



UNIVERSITY OF CALIFORNIA
HASTINGS SCHOOL OF LAW

Navigating the Legal Landscape on Vaccine Laws

Dorit R. Reiss



Conflict of Interest Statement:

- The family owns stock (regular) in GSK.

A stylized graphic of a suspension bridge with yellow towers and blue cables, positioned in the top left corner of the slide.

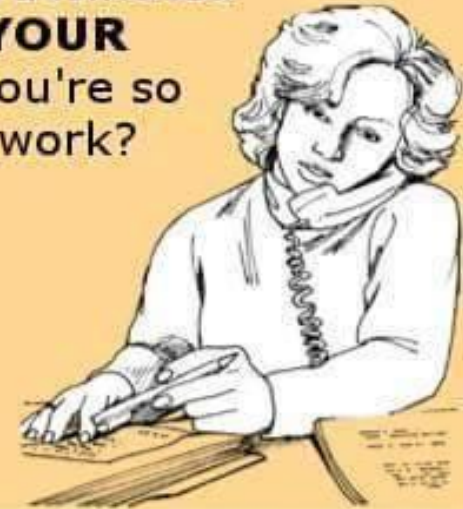
Plan:

- The Federal Framework
- A Right to Education?
- Religious Freedom:
 - Federal
 - State:
 - Constitutional RFR provision
 - RFRA
- Parental Rights

Basic Framework:

- Jacobson v. Massachusetts, 1905.
- Zucht v. King, 1922.

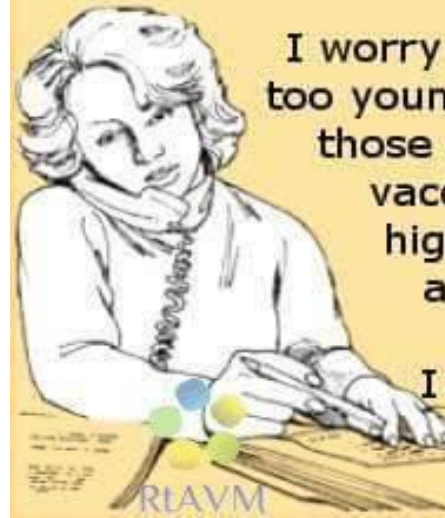
Why would **MY** unvaccinated kid be a threat to **YOUR** vaccinated kid, if you're so sure that vaccines work?



Because I don't just worry about my kid.

I worry about your kid, babies too young to be vaccinated and those who medically can't be vaccinated. They are all at high risk of suffering from and spreading infection.

I think they **ALL** equally deserve protection.





Basic Framework:

- Prince v. Massachusetts, 1944:
Can't expose community or child to disease, child to ill health or death by refusing forced vaccination.
- Phillips v. City of New York, (2015, 2nd circuit)



Right to education?

Children deserve a good education *and* good health. Immunization requirements help protect both.





Right to Education, CA

Art 9. s. 1. A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement.

SEC. 5. The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.

A stylized graphic of a bridge with yellow towers and blue suspension cables, positioned in the top left corner of the slide.

Right to Education, OK

Okla. Const. art. I, § 5 “[p]rovisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all children of the state....”

Okla. Const. art. XIII, § 1 states that “[t]he Legislature shall establish and maintain a system of free public schools wherein all the children of the State may be educated.”



What to Consider?

- Does my constitution address education?
 - What does it say?
- Did the Supreme Court Address it?
 - In what context?
 - What did it say?
- Examine:
 - Application to health/safety issues.
 - Protected Classes.

Hope Delozier died from an ear infection after her anti-vaccine parents used homeopathic and herbal therapies.

Ezekiel Stephan died from meningitis after his anti-vaccine parents used naturopathic and herbal therapies.



Children are *not* property.

Parents don't have the right to sacrifice their kids on the altar of their beliefs.

Religious Freedom, federal:

- Emp't Div., Dep't of Human Res. of Oregon v. Smith, 494 U.S. 872, 890 (1990).
- Prince v. Massachusetts:
Especially here.





Limits on Religious Exemptions:

- Cannot be limited to organized religions:
 - *Dalli v. Board of Ed.* 358 Mass. 753 (1971).
- Your religion does not have to oppose vaccines.
 - *Berg v. Glen Cove City School Dist.*, 853 F. Supp. 651, 655 (E.D.N.Y. 1994)
- Unless legislature required it, cannot evaluate sincerity.
 - *LePage v. State of Wyoming Department of Health*, 18 P.3d 1177, 1180 (2001)



Religious Exemptions, State:

- Does my state have a Religious Freedom Restoration Act (RFRA)?
- If yes:
 - Is it a statute, or in the constitution?
 - What does it apply to?
 - Compelling Interest: *Workman v. Mingo County* (2011).
 - Least Restrictive Means?

You can't
sell them.

Or put
them to work.

Or withhold
lifesaving medicine.




ACCIDENTS

**BOY FELL TO DEATH
IN BIG COAL CHUTE**
Deaths of John Reed and Arthur All
brother and his brother in
the Los Angeles

"Children are not
equipped by experience
to care for themselves
in modern industry"

AND SO THEY PAY



WITH A MAIMED LIFE

Three times as many industrial accidents
occur to children as to adults

EMPLOYMENT OF CHILDREN IS DUE TO
IGNORANCE ||
GREED || OF INDUSTRY AND PARENTS
NECESSITY ||

**ARE ANY OF THESE REASONS WORTH
A CHILD'S LIFE?**



Children are not property.

**Parents do not have a right to sacrifice their
children on the alter of their beliefs.**



Parental Rights:

- Federally: Matter, but not absolute.
- State: What to Consider:
 - What does Constitution say?
 - How did Supreme Court interpret it?
 - Was a parental rights bill passed?
 - If yes: content?
 - Jurisprudence on that and child's welfare?
 - Application to school immunization requirements which affect other children?



"My child, my choice..."
...to risk giving her
classmates measles?



Responding
to Parental
Rights
Argument.





Thank you!

Questions? Comments?

reissd@uchastings.edu

415-5654844