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## The Free Exercise Clause and the Religious Exemption to Vaccinations: Why States are Allowed to Implement Mandatory Vaccinations

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## INTRODUCTION

One of the greatest public health achievements of the 20<sup>th</sup> century is said to be vaccinations, which were developed in order to eradicate vaccine-preventable diseases and to help sustain a healthy society, saving millions of lives around the world. However, the 21<sup>st</sup> century has marked an era of vaccination refusal and has left many medical doctors and infectious disease experts wondering why and how the greatest achievement of public health has become a medical procedure that is denied by so many parents across the globe.<sup>1</sup> With an ardent desire to deny required vaccinations, many parents have sought legal exemptions to avoid vaccinating their children. One of the most common forms of vaccine exemptions are based on religious objections to vaccination.

In the past year, there has been a measles outbreak in New York State. New York has been the state hardest hit by the uptick in the measles virus due to low vaccination rate in the highly present ultra-Orthodox communities.<sup>2</sup> As of June 2019, there were 588 confirmed cases of measles in New York City alone, according to the city's Department of Health and Mental Hygiene.<sup>3</sup> Due to the uprising in the measles outbreak, officials came together to repeal the religious exemption for the sake of public health and welfare.<sup>4</sup>

The Network for Public Health Law<sup>5</sup> reported that in 2013 and 2015, there was an outbreak of vaccine-preventable diseases such as measles and pertussis.<sup>6</sup> In 2019 alone, the Center for Disease Control and Prevention has recorded a record of over 900 reported measles outbreak cases

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<sup>1</sup> Delany I., Vaccines for the 21st Century. *EMBO Mol Med.* 2014;6:708–20.

<sup>2</sup> Bobby Allyn, *New York Ends Religious Exemptions for Required Vaccines*, NPR, Oct. 19, 2019, <https://www.npr.org/2019/06/13/732501865/new-york-advances-bill-ending-religious-exemptions-for-vaccines-amid-health-cris>.

<sup>3</sup> Melanie Grayce West et al., *Measles Outbreak in New York City Slows*, *THE WALL STREET JOURNAL*, (New York, NY) Oct. 19, 2019, <https://www.wsj.com/articles/measles-outbreak-in-new-york-city-slows-11560289612>.

<sup>4</sup> *Id.*

<sup>5</sup> *School Immunization Requirements*, *THE NETWORK FOR PUBLIC HEALTH LAW*, Oct. 10, 2019, [https://www.networkforphl.org/\\_asset/n88lr8/western-region-vaccination](https://www.networkforphl.org/_asset/n88lr8/western-region-vaccination).

<sup>6</sup> Yang YT et al., *Measles Outbreak as a Catalyst for Stricter Vaccine Exemption Legislation*, *THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION*, 2015, at 315.

in New York, accounting for three-quarters of the reported cases nationwide.<sup>7</sup> In June of this year, Governor Cuomo signed legislation repealing religious vaccine exemptions for school-aged children attending school in New York.<sup>8</sup> Additionally, state officials tightened rules for physicians to grant vaccine exemptions for medical reasons.<sup>9</sup> There are currently 26,217 children in New York State whose parents refuse vaccinations, unable to attend public, private and religious schools, childcare centers and nursery schools and prekindergarten programs, because of the repeal of the religious exemption to vaccination.<sup>10</sup> As of September 15, 2019, a challenge to the repeal has been brought in the New York State trial court in the case of *Sullivan-Knapp v. Cuomo* by Christian parents, but lost at the trial level.<sup>11</sup> A challenge to the repeal was also brought by Amish parents in November of this year in *Stoltzfus v. Cuomo*, but New York State Supreme Court Justice Daniel Doyle denied Stoltzfus' legal challenge to the repeal.<sup>12</sup>

