

**“Mom and Dad Won’t Let Me Get Vaccinated:”
Making the Case for Comprehensive State Minor
Consent to Vaccination Laws**

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I. INTRODUCTION

There are situations when a state's ability to protect minors, and the state's responsibility to society at large over individuals' rights, should take precedence. The areas of mental health care, reproductive care, and sexually transmitted disease, including vaccination against Human Papilloma Virus, already exemplify this point.¹ Withholding information, access, or care in these situations, while waiting for parental consent, is overly harmful to minors and society at large.² It hinges not just upon whether the parents will give consent, but also on whether the minor will be forthright with their parents in admitting to the need for that care or even ask for permission.³ The risk of damage to the individual and society outweighs the parents' right to knowledge and their need to consent.⁴ This is especially true when there is clear scientific evidence of a high benefit-to-risk ratio for both the minor and society in general.⁵ This Comment argues that vaccinating against contagious diseases is one of these situations where the state should step in, especially in an epidemic or pandemic situation pertaining to a deadly disease.

As the world passes the third anniversary of the Coronavirus pandemic's beginning, the need for reflection on how to combat and better handle viral epidemics is upon us.⁶ With the start of anything new, uncertainty reigns and it takes time and effort to make sense of the data and learn how to handle the issues. Over the course of fighting the COVID-19 pandemic, one thing that has been clear is the unquestionable accomplishment of the scientific community in the development of several novel COVID-19 vaccines.⁷ These vaccines were designed, in

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¹ See generally Leah H. Keller, *Reducing STI Cases: Young People Deserve Better Sexual Health Information and Services*, 23 GUTTMACHER POL'Y REV. 6 (2020).

² *Id.* at 8.

³ *Id.* at 9.

⁴ See *id.* at 8.

⁵ *Id.*

⁶ *A Timeline of COVID-19 Developments in 2020*, AM. J. MANAGED CARE (Jan. 1, 2021), <https://www.ajmc.com/view/a-timeline-of-covid19-developments-in-2020> (explaining that on January 9th, 2020, the World Health Organization announced a "mysterious coronavirus-related pneumonia in Wuhan, China" and by March 11, 2020, the World Health Organization "declare[d] COVID-19 a Pandemic").

⁷ *Id.* (describing that on December 11th, 2020, the Food and Drug Administration (FDA) approved the Pfizer COVID-19 vaccine under "emergency use authorization" and

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part, with the goal of returning us to our normal daily lives as much as possible, and they proved to be safe and highly effective at cutting the morbidity and mortality of the disease.⁸

The battle against the spread of COVID-19 over the past two years has reminded us that this pandemic was not the first global public health crisis, and it surely will not be the last. It has also made it apparent that society was unprepared for the wide scope of effects of this deadly infectious disease. It severely strained our health care system and resources, devastated us from a social and economic standpoint and as of December 2022, killed approximately 1.09 million Americans.⁹ There is a need for public discourse, innovative policies, and new laws to help prepare us for similar public health issues and future epidemics or pandemics.

The public spent much of the second half of 2020 eagerly awaiting news about vaccinations.¹⁰ The press constantly discussed the vaccine's safety, availability, and efficacy, and these topics were at the top of Americans' minds. Once the vaccine became available, many of those who were eligible by age, health status, and employment status lined up for the shot with the hope that it would protect them from contracting and spreading the virus, and if contracted, then mitigating the severity of the course of the disease.¹¹ Some of the first eligible groups for the vaccine were the elderly, the significantly immuno-compromised, and

by December 18th, 2020, the FDA also approved the Moderna COVID-19 vaccine for "emergency use authorization").

⁸ *Ensuring COVID-19 Vaccine Safety in the US*, CTRS. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/safety.html> (last updated July 19, 2022) (emphasizing the safety and efficacy of the vaccines stating that "COVID-19 vaccines were developed using science that has been around for decades," "COVID-19 vaccines are safe," "COVID-19 vaccines are effective at preventing severe illness from COVID-19 and limiting the spread of the virus that causes it," and "[m]illions of people in the United States have received COVID-19 vaccines" under "the most intense safety monitoring in U.S. history").

⁹ *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. TIMES, <https://www.nytimes.com/interactive/2021/us/covid-cases.html> (last updated Nov. 2, 2022).

¹⁰ PBS NewsHour, *Watch: COVID-19 Vaccine Could Be Available to Americans by End of 2020 or Start of 2021, Fauci Says*, YOUTUBE (June 23, 2020), <https://www.youtube.com/watch?v=wYCBnULOzMo> (showing that infectious disease expert and doctor, Anthony Fauci, attempted to alleviate some of the public's anxieties about when a COVID-19 vaccine would be available to the masses by explaining that he felt "cautiously optimistic" about the immediacy of the vaccine availability).

¹¹ *A Timeline of COVID-19 Vaccine Developments in 2021*, AM. J. MANAGED CARE (June 3, 2021), <https://www.ajmc.com/view/a-timeline-of-covid-19-vaccine-developments-in-2021> (explaining that as of April 19, 2021, "all adults nationwide [were] eligible for COVID-19 Vaccines").

the brave physicians and front-line healthcare workers.¹² Eventually, all adults gained eligibility for the shot.¹³

In the spring of 2021, the United States Food and Drug Administration (“FDA”) authorized COVID-19 vaccines for individuals as young as twelve years old.¹⁴ Those below the age of eighteen, because of their minor status, generally needed parental approval before they could receive the COVID-19 vaccine.¹⁵ The Centers for Disease Control and Prevention (“CDC”) urged parents with children in that age group to get them vaccinated, noting its efficacy and safety.¹⁶ While many parents heeded that advice, others did not, and still have not.¹⁷ Although referencing a younger age group, as of October 2021, “one-third [of parents with children ages five to eleven] said they would definitely *not* get their child vaccinated.”¹⁸

What about those persons under the age of eighteen who are eligible for the COVID-19 vaccine and wish to join the vaccinated community in order to protect themselves and society as a whole?¹⁹ For example, because twenty-year-olds are considered adults in our society, in the eyes of the law, any twenty-year-old can walk into a vaccine clinic, present identification, and receive the vaccine with essentially no

¹² *A Timeline of COVID-19 Vaccine Developments in 2020*, *supra* note 6 (stating that on December 11th, after the FDA authorized emergency use of Pfizer’s COVID-19 vaccine, “vaccinations of healthcare workers [began] within days”).

¹³ *A Timeline of COVID-19 Vaccine Developments in 2021*, *supra* note 11.

¹⁴ *A Timeline of COVID-19 Vaccine Developments in 2021*, *supra* note 11 (explaining that on May 10, 2021 “the FDA announce[d] it will expand its EUA [emergency use authorization] for the Pfizer/BioNTech vaccine to include adolescents aged [twelve] through [fifteen]”).

¹⁵ See *State Parental Consent Laws for COVID-19 Vaccination*, KAISER FAM. FOUND. (Oct. 11, 2021), <https://www.kff.org/other/state-indicator/state-parental-consent-laws-for-covid-19-vaccination/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

¹⁶ *COVID-19 Vaccines for Children and Teens*, CTRS. FOR DISEASE CONTROL AND PREVENTION (Jan. 11, 2022), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations/adolescents.html>.

¹⁷ See Jaime Sidani, et. al, *COVID-19 Vaccines for Children: How Parents Are Influenced by Misinformation, and How They Can Counter It*, THE CONVERSATION (Dec. 15, 2021, 8:29 AM), <https://theconversation.com/covid-19-vaccines-for-children-how-parents-are-influenced-by-misinformation-and-how-they-can-counter-it-173212>.

¹⁸ *Id.* (emphasis added).

¹⁹ See Nina Shevzov-Zebrun & Arthur Caplan, *Parental Consent for Vaccination of Minors Against COVID-19*, 39 VACCINE 44, 6451 (2021), <https://doi.org/10.1016/j.vaccine.2021.09.049> (asking a similar question, “[w]hat if a minor (specifically age [twelve] or older) requests a COVID vaccination against parental will or without parental knowledge? How ought the benefit this vaccination would offer—for the adolescent, their peers, their vulnerable or elderly contacts—be balanced with the risk of alienating parents and liability for the provider . . .”).

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questions asked. Perceived as an adult, the law assumes a person of such age can make their own medical and healthcare decisions. This is not the case, however, for those under the typical age of legal maturity, eighteen years old.²⁰ While this arbitrary age limit may make sense in some circumstances, it is not appropriate in the context of public health, where mass vaccination is the fastest and most effective means to public safety.

