

VACCINATIONS AND FUNDAMENTAL RIGHTS: THE NEED FOR FEDERAL VACCINATION LEGISLATION

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INTRODUCTION

“Before the measles vaccine was introduced in 1963, an estimated 3 to 4 million people got measles each year in the United States... [A]bout 400 to 500 people died from measles and 48,000 were hospitalized [yearly] in the pre-vaccine era”¹ The MMR vaccine was developed to combat measles and protect lives, and it is the best protection available against the disease if given to children in two doses.² Yet, in Michigan alone there were 44 confirmed cases of the Measles in 2019³ and, in 2012, the measles claimed 122,000 lives across the world.⁴

“Except for smallpox, many diseases are still rampant in third world and developing countries. What this means is that diseases can [make] a comeback anywhere that vaccines begin to be delayed or stopped.”⁵ In 2008, 63,000 people worldwide died because of tetanus.⁶ In addition, there were over 94,000 cases of rubella and over 680,000 cases of mumps in 2012 globally.⁷ “Even with low or nonexistent rates of many infections, like measles, polio, and diphtheria in the United States, parents shouldn’t forget that these infections are just a plane ride away from [their] child[ren].”⁸ In the United States, citizens are fortunate enough to have access to vaccinations, and, due to their availability, are able to effectively battle the risk of exposure to infectious diseases, so long as vaccination guidelines are followed.⁹

This note focuses on the interaction between fundamental rights and the consequences of parental refusal to vaccinate their minor children. Whereas

1. *2019 Michigan Measles Outbreak*, I VACCINATE, <https://ivaccinate.org/measles-outbreak/> (last visited Feb. 3, 2020).

2. *Id.*

3. *Id.*

4. Vincent Iannelli, *Epidemics and Outbreaks of Vaccine-Preventable Diseases*, VERYWELL FAMILY (Feb. 23, 2020), <https://www.verywellfamily.com/vaccine-preventable-diseases-2633684>.

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

parents have the right to raise their children,¹⁰ and a right to religious freedom,¹¹ those rights are restricted by a governmental interest in protecting public health, child welfare, and promoting uniformity among the several states in the country. The note aims to explore different rights afforded to citizens by the Constitution and explain situations in which it is necessary, and constitutional, for the government to regulate behaviors and limit rights of the people, to protect the country as a whole.

Section I of this note explores fundamental rights that have been granted to individuals by the Supreme Court of the United States through their interpretations of the Constitution and the Equal Protection and Due Process Clauses. Through those fundamental rights, individuals have been protected heavily from governmental intrusion into their lives. The rights granted, however, are not unqualified, and are subject to government regulation in some circumstances.

Section II of this note outlines when states are able to regulate the scope of fundamental rights. Specifically, this section discusses governmental regulation in cases of possible medical abuse or neglect, which makes it possible for the refusal to vaccinate a child to be considered medical neglect, although it has not yet been held to do so.

Section III of this note explains specific instances and reasons that the state has to intervene with, and overcome, individuals' fundamental rights. The section aims to explain when the government is able to infringe upon an individual's ability to choose whether to vaccinate, although it could interfere with fundamental rights that have been recognized and protected under the Constitution. Courts have continuously upheld the rights of the state governments to override parental decisions when it comes to public health and safety concerns during an outbreak.¹²

Section IV of this note discusses the main reason a why many parents refuse to vaccinate their children: religious beliefs. It goes on to explore multiple instances in which the court has determined that although individuals have religious freedoms, the government is able to regulate their conduct when it comes to furthering important interests.

Section V provides an argument describing why there should be federal legislation regarding childhood vaccinations to promote uniformity among the states regarding the issue, as well as to promote protections of public safety and child welfare. It also proposes a possible federal law, allowing for only a medical exemption to mandatory vaccinations for minor children. There is also discussion and explanation of why federal legislation would survive multiple levels of Supreme Court review.

10. See, e.g., *Troxel*, 530 U.S. at 72, 75; *Meyer v. Nebraska*, 262 U.S. 390, 399-400 (1923); *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534-35 (1925).

11. U.S. CONST. amend. I.

12. See, e.g., *Zucht v. King*, 225 S.W. 267, 272 (Tex. Civ. App. 1920) *writ refused*, (Feb. 9, 1921).

I. FUNDAMENTAL RIGHTS

Citizens of the United States are afforded certain rights and freedoms. The Constitution grants and ensures these rights and requires that the government protect them.¹³ When people feel that the government has infringed upon their guaranteed rights as citizens of this country, they turn to the Constitution and Supreme Court precedent to be sure that their grievances are heard, and their closely held freedoms are protected from such an intrusion. When rights that have been granted under the Constitution have been allegedly infringed upon, Courts generally look to an analysis that involves a level of scrutiny to determine if the action by the government was appropriate. Among those levels of scrutiny, we find rational basis, intermediate scrutiny, and strict scrutiny, all lying on a spectrum of rights with rational basis on one end and strict scrutiny on the opposite.¹⁴

On one end of the scrutiny spectrum, rational basis review is for rules or regulations that have a “low level of suspicion,” and a “low likelihood of being overturned.”¹⁵ Under this test, the “[g]overnment must have a legitimate interest” and “[t]he law must be ‘rationally related’ to the interest.”¹⁶ When the Court considers something to be a “regular government regulation” and “not ‘arbitrary, discriminatory, or demonstrably irrelevant’ to the action regulated,”¹⁷ rational basis is appropriate.

In the middle of the scrutiny spectrum lies intermediate scrutiny which is generally applied to “quasi-suspect classifications” such as gender and less expressive speech.¹⁸ Under this standard, the regulation has a “[m]edium likelihood of being overturned,” and the “[g]overnment must have an important interest” where the “law [is] ‘substantially related’ to the interest.”¹⁹ Under this standard, the government has important interests that are the same as mentioned under rational basis review.

At the highest end of the spectrum lies strict scrutiny, where the Court “has declared government regulation should be scrutinized *very* strictly when it infringes on a protected liberty[,] . . . a protection action[,] . . . or when it unfairly discriminates against a protected class”²⁰ When the Court applies this standard of review, the “[g]overnment must have a compelling interest” requiring that “[t]he law must be ‘narrowly tailored’ to the interest,” and that the law generally has a

13. U.S. CONST.

14. Mariam Morshedi, *Levels of Scrutiny*, SUBSCRIPT LAW (Mar. 6, 2018), <https://www.subscriptlaw.com/blog/levels-of-scrutiny>.

15. *Id.*

16. *Id.*

17. *Id.* (quoting *Nebbia v. New York*, 291 U.S. 502 (1934) (the first case in which the Court introduced rational basis review of a governmental regulation)).