These events triggered a worldwide debate regarding vaccination and the legal exemption of vaccination and its possible consequences such as social distancing, exclusion from school, and the great risk of wide spreading of vaccine-preventable diseases.<sup>13</sup> Religious objections are often used by parents as an excuse to avoid the vaccination of children<sup>14</sup> and some studies show that the number of religious exemptions have been increasing, leading to vaccine-preventable disease

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<sup>7</sup> Michelle Andrews, *Starting This Week, 26,000 Unvaccinated Kids Have to Get Shots to Attend School in New York*, VICE, Sept. 3, 2019, [https://www.vice.com/en\\_us/article/bjwmg8/starting-this-week-26000-unvaccinated-kids-have-to-get-shots-to-attend-school-in-new-york](https://www.vice.com/en_us/article/bjwmg8/starting-this-week-26000-unvaccinated-kids-have-to-get-shots-to-attend-school-in-new-york).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Sullivan-Knapp v. Cuomo*, No. E2019-1339CV, (NY Supp. Ct. Oct. 9, 2019).

<sup>12</sup> *Stoltzfus v. Cuomo*, No. 20190311, (NY Sup. Ct. Nov. 4, 2019).

<sup>13</sup> Andy Baker-White, *School Vaccination Legislative Review*, THE NETWORK FOR PUBLIC HEALTH LAW (Oct. 10, 2019), [https://www.networkforphl.org/the\\_network\\_blog/2015/08/19/678/2015\\_school\\_vaccination\\_legislative\\_review/](https://www.networkforphl.org/the_network_blog/2015/08/19/678/2015_school_vaccination_legislative_review/).

<sup>14</sup> WL Ruijs, et al., *How healthcare professionals respond to parents with religious objections to vaccination: a qualitative study*, BMC HEALTH SERV RES. (2012), <https://bmchealthservres.biomedcentral.com/articles/10.1186/1472-6963-12-231>.

outbreaks such as mumps, measles, polio, rubella, and whooping cough.<sup>15</sup> In fact, elimination of endemic transmission of measles in the United States might be threatened by the accumulation of children with vaccine exemptions.<sup>16</sup>

In this paper I will explore the implications between compulsory vaccination, religious exemptions and parental rights, and how they implicate constitutional rights to free exercise. The main question I will discuss is whether the religious exemption is merely a permissible accommodation or whether it is required by the Free Exercise Clause. I will start by looking through the exemptions and the current problems with vaccine refusals and then analyze the history of the regulation of vaccinations in the case law. After, I will dive into the jurisprudence question of whether the Free Exercise Clause requires exemptions from compulsory vaccine laws by sifting through applicable precedent and application of that precedent to the issue at hand.

## **I. EXEMPTIONS AND THE CURRENT PROBLEM OF VACCINE REFUSALS**

A religious waiver to vaccinations provides cover to those who resist vaccines for various reasons including medical, religious and for personal belief.<sup>17</sup> Until 2015, 48 states had some form of religious exemption. California did away with its exemption in 2015 and New York and Maine repealed theirs in 2019.<sup>18</sup> Currently, forty-five states and the District of Columbia permit religious exemptions from vaccines and there are bills pending in most states to repeal religious exemptions in 2020.<sup>19</sup> Massachusetts, Connecticut, New Jersey and Pennsylvania are among other states

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<sup>15</sup> GAVI: THE VACCINE ALLIANCE (2015), <https://www.vaccineswork.org/vaccine-preventable-disease-outbreaks/>.

<sup>16</sup> VK Phadke et al., *Association between vaccine refusal and vaccine-preventable diseases in the United States: a review of measles and pertussis*. THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION (2016), <https://www.ncbi.nlm.nih.gov/pubmed/26978210>.

<sup>17</sup> THE HISTORY OF VACCINES: AN EDUCATIONAL RESOURCE BY THE COLLEGE OF PHYSICIANS OF PHILADELPHIA, <https://www.historyofvaccines.org/index.php/content/articles/vaccination-exemptions>.

