

Maria Andrea M. Jurado

Mrs. Jennifer Sagucio

Senior Project

1/29/2014

The Federal Government Should Mandate Vaccination on Children Attending Public Schools

The issue of vaccination among all children attending public schools in the United States has been a serious fight between the rights of an individual against the rights of the society. Today, vaccination laws are imposed differently in different states; the authority only lies on the state level, hence each state enforces their laws differently from one another. All vaccination laws imposed by states include exemptions, and each state has different exemptions, depending on how they view the situation. Vaccination laws have three major exemptions: medical, religious and philosophical. Medical exemptions for newborn children and children who are undergoing other medications are in effect, and so are religious-based exemptions. Exemptions based on philosophical beliefs are the most dangerous, because they are biased, unwarranted and misleading, but only 20 states do not allow them. Vaccinations are not forced on anyone but rather suggested. All laws still protect the rights of parents to decide the health and welfare of their children. In line with this threatening imposition, petitions on the elimination of philosophical exemptions from vaccinations have sprung out among parents of children attending public schools. Therefore, the federal government must eliminate all philosophical exemptions from vaccinations and must impose a mandatory vaccination law for all children attending a public school because vaccines can eradicate and control the spread of curable diseases, prevent serious illnesses which may lead to death and because no individual should

have the right to risk the safety of the public solely for the purpose of satisfying their personal moral or philosophical views.

Ever since the first smallpox vaccine was administered in the late 1800s and other vaccines were invented to combat diseases, vaccines have been proven to eradicate and control the spread of curable diseases. One of the debilitating diseases eradicated by vaccines is the Polio virus. In 1954, when Jonas Salk and Albert Sabin discovered the oral Polio vaccines, the number of recorded Polio cases decreased from 500,000 to 2,000 cases; to date, Polio has been eradicated from the Western Hemisphere and the European and Western Pacific regions. (*“Childhood Vaccinations”* Gale Opposing Viewpoints) Vaccines have also triumphed in eradicating the smallpox virus. In 1967, the World Health Organization (WHO) undertook a worldwide vaccination campaign against the smallpox virus. “Twelve years later, the disease has been wiped out, and there hasn’t been a single case ... which makes the smallpox the first and only disease to be ever eradicated from the Earth.” (*“Childhood Vaccinations”* Gale Opposing Viewpoints) In May 8, 1980, the WHO’s global commission declared the world free from smallpox was acknowledged and signed by as many as 65 countries. (*“Vaccines”* ProCon.org)

Aside from Polio and smallpox, the United States has been cleared of another curable disease since the late 1900s – mumps. For over two decades, the United States was free of mumps, until an outbreak occurred in 2006 when a student at the University of Wisconsin returned from a trip to the United Kingdom and caused the resurgence of the eradicated mumps virus. The University of Wisconsin systems, like the state law, did not enforce strict parameters regarding vaccinations, and waivers for vaccination can even be made on the school application. Because many students from the University were not vaccinated, the spread of the mumps virus escalated, and within 17 weeks, the mumps virus has affected 2,597 students in the university; all

of them were not vaccinated, and according to the University of Wisconsin, the records of the diagnosed students indicated that they waived their vaccination requirements due to “scientific beliefs.” (“*Multistate Outbreak of Mumps – United States*” CDC.gov) Attending physician Kyle Gershman, who handled the outbreak in the University, insisted that despite the contraction of mumps, an initial dose of the MMR vaccine saved the lives of the infected adults. “To ensure the successful prognosis, the students had to receive a second dose of the MMR vaccine, 28 days after the contraction of the disease.” (Gershman 3) Sure enough, none of the reported cases of the mumps outbreak died.

The resurgence of the mumps virus, along with the successful re-eradication of the disease, clearly disproved one anti-vaccination sentiment led by Dr. Sherri Tenpenny, one of the leading experts on the dangers of vaccination. In her article, “Saying No to Vaccines,” Tenpenny asserted that “vaccines are not safe and effective ... and it has a counterintuitive effect that causes allergies to its hosts.” Although many of the students from the University of Wisconsin initially claimed that they don’t want to receive vaccination, none of them showed any indication of any allergies or “counterintuitive effects” from the MMR vaccines. Upon receiving the second dose, 78% of the students were successfully cured of the mumps virus. Although resurgence of epidemics poses quite a threat to the health and welfare of people, serious illnesses and deaths due to failure to vaccinate are much more formidable.

