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Vaccinations: Is it Constitutional to Mandate Them?

With a surge in the world's population, which now surpasses seven billion, and an increase of travel in our globally interconnected world, there has been an escalation in the spread of communicable diseases, both new and old, within the past few years. As recent as 2014, when California experienced an outbreak of the measles amongst school age children, epidemics of communicable diseases have been a public safety concern for the U.S. government and citizens alike. Since the first law mandating vaccinations was passed in Massachusetts in 1855, questions on whether forced vaccinations infringes on the constitutional rights of citizens and parents have been voiced. Although those rights were always protected under health and religious exemption laws, recently California Governor Jerry Brown mandated a controversial law, SB 277, which forgoes religious exemption and requires all school aged children to be vaccinated from certain communicable diseases, regardless of religious beliefs or views.¹ The purpose of these mandates is to protect the safety of the public and to forgo the epidemics that were so rampant in the past centuries. Whether in regards to California's new mandate, which prohibits religious exemptions, or the laws of the past, which allowed for the exemption, it is undeniably constitutional for states to mandate vaccinations to protect its citizens when there is an imminent danger to the public.

This paper will examine the constitutionality of mandated vaccinations, and discuss how and why constitutionality is determined on a case by case bases. Next, this article will discuss

¹ SB 277 was signed on June 30, 2015 and will go into effect July 1, 2016.
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB277

what constitutes religious exemptions, and to what extent will that exemption be catered to when the public's health and safety is at a risk.

The argument of whether citizens of the United States can be forced to receive immunizations has been the subject of many court cases since the introduction of mandated vaccinations in the early 19th century. Beginning with the small pox vaccine, the government's implementation of mandated vaccines for its citizens was defended because of a "real and substantial relation to the protection of the public health and safety"² The first notable case that challenged the constitutionality of mandated vaccinations was Jacobson v State of Massachusetts (1905). In this case, citizens led by Henning Jacobson, a pastor, "challenged a Massachusetts state law requiring all persons over the age of 21 to be vaccinated against small pox."³ Jacobson argued that,

a compulsory vaccination law [was] unreasonable, arbitrary and oppressive, and, therefore, hostile to the inherent right of every freeman to care for his own body and health in such way as to him seems best; and that the execution of such a law against one who objects to vaccination, no matter for what reason, is nothing short of an assault upon his person.⁴

Jacobson stated that this went against the 14th Amendment which protects individual liberties. Although individual liberties are covered under the 14th Amendment, the State holds a right to supersede individual liberties when a threat to the public is imminent. "[T]he state may be justified in restricting individual liberty...under the pressure of great dangers."⁵ This restriction of liberties is known as the State's police power, which may "be held to embrace, at least, such

² Boone v. Boozman, 217 F.Supp.2d 954. AR: Supreme Court 2002

³ Jacobson v State of Massachusetts, 197 U.S. 11 (1905)

⁴ Ibid.

⁵ JACOBSON v. MASSACHUSETTS•197 U.S. 11, 26 (1905)

reasonable regulations established directly by legislative enactment as will protect the public health and the public safety.”⁶ The Supreme Court ruled in favor of Massachusetts, citing it was within the police power of said State to mandate vaccinations in order to protect each and every citizen from an epidemic that could pose a serious threat to the health of the nation.

This ruling was subsequently underscored in Zucht v. King (1922). Rosalyn Zucht sued the city of San Antonio after an ordinance was issued that prohibited anyone who did not obtain the smallpox vaccine from attending public or private school.⁷ The defense argued that,

[A] State may, consistently with the federal Constitution, delegate to a municipality authority to determine under what conditions health regulations shall become operative.⁸

Under the Zucht v. King ruling, the courts dismissed the need for a disease to presently pose serious threat to the public. Whether there was a current condition that satisfied the classification of a threat to public health and safety, or it was the State’s own decision on what conditions vaccinations were deemed a necessity, both instances remain within the constitutional authority of the 14th Amendment. Neither instances encroached on individual liberties, but instead they underscored the need for the State to protect its citizens.