Through effective legislation, states can assist themselves in fighting a public health crisis. States can utilize methods proven to mitigate the effects of a crisis. This Comment will make a case for all states to adopt minor consent to vaccination laws in confronting both current and future public health emergencies. All efforts to combat public health crises are compelling state interests.²¹ The current coronavirus pandemic demonstrates that states play a crucial and irreplaceable role in the daily fight to protect their citizens from deadly diseases. As a preventative measure for the future and as a tool to combat the ever-changing and ever-spreading coronavirus, states need appropriate and effective legislation that can assist in stamping out the spread of communicable diseases.

Minors make up a significant portion of the population in each state.²² Minors also account for a significant portion of the population that gathers in large numbers and close quarters daily. Minors gather regularly in primary schools, colleges, camps, and sporting events, just to name a few. Importantly, minors collectively encompass a large portion of persons eligible for the coronavirus vaccine, yet they are not receiving it in large numbers.²³ As of December 16, 2021, only 52.6% of

²⁰ Aviva L. Katz, Sally A. Webb, & Committee on Bioethics, *Informed Consent in Decision-Making in Pediatric Practice*, 138 AM. ACAD. OF PEDIATRICS 1, 2 (Aug. 2016), <https://pediatrics.aappublications.org/content/138/2/e20161485>.

²¹ See *infra* II.B.

²² See Stella U. Ogunwole et al., *Population Under Age 18 Declined Last Decade*, U.S. CENSUS BUREAU (Aug. 12, 2021), <https://www.census.gov/library/stories/2021/08/united-states-adult-population-grew-faster-than-nations-total-population-from-2010-to-2020.html> (stating that persons under the age of eighteen made up “73.1 million, or 22.1% of the U.S. population in 2020”); see also *Percentage of Population Under 18 Years in the United States in 2019, Sorted by State*, STATISTA, <https://www.statista.com/statistics/306623/percentage-of-population-under-18-years-in-the-us-by-state-and/> (last visited Oct. 12, 2023) (showing the “[p]ercentage of population under eighteen years in the United States in 2019, sorted by state.” The percentage of persons under eighteen in each state according to state population ranges from approximately eighteen percent to twenty-nine percent, including the District of Columbia).

²³ See Brian Dean Abramson, *Do US Teens Have the Right to Be Vaccinated Against Their Parents’ Will? It Depends on Where They Live*, THE CONVERSATION (Aug. 31, 2021), <https://theconversation.com/do-us-teens-have-the-right-to-be-vaccinated-against->

persons aged twelve to seventeen were fully vaccinated against COVID-19.²⁴ Except for those minors between five and eleven years of age, twelve-to-seventeen-year-olds are currently the least fully vaccinated age group in the country.²⁵

This alarming statistic is likely the result of various factors, including access to vaccine clinics, misinformation regarding the science behind novel vaccines, and perhaps a lack of personal motivation.²⁶ There is room for speculation as to why minors are not getting the COVID-19 vaccine. The legal obstacle of needing parental consent, however, is certainly a contributing factor and should not be ignored as an obstacle to higher vaccination rates among this age group. Parental consent requirements “can present a significant barrier to improving adolescent vaccine uptake across all health care settings in which adolescents access care.”²⁷

Comprehensive minor consent to vaccination laws across the fifty states will allow for more people to get vaccinated in a shorter amount of time. Minor consent laws act as barriers to widespread vaccination because they “may slow vaccine uptake nationally.”²⁸ A slow or delayed response to widespread vaccination is detrimental to the states’ goals toward mitigation.²⁹ Slowing and stopping the spread of a communicable disease, such as the coronavirus, depends upon a swift response.³⁰ If large numbers of the population face a legal barrier to

their-parents-will-it-depends-on-where-they-live-166147 (explaining that “[twelve-to-fifteen]-year olds are the least vaccinated age group in the country, with [one] in [three] having received one dose and just [one] in [four] being fully vaccinated – about half the rate of the population as a whole”).

²⁴ *Covid-19 Vaccination and Case Trends by Age Group, United States*, CTRS. FOR DISEASE CONTROL AND PREVENTION, <https://data.cdc.gov/Vaccinations/COVID-19-Vaccination-and-Case-Trends-by-Age-Group-/gxj9-t96f> (last updated Oct. 20, 2022).

²⁵ *Id.*

²⁶ See Abigail English, *Adolescent Consent for Vaccination: A Position Paper of the Society for Adolescent Health and Medicine*, 53 J. ADOLESCENT HEALTH 550–53 (2013) (explaining that “[b]arriers to vaccination include both individual (teen, parent, or provider) beliefs, such as concerns about vaccine efficacy and safety, and inadequate system-level practices that facilitate vaccination”); see also Lois A. Weithorn & Dorit Rubinstein Reiss, *Providing Adolescents with Independent and Confidential Access to Childhood Vaccines: A Proposal to Lower the Age of Consent*, 52 CONN. L. REV. 772, 786 (2020) (explaining that parents refuse to vaccinate their kids out of “safety concerns,” “distrust of doctors and government[,]” and sometimes out of preference for “alternative medicine as well as ‘natural’ approaches to health without scientific foundation”).

²⁷ English, *supra* note 26, at 550.

²⁸ James G. Hodge, Jr. et al., *Public Health and the Law: Legal Challenges Underlying COVID-19 Vaccinations*, 49 J. L., MED. & ETHICS 495, 496 (2021).

²⁹ See *infra* II.D.

³⁰ See *infra* II.D.

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vaccination, a swift and direct response is that much less attainable.³¹ Comprehensive minor consent to vaccination laws will enhance each state's goals toward reducing the spread of deadly diseases. These laws will allow for faster and more thorough community mitigation efforts for public health crises to come.

States have the power to employ a broad range of measures to protect their people amid a public health emergency.³² Adopting comprehensive minor-consent-to-vaccination laws will specifically allow for each state to effectively combat a crisis and allow minors to exercise autonomy over their medical decisions. Minors' rights to consent to vaccinations without parental approval should extend beyond the bar of a "mature minor."³³ The standard for allowing a minor to consent to a vaccination should be the same standard as those public health services already confidentially available for minors, such as those for reproductive or mental health care.³⁴ The "maturity" of the minor—an abstract guideline—should not be the basis for the standard but rather the minor's desire to partake in an available and widely encouraged public health service. In the same way that it does for reproductive healthcare services, the significant public health benefits that the states wish to advance greatly outweigh the need for heightened consent from minors.

To further enhance this argument, this Comment will discuss a recently passed "Minor Consent For Vaccination" law in the District of Columbia as a model for other states to adopt.³⁵ This law is known as D.C. Law 23-193, the "Minor Consent for Vaccinations Amendment Act of 2020," and it permits minors as young as eleven years old to consent to vaccinations without parental approval.³⁶ This Comment will also discuss a recently proposed California senate bill: Senate Bill 866, the Teens Choose Vaccines Act.³⁷ This prospective bill would allow minors as young as twelve to consent to vaccinations.³⁸ Finally, this Comment will conclude by providing a call to action for all states to legislate intelligently and proactively by adopting minor consent to vaccination

³¹ See *infra* II.D.

³² See *infra* II.A.

³³ See *infra* II.I.

³⁴ See *infra* II.H.

³⁵ D.C. Mun. Regs. tit. 22-B § 2.6 (2020).

³⁶ *Id.*

³⁷ *Senator Wiener Introduces SB 866*, SCOTT WIENER: REPRESENTING SENATE DISTRICT 11 (Jan. 21, 2022), <https://sd11.senate.ca.gov/news/20220121-senator-wiener-introduces-sb-866-%E2%80%94-teens-choose-vaccines-act-%E2%80%94-allow-young-people-12>.

³⁸ S.B. 866, 2021-2022 Reg. Sess. (Cal. 2022) (as introduced on Jan. 20, 2022).

laws. Minor consent to vaccination laws will address current shortcomings in the ongoing pandemic response efforts and anticipate future problems in public health.

II. BACKGROUND

This section will focus on the origins of public health law in the United States, the states' powers to regulate for the public welfare through their police powers and the doctrine of *parens patriae*, and the history of minor's rights to consent to medical care and health services over the will of their parents. This Comment will also address how vaccinations protect minors the same as they do adults, the similarities between minor consent in the vaccination context and minor consent in the context of other public health services like reproductive and mental health care, and a brief discussion of the mature minor doctrine.