18. *Id.*

19. *Id.* See also *Craig v. Boren*, 429 U.S. 190 (1976) (where the Court applies intermediate scrutiny for the first time).

20. Morshedi, *supra* note 14.

“[v]ery high likelihood of being overturned.”²¹ Whenever this level of scrutiny is applied, it is rare that a law survives, although it is possible.²² Keeping the levels of scrutiny in mind, it is necessary to know which rights the Supreme Court has deemed fundamental.

The United States Constitution affords many rights, and among those rights are the rights to due process and equal protection.²³ The Fourteenth Amendment to the Constitution provides:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.²⁴

The Amendment has been used in many cases before the Supreme Court of the United States in which citizens felt that the government had overstepped its power, infringing upon and violating their rights to due process and equal protection.²⁵

One of the fundamental rights that the Supreme Court has recognized as being protected by the Fourteenth Amendment, and afforded much protection to, is the right to marry.²⁶ The Court in *Loving v. Virginia* explained, “[t]he freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men,”²⁷ and also, “[m]arriage is one of the ‘basic civil rights of man,’ fundamental to our very existence and survival.”²⁸ In *Loving*, the Court overturned a statute which criminalized the marriage of a white man and an African American woman, by declaring that race was not a substantial justification for denying marriage.²⁹ The Court applied a very high standard to the law in question, noting that “the Equal Protection Clause requires the consideration of whether the classifications drawn by any statute constitute an arbitrary and invidious discrimination,”³⁰ meaning that if the statute’s only purpose was to discriminate, it would need to be invalidated for infringing upon a fundamental right.

The Supreme Court has held that the right to procreate is another fundamental right protected by the Fourteenth Amendment.³¹ Along with the right to marry, the right to have children follows as a constitutionally protected right upon which the

21. *Id.* See also *Loving v. Virginia*, 388 U.S. 1 (1967) (where the Court applied strict scrutiny and struck a law banning interracial marriage); *Skinner v. Oklahoma* 316 U.S. 535 (1942) (where the Court applied strict scrutiny and struck down a law forcing sterilization of criminals).

22. *Id.* See also *Korematsu v. United States*, 323 U.S. 214 (1944) (where the Court applied strict scrutiny and the case was resolved in favor of the government).

23. U.S. CONST. amend. XIV.

24. U.S. CONST. amend. XIV.

25. See, e.g., *Loving v. Virginia*, 388 U.S. 1 (1967).

26. *Id.*

27. *Id.* at 13.

28. *Id.* at 12 (quoting *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942)).

29. See *Loving*, 388 U.S. 1 (1967).

30. *Loving*, 388 U.S. at 10.

31. See *Skinner*, 316 U.S. at 535.

government is unable to infringe without showing that the law is able to pass a strict scrutiny analysis. “Marriage and procreation are fundamental to the very existence and survival of the race,”³² and the Court affords them high protection under the Constitution. Following the right to marry and the right to procreate, the Court has also recognized the right to privacy as a fundamental under the Fourteenth Amendment.³³ Specifically, the right to privacy protects decisions regarding whether to bear or beget a child. In *Eisenstadt v. Baird*, the Court stated that, “[i]f the right of privacy means anything, it is the right of the *individual*, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.”³⁴ The Court has continuously upheld the rights of citizens against the governmental intrusions into their lives, and has continued to protect those rights that have been deemed fundamental. So, then, does it follow that parents have a fundamental right to raise their children as they choose?

Some scholars have noted that parents should not necessarily be afforded the *unqualified* fundamental right to do so. James Dwyer, a legal scholar and professor at William and Mary Law School, has explained his position that parents should not have “rights,” but rather they should be “permitted” to “make certain decisions on a child’s behalf in accordance with the *child’s* rights.”³⁵ He further contends that just because someone is a parent does not mean that they are “entitled to control the life of another person.”³⁶ The current trend in the law seems to be different, however, in that society seems to allow deference to the parent’s decision when it comes to the interests of the child, and, according to Dwyer, in most cases courts are “unwilling to allow either the State’s determination or their own judgment of a child’s best interests to supplant parental . . . rights.”³⁷

Other scholars, however, have agreed with the legal system and believe that the right to raise one’s children should be *nearly unqualified*, fundamental, and protected. According to Dr. Melissa Moschella, Assistant Professor of Philosophy, parents have a right to raise their children as they see fit, and “except in cases of genuine . . . abuse or neglect, the state should refrain from interfering . . .”³⁸ She believes that parents are closer to their children, and are therefore able to make the decisions that are best for them and their upbringing because the relationship gives them more of a sense of responsibility and care.³⁹ However, just because parents have this right does not mean that the government should be unable to step in and regulate when necessary, such as in cases of abuse, neglect, or violence being taught.⁴⁰ While there are compelling points on both sides of the argument, the

32. *Id.* at 541.

33. *See Eisenstadt v. Baird*, 405 U.S. 438 (1972).

34. *Id.* at 453.

35. James G. Dwyer, *Parents’ Religion and Children’s Welfare: Debunking the Doctrine of Parents’ Rights*, 82 CALIF. L. REV. 1371, 1373 (1994).

36. *Id.*

37. *Id.* at 1377.

38. Melissa Moschella, *The Fundamental Case for Parental Rights*, PUB. DISCOURSE (Oct. 6, 2014), <https://www.thepublicdiscourse.com/2014/10/13635/>.

39. *See id.*

40. *Id.*

Supreme Court has interpreted the Constitution to mean that parents do in fact have a fundamental right to raise their children, and has upheld that right in many situations, but that right is not without limitations.⁴¹

The Court has stated that, “so long as a parent adequately cares for his or her children (*i.e.* is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent’s children.”⁴² Among the known responsibilities of a parent when raising their children are the responsibilities to be involved and help them get a proper education, to teach them morals and values, to keep them safe and healthy, and many more.⁴³ Parents have many responsibilities, and they need to be able to obtain their goals, within reasonable means, without fear that the State will step in and regulate their parenting practices. Parents have a bond with their children, and that bond likely makes them more capable to make the decisions that will best benefit their children and their futures. Recognizing this, the Court has afforded parents the fundamental right to make decisions regarding the upbringing of their children.⁴⁴

Among the recognized constitutionally protected rights is the right to choose what their children are taught in schools.⁴⁵ Although “the state may do much . . . in order to improve the quality of its citizens . . . the individual has certain fundamental rights which must be respected.”⁴⁶ Parents have a right to “give [their] children education suitable to their station in life . . .”⁴⁷ that is unable to be infringed upon by the state, which the Court made clear by invalidating a statute prohibiting children from being taught German in the classroom.⁴⁸ Following the right to choose what kind of education their children receive, parents also have the right to send their children to schools of their choosing and control their educational opportunities.⁴⁹

Parents have also been afforded the right to be given special deference in court proceedings because “there is a presumption that fit parents act in the best interests of their children.”⁵⁰ According to the Supreme Court in *Troxel v. Granville*, “[i]n light of [the] extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental

41. See generally *Troxel v. Granville*, 530 U.S. 57 (2000) (where the Court states that “the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody and control of their children.”)