<sup>18</sup> Procon.org, *State Vaccination Exemptions for Children Entering Public Schools*, PROS AND CONS OF CURRENT ISSUES (July 26, 2019), <https://vaccines.procon.org/state-vaccination-exemptions-for-children-entering-public-schools/>.

<sup>19</sup> *Id.*

pending repeal.<sup>20</sup> All fifty states allow for medical exemptions and only fifteen states and the District of Columbia allow for philosophical (“personal belief”) exemptions.<sup>21</sup>

Earlier this year, New York State repealed their religious exemption to vaccination requirements for schoolchildren.<sup>22</sup> On June 13, 2019, New York passed the new law and became the fifth state in the country to bar all nonmedical exemptions to vaccination, establishing one of the strictest policies in the nation.<sup>23</sup> The New Jersey State Legislature passed Bill No. 3818 in January 2019, removing the religious exemption as a reason parents can refrain from having their children vaccinated.<sup>24</sup> In California, starting January 1, 2020, the California Department of Public Health (CDPH) will have the power to revoke medical exemptions that it determines are not medically necessary.<sup>25</sup> In Maine, new laws tightening vaccination rules will be in effect starting September 2021.<sup>26</sup> Unlike other states repealing religious exemptions to vaccines, Maine will allow students receiving special education services to have claimed a religious and philosophical exemption before September 2021.<sup>27</sup>

Strikingly, West Virginia is the only state in the country that has never had non-medical exemptions, and, as a result, West Virginia has not experienced a measles outbreak in twenty-five

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Sharon Otterman, *Get Vaccinated or Leave School: 26,000 N.Y. Children Face a Choice*, NYTIMES (Sept. 6, 2019), <https://www.nytimes.com/2019/09/03/nyregion/measles-vaccine-exemptions-ny.html>.

<sup>23</sup> *Id.*

<sup>24</sup> State of New Jersey, Assembly No. 3818, Amending Section 6 of P.L.1974, c.150 (C.26:1A-9.1) (2019), [https://www.njleg.state.nj.us/2018/Bills/A4000/3818\\_R1.HTM](https://www.njleg.state.nj.us/2018/Bills/A4000/3818_R1.HTM).

<sup>25</sup> Calmatters.org, *Five Things to Know About California’s New Vaccine Law*, CAL MATTERS (Sept. 15, 2019), <https://calmatters.org/health/2019/09/california-new-law-vaccination-medical-exemption/>.

<sup>26</sup> Evan Simko-Bednarski, *Maine bars residents from opting out of immunizations for religious or philosophical reasons*, CNN (May 27, 2019), <https://www.cnn.com/2019/05/27/health/maine-immunization-exemption-repealed-trnd/index.html>.

<sup>27</sup> Eesha Pendharkar, *New Maine law tightening vaccination rules has an exception for special ed students*, 13 WGME (Jun. 10, 2019), <https://wgme.com/news/local/new-maine-law-tightening-vaccination-rules-has-an-exception-for-special-ed-students>.

years.<sup>28</sup> The state legislature has maintained strong vaccination policies for decades, resisting political pressure to expand exemptions to vaccination mandates.<sup>29</sup>

In the United States today, from the time when babies are born, they receive numerous immunizations. Additionally, state laws establish vaccination requirements for school children and these laws often apply to children attending public schools, private schools and day care facilities.<sup>30</sup> State laws also establish the instrumentalities for enforcement of school vaccination requirements and exemptions.<sup>31</sup>

There are three types of exemptions to vaccinations: (1) medical exemptions; (2) religious exemptions; and (3) philosophical exemptions.<sup>32</sup> Valid medical exemptions include but are not limited to, life-threatening allergies, blood conditions, tuberculosis, history of seizures, etc.<sup>33</sup> A religious exemption can arise from statutory provisions granting parents the right to forego vaccination for their child if vaccination would violate their sincere religious belief.<sup>34</sup> States vary in their treatment of religious exemptions, particularly with respect to the ease with which they can be obtained.<sup>35</sup> In some jurisdictions, parents merely need to check a box on a form to request

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<sup>28</sup> Emily Moon, *The Virtues of West Virginia's vaccine policy*, THE WEEK (Mar. 31, 2019), <https://theweek.com/articles/828989/virtues-west-virginias-vaccine-policy>.