Although the two aforementioned cases dealt with the constitutionality of mandated vaccines in accordance with individual liberties protected under the 14th Amendment, other cases have dealt with the encroachment of religious freedoms as subject to vaccination laws. One case in particular, The Matter of Christine M., 157 Misc.2d 4, 595 N.Y.S.2d 606 (New York Family Court 1992), addressed the issue of religious exemptions.⁹ The matter in this case revolved around a toddler, Christine M., whose father refused to have her vaccinated from the measles

⁶ Ibid.

⁷ Zucht v. King 260 U.S. 174 (1922) <https://supreme.justia.com/cases/federal/us/260/174/case.html>

⁸ *Laurel Hill Cemetery v. San Francisco*, 216 U. S. 358

⁹ The Matter of Christine M., 157 Misc.2d 4, 595 N.Y.S.2d 606 (New York Family Court 1992) <http://biotech.law.lsu.edu/cases/vaccines/ChristineM.htm>

soon after New York had experienced a measles outbreak. The father, Mr. M, a practicing member of the Church of the 7th day, cited his religious beliefs as his reason behind not allowing the vaccination, even though the child had been previous vaccinated from other diseases, along with his other three older children. Mr. M, invoked the exemption, by claiming he did research in regards to the inherent dangers he believed vaccines pose, as well as him believing in a more holistic approach to medical treatment. According to state statutes, “in order to invoke the exemption a parent must however (1) hold a religious belief against vaccination, as opposed to a belief founded upon medical or purely moral considerations; and (2) sincerely hold such belief.”¹⁰ Although Mr. M was a religious man, his claims to exemption were based more on personal beliefs of moral consideration. After his continual refusal against vaccinating Christine, Child Protective Services brought a case of neglect against him. They charged that,

a parent's knowing failure to have a child immunized against measles in the midst of a measles epidemic or outbreak clearly places that child's physical condition in imminent danger of becoming impaired within the meaning of section 1012 (f) of the Family Court Act.¹¹

Although the government recognizes the right of the parent to raise their child in accordance to their own belief and views, these rights can and must be superseded when parental choices pose a threat to public health and safety. “Consequently, the large numbers of pre-school children who are unprotected against small pox and measles must be immunized and protected in their own self-interest as well as for the health and economic well-being of the community.”¹²

Government interference with the right of parents to nurture and to manage their children has been grounded both upon the State's general police power to protect and promote

¹⁰ Matter of Sherr v Northport-E. Northport Union Free School Dist., 672 F Supp, at 92, 94.

¹¹ Brown v City School Dist., 104 Misc. 2d 796 [Sup Ct, Steuben County 1980]

¹² The Matter of Christine M, 34.

public welfare, and upon the doctrine of *parens patriae*. (*Santosky v Kramer*, 455 US 745, 766 [1982]; *Prince v Massachusetts*, *supra*, 321 US, at 166, 169.) Moreover, the United States Supreme Court specifically has recognized that the enactment of statutes requiring immunization against communicable diseases, in the interest of both children and of the general public, is a valid exercise of a State's police power.¹³

In the case of the *Matters of Christine M*, the judge ruled in favor Mr. M. Although Mr. M did not have grounds for religious exemption, there was a lack of imminent threat to the public.

There was no current measles outbreak, therefore, the child did not need to be vaccinated. Again, mandating vaccines does not violate constitutional rights, as long as the mandate is there to protect the public from a present risk.