42. *Id.* at 68-9.

43. *The Parent Coach Plan*, <https://parentcoachplan.com/article3.php> (last visited February 22, 2021).

44. See, e.g., *Troxel*, 530 U.S. at 72, 75; *Meyer v. Nebraska*, 262 U.S. 390, 399-400 (1923); *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534-35 (1925).

45. See *Meyer*, 262 U.S. 390.

46. *Id.* at 401.

47. *Id.* at 400.

48. *Id.* at 400, 403.

49. See generally *Pierce*, 268 U.S. 510 (where the Court explained that the law requiring children of certain ages to attend public schools “unreasonably interfere[d] with the liberty of parents and guardians to direct the upbringing and education of children under their control.”)

50. *Troxel*, 530 U.S. at 68.

right of parents to make decisions concerning the care, custody, and control of their children.”⁵¹ Therefore, parents have a fundamental right of caring for their children and raising them accordingly, so long as they are deemed to be fit parents, and when fit parents make decisions for their children, “the court must accord at least some special weight to the parent’s own determination.”⁵²

However, a parents’ right to raise their children is not unqualified, and should not trump every governmental regulation.⁵³ The court in *Schleifer v. City of Charlottesville* stated that “[n]ot every state restriction of a child’s freedom derivatively abridges the fundamental rights of parents. The Supreme Court has rejected the view that parents possess an unqualified right to raise children that trumps any government regulation of their children’s conduct.”⁵⁴ This means that while parents do have a fundamental right to raise their children, that right is not absolute and it can be regulated by the government if there is a compelling interest to do so, such as to protect the child themselves or the public around the child.⁵⁵ Knowing this, it is important to explore the way that religious rights intersect with the right to raise children.

The First Amendment of the Constitution provides, “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof[.]”⁵⁶ Through the Amendment, the importance of the right to free exercise of religion is established, and it is held closely to American citizens as well as very highly protected by the court system.⁵⁷ For example, the Supreme Court held in *Wisconsin v. Yoder* that parents have the right to choose what education their children receive and how long they go to school for religious reasons.⁵⁸ In *Yoder*, the petitioners were convicted of violating the compulsory attendance laws of Wisconsin.⁵⁹ When they challenged their convictions, the Supreme Court upheld the decision of the lower court that the convictions were a violation of the Due Process Clause of the Fourteenth Amendment.⁶⁰ The Court went on to explain, “a State’s interest in universal education . . . is not totally free from a balancing process when it impinges on fundamental rights and interests, such as those specifically protected by the Free Exercise Clause of the First Amendment, and the traditional interest of parents with respect to the religious upbringing of their children”⁶¹ The right to practice religion free of the government’s influence is one that is heavily protected by the court system, but there are exceptions.

While religious freedoms are highly protected, there are circumstances in which the Supreme Court has ruled that the restrictions on religious freedom are

51. *Id.* at 66.

52. *Id.* at 70.

53. *See Schleifer v. City of Charlottesville*, 159 F.3d 843, 852 (4th Cir. 1998).

54. *Id.*

55. *See, e.g., id.*

56. U.S. CONST. amend. I.

57. *Id.*

58. *Wisconsin v. Yoder*, 406 U.S. 205, 234 (1972).

59. *Id.* at 205.

60. *Id.* at 207.

61. *Id.* at 217.

justified so long as the state was able to pass a strict scrutiny analysis. One such instance is when the welfare of a child or the welfare of the public is at risk.⁶² For example, the Court has explained that “the state has a wide range of power for limiting parental freedom and authority in things affecting the child’s welfare; and that this includes, to some extent, matters of conscience and religious conviction.”⁶³ This means that although parents have rights to raise their children in accordance with their religious beliefs, those rights are not unlimited. However, when choosing to override the religious rights of a parent who is making decisions for their children, States cannot elect to favor one religion over another when providing for exemptions.⁶⁴

In sum, while parents have many protected rights when it comes to their choices in raising their children, and there is an intersection with those choices and their religious beliefs, parents are not completely free of state regulations. Legislatures, however, have a high burden to bear when they elect to regulate those rights that are deemed to be fundamental under the Constitution. In cases of the lives of children being at stake, or the public as a whole being at risk, the courts have upheld the constitutionality of state regulation for those legitimate purposes. This being established, it is important to discuss instances in which states are able to step in on behalf of children and override parental rights and religious convictions.

II. WHEN CAN THE STATE STEP IN?

While the right to choose how to raise a child has been deemed fundamental, there are still reasons to hold parents accountable for their actions in doing so. For example, if parents choose to teach their children to be violent, unruly, or irresponsible, the public will likely begin to suffer as a result. Similarly, when it comes to parental decisions to refuse medical treatment for their children for any reason, be it religious or not, it is important to understand when the government is able to step in and override those decisions on behalf of the child’s and public’s best interests.

The federal government established the Office on Child Abuse and Neglect in order to execute and oversee the implementation of the Child Abuse Prevention and Treatment and Adoption Reform and work with other governmental agencies to ensure that necessary expertise is involved in all decisions regarding child abuse and neglect.⁶⁵ The board established by the secretary under this act is to consist of persons from multiple disciplines in order to provide the needed expertise; some

62. *See generally* Prince v. Massachusetts, 321 U.S. 158 (1944) (where the Court explains that a parent’s rights to raise their children and practice religion can be limited by the state when it affects the child’s welfare).

63. *Id.*

64. *See* Sherr v. Northport-E. Northport Union Free Sch. Dist., 672 F. Supp 81, 98 (E.D.N.Y. 1987) (finding that “limitation of the availability of a religiously-based exemption from immunization to ‘bona fide members of a recognized religious organization’ whose doctrines oppose such vaccinations violates both the establishment and free exercise clauses of the First Amendment to the United States Constitution.”).