Vaccines can prevent serious illness and death, and any philosophical belief against vaccinations would be a grave threat to health of an individual. In 2012, only 405 children casualties from the measles virus have been reported. Not surprisingly, these 405 casualties were due to failure to vaccinate. Of the 405 cases of death from measles virus, 386 were of children who did not get vaccinated due to their parents’ philosophical belief against vaccination. (Vara

6) One of the outbreaks that contributed to these 405 cases in 2012 was an outbreak in Minnesota caused by the misleading research of former doctor Andrew Wakefield. According to the Minnesota statute 121A.15 subd. 3 of the state health standards, a notarized statement “signed by the minor child's parent or guardian or by the emancipated person is submitted to the administrator or other person having general control and supervision of the school or child care facility stating that the person has not been immunized as prescribed in subdivision 1 because of the conscientiously held beliefs of the parent or guardian of the minor child or of the emancipated person, the immunizations specified in the statement shall not be required.” In this case, only a notarized statement impeded children from vaccinations and because Wakefield’s new research stirred up concerns of autism due to vaccination at the time, many parents of children in a Somali community in the area filed vaccination exemptions, choosing not to have their children vaccinated. Unfortunately, one of these unvaccinated children was identified with measles after returning from a trip to Kenya. Because measles do not show symptoms in early stages of contraction, the child unknowingly attends school and consequently spread the measles virus to his classmates. 15 cases of measles were reported to have originated from the same strain as the child from Kenya. This severe case could have been prevented had tighter laws from philosophical exemptions were in place. Furthermore, the misleading research by Wakefield was eventually rebutted by a study published on the Journal of Pediatrics refusing the causal relationship between vaccines and autism. (DeStefano, et al 1) With the autism and side-effects arguments against vaccines long refuted, the only main argument against mandatory vaccination that remains upheld is the invasion of privacy argument.

One of the main Constitutional rights of all Americans is the freedom of speech and the freedom to exercise religion. Many American parents believe that mandatory vaccination laws

against their philosophical beliefs would infringe upon their right of free will. Parents have the sole right to decide for their children. One of the notorious cities in the United States which has a very high exemption rates for vaccination is Ashland, Idaho. Similar to the Minnesota law, a signature from the parent is the only thing standing between the way of vaccinations and a child. Idaho Code 39-4802 of the Idaho State law indicates that “any minor child whose parent or guardian has submitted a signed statement to school officials stating their objections on religious or other [philosophical] grounds shall be exempt from the provisions of this chapter.” (“*Idaho State Vaccine Requirements*” NVIC.org) This law, thus, bestows all the “freedom” to the parents of children. Ashland, however, has a 28% vaccination exemption, which is quite high compared to all the other states. (Gavett 2) This matter has caused a division between parents who refuse to vaccinate their children for philosophical grounds and parents who choose to value the welfare of all children in their community. For example, Idaho parent Jennifer Margulis thinks that the “Government can’t mandate vaccinations because it will deprive [her] of her right to decide for her child... and that as a parent, [she] knows what is best for her daughter.” (Gavett 5) Furthermore, Margulis thinks that “getting sick is natural, and [her] daughter would easily get rid of the disease herself.” (Gavett 6) Margulis’ decision to not vaccinate her child clearly poses a threat to other Ashland parents, because there are no laws that would protect their child from Margulis’ daughter in school. In Idaho, if Margulis’ chooses to let her unvaccinated child attend school and her daughter contracts a disease which could have been prevented by a vaccine, “there are no laws which protect other children in the public school from contracting the same disease.” (Gavett 7) Public safety, then, becomes the question. Should a parent have this kind of right to choose for their children and in turn risk the safety of other children in public schools just because of his/her philosophical belief? This is where the federal government must come to

intervene and assert its authority, its authority held by the promise of “[promoting] the general welfare” as stated in the United States Constitution.