A. The Origins of Public Health Law

To demonstrate public health law's rich, extensive history in the United States, we can look to case law from the beginning of twentieth century. Century-old case law supports the notion that vaccines and state regulation go hand in hand.³⁹ In the landmark case *Jacobson v. Massachusetts*,⁴⁰ the United States Supreme Court solidified the broad scope of the states' police powers in a public health crisis.⁴¹ In the midst of a smallpox outbreak, the state of Massachusetts passed a law requiring that members of the community get vaccinated as a preventative measure.⁴² While not everyone approved of this compulsory law, the Court made it abundantly clear that the states retain broad police powers when regulating the health, safety, and welfare of their residents.⁴³ In an opinion written by Justice John Marshall Harlan, the Court stated that, "the police power of a State must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety."⁴⁴ The Court emphasized that "reasonable regulations" are entirely within a state's legislative power.⁴⁵

³⁹ See SCOTT BURRIS, *THE NEW PUBLIC HEALTH LAW* 136 (Oxford Univ. Press 2018).

⁴⁰ *Jacobson v. Massachusetts*, 197 U.S. 11 (1905).

⁴¹ *Id.* at 24; see also BURRIS, *supra* note 39.

⁴² *Jacobson*, 197 U.S. at 27; see also Emily R. Jones, *Who Calls the Shots?: Parents Versus the Parens Patriae Power of the States to Mandate Vaccines for Children in New York*, 37 GA. ST. U. L. REV. 637, 642 (2021) (explaining how the smallpox disease launched the vaccine science movement as it is known today).

⁴³ See *Jacobson*, 197 U.S. at 29.

⁴⁴ *Id.* at 25.

⁴⁵ *Id.*

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The Court acknowledged the fact that it is up to the state legislatures' power to enact laws that are both reasonable and protective of their citizens.⁴⁶ Justice Harlan continued that along with the power to enact such laws, the state legislatures have great discretion to utilize any "mode or manner" that they see fit in addressing public health concerns.⁴⁷ The Court emphasized that "the mode or manner in which those results are to be accomplished is within the discretion of the State" so long as the law does not interfere with the Constitution, or any rights it contains.⁴⁸

In response to the defendant's claims that the compulsory vaccination law was "unreasonable, arbitrary and oppressive," the Court reasoned that there is no "absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint."⁴⁹ Essentially, the majority opinion declared that vaccine regulations, because of their goal in promoting the general welfare and health of state citizens, are not invalid as they do not necessarily infringe upon individual freedoms.⁵⁰ Since individual freedoms and the advancement of the general welfare often collide, they must be appropriately balanced. The Court, deferring to the City of Cambridge's reasons for passing the law, stated that widespread vaccination is "an effective if not the best-known way in which to meet and suppress the evils of a smallpox epidemic that imperiled an entire population."⁵¹ Ultimately, the Court concluded that the states' police power to regulate in this manner outweighed the defendant's perceived notions that the law oppressed his liberties.⁵²

Vaccinations, by their very nature, are advanced with the goal of protecting the masses. This means that vaccinations should and in fact do relate differently to individual freedoms. As one scholar put it, "[m]ost individual rights involve making decisions that impact only the decision-maker" and "[v]accines are distinct in that a private decision has the potential to expose entire communities to fatal diseases."⁵³ Vaccinations are the prime example of the states' ability to exercise their police powers to regulate the individual in order to protect entire communities from harm and possibly death.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Jacobson*, 197 U.S. at 26.

⁵⁰ *Id.*

⁵¹ *Id.* at 30–31.

⁵² *Id.* at 38–39.

⁵³ Mahrukh Badar, *Calling the Shots: Balancing Parental and Child Rights in the Age of Anti-Vax*, 28 *IND. J. GLOBAL LEG. STUD.* 325, 348 (2021).

While the United States Supreme Court later overturned the majority opinion in *Lochner v. New York*⁵⁴, Justice Holmes's dissenting opinion provides a poignant interpretation of state police powers and his thoughts prevailed as one way to think about promoting the public welfare.⁵⁵ In his *Lochner* dissent, Justice Holmes analyzed the government's powers to promote public health.⁵⁶ Justice Holmes stated, "[i]t is settled by various decisions of this court that [state laws] may regulate life in many ways which we as legislators may think as injudicious or if you like as tyrannical," but "the liberty of the citizen to do as he likes so long as he does not interfere with the liberty of others to do the same" is frustrated by laws that the public deems necessary for and in the promotion of the general welfare.⁵⁷

Essentially, Justice Holmes articulated that there is no fundamental right to liberty when one's exercise of "freedom" interferes with the liberty of another. Justice Holmes referenced how states traditionally exercised their police powers for the promotion of the general welfare through "school laws" for instance.⁵⁸ States always exercise their police powers over large societal institutions, like schools. There is no legitimate dispute over the fact that safe schools enhance the general welfare of every community. Vaccinations are also an example of states acting in their citizens' best interests. The only difference is that there is less general agreement about vaccines than there is with school safety laws. For whatever reasons, there is more disagreement about vaccines and their benefit to society as a whole. Vaccinations, however, are a critical public health tool and proven to be the greatest scientific and "public health achievement of the [twentieth] century."⁵⁹

A fundamental concept behind vaccinations and promoting the general welfare of society is that one person's interest in being free from governmental interference does not outweigh the states' power to protect the general welfare of all. States have significant authority to protect the public from the spread of communicable disease. One person's vaccination against an infectious disease mitigates the spread of that disease to others and thus helps to insulate others from illness or

⁵⁴ *Lochner v. New York*, 198 U.S. 45 (1905).

⁵⁵ *See id.* at 75 (Holmes, J., dissenting opinion).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Jones, *supra* note 42, at 637 (explaining that "[v]accines are one of the top ten public health interventions of the twentieth century, lengthening lifespans and drastically reducing the burden of infectious disease in many nations"); *see also* JAMES G. HODGE, JR., *PUBLIC HEALTH LAW IN A NUTSHELL* 126 (West Acad. Publ'g, 3d ed. 2018).

death.⁶⁰ The state is less likely to fully meet this goal and protect all people if a significant portion of its population is unvaccinated. Therefore, the states have a compelling interest in eliminating any barriers currently preventing minors from receiving vaccinations. It is in the states' best interest to ensure that as many people as possible get vaccinated.⁶¹

Protecting the public from current and future public health emergencies is a state issue because the Tenth Amendment to the United States Constitution reserves to the states extensive power to protect the public's health.⁶² The power to regulate and promote the general welfare of citizens is not delegated to the federal government but is instead up to the states' discretion.⁶³ The states' "police powers" encompass this discretion.⁶⁴ A definition of "police powers" is "the inherent authority of the state to enact laws and promulgate regulations to protect, preserve and promote the health, safety, morals and general welfare of the people."⁶⁵

By utilizing police powers, "states may restrict private interests in liberty, autonomy, and privacy."⁶⁶ State governments are permitted to "act in the interests of the community's well-being" and "in relation to individuals own best interests."⁶⁷ In promotion of communal well-being, states may regulate the lives of their citizens in different ways. For example, states require that every driver on the road have a driver's license and register their vehicle with the state's motor vehicles agency.⁶⁸ This directive aims to ensure that when driving vehicles on

⁶⁰ See *Vaccines Protect Your Community*, U.S. DEP'T OF HEALTH AND HUM. SERVS., <https://www.hhs.gov/immunization/basics/work/protection/index.html> (last updated Apr. 29, 2021) (explaining the concept of "community immunity" in that when "people are vaccinated against a certain disease, the germs can't travel as easily from person to person" and everyone is protected).

⁶¹ See generally Anna Christina Sick-Samuels, *COVID Vaccine: What Parents Need to Know*, JOHNS HOPKINS MED., <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/covid19-vaccine-what-parents-need-to-know> (last updated Jan. 10, 2022) (explaining that "the [covid] vaccine helps prevent or reduce the spread of COVID-19" and that "getting vaccinated for COVID-19 can help stop other variants from emerging").

⁶² Hodge, *supra* note 59, at 56.

⁶³ Hodge, *supra* note 59, at 56.

⁶⁴ Hodge, *supra* note 59, at 56.

⁶⁵ Hodge, *supra* note 59, at 56–57.

⁶⁶ Hodge, *supra* note 59, at 57.