65. 42 U.S.C. § 5101 (2018).

of the backgrounds listed include: law, psychology, social services, health care providers, teachers, family rights groups and children's rights advocates.⁶⁶ While working together in researching and discussing those activities that should be defined as child abuse and neglect, the experts on the board submit a report containing their findings to the secretary, which are then used in further discussions on what is best for the children.⁶⁷ The persons involved in this research are further required to continue researching in order to "provide information needed to better protect children from child abuse or neglect and to improve the well-being of victims of child abuse or neglect,"⁶⁸ and can include a variety of topics such as "the nature and scope of child abuse and neglect"⁶⁹ and "causes, prevention, assessment, identification, treatment, . . . , and the consequences of child abuse and neglect."⁷⁰

Medical neglect is a growing cause of concern in this particular area of law because of the tension between the fundamental rights of parents and the welfare of the children involved. "[T]he term 'withholding of medically indicated treatment' means the failure to respond to the infant's life-threatening conditions by providing treatment . . . which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions"⁷¹ Since some parents have closely held religious beliefs that have been deemed a fundamental right and receive the highest level of protection under our Constitution, there are instances when a parent might be withholding medically indicated treatment by the federal government's definition. This provokes the question: can the government infringe upon parental religious rights, or their right to raise their children, in order to be sure the child gets the medically indicated treatment?

When parents are making decisions for their children, they generally draw from their own life experiences.⁷² Whereas parents are generally able to refuse lifesaving treatment for themselves for religious or moral reasons, it does not mean that they should be able to make the same decision for their minor child.⁷³ "State laws typically give much leeway to parents and allow them to make medical decisions for their own children unless their decisions endanger the life of [their] child."⁷⁴ However, in cases where the life of the child is in danger, the treatment is reasonable, the doctors are in agreement about the treatment, and the parent is refusing treatment, courts generally will allow the state to step in.⁷⁵ For example, in *Jehovah's Witnesses of Washington v. King County Hospital*, when minor

66. 42 U.S.C. § 5102 (2018).

67. *Id.*

68. 42 U.S.C. § 5105(1) (2018).

69. 42 U.S.C. § 5105(1)(a) (2018).

70. 42 U.S.C. § 5105(1)(b) (2018).

71. 42 U.S.C. § 5106g(5) (2018).

72. *When Can a Parent Deny Medical Treatment to Their Minor Child*, LAWINFO, <https://resources.lawinfo.com/insurance/health-insurance/when-can-a-parent-deny-medical-treatment-to-a.html> (last visited Jan. 6, 2020).

73. *See Jehovah's Witnesses v. King Cty. Hosp.*, 278 F. Supp. 488 (W.D. Wash., 1967).

74. LAWINFO, *supra* note 74.

75. *Id.*

children of Jehovah's Witnesses were given blood transfusions under court order and contrary to the parent's religious beliefs, the court explained:

If a plaintiff receives a blood transfusion, this could, in the view of the plaintiffs, mean permanent spiritual harm to both the child and parent or adult. According to the Jehovah's Witnesses, blood transfusions involve certain risks, are of limited value, and there are alternative means of treatment which makes the use of such therapy unnecessary and inadvisable. . . . Nevertheless, it is the prevailing medical view that blood transfusions are not only safe but necessary in those kinds of situations presented to the court in the specific instances involving the minor plaintiffs in this case.⁷⁶

The court then held that the parents were not entitled to relief under the Constitution for the actions of the state in entering a court order,⁷⁷ meaning that in such instances where medical intervention could save the life of the child, a state can override fundamental parental rights.

In cases where it may be deemed necessary for the government to step in and make medical decisions for minor children, parents face consequences of possibly losing their children or having criminal abuse and neglect charges brought against them.⁷⁸ While fit parents should be afforded deference in court hearings about custody of their children,⁷⁹ it seems that when parents are refusing necessary medical treatment they may be acting as unfit parents in the eyes of the legislature and the courts. In deciding the issue, the Supreme Court invoked the Due Process Clause of the Fourteenth Amendment and explained that to force the separation of parent and child without showing unfitness of the parent, or that the separation was in the child's best interest, would violate Due Process.⁸⁰

While the court in some circumstances has the ability to terminate parental rights due to unfit parenting, the state must prove its case of neglect by a clear and convincing evidence standard in order to remove the child from the parent's custody.⁸¹ The state needs to meet this standard to permanently sever the parent's rights to the child because, "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State."⁸² Parents make mistakes and make decisions that society may not agree with, but our country has a strong interest in protecting familial bonds and preventing irreversible destruction of families.⁸³

76. *Jehovah's Witnesses*, 278 F. Supp. at 502-03.

77. *Id.* at 508.

78. LAWINFO, *supra* note 74.

79. *Troxel v. Granville*, 530 U.S. 57, 67-68 (2000).

80. *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) (quoting *Smith v. Org. of Foster Families* 431 U.S. 816, 862-63 (1977)).

81. *Santosky v. Kramer*, 455 U.S. 745, 747 (1982) ("Before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence.").

82. *Id.* at 753.

83. *Id.* at 766-67.

Parents make decisions daily when it comes to the upbringing of their children; some decisions may be contrary to what society deems appropriate and others may fall in line with majority views. There is likely a presumption that parents are closer to their children and are able to make the best decisions when it comes to their care, therefore affording parents a large deference in making such decisions. However, since there are circumstances in which parents may make decisions to withhold vital medical care for their children, and such decisions can endanger the life of the child, the legislatures and courts have made it clear that the state is able to step in and override the parents' choices in order to protect the child's best interests.

III. STATES' INTEREST IN PUBLIC HEALTH—WHEN CAN THE STATE MANDATE CERTAIN TREATMENTS?

Although the court system makes a point of protecting our rights from state intrusion, there are instances in which it becomes necessary for there to be governmental regulation of citizens' behavior. Along with the ability to criminalize certain behaviors and maintain peace, "the preservation of the public health [is] the primary responsibility of state and local governments"⁸⁴ In certain circumstances, the government is afforded the ability to restrict rights to ensure public health and safety, such as when there are emergencies caused from disease outbreaks. "With respect to the preservation of the public health in cases of communicable disease outbreaks, these powers may include the institution of measures such as quarantine and isolation or the enactment of mandatory vaccination laws."⁸⁵

Where parents have the fundamental rights to raise their children and to the free exercise of religion, states have the right to intervene to protect the public health as a whole. This being true, where should the line be drawn? At what point do the parents' rights to raise their children override the states' rights to intervene with their choices? At what point does state police power override the parents' religious convictions? Courts and scholars have attempted to answer these questions in a way that is clear to the public as a whole.

Vaccinations were created both to promote the health of children and to promote the health of the public.⁸⁶ While parents do have fundamental rights when it comes to raising their children, the right to choose not to vaccinate is not protected under the Constitution in cases of public health emergencies or in cases of possible medical neglect.⁸⁷ The federal government does not have any mandatory vaccination requirements, although it has the ability to, because

84. Kathleen S. Swendiman, CONG. RESEARCH SERV., RS21414, *MANDATORY VACCINATION: PRECEDENT AND CURRENT LAWS* 1 (2011).

85. *Id.*

86. Sharon Driscoll, *What are the Laws Around Vaccines and Kids' Rights?*, STAN. UNIV. (Feb. 14, 2019), <https://www.futurity.org/vaccination-kids-rights-laws-1983792/>. See also Karen Lewis, *Why Parents Should Vaccinate Their Children*, THE ARIZONA PARTNERSHIP FOR IMMUNIZATION (May 7, 2015), <https://www.whymmunize.org/why-parents-should-vaccinate-their-children/>.