Mandatory vaccinations on the federal level must be imposed and exemptions against philosophical beliefs must be eliminated because no individual has the right to risk the safety of the public solely for the purpose of fulfilling their unwarranted philosophical beliefs. Refusal to vaccinate demonstrates child neglect, if the parents have unwarranted reasons. These parents are not only guilty of one charge, they should also be held accountable for the death of any child who contracts a disease from them or their unvaccinated children. Harvard Health-Law policymaker Arthur Caplan believes that parents who don’t vaccinate their children for unwarranted philosophical beliefs and causes the death of anyone who contracts the virus from them is guilty of negligent homicide. (Caplan 3) The direct choice of the parent to let his/her child mingle with other children when she knows that his/her child is susceptible to a disease can endanger the life of an innocent child who happens to not be vaccinated. Since it is true that doctors do not know certainly who has the disease and who doesn’t, it is necessary for the Federal Government to enact mandatory vaccination all over the country to ensure the safety of all.

In 1905, Henning Jacobson, a Swedish immigrant decided to send his unvaccinated child to a public school in Massachusetts. Coming from Sweden, Jacobson had philosophical beliefs that made him refuse the viability of vaccines. Unfortunately, his son was carrying a strain of measles virus, and by the time he was diagnosed, a child who has contracted the same strain from the Jacobson child has already died. To enforce the right of the federal government to impose mandatory vaccination laws, a seminal Supreme Court Case, *Jacobson v. Massachusetts* affirmed the authority of state legislatures to “assign police powers to health officials to embrace,

at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety.” In light of the *Jacobson v. MA* case, the courts have found precedence on which negligent homicide trials can rely on. *Jacobson* was jailed for ten years, and was fined \$5 for the death of the child. Justice John Harlan upheld the rights of the states to encroach on natural rights, if they safety of the public demands. *Jacobson v. MA* has since been the basis of the mandatory vaccination laws in Massachusetts which prohibit philosophical beliefs as grounds for exemption from vaccination.

In 1922, *Jacobson v. MA* has found reaffirmation from the *Zucht v. King* Supreme Court case, which addressed the constitutionality of childhood vaccination requirements. “The Court denied a due process Fourteenth Amendment challenge to the constitutionality of city ordinances that excluded children from school attendance for failure to present a certificate of vaccination holding that “these ordinances confer not arbitrary power, but only that broad discretion required for the protection of the public health” (*Zucht*) The holdings of *Zucht v. King* and *Jacobson v. Massachusetts* clearly sets a legal basis for a mandatory vaccination for all children attending a public school, and the society is just waiting for the federal government to pass a bill that would protect their child from the unwarranted philosophical beliefs of other people.

The charge towards mandatory vaccination is ongoing. In some states, those who refuse to abide by their laws against exemption due to philosophical belief have been refused of admission to a public school. Arizona led this movement in 1987 in the wake of the Supreme Court Case, *Maricopa County Health Department v. Harmon*, when the Maricopa County Health Department has decided to “exclude unvaccinated children from school when there is a perceived risk for the spread of a [disease].” (*Maricopa County Health Department*) The Court considered the constitutionality of the right of a child to attend a public school in Arizona;

however, the court ruled that because the unvaccinated Harmon child is jeopardizing the lives of other public school children because she is being suspected of having measles. The Maricopa ruling insisted that the Harmon child be vaccinated based on the grounds of *Jacobson v. Massachusetts* and *Zucht v. King*, before she becomes admitted to a public school again. According to the ruling, both the *Jacobson* and the *Zucht* cases did not require an epidemic to compel a vaccination. These Supreme Court Rulings, therefore, uphold the constitutionality of a mandatory federal mandatory vaccination law that would protect the rights of the majority from the rights of an individual.

In the United States Constitution, the founding fathers of America swore to protect the natural rights of the American people and promised to protect the general welfare of the public. Today, mandatory vaccination laws are one of the debatable issues which require the federal government to act on behalf of the majority of the American people against the dangers of the philosophical beliefs of the society against vaccinations. The federal government must heed the plea of the American people to eliminate philosophical exemptions from vaccinations and impose a strict mandatory law compelling all children attending a public school to be vaccinated because vaccines can eradicate and control the spread of curable diseases, prevent serious illnesses which may lead to death and because no individual should have the right to risk the safety of the public solely for the purpose of satisfying their personal moral or philosophical views. The grounds for a mandatory federal vaccination law would trump all philosophical exemptions given by each state, and this will guarantee the public health and safety of all people. This will guarantee the natural right of all Americans to life, liberty and the pursuit of happiness.