⁶⁷ Hodge, *supra* note 59, at 57–58.

⁶⁸ See N.J. STAT. ANN. § 39:3-4 (2021) ("[E]very resident of this State and every nonresident whose automobile or motorcycle shall be driven in this State shall, before using the vehicle on the public highways, register the same, and an automobile or motorcycle shall not be driven unless so registered."); see N.J. STAT. ANN. § 39:3-10(a) (2022) ("A person shall not drive a motor vehicle on a public highway in this State unless

public roads and highways, people are held accountable for passing a driver's exam, registering the ownership of their vehicle with the state, and are adhering to the rules of the road. All directives require individuals to do many things so that public roads and highways are safe for everyone to use.

Similar to how ensuring safety on public roads and highways is a paramount concern of the state, vaccines help ensure the safety of citizens from infectious diseases. Like driver's license laws, vehicle registrations, and traffic regulations, vaccine requirements are another way the state exercises its powers to promote the safety and well-being of all. The state regulates public health through its police powers. This includes, for example, requiring students who attend public schools to receive immunizations against various diseases.⁶⁹ Vaccinations are a common example of state-implemented regulations that infringe upon the individual liberties of some to ensure the safety and security of all.

Regarding the prevention of communicable diseases, states retain significant legal authority to "exercise these public health powers directly."⁷⁰ The police powers of the state governments extend broadly in the effort to mitigate an infectious disease because of the nature and function of communicable viruses. Communicable conditions are "illnesses caused by an infectious agent or its toxins that occurs through the direct or indirect transmission of the infectious agent or its products."⁷¹ For example, the "infectious agent" that causes the COVID-19 virus falls into this category because it spreads between humans through airborne pathogens and "exposure to respiratory fluids carrying [the] infectious virus."⁷² As exemplified by the COVID-19 pandemic, the rapid spread of a communicable disease is considered a public health crisis.

the person is . . . in possession of a validated permit, or a probationary or basic driver's license issued to that person in accordance with this article.").

⁶⁹ See generally *Summary of N.J. School Vaccination Requirements*, N.J. DEP'T OF HEALTH (Dec. 2021), https://www.nj.gov/health/cd/documents/imm_requirements/k12_parents.pdf (explaining that without a valid medical or religious exemption, children "may be excluded from a school, preschool, or childcare facility during a vaccine preventable disease outbreak or threatened outbreak as determined by the Commissioner, Department of Health or his or her designee").

⁷⁰ Hodge, *supra* note 59, at 97.

⁷¹ Hodge, *supra* note 59, at 100 (citing N.Y.C., NY., Health Code tit. 24, § 11.01 (2010)).

⁷² Hodge, *supra* note 59, at 100; *Scientific Brief: SARS-CoV-2 Transmission*, CTRS. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/sars-cov-2-transmission.html#:~:text=References-SARS%2DCoV%2D2%20is%20transmitted%20by%20exposure%20to%20infectious%20respiratory, respiratory%20fluids%20carrying%20infectious%20virus> (last updated May 7, 2021).

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B. Using Vaccines to Create “Herd Immunity” is a Compelling State Interest

Ever since scientific development allowed for vaccines to become a crucial and effective preventative tool against disease transmission, vaccinations became one of the many ways that states use their police powers to combat public health crises and conduct testing, screenings, and quarantining.⁷³ As we have seen with the coronavirus pandemic, testing and quarantining in particular have become routine state-implemented regulations, along with masking and social distancing.⁷⁴ States implemented all of these regulations in public places and strongly advised in private so as to prevent the spread of COVID-19.⁷⁵

Once the vaccine became available at the end of 2020, encouraging people to receive the COVID-19 vaccine has been at the forefront of the states’ pandemic fighting mission and response.⁷⁶ Vaccinations are absolutely essential to prevent infection of communicable diseases.⁷⁷ For example,

Large-scale vaccination campaigns create herd immunity, where individuals are protected by the high vaccination rates of the population around them. Immunity from a vaccine protects both the individual and the people in the population who may be unable to receive the vaccine. Widespread public use of vaccinations to achieve herd immunity and protect children and adults from vaccine-preventable disease emerged in the 1800s.⁷⁸

The states’ goal is to achieve “high vaccination rates” because such “widespread” vaccination creates “herd immunity” and saves lives.⁷⁹

C. The Doctrine of Parens Patriae

In addition to general police powers, states have the power of *parens patriae*, which is Latin for “parent of the country.”⁸⁰ Under the doctrine of *parents patriae*, states may “step in for the benefit of minors” and others who are or may be without the capacity to take care of their

⁷³ See Hodge, *supra* note 59, at 57.

⁷⁴ See *Implementation of Mitigation Strategies for Communities with Local COVID-19 Transmission*, CTRS. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/community/community-mitigation.html> (last updated May 23, 2021).

⁷⁵ See *id.*

⁷⁶ See *id.*

⁷⁷ See generally Jones, *supra* note 42, at 643.

⁷⁸ Jones, *supra* note 42, at 643.

⁷⁹ Jones, *supra* note 42, at 643.

⁸⁰ Hodge, *supra* note 59, at 57.

own general welfare.⁸¹ Similar to police powers, *parens patriae* is an implied power that “gives the state the ability to limit parental freedom in matters affecting the child’s health, safety, and welfare.”⁸²

Like most governmental powers, the government cannot, without exception, trample on the fundamental rights of parents;⁸³ those rights restrict *parens patriae* powers.⁸⁴ Irrespective of direct constitutional enumeration, parents still have a “fundamental right” to raise their children as they so desire.⁸⁵ Even though this right exists, the doctrine of *parens patriae* serves as a “limitation” on the basic rights of parents when a child’s safety or health is in jeopardy.⁸⁶

D. A Swift and Strong Response by the States is Critical During a Public Health Crisis

Urgent government action is crucial in combatting a public health crisis.⁸⁷ The faster and more efficient the response, the slower the spread of disease, which lessens the strain on the medical and healthcare communities, thus likely saving more lives.⁸⁸ In 2006, years before the current COVID-19 pandemic, the National Governors Association (“NGA”) compiled a detailed, anticipatory “best practices” report (the “NGA report”) on how state governments should plan for, prevent, and ultimately handle a communicable disease-induced pandemic.⁸⁹ The NGA report explained that “aggressive planning at the state level” is paramount and that “proper planning and training” is the only sufficient way to prepare for a pandemic, even if it turns out milder than expected.⁹⁰

⁸¹ Hodge, *supra* note 59, at 58; *see also* Katz & Webb *supra* note 20, at 5 (emphasizing the notion that states have the ability, through their *parens patriae* powers, to override individual liberties and parental authority when there is a “societal interest in protecting [a] child or young adult from harm”).

⁸² Jones, *supra* note 42, at 652.

⁸³ *See* Jones, *supra* note 42, at 652.

⁸⁴ *See* Jones, *supra* note 42, at 652.

⁸⁵ Jones, *supra* note 42, at 652.

⁸⁶ Jones, *supra* note 42, at 652.

⁸⁷ *See generally* Stephen Prior, *Preparing for a Pandemic Influenza: A Primer for Governors and Senior State Officials*, NAT’L GOVERNORS ASS’N CTR. FOR BEST PRAC. 1 (2006), <https://www.nga.org/wp-content/uploads/2020/02/Pandemic-Influenza-Primer.pdf>.

⁸⁸ *See id.* at 4 (emphasizing the necessity of preparation since medical response capability in a pandemic will likely be “limited, strained, and potentially depleted” due to lack of medical equipment and trained personnel).

⁸⁹ *See generally id.*

⁹⁰ *Id.* at 1.

