptions or are home schooled.

40. According to health officials, vaccinations allegedly require a 97% compliance rate to achieve a so called herd immunity and the desired vaccination effect. However, many vaccine researchers have opined that herd immunity is

only achieved through natural immunity, and has never been achieved through vaccinations contrary to the pharmaceutical industry claims.<sup>3</sup>

41. Here in Rockland, even though the widely, discredited herd immunity theory of vaccination efficacy has been satisfied with a 98% vaccination rate, there are still a few cases of measles cropping up, even in fully vaccinated individuals, leading to a conclusion it is not the unvaccinated, healthy children being quarantined that are causing the problem.

42. The more likely rationale as the basis for the cause of Rockland's measles is that the vaccinations do not work as claimed, and are spreading the measles through the shedding of the live viruses within the MMR vaccine.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**THE EXECUTIVE ORDER IS *ULTRA VIRES***

42. Petitioners re-allege the foregoing paragraphs as if more fully stated herein.

43. There is no public health emergency in Rockland of the disastrous magnitude required under the Executive Law 24 to invoke Ed Day's executive powers, and to enact the unprecedented Order to force vaccinate and quarantine healthy children in Rockland County invalidating the religious exemptions provided under state law in violation of lawful procedure. §2164(9).

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<sup>3</sup> <https://childrenshealthdefense.org/news/natural-vs-artificial-herd-immunity-failed-vaccination-programs-taught-us/>

44. There is no requisite catastrophe from the four alleged measles cases in the County, sufficient to invoke the power under Executive Law 24, to quarantine healthy children, while others who may be vectors, or who are shedding the live virus from the vaccine are allowed to move freely about in public places.

45. There is no lawful basis or legitimate public health objective served by a reverse quarantine targeting healthy children with religious exemptions, that is admittedly, by design enacted to achieve an arbitrary vaccination quota in Rockland County schools that completely contravenes the public health law. §2164(9).

46. The Executive Order is arbitrary and capricious because Rockland County could have quarantined those infected with measles, or those recently vaccinated and shedding the live viruses, but has failed to do so.

47. Instead in an arbitrary and capricious way, in violation of lawful procedure, ED Day has quarantined the wrong people because of their religious beliefs, and that is not permitted under New York law or the United States Constitution.

48. New York State's Health Commissioner has not declared a public health emergency or ordered the quarantine of healthy children in this state, clear proof there is no health emergency in Rockland County.

49. Similarly, New York's Governor has not declared a public health emergency nor has he ordered a quarantine of healthy children in this state demonstrating once again there is no health emergency in New York State

50. Notably, the Centers for Disease Control (CDC), the federal agency with the skills, resources, knowledge and authority to declare a measles emergency has not done so, nor have they ordered the quarantine of healthy children in the United States with religious exemptions provided under state law.

83. The Executive Order is *ultra vires*, arbitrary, capricious and contrary to law in that its issuance lacks legal authority, violates state law, violates the First and Fourteenth Amendments, and should be enjoined, nullified and voided to avoid irreparable harm to petitioner, and others similarly situated affected by the March 26, 2019 Executive Order.

WHEREFORE, based on the foregoing, this Honorable Court should declare null and void and temporarily, preliminarily and permanently restrain the March 26, 2018 Executive Order, and provide any and all further relief deemed just and proper.

Respectfully submitted,

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