<sup>29</sup> *Id.*

<sup>30</sup> CENTER FOR DISEASE CONTROL AND PREVENTION: STATE VACCINATION REQUIREMENTS (2016), <https://www.cdc.gov/vaccines/imz-managers/laws/state-reqs.html>.

<sup>31</sup> *Id.*

<sup>32</sup> Procon.org, *State Vaccination Exemptions for Children Entering Public Schools*, PROS AND CONS OF CURRENT ISSUES (July 26, 2019), <https://vaccines.procon.org/state-vaccination-exemptions-for-children-entering-public-schools/>.

<sup>33</sup> CENTER FOR DISEASE CONTROL AND PREVENTION: STATE VACCINATION REQUIREMENTS (2016), <https://www.cdc.gov/vaccines/imz-managers/laws/state-reqs.html>.

<sup>34</sup> Shaun P. McFall, *Vaccination & Religious Exemptions*, FREEDOM FORUM INSTITUTE (Aug. 18, 2008), <https://www.freedomforuminstitute.org/first-amendment-center/topics/freedom-of-religion/free-exercise-clause-overview/vaccination-religious-exemptions/>.

<sup>35</sup> SB Omer et al., *Nonmedical exemptions to school immunization requirements: secular trends and association of state policies with pertussis incidence*, JAMA (Oct. 11, 2016), <https://jamanetwork.com/journals/jama/fullarticle/203593>.

an exemption.<sup>36</sup> In other states, such as New York, the scrutiny is intense, and much litigation has ensued as parents try to prove that their views are indeed religious in nature (rather than the product of secular, medical, philosophical, or moral considerations).<sup>37</sup> A philosophical exemption broadens statutory language allowing religious exemption, granting an exemption to a vaccine mandate based on “a personal belief opposed to immunization”<sup>38</sup> or “conscientiously held beliefs of the parent of guardian.”<sup>39</sup> This exemption is based on parents' personal beliefs about vaccines. Some parents are concerned about vaccine safety and others believe that getting sick is good for the child because it strengthens the immune system. Many of these concerns have been debunked, such as a theory that vaccines cause autism.<sup>40</sup>

Although forty-five states and the District of Columbia permit religious exemptions for vaccinations, according to the Pew Research Center, researchers and journalists struggle to identify a single U.S. religious group that advocates against vaccines for children.<sup>41</sup> According to an article published in the *Annual Review of Public Health* by Douglas Diekema, a doctor and bioethicist at Seattle Children's Hospital, when some of the religious exemptions to vaccines were put in place in the 1960s and 1970s, they were added “at least in part owing to the lobbying efforts of the Christian Science Church”.<sup>42</sup> Though the Christian Science Church is known for its practice of

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<sup>36</sup> SP Calandrillo, *Vanishing vaccinations: why are so many Americans opting out of vaccinating their children?*, UNIV MICH J LAW REFORM. (Winter 2004), <https://www.ncbi.nlm.nih.gov/pubmed/15568260>.

<sup>37</sup> *Caviezel v. Great Neck Pub. Sch.*, 701 F. Supp. 2d 414 (E.D.N.Y. 2010).

<sup>38</sup> Utah Code Ann. § 53 A-11-301, 302.

<sup>39</sup> Minn. Stat. § 121A.15.

<sup>40</sup> PUBLIC HEALTH, <https://www.publichealth.org/public-awareness/understanding-vaccines/vaccine-myths-debunked/>.