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The NGA report specifically addressed the “role of the governor and lead state officials in managing a pandemic.”⁹¹ The NGA emphasized the crucial role of states in “managing the spread of the pandemic—focusing on medical interventions and enacting other measures to prevent disease spread.”⁹² These transmission management methods, including those that are medical and nonmedical, are described in detail by the NGA report.⁹³ The report provides states with information and guidelines for vaccine and anti-viral distribution, as well as more straightforward approaches to prevent infection.⁹⁴

A swift and efficient response involves strategizing vaccine distribution and how, when, and to whom it happens once available.⁹⁵ For example, “the keys to the successful use of vaccines will be the development of flexible plans for use and defining priority groups who will be vaccinated . . . [s]tate officials should continue to advocate and enhance discussions of the value of the routine vaccination” against the threat of the infectious disease.⁹⁶

Not only must states account for how widespread vaccinations will be implemented and distributed, states must also anticipate that the public may need to be convinced or at least informed as to why obtaining a vaccine is paramount to their health.⁹⁷ The overarching message of the NGA report is that states, in their pandemic management response, must have a “decision-making process” that is “agile and responsive.”⁹⁸ Vaccine implementation and all of its intricacies are a significant part of the state’s “agile” response.⁹⁹

In managing the effects of a pandemic, state and local governments are advised to both organize preventatively to the extent possible, and to act quickly and efficiently if one occurs.¹⁰⁰ In January 2019, the CDC’s

⁹¹ *Id.* at 5 (suggesting that state officials consider how to manage the outbreak and continue operations while minimizing human morbidity, social disruption, and economic consequences).

⁹² *Id.* at 6.

⁹³ See Prior, *supra* note 87, at 16–20.

⁹⁴ See Prior, *supra* note 87, at 16–20.

⁹⁵ Prior, *supra* note 87, at 16.

⁹⁶ Prior, *supra* note 87, at 16.

⁹⁷ See Prior, *supra* note 87, at 16 (stating that the keys to successful use of vaccines hinge on defining priority vaccination groups and then “advocat[ing] and enhanc[ing] discussions” of the value of vaccination to those groups).

⁹⁸ Prior, *supra* note 87, at 23.

⁹⁹ Prior, *supra* note 87, at 16–17, 23.

¹⁰⁰ See CTRS. FOR DISEASE CONTROL AND PREVENTION, PUBLIC HEALTH EMERGENCY PREPAREDNESS AND RESPONSE CAPABILITIES 1 (2019), https://www.cdc.gov/cpr/readiness/00_docs/CDC_PreparednesResponseCapabilities_October2018_Final_508.pdf.

Center for Preparedness and Response released an updated version of its Public Health Emergency Preparedness and Response Capabilities report.¹⁰¹ Throughout this report, the CDC stressed the importance of strategic preparation and immediate action at the state and local levels:

The public health consequences of disasters and emergencies initially affect local jurisdictions. During the initial response, the people and communities that are impacted must rely on local community resources. As a result, all state, local, tribal, and territorial emergency response stakeholders must be prepared to coordinate, cooperate, and collaborate with cross-sector partners and organizations at all governmental levels.¹⁰²

To prepare for public health emergencies appropriately, state and local governments need to develop medical countermeasures, such as vaccines, and coordinate efforts with experts.¹⁰³ Section eight of the preparedness and response report provides strategies and guidelines for the “timely” dispensing and administration of medical countermeasures.¹⁰⁴

Specifically, the CDC urges state and local governments to quickly and efficiently “provide medical countermeasures to the target population(s) to prevent, mitigate, or treat the adverse health effects of a public health incident,” focusing on “dispensing and administering medical countermeasures such as vaccines, antiviral drugs, antibiotics, and antitoxins.”¹⁰⁵ The CDC makes it abundantly clear that state and local governments are the first and most crucial line of defense amidst a public health crisis. It is the job of the state and local governments to respond to a public health crisis, specifically a communicable disease outbreak, with initiatives like vaccines.¹⁰⁶

E. Minors Are Not Immune from Both Contracting and Transmitting Communicable Diseases

Persons under the age of eighteen are not immune from catching, spreading, and suffering from communicable diseases, as the COVID-19 virus has terrifyingly illustrated.¹⁰⁷ The CDC explained the effects of COVID-19 in persons under the age of 18: “[w]hile children have been

¹⁰¹ See generally *id.*

¹⁰² *Id.* at 1.

¹⁰³ *Id.* at 81.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 80.

¹⁰⁶ CTRS. FOR DISEASE CONTROL AND PREVENTION, *supra* note 100, at 56, 80.

¹⁰⁷ See *COVID Data Tracker: Pediatric Data*, CTRS. FOR DISEASE CONTROL AND PREVENTION, <https://covid.cdc.gov/covid-data-tracker/#pediatric-data> (last visited Oct. 13, 2023).

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less affected by COVID-19 compared with adults, children can get sick from COVID-19 and can spread COVID-19 to others. Some children may develop severe illness. Children with underlying medical conditions are at increased risk for severe illness compared to children without underlying medical conditions.”¹⁰⁸ Children are “hardly immune to the ravages of COVID” and can suffer the “burden” of this disease just as extremely as others.¹⁰⁹

As recent as December 28, 2021, the reports of pediatric contraction of and hospitalization for the COVID-19 virus skyrocketed.¹¹⁰ New York City saw pediatric hospital admissions for COVID-19 increase “nearly five-fold.”¹¹¹ In another large metropolitan city, Washington D.C. admitted “close to double” the numbers of pediatric patients.¹¹² This increase in pediatric hospitalizations is likely triggered in part by children “that are eligible over [five],” but are “not fully vaccinated or not vaccinated at all.”¹¹³ A physician at a Connecticut Children’s Hospital told CNN that “children are an easy target for the virus,” and that currently “only about a third of eligible children, ages [five] and older, are vaccinated in Connecticut,” overwhelming the hospitals with sick, COVID-19-positive children.¹¹⁴

Even before the COVID-19 pandemic, mountains of research and data supported the fact that minors benefit from vaccinations across all areas of healthcare. These results recommend that minors receive an array of effective and preventative vaccines throughout adolescence.¹¹⁵ For example, “between the ages eleven to seventeen, adolescents in the United States are advised to receive at least thirteen doses of four different vaccines.”¹¹⁶ The Journal of Adolescent Health explained that presently recommended vaccines for adolescents “have the potential to greatly improve the health of youth and their contacts by preventing conditions such as: tetanus, pertussis, meningococcal disease, influenza, as well as cervical and other PHV-related cancers in adulthood.”¹¹⁷

¹⁰⁸ *Id.*; see also Sick-Samuels, *supra* note 61 (explaining that “some kids infected with the coronavirus can get severe lung infections, become very sick and require hospitalization”).

¹⁰⁹ Shevzov-Zebrun & Caplan, *supra* note 19, at 6451.

¹¹⁰ Maggie Fox & Jen Christensen, *New Omicron Variant Fills up Children’s Hospitals*, CNN HEALTH (Dec. 28, 2021), <https://www.cnn.com/2021/12/27/health/covid-kids-hospitals/index.html>.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ English, *supra* note 26, at 550.

¹¹⁶ English, *supra* note 26, at 550.

¹¹⁷ English, *supra* note 26, at 550.

F. Lack of Parental Permission Is One Reason Why Minors Remain Unvaccinated Against COVID-19

The coronavirus vaccine has been available for public administration since December of 2020.¹¹⁸ It was initially available only to persons sixty-five years or older and high-risk patients.¹¹⁹ Quickly, it became available to younger adults and soon, thereafter, the pharmaceutical and biotechnology company Pfizer declared their vaccine safe and effective for minors as young as twelve years old.¹²⁰ Despite these developments, and even though vaccine manufacturers, scientists, and the CDC deemed the vaccines safe and effective for minors while encouraging parents to vaccinate their children, many parents did not, and are still not, heeding those suggestions.¹²¹

A recent *New York Times* article detailed this new reality and the struggle between guidance set by public health institutions, medical professionals, and state and local governments for the welfare of the public, and the pushback from anti-vaccine or vaccine-hesitant parents.¹²² The article emphasized that “vaccination of children is crucial to achieving broad immunity” and is one step closer to everyone being able to return to normal life, normal school, and normal work.¹²³ Unfortunately, however, polling research indicates that “only three in [ten] parents of children between the ages of [twelve] through [seventeen] intended to allow them to be vaccinated immediately.”¹²⁴ A seventeen-year-old girl from Florida explained that she wanted the coronavirus vaccine because “its [her] body,” but her mother refused to oblige her wishes.¹²⁵

¹¹⁸ *A Timeline of COVID-19 Vaccine Developments in 2020*, *supra* note 6.

¹¹⁹ *A Timeline of COVID-19 Vaccine Developments in 2021*, *supra* note 11.

¹²⁰ *A Timeline of COVID-19 Vaccine Developments in 2021*, *supra* note 11; *see also* Natalie Singer et al., *COVID-19 Vaccination and Parental Consent*, KAISER FAM. FOUND. (May 26, 2021), <https://www.kff.org/policy-watch/covid-19-vaccination-and-parental-consent/> (explaining that “the authorization of Pfizer’s COVID-19 vaccine for adolescents, ages [twelve to fifteen]” is a group that makes up approximately seventeen million persons).