87. Driscoll, *supra* note 88.

vaccinations and child welfare have generally been considered best handled by the individual states.⁸⁸

While the federal government has not passed a law requiring mandatory vaccinations, it has established the Children's Vaccine Initiative,⁸⁹ a program created "to develop affordable new and improved vaccines to be used in the United States. . . that will increase the efficacy and efficiency of the prevention of infectious diseases."⁹⁰ The secretary of the initiative is charged to "develop and make available vaccines. . . that can be given early in life, that provide long lasting protection . . . and that protect against a larger number of diseases."⁹¹ The federal government has also established an advisory commission on childhood vaccines,⁹² which is comprised of three health professionals, three members of the general public, three attorneys, the Director of the National Institutes of Health, the Assistant Secretary for Health, the Director of the Centers for Disease Control and Prevention, and the Commissioner of Food and Drugs.⁹³

The advisory commission on childhood vaccines is charged with various functions, some of which are recommending changes to the vaccine injury table,⁹⁴ recommending research, and gathering information regarding the adverse effects of vaccinations.⁹⁵ Using the information compiled by the advisory commission, health care providers are given the information and tools to provide vaccinations to children and are charged with the responsibility of giving the legal guardians of the children the information within the vaccine injury table and explaining what it means.⁹⁶

Further, the federal government has also established that if states meet certain requirements, the states are able to receive vaccinations to provide to qualifying children through federal funding at no cost to the child or the facility.⁹⁷ Given the establishment of the commission and the initiative, it is clear that the federal government recognizes the importance of vaccinations to the country as a whole, even though states are ultimately the ones passing mandatory vaccination laws and allowing for exemptions to them.⁹⁸

88. *Id.*

89. 42 USCS § 283(d) (2019).

90. *Id.*

91. *Id.*

92. § 300(aa)(19).

93. § 300(aa)(19)(a)(1)-(2).

94. § 300(aa)(14), "[A] table of vaccines, the injuries, disabilities, illnesses, conditions, and deaths resulting from the administration of such vaccines, and the time period in which the first symptom or manifestation of onset or of the significant aggravation of such injuries, disabilities, illnesses, conditions, and deaths is to occur after vaccine administration for purposes of receiving compensation under the Program."

95. § 300(aa)(19)(f).

96. § 300(aa)(26).

97. § 1396s.

98. CTR. FOR DISEASE CONTROL & PREVENTION, *State School Immunization Requirements and Vaccine Exemption Laws*, <https://www.cdc.gov/phlp/docs/school-vaccinations.pdf> (last updated Feb. 2017).

When states do pass mandatory vaccination laws, on many occasions, courts have upheld the laws as reasonable exercises of their police power. In *Zucht v. King*, where an unvaccinated child was excluded from both public and private schools, the court held that states are able to make ordinances restricting non-vaccinated children from attending schools and that vaccinations can be required for public health reasons.⁹⁹ The court explained:

We are discussing a police regulation affecting the schools, school children, for their good and the good of society, against the possible spread of one of the most filthy and dangerous diseases. We are not dealing with abstract questions . . . but with the vital question of the protection of health and the spread of a loathsome disease. . . [W]e can conceive of no greater spread of the terrible disease than through the public schools. . . [Children] are thrown in contact with each other every school day during the scholastic term, and each child so coming in contact with a diseased child may take it home, and so on it goes. Vaccination is for the good of the child as well as for society.¹⁰⁰

Many courts have adopted the same reasoning as the court did in *Zucht*, holding that it is constitutional for states to require vaccinations before children are able to attend schools.¹⁰¹

Although states may vary about which mandatory vaccinations are required,¹⁰² all states require (with some exceptions)¹⁰³ that children are vaccinated before attending school or daycare in order to prevent any outbreaks of preventable diseases.¹⁰⁴ The CDC has deemed multiple vaccinations necessary for children's lives to protect them from known diseases such as Hepatitis A, Hepatitis B, and Human Papillomavirus.¹⁰⁵ While there is not yet a mandatory vaccination requirement at the federal level, the federal government does reserve the right "to make and enforce such regulations as . . . necessary to prevent the introduction, transmission, or spread of communicable diseases."¹⁰⁶

99. *Zucht v. King*, 225 S.W. 267, 272 (Tex. Civ. App. 1920) *writ refused*, (Feb. 9, 1921).

100. *Id.*

101. See *Seubold v. Ft. Smith Special Sch. Dist.*, 237 S.W.2d 884, 887 (Ark. 1951) (compulsory vaccinations do not infringe upon a constitutional right); *Workman v. Mingo Co. Bd. of Ed.*, 419 F. App'x 348, 356-57 (4th Cir. 2011) (it is constitutional for states to require vaccinations before children are able to attend schools); *Brown v. Stone*, 378 So. 2d 218, 223-24 (Miss. 1979) (states can require vaccinations to attend public school for public health reasons).

102. PROCON.ORG, *State-by-State: Vaccinations Required for Public School Kindergarten* <https://vaccines.procon.org/state-by-state-vaccinations-required-for-public-school-kindergarten/> (last updated June 23, 2018).

103. See NAT'L VACCINE INFO. CTR., *Frequently Asked Questions About Vaccine Exemption Information* <https://www.nvic.org/faqs/vaccine-exemptions.aspx> (last visited Feb. 3, 2020).

104. PROCON.ORG, *supra* note 104.

105. See CTR. FOR DISEASE CONTROL & PREVENTION, *Immunization Schedules*, <https://www.cdc.gov/vaccines/schedules/hcp/imz/child-adolescent.html> (last visited Jan. 2, 2021) (explaining each type of vaccine, its recommended time frame and information regarding administration of the vaccines).

106. 42 USCS § 264 (2019).