<sup>41</sup> Aleksandra Sandstrom, *Amid Measles Outbreak, New York Closes Religious Exemption for Vaccination – but most states retain it*, PEW RESEARCH CENTER (Jun. 28, 2019), <https://www.pewresearch.org/fact-tank/2019/06/28/nearly-all-states-allow-religious-exemptions-for-vaccinations/>.

<sup>42</sup> Douglas S. Diekema, *Personal Belief Exemptions From School Vaccination Requirements*, ANNUAL REVIEW OF PUBLIC HEALTH 35, no. 1 (2014), <https://doi.org/10.1146/annurev-publhealth-032013-182452>.

healing through prayer, it does not promote that its church members should refrain from vaccinating children.<sup>43</sup>

Other religious concerns have arisen within the Jewish and Muslim communities because certain vaccines – including some measles, mumps and rubella (MMR) and varicella, or chickenpox, vaccines – contain gelatin, which is derived from pigs. Many Jews and Muslims do not consume swine products, however, religious authorities from Judaism and Islam have said the vaccines are permissible.

Furthermore, the Catholic Church has sanctioned the “temporary use of vaccines such as some rubella vaccines because they are possibly developed from descendant cells of tissue from aborted fetuses.”<sup>44</sup> However, the Church supports and encourages their members to seek out alternative vaccines that do not use such cells.<sup>45</sup> Importantly, the Pontifical Academy for Life has made clear that people do not have to refuse vaccination and that it is morally acceptable to use vaccines because of the benefits to the children and to society as a whole.<sup>46</sup> The Church recognizes the significant public health issues and allows people to accept vaccines and the National Catholic Bioethics Center has stated that “[o]ne is morally free to use the vaccine, despite its historical association with abortion, if there is a proportionately serious reason for doing so. In practice, the risks to personal and public health could permit its use. This is especially important for parents, who have a moral obligation to protect the life and health of their children and those around them.”<sup>47</sup>

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<sup>43</sup> CHRISTIAN SCIENCE (2019), <https://www.christianscience.com/press-room/a-christian-scientist-s-perspective-on-vaccination-and-public-health>.

<sup>44</sup> LETTER FROM PONTIFICIA ACADEMIA PRO VITA TO DEBRE L. VINNEDGE VATICAN CITY (2005), <https://www.immunize.org/talking-about-vaccines/vaticandocument.htm>.

<sup>45</sup> *Id.*

<sup>46</sup> Cindy Wooden, *Vatican's Academy for Life Encourages Parents to Vaccinate Children*, CRUX (Mar. 20, 2019), <https://cruxnow.com/vatican/2019/03/20/vaticans-academy-for-life-encourages-parents-to-vaccinate-children/>.

<sup>47</sup> NCBC CENTER, <https://www.ncbcenter.org/resources/frequently-asked-questions/use-vaccines/>.

## II. THE HISTORY OF VACCINES IN THE CASE LAW

In 1885, Massachusetts became the first U.S. State to require vaccination for children attending school.<sup>48</sup> During this time, the only vaccine available was the smallpox vaccine.<sup>49</sup> With Massachusetts pioneering in the regulation of vaccinations for schoolchildren, other states and localities began to pass similar regulations, though the regulations were not strictly enforced.<sup>50</sup>

In 1905, the implications of compulsory vaccination laws were argued, for the first time, in United States Supreme Court in *Jacobson v. Massachusetts*.<sup>51</sup> In *Jacobson*, the Supreme Court upheld the authority of states to enforce compulsory vaccination laws for the “protection of the public health and the public safety, confessedly endangered by the presence of a dangerous disease.”<sup>52</sup> Groundbreakingly, in this case, the Court acknowledged that in some instances, the freedom of the individual must be subordinated to “the good and welfare of the commonwealth, of which the legislature is primarily the judge” and in which “the police power rests in Massachusetts” *i.e.*, the state.<sup>53</sup> The Supreme Court reaffirmed its decision in *Jacobson* in *Zucht v. King* (1922), where it held that a school system could refuse admission to a student who did not have the required vaccinations.<sup>54</sup>