¹²¹ *See COVID-19 Vaccine Safety in Children and Teens*, CTRS. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/vaccine-safety-children-teens.html> (last updated July 20, 2022).

¹²² *See* Jan Hoffman, *As Parents Forbid Covid Shots, Defiant Teenagers Seek Ways to Get Them*, N.Y. TIMES, <https://www.nytimes.com/2021/06/26/health/covid-vaccine-teens-consent.html?searchResultPosition=4> (last updated Sept. 30, 2021).

¹²³ *Id.*; *see also* Singer, *supra* note 120 (reinforcing the notion that vaccinating children against COVID-19 is critical and that “reaching parents with information about [the vaccine] for children will be the driving factor for increasing vaccine coverage for young people”).

¹²⁴ Hoffman, *supra* note 122.

¹²⁵ Hoffman, *supra* note 122.

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This is not an isolated problem; “frustrated teenagers” across the country are trying to figure out how to get the coronavirus vaccine without their parent’s consent.¹²⁶ Many acknowledged this frustration, including Gregory D. Zimet, a psychologist and professor of pediatrics at Indiana University School of Medicine.¹²⁷ Dr. Zimet explained how strange and ironic it is that adolescents are “legally prevented from making a choice that [is] strenuously urged by public health officials.”¹²⁸ Dr. Zimet continued that, “developmentally, adolescents at [fourteen] and even younger are at least as good as adults at weighing the risks of a vaccine.”¹²⁹ When the entire world is encouraging each other to get vaccinated to protect themselves and others, teenagers and adolescents under the age of eighteen who understand the urgency of the situation and the effectiveness of the medical service are unable to receive it, unable to heed the recommendations of medical professionals, and unable to contribute to the general welfare of their community.

This problem is clearly having real-life repercussions. On December 16, 2021, the CDC vaccination reports showed that minors aged twelve to seventeen were among the least fully vaccinated age groups in the country, second only to the age group of five-to-eleven-year-olds.¹³⁰ The age group that is required to get parental approval for vaccinations is not getting the coronavirus vaccine in the numbers that they should be.

Even before the current coronavirus public health crisis, the American Medical Association (“AMA”) issued an opinion endorsing the ability of minors to seek vaccinations over the will of their parents, thereby recognizing the fact that parental consent can often act as a barrier to adolescents receiving beneficial immunizations.¹³¹ One physician expressed concern about this issue stating that “many children go unvaccinated as anti-vaccine related messages and advertisements target parents with misinformation. Allowing mature

¹²⁶ Hoffman, *supra* note 122.

¹²⁷ Hoffman, *supra* note 122.

¹²⁸ Hoffman, *supra* note 122.

¹²⁹ Hoffman, *supra* note 122.

¹³⁰ CTRS. FOR DISEASE CONTROL AND PREVENTION, *supra* note 24 (observing that this data was uploaded on Dec. 16, 2021, only 54.2% of age [twelve-to-seventeen]-year old’s were fully vaccinated against the COVID-19 virus).

¹³¹ Press Release, Am. Med. Assoc., AMA Adopts New Policies on First Day of Voting at 2019 Annual Meeting (June 10, 2019) <https://www.ama-assn.org/press-center/press-releases/ama-adopts-new-policies-first-day-voting-2019-annual-meeting>.

minors to provide informed consent to vaccinations will ensure these patients can access this type of preventative care.”¹³²

Anti-vaccine and vaccine-hesitant parents have influence over their children and teenagers just like pro-vaccine parents. The difference though is that the former group’s decisions that they may make for their child about vaccinations is often one that is muddled by “targeted misinformation,” and it is a decision that affects more than just that one person.¹³³ The Journal of Adolescent Health has also recognized the fact that “ability of minors to consent to vaccination” has a significant “impact on whether adolescents receive indicated vaccines.”¹³⁴

G. Informed Consent to Vaccinations May Differ from that of General Medical Care

A vaccination, by its very nature, differs from a standard medical procedure or a general medical treatment because someone other than one’s regular treating physician routinely gives the vaccinations. Vaccinations are often administered to patients by doctors, nurses, pharmacists, and other qualified professionals that the patient does not necessarily know or trust as well as they know or trust their usual doctor. Administration of a vaccine to a patient often occurs on a much less intimate platform and it requires a different approach by the treating professional.

For a physician to effectively treat a patient, there must be a relationship of trust and understanding formed between the parties. The American Academy of Pediatrics (“AAP”) discussed the history of informed consent as a crucial idea in medical practice stating that, “[t]he support for informed consent in ethical theory is most commonly found in the concept of autonomy, the right of an autonomous agent to make decisions as guided by his or her own reason.”¹³⁵ The idea that one has individual rights to make decisions pertaining to their physical body is a deeply rooted and widely accepted norm.

The right to make decisions about one’s own body based on one’s personal and rational desires is a fundamental principle of medical practice. The AAP explained that in order to make a smart and rational decision about one’s body, patients need to be fully informed.¹³⁶ Obtaining informed consent includes two steps: “disclosing information

¹³² *Id.*

¹³³ *See id.*

¹³⁴ English, *supra* note 26, at 551.

¹³⁵ Katz & Webb, *supra* note 20, at 2.

¹³⁶ Katz & Webb, *supra* note 20, at 2.

to patients and their surrogates and obtaining legal authorization before undertaking any interventions.”¹³⁷ The medical profession recognizes that respecting “individual autonomy” and the right “to live life according to [one’s] own reasons and motives” must be balanced with the expertise and professional recommendations of the treating doctors.¹³⁸ While all of this is true regarding informed consent in the general medical care context, it may not be as necessary or stringent in the context of vaccine administration.

H. Minors and Medical Care: The Availability of Minor Consent for Certain “Privileged” Health Services

According to the American Medical Association’s Code of Medical Ethics, while parents usually serve as the best people to “understand their child’s unique needs and interests,” parental authority in general “does not mean children should have no role in the decision-making process.”¹³⁹ Specifically, section 2.2.2 states that “[p]hysicians who treat minors have an ethical duty” to involve minors in “decisions about their health care.”¹⁴⁰ This is true for anyone providing a medical service to minors, which includes administering a vaccine.

The general rule throughout the country is that parents have autonomy and control over their minor children’s medical decisions.¹⁴¹ All states follow this presumptive and constitutionally protected approach.¹⁴² The authority to make decisions regarding their children’s medical needs and care is among the fundamental rights of parents.¹⁴³ At some point, the law determined that children are a “category of individuals aged [zero] to [eighteen]” and that “for the duration of the child’s minority, parents are the proper proxy decision-makers.”¹⁴⁴ While the public accepts this as clear and logical in most aspects of life, there are times when one can rebut this presumption with a stronger interest, namely, an interest that outweighs that of the parents’ right to

¹³⁷ Katz & Webb, *supra* note 20, at 2.

¹³⁸ Katz & Webb, *supra* note 20, at 2.

¹³⁹ AM. MED. ASSOC., CODE OF MED. ETHICS § 2.2.1, <https://www.ama-assn.org/system/files/2019-06/code-of-medical-ethics-chapter-2.pdf>.

¹⁴⁰ *Id.* at § 2.2.2.

¹⁴¹ Doriane Lambelet Coleman & Philip M. Rosoff, *The Legal Authority of Mature Minors to Consent to General Medical Treatment*, AM. ACAD. OF PEDIATRICS 786, 791 (Apr. 2013) <https://pediatrics.aappublications.org/content/131/4/786.short> (explaining that the “default” rule is that of parental consent and that parents’ rights are “fundamental” and “among the most important of our individual rights”).

