

Case Law Update: Vaccination & the Federal Courts

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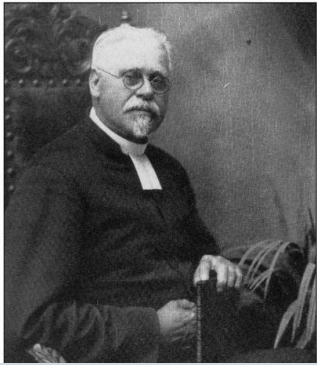


Vaccination
requirements
and the law:
A brief history

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Vaccination required during an outbreak

Jacobson v. Massachusetts, 197 U.S. 11 (1905)



Background

- A Massachusetts statute authorized local boards of health to impose vaccination requirements.
- During an outbreak of smallpox, the board of health for Cambridge, Mass., required town residents to be vaccinated or face criminal charges.
- Reverend Henning Jacobson refused to be vaccinated. He was convicted and fined \$5.00.

Question for the court

- Did the vaccination requirement violate Jacobson's rights under the 14th amendment's due process clause?

Court's holding

- Vaccination requirement was not an unconstitutional impingement on liberty rights, because it was a reasonable means of protecting public health and safety.

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*Jacobson v.
Massachusetts*,
197 U.S. 11
(1905)

"But the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist with safety to its members."

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Vaccination requirements for children

In 1922, the U.S. Supreme Court held that vaccination may be required as a condition of school attendance.

- *Zucht v. King*, 260 U.S. 174 (1922)

In 1944, in a case that was not about vaccination, the U.S. Supreme Court held that a parent's right to control a child's upbringing did not extend to allowing the parent to require the child to work in violation of child labor laws, even when the labor was in furtherance of the parent's religious beliefs.

- *Prince v. Massachusetts*, 321 U.S. 158 (1944)
- In reaching this decision, the Court wrote: "The right to practice religion freely does not include the liberty to expose the community or the child to communicable disease or the latter to ill health or death."
- Although the case wasn't directly about childhood vaccination requirements, it was influential in subsequent cases when those requirements were challenged.



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The role of legislatures

By the 1980s, every state had statutes requiring children to be vaccinated in order to attend school.

- N.C.G.S. §§ 130A-152 – 130A-155.1

All states provide exemptions for medical contraindications and most provide exemptions for sincere religious beliefs.

- N.C.G.S. § 130A-156 (medical exemption)
- N.C.G.S. § 130A-157 (religious exemption)

Some states provide a "philosophical" or "personal belief" exemption for beliefs that do not have to be religious in nature.

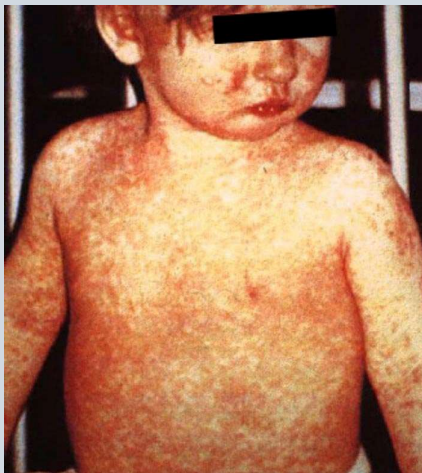
- North Carolina does not allow a non-religious personal exemption. 10A N.C.A.C. 41A .0403.

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Top ten public health achievements of the 20th century

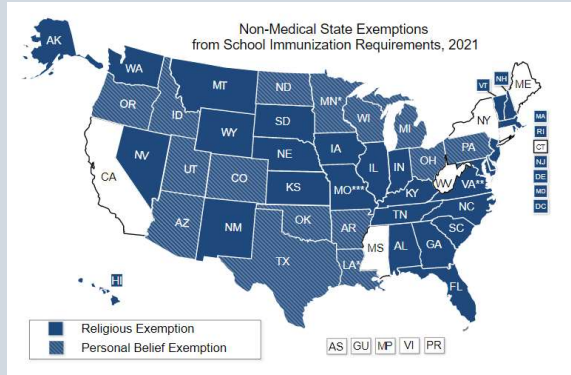


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Early 21st century trends in vaccination law

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Source: National Conference of State Legislatures

Some state legislatures tightened or eliminated non-medical exemptions

In 2000, the only two states that did not allow religious or other non-medical exemptions were West Virginia and Mississippi.

Following the measles outbreaks of the 2010s, four states repealed all non-medical exemptions: California, New York, Maine, & Connecticut.

Other states narrowed their non-medical exemptions to religious exemptions only (i.e., no non-religious personal belief exemption), or placed other requirements on uses of non-medical exemptions.

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Courts upheld public health actions to contain measles outbreaks


C.F. v. New York City Dep't of Health & Mental Hygiene, 139 N.Y.S.3d 273 (2020).