In 1944, another revolutionary case was decided in Massachusetts: *Prince v. Massachusetts*.<sup>55</sup> Here, the Court held that the government has broad authority to regulate the actions and treatment of children.<sup>56</sup> The Court held that a Massachusetts state law prohibiting child

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<sup>48</sup> THE HISTORY OF VACCINES: AN EDUCATIONAL RESOURCE BY THE COLLEGE OF PHYSICIANS OF PHILADELPHIA, <https://www.historyofvaccines.org/index.php/content/articles/vaccination-exemptions>.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905).

<sup>52</sup> *Id.* at 39.

<sup>53</sup> *Id.* at 26–27.

<sup>54</sup> *Zucht v. King*, 260 U.S. 174 (1922).

<sup>55</sup> *Prince v. Massachusetts*, 321 U.S. 158 (1944).

<sup>56</sup> *Id.* at 168–69.

labor on the streets and public places is constitutional as applied to a child member of a religion who was offering religious materials for money.<sup>57</sup> The free exercise of religion and parental authority, though important liberties, are not absolute and can be permissibly restricted if doing so is in the interest of the child’s welfare.<sup>58</sup> The Court emphasized that “parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves.”<sup>59</sup> The Supreme Court established that a state has a legitimate interest in protecting children and therefore can exercise authority to regulate the actions and treatment of children. Flowing from this, in 1972, the Court in *Yoder* held that Wisconsin’s compulsory education law violated an Amish father’s rights to take his 15-year-old children out of school to complete their education in Amish ways at home.<sup>60</sup>

### **III. DOES THE FREE EXERCISE CLAUSE REQUIRE EXEMPTIONS FROM COMPULSORY VACCINE LAWS?**

Government accommodation of religious practice has long been recognized as essential to religious liberty in the United States.<sup>61</sup> It is within the government’s authority to carve out narrowly construed exemptions or accommodations when a specific religious practice is unduly burdened by state policies or laws. In the United States, religious accommodations protect religious liberty for portions of the population that might otherwise have been denied their right to practice their faith, through free-exercise litigation, executive regulatory policy, or legislative practice.

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<sup>57</sup> *Id.* at 171.

<sup>58</sup> *Id.* at 167.

<sup>59</sup> *Id.* at 170.

<sup>60</sup> *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

<sup>61</sup> *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327 (1987).

Accommodations can be permitted, in that they fall in the “play in the joints” between the Free Exercise and Establishment Clauses.<sup>62</sup> Those types of permissible accommodations are neither required nor forbidden by the Religion Clauses. The question for us is whether the vaccine exemption is simply a permissible exemption, or whether it is required by the FEC. If it is permissible, then New York’s repeal (and the repeal by other states) is constitutional. But if the exemption is mandatory, then states cannot constitutionally repeal them.

**a. HISTORY OF GOVERNMENT ACCOMMODATION OF RELIGIOUS PRACTICE: APPLICABLE PRECEDENT**

In *Wisconsin v. Yoder* the court analyzed the Amish Exemption to education. The State of Wisconsin enforced a compulsory school attendance law that required children to attend school until the age of sixteen.<sup>63</sup> Members of the Old Order Amish Religion and the Conservative Amish Mennonite Church, who believed that school attendance after the eighth grade was contrary to their religion and endangered their and their children’s salvation, were convicted of violating the school attendance law.<sup>64</sup> Justice Burger concluded that “only those interests of the highest order” could overcome the right of free exercise of religion, and that the State’s asserted interest in education (which prepares children to be active and self-sufficient citizens) could not overcome the Amish claim.<sup>65</sup> The convictions were therefore reversed with the acknowledgement that Amish children received extensive vocational education in their community.<sup>66</sup> The Court acknowledged that the Amish religion, which has a long and deeply rooted history in the formation and history of the United States, was found to be teaching their children enough skills and vocational education

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<sup>62</sup> *Locke v. Davey*, 540 U.S. 712 (2004).