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 789.

decide. The most prominent examples of when minors' rights to obtain medical services are especially strong involve intimate and sensitive issues, such as reproductive and mental healthcare services for the minor.¹⁴⁵

In general, minors can obtain, without parental permission, "services related to sexually-transmitted infections, pregnancy, family planning, and substance-related concerns."¹⁴⁶ In every state, adolescents can consent to certain reproductive medical treatments and can usually obtain access to contraception and STI testing.¹⁴⁷ The states justify providing these services to minors confidentially because without these options, minors "might otherwise forego" treatment with "sensitive health care services" because they do not want to involve their parents or guardians.¹⁴⁸

Conversations around STI testing, contraceptives, treatments, and pregnancy are all "highly stigmatized topics that young people are often reticent to discuss."¹⁴⁹ There must be a safe space to "allow young patients to meet with providers without their parents' permission or knowledge."¹⁵⁰ Minors who are reluctant or unwilling to share their desire for these services to their parents or guardians are at higher risk.¹⁵¹ Without confidential care, there is a "decrease[d] . . . likelihood that they receive STI screening and treatment" and an increased likelihood of contaminating others with STIs.¹⁵²

One of the key interventions in the world of sexual and reproductive health, among other measures, are vaccinations.¹⁵³ The HPV vaccine, for example, has been a breakthrough intervention in the prevention of cervical cancer caused by the human papilloma virus, a sexually transmitted infection.¹⁵⁴ The HPV vaccine reduced HPV infections "among adolescent girls by 71%."¹⁵⁵ But minors still face barriers in all areas of reproductive health care treatment, including the

¹⁴⁵ See English, *supra* note 26, at 551.

¹⁴⁶ Shevzov-Zebrun & Caplan, *supra* note 19, at 6451.

¹⁴⁷ English, *supra* note 26, at 551.

¹⁴⁸ English, *supra* note 26, at 551.

¹⁴⁹ Keller, *supra* note 1, at 9.

¹⁵⁰ Keller, *supra* note 1, at 9.

¹⁵¹ Keller, *supra* note 1, at 6 (explaining that "[y]oung people face multiple roadblocks to obtaining high-quality sexual health information and STI care that can help them avoid STIs or mitigate the effects of an infection").

¹⁵² Keller, *supra* note 1, at 7-8.

¹⁵³ Keller, *supra* note 1, at 8.

¹⁵⁴ Keller, *supra* note 1, at 9.

¹⁵⁵ Keller, *supra* note 1, at 9.

challenges presented by the HPV vaccine, which “lagged” behind other adolescent vaccines.¹⁵⁶

I. What Is the Mature Minor Doctrine?

The mature minor doctrine is an exception to the universal rule that parents make decisions for their children’s medical needs and healthcare overall.¹⁵⁷ The mature minor doctrine is a common law doctrine that “recognizes that there is a subset of adolescents who have adequate maturity and capacity to understand and appreciate an intervention’s benefits, risks, likelihood of success, and alternatives and can reason and can choose voluntarily.”¹⁵⁸ Treating minors gives rise to a number of issues. Minors can disagree with their parents about the kind of treatment that they wish to receive, and they can certainly express “independent views” about treatments and courses of care in general.¹⁵⁹

Under the mature minor doctrine, the court considers various aspects of the minor patient including their “age, overall maturity, cognitive abilities, and social situation” and determines whether to override the general rule of parental involvement.¹⁶⁰ The mature minor doctrine originated as a common law principle, but “[a]s of 2021, roughly one-third of U.S. states” passed laws codifying it.¹⁶¹ Importantly, the AMA endorsed states adopting the mature minor doctrine for vaccinations.¹⁶² The AMA reports that eighteen states recognize mature minor common law principles and/or codified in legislation.¹⁶³

III. VACCINATIONS ARE EQUIVALENT TO ALREADY AVAILABLE “PRIVILEGED” HEALTH SERVICES FOR MINORS, THUS MINOR CONSENT TO VACCINATION SHOULD BE BASED ON THE SAME JUSTIFICATIONS

A. Minors’ Rights to Obtain Vaccinations Should Not Be Limited By the “Mature” Minor Doctrine and Should Be Considered a

¹⁵⁶ Keller, *supra* note 1, at 9.

¹⁵⁷ Katz & Webb, *supra* note 20, at 9.

¹⁵⁸ Katz & Webb, *supra* note 20, at 9.

¹⁵⁹ Coleman & Rosoff, *supra* note 141, at 787.

¹⁶⁰ Katz & Webb, *supra* note 20, at 9.

¹⁶¹ Abramson, *supra* note 23.

¹⁶² Am. Med. Assoc., *supra* note 131.

¹⁶³ Bari Weinberger, *Vaccine and Other Healthcare Decisions for Minors*, N. J. L. J. (Aug. 6, 2021), <https://www.law.com/njlawjournal/2021/08/06/vaccine-and-other-health-care-decisions-for-minors/>.

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Maturity is not the standard that allows minors to authorize their own “privileged” healthcare decisions.¹⁶⁴ Maturity is not a standard by which we allow adults to make decisions about theirs and others health care decisions either. Certainly, a minor must be adept enough, for example, to know that they need reproductive health care and be mature enough to go to their physicians to ask for it. The reason we allow minors to do this, however, is not based on maturity, and it never has been. We allow minors to go to their doctors and request services like birth control or psychological counseling because the interests in the minor’s health and the health of society at large outweigh the rights of the parents to have final influence in these areas of their children’s health.¹⁶⁵

States’ age limits for minors and consent are set arbitrarily yet engrained in our culture. The justification supposes that those under the specified age lack the ability to make an informed decision and that those over that age do. But this is highly subjective and there is no requirement of anyone over the state’s designated age of such a test of actual ability to make an informed consent. Surely, there are minors under the age who have that ability and those over the age without it. The measure should be a scientific risk-benefit analysis and meet the state’s duties to protect minors and society at large.

Minor’s rights to consent to vaccinations is crucial to both the individual and the public health in general. Not allowing this may lead to a personal tragedy for the individual minor, and a public health failure for society at large. Vaccines are generally highly beneficial and low risk.¹⁶⁶ One should not have to be a mature person for purposes of protecting the public from an infectious disease. The current pandemic pointed out the illogical and unworkable state of minor consent laws across the country as a policy failure.¹⁶⁷ Medical services for mental health and suicide prevention seem skewed towards the benefit of the individual. Reproductive health care and access to birth control implicate both the individual and society. Vaccinations also implicate both but specifically seem to be skewed towards society at large.

¹⁶⁴ See generally Keller, *supra* note 1.

¹⁶⁵ See generally Keller, *supra* note 1.

¹⁶⁶ *Understanding How Vaccines Work*, CTRS. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/vaccines/hcp/conversations/understanding-vacc-work.html> (last updated May 23, 2022) (explaining that immunity provided by vaccines is better than natural immunity because “natural infections can cause severe complications and be deadly” and while vaccines “can cause side effects,” most are mild, and a vaccination is the “best way to prevent” contracting a deadly disease).

¹⁶⁷ See *infra*, IV.A.

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Minor's rights to obtain vaccinations should extend beyond the bar of a mature minor because maturity is largely irrelevant to the state's objectives towards stamping out a public health crisis.

It is not a shockingly new idea that minor vaccination laws deserve some upgrades. Many different approaches exist, but in general, the "most viable options" to legal modifications of minor vaccination laws "fall into [three] broad categories."¹⁶⁸ The third category, "[a]lignment with privileged healthcare services" is likely the "most prudent for minors and society alike."¹⁶⁹ Minors' abilities to consent to vaccinations should not base themselves on the "status" of the minor but on the "service" of the vaccination as a public health tool. The kind of medical service that they are getting is a crucial factor.

B. The COVID-19 Vaccine

The COVID-19 pandemic has illuminated and intensified the need for a reclassification of minors' consent rights. The COVID-19 vaccine has been available for those as young as twelve since May 10, 2021.¹⁷⁰ This is an emergency, urgent, lifesaving vaccination given to people for the protection of society as a whole. Minors should have the right to participate in local, national, and global efforts to eradicate deadly infectious diseases. To not allow minors to actively participate in a national—or global in the case of COVID-19—effort to combat a public health crisis not only lacks sufficient justification but harms the states' efforts toward safety and welfare. It disrespects the autonomy of the minor to not be able to consent to healthcare services that they not only desire, but modern science also strongly recommends. It puts the minor at risk of contracting and spreading a deadly disease, the same way that creating barriers to reproductive health care services for adolescents risk exposing them to STIs like the cancer-causing Human Papilloma Virus.

In arguing that minors should not face arbitrary barriers to vaccination, there are some key considerations, including the intensity and acuity of a pandemic backdrop and its influence on the weight of a minor's decision-making.¹⁷¹ The risks of vaccination are low, and the benefits are great enough to make determining "maturity" unnecessary at most or less important at the least.¹⁷² It does not make sense logically, practically, and ethically that the entire world is advised to get

¹⁶⁸ Shevzov-Zebrun & Caplan, *supra* note 19, at 6453.