- The New York City Board of Health required all persons living, working, or attending school or child care in four of the city's zip codes to be vaccinated against measles, unless they qualified for a medical exemption. The Appellate Division upheld the requirement as a valid exercise of the board's police power, and rejected a claim that it violated the 1st amendment by not allowing a religious exemption.

W.D. v. Rockland County, 521 F.Supp.3d 358 (S.D.N.Y. 2021).

- Rockland County (N.Y.) ordered children who were not vaccinated against measles to be excluded from schools. A federal district court upheld this action, rejecting arguments that it violated the 1st amendment's rights to assemble and to the free exercise of religion, and the 14th amendment's right to equal protection.

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COVID-19
CORONAVIRUS
VACCINE

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COVID-19
CORONAVIRUS
VACCINE

COVID-19
vaccination
requirements
& evolving
federal law

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Federal actions requiring employment-based COVID-19 vaccination

CMS mandate

- *Biden v. Missouri*, 595 U.S. ____ (Jan. 13, 2022).
- Supreme Court **allowed** CMS rule requiring vaccination of certain healthcare workers to be enforced.

OSHA mandate

- *National Federation of Independent Businesses v. Department of Labor*, 595 U.S. ____ (Jan. 13, 2022).
- Supreme Court **blocked** OSHA Emergency Temporary Standard (ETS) requiring employers with more than 100 employees to be vaccinated or undergo weekly tests & wear masks.

Federal contractor mandate

- *Georgia v. Biden*, currently before the 11th Circuit Court of Appeals (argued on April 8).
- Enforcement has been **enjoined nationwide** since December 2021.

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State actions requiring employment-based COVID-19 vaccination

Maine: health care workers

- *Does v. Mills*, 595 U.S. ____ (Oct. 29, 2021).
- State of Maine adopted a regulation requiring certain health care workers to be vaccinated against COVID-19. The Supreme Court denied a request for an injunction, meaning the regulation was **allowed to take effect**. However, Justices Gorsuch, Thomas, & Alito dissented because the regulation provided a medical exemption but not a religious exemption.

NYC: health care workers

- *Dr. A v. Hochul*, 595 U.S. ____ (Dec. 13, 2021).
- State of NY adopted a regulation requiring certain health care workers to be vaccinated against COVID-19. The Supreme Court denied a request for an injunction, **allowing the regulation to take effect**. However, Justices Gorsuch, Thomas, and Alito again dissented because the regulation provided a medical exemption but not a religious exemption.

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Other notable cases

Vaccination requirements for public university students

- *Klaassen v. Trustees of Indiana University*, 7 F.4th 592 (7th Cir. 2021), *vacated as moot*, 24 F.4th 638 (7th Cir. 2022). Indiana University's requirement for students to either be vaccinated or wear a mask and test twice weekly **upheld** against arguments that the requirement violated substantive due process rights (14th amendment) and religious exercise rights (1st amendment). Application to Supreme Court for injunction denied; case subsequently dismissed as moot.

Military personnel

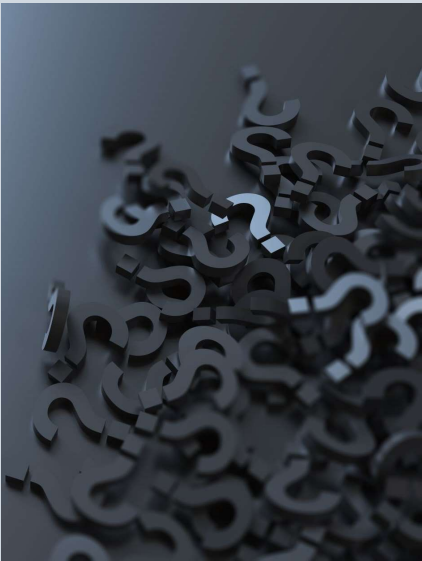
- *Austin v. Navy SEALs*, 595 U.S. ____ (Mar. 25, 2022). The U.S. Department of Defense has a covid-19 vaccination requirement for military personnel. 26 Navy SEALs and other Navy personnel with a religious objection sought an injunction to prevent punitive action against them. DOD sought partial relief from the injunction, arguing it did not intend to discipline or discharge unvaccinated personnel but should be permitted to reassign them from certain deployments or duties. The U.S. Supreme Court agreed and partially stayed the injunction, **allowing the reassignments to remain in place** while litigation continues.

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The Supreme Court is reviewing vaccine mandates for the first time in 100 years	Divergences or gaps may be developing in domains where requirements are imposed	The legal requirements for exemptions may be shifting
State governments have broader authority than federal government	Employment	Will religious exemptions be constitutionally required?
Local governmental authority depends on state	Schools/child care & universities	How will the sincerity of a religious exemption be determined?
Governmental authority is intact, but standard for review may be shifting	Community	

Where are we now, and what are the issues to watch?

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Questions?

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