<sup>63</sup> *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 215.

<sup>66</sup> *Id.* at 213.

to survive in their community, and that was therefore found to be enough education for them.<sup>67</sup> The Court further recognized that the parent’s fundamental right to freedom of religion outweighed the state’s interest in educating their children and that the parents have the right to direct their children’s education.<sup>68</sup> *Yoder* sets forth this ‘compelling interest test’ and guarantees its application in all cases where free exercise of religion is substantially burdened.<sup>69</sup>

Nearly twenty years later, the court in *Employment Division v. Smith* decided that accommodations for religious practices incompatible with general requirements must ordinarily be found in the “political process”, virtually eliminating the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion.<sup>70</sup> The Court implemented the ‘neutral law of general applicability’ standard.<sup>71</sup> In *Smith*, two members of the Native American Church were denied state unemployment benefits after it was determined that they had been fired from their jobs for ingesting peyote, a crime under the Oregon law.<sup>72</sup> The Supreme Court held that this did not violate the Free Exercise Clause, even though the peyote had been ingested for sacramental purposes, because the “right of free exercise does *not* relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).”<sup>73</sup>

In this controversial 1990 Decision concerning the religious use of peyote, the majority opinion, led by Justice Scalia, made it clear that the legislature may enact narrow accommodations without violating the Establishment Clause, even though the Free Exercise Clause may not require

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<sup>67</sup> *Id.* at 235–36.

<sup>68</sup> *Id.* at 233–34.

<sup>69</sup> *Id.* at 215.

<sup>70</sup> *Employment Division v. Smith*, 494 U.S. 872, 902 (1990) (O’Connor, J., concurring).

<sup>71</sup> *Id.* at 890 (Scalia, J., majority opinion).

<sup>72</sup> *Id.* at 872.

<sup>73</sup> *Id.* at 879.

the state to provide religious exemptions from neutral, generally applicable laws.<sup>74</sup> Further elaborating, “that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action”, distinguishing this as involving “not the Free Exercise Clause alone, but the Free Exercise Clause in conjunction with other constitutional protections” such as free speech or “parental rights.”<sup>75</sup> Scalia’s opinion emphasized that ‘the law applies to *all*’ and abandoned strict scrutiny for the ‘generally applicable, facially neutral law’ standard, *except* in situations where other constitutional claims are involved – i.e. parental rights.<sup>76</sup> The court emphatically rejected the proposition that the First Amendment alone – without being coupled to another constitutional protection, such as the freedom of speech, of press, or to direct the education of one’s children, “could excuse [an individual] from compliance” with a general applicable law.<sup>77</sup> Furthermore, the court indicated that Congress, not the Court, may exempt citizens from the law, thus, allowing exemptions to be statutorily required but not constitutionally compelled.<sup>78</sup>

Given the case law precedent presented in *Yoder* and *Smith*, the standard of review applicable to whether the vaccine exemption is constitutional is strict scrutiny. This standard is derived from *Smith* who paved the way for the *Yoder* hybrid, presented when two constitutional protections are implicated – religion and parental rights.

The strict scrutiny framework requires the legislature to have passed the law to further a “compelling government interest,”<sup>79</sup> and must have narrowly tailored the law to achieve that

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<sup>74</sup> *Id.* at 872.

<sup>75</sup> *Id.* at 881.