Mandatory vaccination for students is a matter of public health rather than a compulsion to infringe upon recognized individual freedoms, which is why states are able to enforce their mandatory vaccination laws within reason.¹⁰⁷ Schools have a duty to protect the children enrolled as much as possible, so when the schools deem it necessary, it is acceptable for them to prevent unvaccinated children from coming to school as advised by health boards of the particular state.¹⁰⁸ In fact, all fifty states have laws requiring students to provide documentation that they have been vaccinated in accordance to the state requirements before they can attend school.¹⁰⁹ Further, when there are outbreaks of certain diseases, such as measles, and state departments have determined that there is possibility of further infection at schools, it is acceptable for states to stop unvaccinated children from attending school until they are confident the risk that more children could be affected is no longer present.¹¹⁰

In addition to the ability to stop unvaccinated children from attending school during an outbreak, the government is able to step in and create mandatory vaccination laws when it is reasonably necessary to protect public health because it is a proper exercise of their police power.¹¹¹ “Federal jurisdiction over public health matters derives from the Commerce Clause, which states that Congress shall have the power ‘[t]o regulate Commerce with foreign Nations, and among the several States.’”¹¹² The Commerce Clause affords the government police powers which allow for states to enact laws to further their interest in public health. Government police powers “may include the institution of measures such as quarantine and isolation or the enactment of mandatory vaccination laws.”¹¹³

Although it could be considered an infringement upon fundamental rights, courts have often held that requiring mandatory vaccinations is constitutional.¹¹⁴ For example, in *Jacobson v. Massachusetts*, where the state government passed a law allowing a board to require vaccinations if it believed them appropriate, the Supreme Court held that for public health reasons, smallpox vaccinations could be mandatory.¹¹⁵ The Court explained:

The authority of the state to enact this statute is to be referred to what is commonly called the police power, a power which the state did not surrender when becoming a member of the Union under the Constitution. . . . [T]his court . . . has distinctly recognized the authority of a state to enact quarantine laws and “health laws of every description;” . . . According to settled principles, the police power of a state must be

107. *Duffield v. Sch. Dist. of City of Williamsport*, 162 Pa. 476, 483 (1894).

108. *See id.* at 483.

109. Swendiman, *supra* note 86, at 5.

110. *Maricopa Cty. Health Dep’t. v. Harmon*, 750 P.2d 1364, 1369 (Ariz. Ct. App. 1987).

111. Swendiman, *supra* note 86, at 4, 5.

112. *Id.* at 10 (quoting U.S. CONST. art. I, § 8).

113. *Id.* at 4.

114. *Workman v. Mingo Cty. Bd. of Educ.*, 419 F. App’x 348, 353-54 (4th Cir. 2011).

115. *Jacobson v. Massachusetts*, 197 U.S. 11, 39 (1905).

held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety.¹¹⁶

Whereas Jacobson argued that he should be free to choose whether to be vaccinated, the Court explained that while each person has freedoms, those freedoms are not always going to be free of restraints from the governmental authority.¹¹⁷

In sum, while citizens have been afforded many rights under the Constitution that the government is generally unable to infringe upon, protection of the public health is a top priority of the state.¹¹⁸ Since this is true, when states make reasonable laws to protect public health and safety, specifically those involving mandatory vaccinations, courts have upheld them as passing the bar of heightened scrutiny afforded to such fundamental rights.¹¹⁹

IV. VACCINATIONS V. RELIGION

Many studies have been conducted focusing on reasons parents may decide not to vaccinate their children. The results suggest that there are four categories of reasons surrounding those decisions: personal beliefs or philosophical reasons, safety concerns, a desire for more information, and religious reasons.¹²⁰ In each category, there is a spectrum of parental decisions ranging from refusing all vaccines to only refusing some or delaying the timing of receiving them.¹²¹ However, “[r]eligious reasons tend to account for the majority of total vaccine refusal, while parents with personal beliefs against immunization tend to be more willing to . . . partially vaccinate their children.”¹²²

To address some of the concerns by parents about vaccinating their children, all fifty states have one or more of three recognized exemptions to their mandatory vaccination laws.¹²³ Every state has a medical exemption to vaccination requirements that can be used in certain circumstances, such as when children may have allergic reactions or immunodeficiencies which make it harmful for them to receive vaccinations.¹²⁴ “In most states, a medical exemption must be written by a medical doctor (M.D.) or doctor of osteopathy (D.O.).”¹²⁵ However, the medical

116. *Id.* at 24-25.

117. *Id.* at 26.

118. Swendiman, *supra* note 86, at 4.

119. *Workman*, 419 F. App’x at 356.

120. McKee & Bohannon, *Exploring the Reasons Behind Parental Refusal of Vaccines*, 21 J. OF PEDIATRIC PHARMACOLOGY & THERAPEUTICS 104 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4869767/>.

121. *Id.*

122. *Id.*

123. Carolyn L. Todd, *What Actually Counts as a Medical Exemption for Vaccines—and What’s at Stake When They’re Abused*, SELF (Aug. 29, 2019), <https://www.self.com/story/medical-exemption-vaccines>.

124. *Id.*

125. *Frequently Asked Questions About Vaccine Exemption Information*, *supra* note 105, at 1.

exemption has become increasingly difficult to obtain due to developing standards and the elimination of the need to delay or withhold vaccinations.¹²⁶

Along with the medical exemption, “[l]ess than half of U.S. states allow for an exemption to vaccination based on philosophical, personal or conscientiously held beliefs.”¹²⁷ There are various personal or philosophical reasons that parents may choose not to vaccinate. Some specific reasons that may fall under this category include believing “that natural immunity is better for their children than is immunity acquired through vaccinations,” or that “the possible negative side effects of vaccine administration outweigh the benefits of vaccines.”¹²⁸ Additionally, some parents that invoke this exception “do not see the preventable diseases as serious or life-threatening and would prefer not to put extra chemicals into their children’s bodies.”¹²⁹ The requirements for using this exemption vary from state to state, some allowing children to object, some requiring doctor signatures, and some requiring completion of an educational program regarding vaccinations.¹³⁰

Another reason parents may be hesitant to vaccinate their children is that they are concerned about safety due to the impact of stories they see or hear from the media or from family or friends.¹³¹ They have fears that vaccines might overload their child’s immune system if they give their children multiple vaccinations at once as is recommended on a vaccine schedule and, “[a]s a result of this logic, many choose to delay vaccines in order to better protect their children.”¹³² Desire for additional education is another main reason parents might refuse or delay vaccinations for their children. “Many parents desire to have more detailed information regarding the side effects and benefits associated with vaccines expressed in a factual way that does not appear to be trying to sway them one way or the other regarding vaccinating their child.”¹³³

In addition to the above reasons, the religious exemption appears to be the most commonly used exemption, and as of 2019, forty-five states had passed laws allowing for religious exemptions to mandatory vaccination requirements.¹³⁴ Although parents may hold personal objections to vaccinations and claim the religious exemption as a result, “the majority of doctors said parents refusing or delaying vaccinations for their children do so because they believe the vaccine is unnecessary, taxing on their child’s immune system or for fear the shot will cause

126. *Id.* at 1-2.

127. *Id.* at 3.