Similar to the *Matters of Christine M*, *Boone v. Boozman* (2002) challenged an Arkansas law, which mandated school aged children to be vaccinated from Hepatitis B, under the religious freedom exemption. “Section 6-18-702 of the Arkansas Code Annotated requires that children be immunized from certain diseases before they may attend public or private school in the State of Arkansas.”¹⁴ Cynthia Boone claimed that her daughter, Ashley, need not receive the vaccination due to an absence of a current outbreak amongst children her age. Boone argued that vaccinations were against her religious beliefs, citing the 14th Amendment, once again in protection of individual liberties. Boone also claimed that because her daughter was prohibited from attending school due to the lack of the vaccination, her daughter’s rights to “a free and appropriate public education” were violated.¹⁵ “While the Court does not minimize the

¹³ *Ibid.*, 29.

¹⁴ *Boone v Boozman*, 217 F.Supp.2d 938 (2002)

http://www.leagle.com/decision/20021155217FSupp2d938_11049/BOONE%20v.%20BOOZMAN#

¹⁵ *Boone v Boozman*, 217 F.Supp.2d 957.

http://www.leagle.com/decision/20021155217FSupp2d938_11049/BOONE%20v.%20BOOZMAN#

http://www.leagle.com/decision/20021155217FSupp2d938_11049/BOONE%20v.%20BOOZMAN#

importance of education, it is firmly established that the right to fundamental right or liberty.”¹⁶

Again, the courts ruled that Ashley’s individual rights were not violated. The court further stated that,

“It is well established that the State may enact reasonable regulations to protect the public health and the public safety, and it cannot be questioned that compulsory immunization is a permissible exercise of the State's police power.”¹⁷

Regardless of whether exemptions are allowed or not, the safety of the public supersedes the "religious freedom" that one may use as an immunity to refrain from receiving vaccinations, especially when there is an imminent risk to the public.

In Conclusion, the benefits of vaccinations are undeniable in our society today. According to the Center of Disease Control, among children who were born between 1994 and 2013, vaccines have prevented an estimate of over 322 million illnesses in each child, 21 million hospitalizations and has precluded over 732,000 child deaths.¹⁸ To state that mandating a vaccine is unconstitutional and violates a citizen’s individual liberties is completely inaccurate. The 14th Amendment protects each and every citizen’s individual rights barring they are a threat to another citizen or society in general. The government’s job is to protect all citizens, and if that protection comes falls under mandating vaccinations which in some cases supersede religious exemptions, then that tasks fall under the police power of the State. Nevertheless, the numbers

¹⁶ San Antonio Independent School District v. Rodriguez, [411 U.S. 1](#), 35, 93 S.Ct. 1278, 1297, 36 L.Ed.2d 16 (1973).

¹⁷ Boone v Boozman, 217 F.Supp.2d 954.

http://www.leagle.com/decision/20021155217FSupp2d938_11049/BOONE%20v.%20BOOZMAN#

¹⁸ "Benefits from Immunization During the Vaccines for Children Program Era — United States, 1994–2013." Centers for Disease Control and Prevention. Centers for Disease Control and Prevention, 25 Apr. 2014. <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6316a4.htm>

from the CDC proves that government enforcement of vaccinations are beneficial for the health, safety and security of our society.

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3. Boone v. Boozman. Arkansas. 12 Aug. 2002. *Leagle*. Web. 14 May 2016.
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4. CA Health & Safety Code § 120325. Print.
5. "Good Review of Religious Exceptions to Mandatory Vaccinations - Matter of Christine M., 157 Misc.2d 4, 595 N.Y.S.2d 606 (New York Family Court. 1992)." *Good Review of Religious Exceptions to Mandatory Vaccinations - Matter of Christine M., 157 Misc.2d 4, 595 N.Y.S.2d 606 (N.Y.Fam.Ct. 1992)*. 21 Dec. 1992. Web. 23 May 2016.
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8. S. SB 277 (2015) (enacted). Print.
9. San Antonio Independent School District v. Rodriguez. Texas. 21 Mar. 1973. *Cornell*

University Law School. Web. 10 May 2016.

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10. Sherr v Northport-East Northport Unified Free School District. New York. 21 Oct. 1987.

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