Works Cited

- Caplan, Arthur. "Liability for Failure to Vaccinate." *Bill of Health*. Harvard Law - Petrie Flom Center, 23 May 2013. Web. 29 Jan. 2014.
<<https://blogs.law.harvard.edu/billofhealth/2013/05/23/liability-for-failure-to-vaccinate/>>.
- Centers for Disease Control and Prevention (CDC), US Department of Health and Human Services. "Many Deadly Diseases Would Return If We Stopped Vaccinations." *Vaccines*. Ed. Noël Merino. Detroit: Greenhaven Press, 2012. Current Controversies. Rpt. from "What Would Happen If We Stopped Vaccinations?" 2010. *Opposing Viewpoints in Context*. Web. 29 Jan. 2014.
- "Childhood Vaccinations Are Important for Public Health." *Parents' Guide to Childhood Immunizations*. Portland, OR: U.S. Government Printing Office, 2007. Rpt. in *Should Vaccinations be Mandatory?* Ed. Noël Merino. Detroit: Greenhaven Press, 2010. At Issue. *Opposing Viewpoints in Context*. Web. 29 Jan. 2014.
- DeStefano, Frank, MD, Christopher Price, MS, and Eric Weinstaub, MPH. "Increasing Exposure to Antibody - Stimulating Proteins and Polysaccharides in Vaccines Is Not Associated with Risk of Autism." *Journal of Pediatrics* 5.1 (2013): 1-7. 28 Jan. 2014. Print.
- Gavett, Gretchen. "Why Aren't Parents Vaccinating Their Children?" *PBS*. PBS, 28 Nov. 2011. Web. 07 Feb. 2014. <<http://www.pbs.org/wgfh/pages/frontline/health-science-technology/the-vaccine-war/why-arent-parents-vaccinating-their-children/>>.
- "Idaho State Vaccine Requirements – National Vaccine Information Center." *National Vaccine Information Center (NVIC)*. N.p., 8 July 2013. Web. 09 Feb. 2014.
<<http://www.nvic.org/Vaccine-Laws/state-vaccine-requirements/idaho.aspx>>.

Jacobson v. Massachusetts. 197 U.S. 11. Supreme Court of the United States of America. 1905.

Maricopa County Health Department v. Arizona. 123 Ariz. 37. Arizona Appellate Court. 1985.

"Minnesota State Vaccine Requirements – National Vaccine Information Center." *National Vaccine Information Center (NVIC)*. N.p., 8 July 2013. Web. 09 Feb. 2014.

<<http://www.nvic.org/Vaccine-Laws/state-vaccine-requirements/minnesota.aspx>>.

"Multistate Outbreak of Mumps." *Centers for Disease Control and Prevention*. Centers for Disease Control and Prevention, 18 May 2006. Web. 09 Feb. 2014.

<<http://www.cdc.gov/mmwr/preview/mmwrhtml/mm55d518a1.htm>>.

Olson, Marina. "Should the Government Mandate Vaccinations?" *The American Conservative*. The American Conservative, 30 Sept. 2013. Web. 29 Jan. 2014. Print.

Pediatric Infectious Diseases Society. "Mandatory Vaccinations with Few Exceptions Are Necessary for Public Health. Detroit: Greenhaven Press, 2012. Current Controversies. Rpt. from "A Statement Regarding Personal Belief Exemption from Immunization Mandates." 2011. 1-5. *Opposing Viewpoints in Context*. Web. 29 Jan. 2014.

Tenpenny, Sherri J. *Saying No to Vaccines*. Middleburg Heights, OH: NMA Media-Press. 2008. Print.

"Vaccines." *History of Vaccines RSS*. ProCon.org, 05 Feb. 2014. Web. 07 Feb. 2014.

<<http://www.historyofvaccines.org/content/timelines/asll>>.

Vara, Christine. "Where Does Your State Stand on School Immunization Exemptions?" *Shot of Prevention*. N.p., 22 Feb. 2012. Web. 09 Feb. 2014.

<<http://shotofprevention.com/2012/023/22/where-does-your-state-stand-on-school-immunization-exemptions/>>.

Zucht v. King. 260 U.S. 174. Supreme Court of the United States of America. 1922.