128. McKee & Bohannon, *supra* note 122 at 107.

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. New York, California, Maine, Mississippi, and West Virginia are the states that, as of 2019, do not allow for a religious exemption. Aleksandra Sandstorm, *Amid Measles Outbreak, New York Closes Religious Exemption for Vaccinations – But Most States Retain It*, PEW RESEARCH CENTER (June 28, 2019), <https://www.pewresearch.org/fact-tank/2019/06/28/nearly-all-states-allow-religious-exemptions-for-vaccinations/>.

their child pain.”¹³⁵ However, many religions do not appear to actually oppose vaccinations outright even though parents claim the exemption for their children based on religion reasons.¹³⁶ Religions including Christianity, Judaism, and Islam, do not expressly condemn vaccination, but rather allow for children raised in their respective faiths to be vaccinated.¹³⁷

“[T]he pervasiveness of religion-based exemptions doesn’t reflect reality. No major religion has explicit, doctrinal objections to vaccinations,”¹³⁸ but in order to respect fundamental rights, many states have chosen to allow for the exemption in absence of a public health emergency. People hold their religious beliefs close to their hearts, and have for a long time, so much so that the Constitution protects religious freedom, and the courts protect it with strict scrutiny whenever there is a possibility of infringement.¹³⁹ However, when it comes to protecting society as a whole, sometimes it is necessary for the government to limit the actions citizens take based upon their religious beliefs. Although citizens have a fundamental right to their religious beliefs, they do not have the unqualified freedom to act upon those beliefs.¹⁴⁰ Restricting persons’ abilities to act on their feelings is important, because without having such restrictions, we would have a disorganized society in which people act on their changing emotional standpoints rather than acting with logic to create appropriate responses.

Where state legislatures choose to provide for religious exemptions to compulsory vaccination laws, some courts have questioned their validity.¹⁴¹ For example, in *Brown v. Stone*, the court held that it was constitutional to require children to be vaccinated to attend public schools.¹⁴² The court also held that the religious exemption provided in the state statute was a violation of the Fourteenth Amendment because it could be considered discriminatory against those parents who were not religious.¹⁴³ The court stated, “[the statute] would require the great body of school children to be vaccinated and at the same time expose them to the hazard of associating in school with children exempted under the religious exemption who had not been immunized as required by the statute.”¹⁴⁴

The Court has determined that the government is unable to directly burden religious freedoms unless the restriction survives a rigorous level of scrutiny.¹⁴⁵ However, “using [rigorous scrutiny] as the standard that must be met before the

135. Antonia Blumberg, *Here’s Where Major Religions Actually Stand on Vaccines*, HUFFINGTON POST, (Mar. 31, 2017, 5:47 AM), https://www.huffpost.com/entry/heres-where-major-religions-actually-stand-on-vaccines_n_58dc3ef0e4b08194e3b71fc4.

136. Lewis, *Why Parents Should Vaccinate Their Children* (May 7, 2015), <https://www.whyyimmunize.org/why-parents-should-vaccinate-their-children/>.

137. *Id.*

138. *Id.*

139. U.S. CONST. amend. I.

140. *See* *United States v. Ballard*, 322 U.S. 78, 86 (1944).

141. *See, e.g., Brown v. Stone*, 378 So. 2d 218, 220, 222-23 (Miss. 1979).

142. *Id.* at 223.

143. *Id.*

144. *Id.*

145. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 521, 546 (1993).

government may accord different treatment on the basis of race . . . or before the government may regulate the content of speech . . . is not remotely comparable to using it for the purpose [of religiously neutral regulations]”¹⁴⁶ As discussed in *Employment Division v. Smith*, the purpose was a neutral regulation of the use of drugs in Oregon, a prohibition of which was applicable to all persons regardless of their intent or reasons behind their usage.¹⁴⁷ Based on the Court’s finding in *Smith*, it is appropriate to apply that reasoning to all laws which are not directly burdening a specific religion or non-religion, including religious-neutral vaccination laws.¹⁴⁸ Requiring parents to vaccinate their children has nothing to do with their specific religious denominations; rather, it has to do with protecting the children, as well as the public, from diseases that could potentially result in serious harm or even death.

Although the religious exemption may have been questioned by the court in *Brown*, other courts have explained that religious exemptions may be constitutional so long as there is not preferential treatment under the law to one religion over another.¹⁴⁹ Since the freedom of religion is a fundamental right afforded to parents under the Constitution, states are able to provide for exemptions to compulsory vaccination laws that are inclusive of all religious practices in order to do their best not to infringe upon that right. Where there is a religious exemption provided for by the state, “[i]f the beliefs [are] sincerely held[,] they are entitled to the same protection as those more widely held by others.”¹⁵⁰ Further, when the religious exemption is used by a parent choosing not to vaccinate their child, asking that parent to provide proof of their religious belief and how closely they are held, might result in an infringement upon the fundamental constitutional right to free exercise of religion and could be struck down as unconstitutional as a result.¹⁵¹ Therefore, while exemptions to compulsory vaccination laws exist, it appears that they need to be written carefully so as not to exclude some beliefs while including others. States also need to be careful not to insert themselves into private beliefs even if they may question them.

While fundamental religious rights are guaranteed protections, the government is able to override those rights in cases where it will benefit the greater good, such as when passing mandatory vaccination laws under their police power. “[The] current vaccination requirements have dramatically increased society’s ability to prevent illness, particularly in children.”¹⁵² However, providing for a religious exemption to mandatory vaccination laws can subject children to interaction with other children who may not be able to receive vaccinations because of their medical inability to receive them, which could decrease the

146. *Emp’t Div. v. Smith*, 494 U.S. 872, 885-86 (1990).

147. *Id.* at 911, 915-16.

148. *See id.* at 918.

149. *See Dalli v. Bd. of Educ.*, 267 N.E.2d 219, 223 (Mass. 1971) (explaining that the preferred treatment of one group over another is a violation of the Constitution).

150. *Id.*

151. *In re LePage*, 18 P.3d 1177, 1180 (Wyo. 2001).

152. Shaun P. McFall, *Vaccination & Religious Exemptions*, FREEDOM FORUM INSTITUTE, (Aug. 18, 2008), <https://www.freedomforuminstitute.org/first-amendment-center/topics/freedom-of-religion/free-exercise-clause-overview/vaccination-religious-exemptions/>.

likelihood for herd immunity at public schools.¹⁵³ Although vaccinations are aiding in the effort to reduce illness, “[t]he threat of outbreak has not been eliminated . . . and religious exemptions have recently sparked a number of deadly infections that might have been prevented through a more rigorous vaccination requirement.”¹⁵⁴

Different states controlling children’s mandatory vaccinations and dictating which exemptions apply to those required vaccinations creates confusion; federal legislation would likely make things easier for citizens to understand and follow appropriately. For example, if a family were to relocate from a state that allowed for the religious exemption to vaccinations to a state that does not allow for such an exemption, and they invoked the exemption in their home state, the children may not be able to attend school. Having federal legislation that dictates which vaccinations children are required to receive, when they are required to receive them, and which exemptions, if any, are allowed, will create uniformity among the states and less litigation regarding exactly what falls under an exemption.