¹⁶⁹ Shevzov-Zebrun & Caplan, *supra* note 19, at 6453.

¹⁷⁰ *A Timeline of COVID-19 Vaccine Developments in 2021*, *supra* note 11.

¹⁷¹ Shevzov-Zebrun & Caplan, *supra* note 19, at 6452.

¹⁷² Shevzov-Zebrun & Caplan, *supra* note 19, at 6452.

vaccinated and a teenager who disagrees with their parents is unable to do so.

IV. PROPOSAL: ALL FIFTY STATES SHOULD ADOPT MINOR CONSENT TO VACCINATION LAWS

A. *The Current State of Minor Consent Laws Across the Country*

Across the country, the current state of minors' rights to consent to medical care is quite convoluted. Whether parental consent is specifically required for vaccinations "varies significantly by both state and vaccine in question."¹⁷³ "Forty states require parental consent for vaccination of minors under [eighteen], and Nebraska sets the age at [nineteen] (Some states carve out exemptions for teenagers who are homeless or emancipated.)"¹⁷⁴ Importantly, "[s]ome states, including California, allow minors over 12 to receive only certain vaccines—namely against HPV and Hepatitis B, both commonly sexually transmitted—without parent agreement"¹⁷⁵ Two other states, New York and Minnesota, also allow minors of a certain age to receive certain vaccines.¹⁷⁶ In Minnesota, minors are allowed "to consent for hepatitis B virus immunization" and in New York, certain regulations "permit sexually active minors to consent to HPV vaccination 'during confidential sexual and reproductive health care visits without consent or knowledge of the parent or guardian.'"¹⁷⁷

Common among the current state of minor consent laws is that minors may only consent to vaccinations based on certain factors.¹⁷⁸ While the minor's specific age is always relevant, the most relevant factors are the vaccine in question and the disease it targets.¹⁷⁹ At minimum, states seem to be the most receptive to minor consent laws when it comes to vaccinations that target and protect against sexually transmitted diseases. While crucial, sexually transmitted diseases are not the only infectious diseases plaguing minors, nor are they the only potentially dangerous and life-threatening ones. Minor consent to vaccination laws across the country need not base itself on the specific

¹⁷³ Shevzov-Zebrun & Caplan, *supra* note 19, at 6451.

¹⁷⁴ Hoffman, *supra* note 122.

¹⁷⁵ Hoffman, *supra* note 122.

¹⁷⁶ Gregory D. Zimet et al., *Adolescent Consent for Human Papillomavirus Vaccine: Ethical, Legal, and Practical Considerations*, 231 J. OF PEDIATRICS 24, 25 (2021).

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *See id.*

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vaccine or disease in question, but on vaccinations in general as a protected, privileged health service.

B. What Is D.C. Law 23-193?

In the Fall of 2020, the D.C. legislature passed the “Minor Consent for Vaccinations Amendment Act of 2020.”¹⁸⁰ The legislation became “[e]ffective from March 16, 2021.”¹⁸¹ D.C. Law 23-193 states that,

[a] minor, [eleven] years of age or older, may consent to receive a vaccine if the minor is capable of meeting the informed consent standard, the vaccination is recommended by the United States Advisory Committee on Immunization Practices (“ACIP”), and will be provided in accordance with ACIP’s recommended immunization schedule.¹⁸²

Section (b) goes on to state that “[f]or the purposes of this subsection, a minor shall be deemed to meet the informed consent standard if the minor is able to comprehend the need for, the nature of, and any significant risks ordinarily inherent in the medical care.”¹⁸³ Subsection (c) provides that “[t]he Department of Health shall produce one or more age-appropriate alternative vaccine information sheets, which shall be made available before vaccination of minors to support providers for use in the informed consent process.”¹⁸⁴ Minors as young as eleven years old qualify in this consent law.¹⁸⁵

This law originated in the D.C. legislature after a measles outbreak in D.C. schools.¹⁸⁶ Almost immediately after taking effect, parents challenged the law on several grounds, filing lawsuits and asking for injunctive relief.¹⁸⁷ On March 18, 2022, a Federal Judge in D.C. issued an opinion temporarily blocking enforcement of D.C. Law 23-193.¹⁸⁸ As of this date, the temporary block still stands, unfortunately marking a significant pause in a critical and progressive stride forward in public health.

¹⁸⁰ LEGIS. INFO. MGMT. SYS., B23-0171–MINOR CONSENT FOR VACCINATIONS AMEND. ACT OF 2019, <https://lims.dccouncil.us/Legislation/B23-0171> (last visited Oct. 13, 2023).

¹⁸¹ *Id.*

¹⁸² D.C. Mun. Regs. tit. 22-B § 2.6 (2020).

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ Booth v. Bowser, Nos. 21-cv-01857, 21-cv-01782, 2022 U.S. Dist. LEXIS 48877, at *53 (D.C. Cir. Mar. 18, 2022) (granting preliminary injunction).

¹⁸⁷ *Id.* at *3.

¹⁸⁸ *Id.* at *54–55; see also Justin Wm. Moyer & Julia Zauzmer Weil, *Judge Bars D.C. From Vaccinating Children Without Parental Consent*, WASH. POST, <https://www.washingtonpost.com/dc-md-va/2022/03/21/dc-vaccine-lawsuit-parental-consent/> (last updated Mar. 21, 2022, 5:49 PM).

C. What Is California Senate Bill 866?

In January of 2022, California Senator Scott Wiener introduced Senate Bill 866.¹⁸⁹ Section (a) of the bill provides that,

[a] minor [twelve] years of age or older may consent to a vaccine that is approved by the United States Food and Drug Administration and meets the recommendations of the Advisory Committee on Immunization Practices (ACIP) of the federal centers for Disease Control and Prevention (ACIP) without the consent of the parent or guardian of the minor.¹⁹⁰

Senate Bill 866, also known as the “Teens Choose Vaccines Act,” as opposed to the D.C. bill, was drafted and proposed in the California Senate in direct response to the coronavirus pandemic.¹⁹¹ Senator Wiener explained that “[w]ith the persistence of the COVID-19 pandemic and the widespread availability of highly effective and safe vaccines” it is “more important than ever that young adults be able to access vaccines.”¹⁹² Senator Wiener continued that providing access to minors “regardless of their parents’ beliefs or work schedules” is absolutely crucial for the minors physical and mental well-being.¹⁹³ The Senator expressed the concern that it would be “unconscionable” for minors to be denied access to the vaccine because of disagreement with their parents.¹⁹⁴ Therefore, in proposing Senate Bill 866, the Senator hoped to permit minors to get vaccinated, regardless of “their parents’ political views or inability to find the time.”¹⁹⁵

V. CONCLUSION

D.C. Law 23-193 and California Senate Bill 866 should serve as model legislation. These minor consent to vaccination laws are some of, if not the most, liberal minor consent to vaccination laws on the books and in consideration in the United States. These minor consent to vaccination laws can and should be adapted and modified by other states with their respective community goals and needs in mind. Comprehensive minor consent to vaccination legislation, adopted and codified by every state, simply makes sense. The justifications for this kind of legislation are rooted in general state public health policy considerations, endorsed by major medical institutions, and supported

¹⁸⁹ *Senator Wiener Introduces SB 866, supra* note 37.

¹⁹⁰ S.B. 866, 2021-2022 Reg. Sess. (Cal. 2022) (as introduced on Jan. 20, 2022).

¹⁹¹ *Senator Wiener Introduces SB 866, supra* note 37.

¹⁹² *Senator Wiener Introduces SB 866, supra* note 37.

¹⁹³ *Senator Wiener Introduces SB 866, supra* note 37.

¹⁹⁴ *Senator Wiener Introduces SB 866, supra* note 37.

¹⁹⁵ *Senator Wiener Introduces SB 866, supra* note 37.

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by science and health professional recommendations. Codifying minors' rights to consent to vaccinations in every state will not only help end the current COVID-19 pandemic, but it will also better prepare for addressing community mitigation for the future of public health.

Minor consent to vaccination legislation will enable states to act swiftly, target vulnerable classes of people, specifically minors, and to provide better protection to us all. Most adults who received the COVID-19 vaccine did so because the public health, science, and medical organizations and communities advised them to do so. The public trusts these societal institutions with countless aspects of its daily lives. As a society, we wanted to protect ourselves and others and get back to our normal lives sooner rather than later. The standard for a minor to make this decision should not be any different.