



UNIVERSITY OF CALIFORNIA
HASTINGS SCHOOL OF LAW

Legal Changes: the National Landscape

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Conflict of Interest Statement:

- **The family owns stock (regular) in GSK.**

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Presentation Plan:

- **Legislative action:**
 - Exemptions.
 - Others.
- **Regulatory Action: CO and NM.**
- **Litigation: Phillips v. New York.**
- **Challenges ahead?**

Measles outbreak:





Legislation:

- Only overturned if unconstitutional.
- Lengthy & deliberative process.
- Usually high salience.
- Potential for controversy and debate – intensity of preference may shape process.
- Non-expert decisions.

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



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Exemption Related Legislation in Works:

- **Abolish PBE:**
 - In process: CA, ME, VT.
 - Won't advance this year: OK, OR, TX (?), WA.
- **Abolish Religious Exemption:**
 - Will not pass this year: MD, NC, RI.

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Exemption Related Legislation in Works:

Tighten Exemptions:

- **Add educational Requirement – CT, IL, NY, PA.**
 - Not moving forward this year: MN, OR, TX.
- **CT: Notarize religious exemption**
- **IL: State specific religious reason, philosophical not enough.**
- **NJ: parent must state religious problem.**



Transparency legislation:

- **CA: inform parents of rates.**
- **Missouri: principals write to parents & inform non-immunized kids in school.**
- **OR: post data on susceptibles (+exempt).**
- **TX: Post exemption data.**



School/daycare employees:

- **CA, SB 792**
- **Texas, mandating vaccines for public school employees – held in committee.**

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Anti Vaccine Bills:

- **Add PBEs:**
 - In process: MA, NJ.
 - Died: MI, NY.

- **Maine: “Vaccine Consumer Protection Program.”**



Regulation:

- Expert driven.
- Required to meet transparency & reasoning standards.
- Usually less salience.
- Less democratic legitimacy.
- May be quicker and simpler.
- Vulnerable to overturning for ultra vires, other administrative causes, but –
 - Deference.

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Vaccine regulation:

- **Colorado:**
 - Submit exemption when vax due.
 - K-12, annual renewal.
 - Department of health publish rates.
- **New Mexico:**
 - Tighten form, remove philosophical option.

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Litigation:

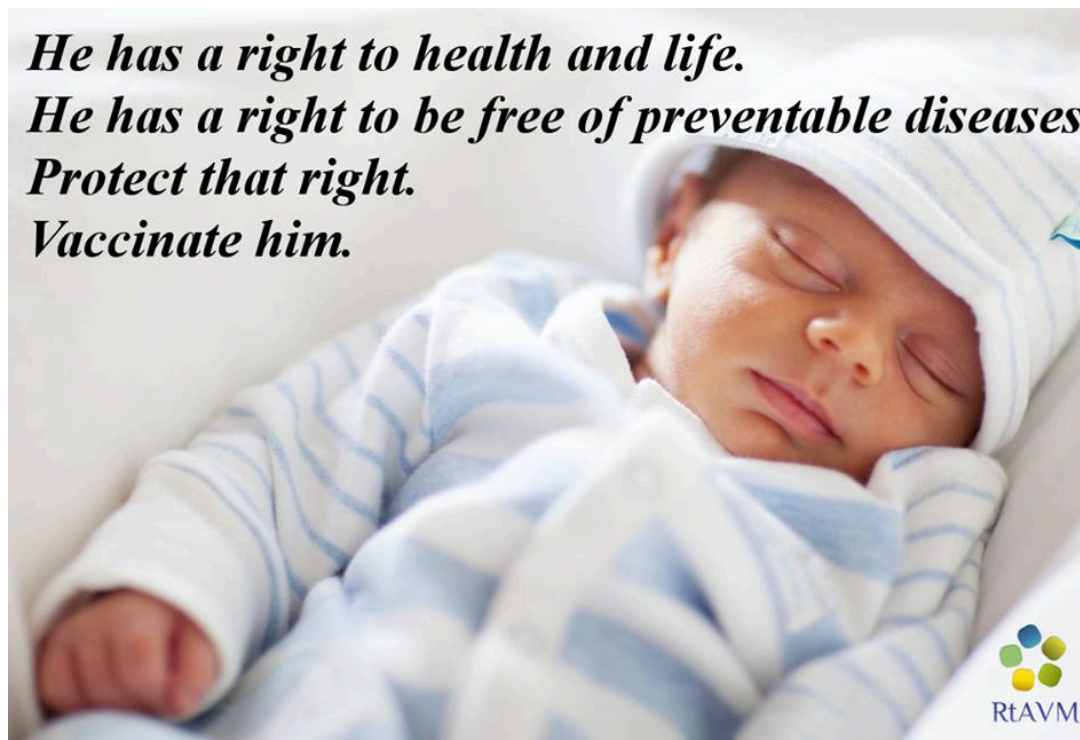
- Highly formalized, legalistic, arguments limited.
- Procedural barriers.
- Cost and speed v. others?
- Depends on case facts.
- Decentralized: up to specific judges.
- Appeal process.



The Constitutional Framework - history:

- Jacobson v. Massachusetts, 1905.
- Zucht v. King, 1922.
- Prince v. Massachusetts, 1944.

*He has a right to health and life.
He has a right to be free of preventable diseases.
Protect that right.
Vaccinate him.*



The first amendment?

- Emp't Div., Dep't of Human Res. of Oregon v. Smith, 494 U.S. 872, 890 (1990).
- Hobby Lobby?
- Phillips v. City of New York, (2015, 2nd circuit)





Thank you!

Questions? Comments?

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