V. FEDERAL MANDATE

Many people choose not to vaccinate their children for various reasons, as explained above. States all have vaccination laws, but the federal government has not yet passed similar vaccination laws. Having a mandatory vaccination law at the federal level would be beneficial in many different aspects, one being that having neutrally and universally applicable laws across the country helps to eliminate confusion about what is required of citizens. Consider the following situation:

A child goes to school in one state, then his parents decide to move to a different state across the country. The child then transfers schools as a result. If the child is not up to date on the vaccinations required in the new state, could the parent then be subject to liability? How would the lack of appropriate vaccinations effect the child’s educational opportunities?

Without a uniform law controlling which vaccinations children are supposed to receive, situations like this could be happening more often than we realize. Parents could be subject to different requirements depending on the state they live in, which could result in confusion and frustration. It could also result in children missing out on educational opportunities while the parents are working on sorting out the paperwork for the appropriate requirements and finding a new pediatrician to administer the new vaccinations. For this reason, federal legislation should be enacted to ensure that public health concerns, child safety, and uniformity are addressed to the best of the government’s ability. I am willing to make a suggestion as to what a possible law might look like below.

153. *Id.* “Herd immunity refers to the phenomenon of general populations or communities becoming immune to certain diseases because every member, or almost every member, has undertaken the necessary steps to prevent the disease.”

154. *Id.*

Federal Vaccination Mandate

1. Parents of minor children shall be required to take their children to a licensed medical professional to be vaccinated appropriately according to the child's age as determined by the appropriate federal agencies.
2. Exemption: As determined by medical professionals, parents who have children with certain medical conditions will be exempted from this requirement.
3. Liability: Failure to comply with this law will result in either one or more of the following:
 - a. Child's inability to attend public school or be on public sports teams.
 - b. Fine for unwillingness to comply not to exceed \$5,000.
4. Definitions, for purposes of this section:
 - a. "child" or "children" means: "a [young] person not yet of the age of majority"¹⁵⁵
 - b. "medical professional" means: a doctor, or the equivalent of a doctor, with the ability to diagnose and treat health conditions
 - c. "federal agencies" include: those agencies listed in or related to the Children's Vaccine Initiative.¹⁵⁶

This law is necessary for the continuing protection of the public health and child welfare as a whole. While many state laws allow for other exemptions,¹⁵⁷ the proposed law here only allows for a medical exemption¹⁵⁸ to the requirements set forth by professionals. The reason for this is because the medical exemption is necessary, whereas the religious exemption is not.¹⁵⁹ For the medical exemption to apply, the child would need to meet certain threshold requirements that disallow them from receiving the vaccinations, as they may be harmful to their health, or even cost them their life. However, with the religious exemption, the Supreme Court has continuously upheld the rights of the state governments to override parental religious convictions in cases where it is necessary.¹⁶⁰

The proposed law would withstand the many forms of scrutiny that the Court has used throughout the years to determine whether a law is in violation of the rights set forth by the Constitution. As explained earlier,¹⁶¹ there are three levels of scrutiny applied to different laws that citizens feel infringe upon their rights: rational basis, intermediate scrutiny, and strict scrutiny.¹⁶²

155. *Child*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/child> (last visited Feb. 4, 2020).

156. 42 U.S.C. § 283 (2018).

157. *State Law & Vaccine Requirements*, NAT'L VACCINE INFO. CTR. (2020), <https://www.nvic.org/Vaccine-Laws/state-vaccine-requirements.aspx> (last visited May 10, 2021) (providing a map of which states offer which types of exemptions to mandatory vaccination laws).

158. *Frequently Asked Questions About Vaccine Exemption Information*, *supra* note 105, at 1-2.

159. *Supra* Section III.

160. *Supra* Section III.

161. *Supra* Section I.

162. Morshedi, *supra* note 14.

First, the proposed regulation would survive a rational basis analysis. Here, the proposed law has legitimate interests in public health, uniformity, and child safety and welfare. The law is rationally related to those interests because it directly combats the fear of illness by requiring vaccinations in order to heighten the likelihood of diseases being prevented. Since the proposed regulation likely meets the threshold of the test, if the Court were to determine that the regulation was to receive rational basis review, it would likely be upheld.

Second, the proposed regulation would also survive an intermediate scrutiny analysis. Under this standard, the government has important interests that are the same as mentioned under rational basis review. The proposed mandate is also substantially related to the important interest because it narrows in on childhood vaccinations, which is directly related to protecting the public and children from disease outbreaks. The law is also substantially related to the interest of promoting uniformity among the states because it is aimed at making universally applicable standards of vaccination requirements so as to eliminate possible confusions.

Finally, the proposed regulation would also survive a strict scrutiny analysis. The governmental interests remain the same as described under rational basis and intermediate scrutiny. The proposed regulation is narrowly tailored to achieving those interests because it targets a specific action in order to protect the public. There does not seem to be another appropriate way, other than specific guidelines and regulations, that would achieve the specific purpose of requiring vaccinations to protect health, safety, and welfare. It is highly possible that the Court may allow for this regulation to pass the high bar set by strict scrutiny even though some may argue that it infringes upon the fundamental rights of parents to raise their children and to have their religious beliefs.

Although some people may be uncomfortable with this type of regulation being passed and applied to citizens uniformly, the Court will likely follow previous rulings in determining that having vaccination requirements during outbreaks of disease is an appropriate form of police power. It is nonbeneficial to wait until an outbreak is already occurring to enact a statute making vaccinations mandatory, because by the time the vaccinations are administered, it may be too late to save those who have already become infected. It is necessary for the government to become proactive in this sense rather than be reactive when disease spreads. A law like the one proposed is something that is necessary to protect our citizens and our country as a whole.

CONCLUSION

Because vaccinations have been proven to be beneficial to health and safety, there should be federal legislation mandating childhood vaccinations in order to promote uniformity among the states and protect the public health and child welfare. The federal government has many legitimate and important interests in exercising its police power over citizens in requiring vaccinations that are both necessary and acceptable, including health, safety, and potential neglect. The federal law should be precise and understandable and should allow for only a narrow medical exception to its requirements in order to achieve its intended purpose of protection. A federal vaccination mandate is both necessary and

inevitable, given the amount of people who travel across state lines and maintain different residences throughout the United States. For the reasons stated and explained, a federal vaccination mandate would survive all levels of appropriate scrutiny proscribed by the courts, and therefore is constitutional and should be enacted.