<sup>76</sup> *Id.* at 879.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> “Where government restricts only conduct protected by the First Amendment and fails to enact feasible measures to restrict other conduct producing substantial harm or alleged harm of the same sort, the interest given in justification of the restriction is not compelling.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546–47 (1993).

interest.<sup>80</sup> Strict scrutiny is the highest standard of review which a court will use to evaluate the constitutionality of governmental discrimination.<sup>81</sup>

Here, we apply strict scrutiny to a compulsory vaccine law that does not contain an exemption and ask: would a religious parent, seeking an exemption for their child, prevail? The parent must prove that the law creates a substantial burden on their religious practice (raising their children in their faith). If the parent does so, then the burden shifts to the state to demonstrate that the law is the least restrictive means of advancing a compelling interest in public health. The government must show that the only way to advance its interest is to require uniform application of the law.

That being said, there are several complications when requiring one's child to undergo an injection against one's religious beliefs, namely applying a substantial burden on one's religious faith. Diversely, there is a substantial and compelling state interest in promoting public health, ensuring the health of children and safeguarding the spread of deadly diseases. It therefore flows from this logic that ensuring that every child is vaccinated in attempts to prevent the spreading of deadly diseases, is a very compelling government interest.

The implication of parental rights is evident in *Stoltzfus v. Cuomo*.<sup>82</sup> In *Stoltzfus*, decided on November 4, 2019, the New York Supreme Court denied an Amish parent's legal claim that the new New York state law requiring students to be fully immunized against contagious diseases and eliminating religious exceptions to vaccinations in New York State, violated his Free Exercise Rights under the New York State Constitution.<sup>83</sup> Jonas Stoltzfus, the father of three children who attended a traditional Amish school in Seneca County, NY, opposed the new law on the basis of

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<sup>80</sup> *Smith*, 494 U.S., at 883 (citing *Sherbert v. Verner*, 374 U.S. 398 (1963)).

<sup>81</sup> *Id.*

<sup>82</sup> *Stoltzfus v. Cuomo*, No. 20190311, (NY Sup. Ct. Nov. 4, 2019).

<sup>83</sup> Verified Complaint at 4, *Stoltzfus v. Cuomo*, No. 20190311, (NY Sup. Ct. Nov. 4, 2019).

his belief that “God made his children ‘right and good’ and to vaccinate his children is to lose faith in God.”<sup>84</sup> Mr. Stoltzfus also claimed that by accepting vaccinations, it shows that “one is hoping to evade one’s obligation to faith as an Amish Christian.”<sup>85</sup> The Court ultimately determined that Plaintiffs failed to meet their burden of clear and convincing evidence that the repeal was an “unreasonable interference” on their religious freedom.<sup>86</sup> Supreme Court Justice Daniel Doyle ruled that the state has the authority to require vaccinations to protect public health, overriding Mr. Stoltzfus’ parental rights, and rejected the lawsuit claims that the repeal should be halted because it violated religious rights’ protections under the State’s constitution.<sup>87</sup>

The Court has indicated how it applies strict scrutiny most clearly in its Religious Freedom Restoration Act (RFRA) decisions. RFRA was passed in response to *Smith* in 1993 to restore strict scrutiny where *Smith* had abandoned it.<sup>88</sup> Specifically, RFRA prohibited the government from burdening religiously motivated activity unless there is a compelling interest to do so, and unless that interest is being furthered in the least restrictive alternative.<sup>89</sup> The Court’s RFRA decisions are particularly important in the analysis for religious vaccine exemptions because it helps us predict how the Supreme Court might rule in the challenge of a vaccine law that contains no religious exemption.<sup>90</sup>

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<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Stoltzfus v. Cuomo*, No. 20190311, (NY Sup. Ct. Nov. 4, 2019).

<sup>87</sup> *Id.*

<sup>88</sup> Ira C. Lupu et al., *A DELICATE BALANCE: THE FREE EXERCISE CLAUSE AND THE SUPREME COURT* (Pew Research Center, 2007).

<sup>89</sup> *Id.* at 14.

<sup>90</sup> Congress passed a significantly scaled-back version of RFRA in 2000, called the Religious Land Use and Institutionalized Persons Act (RLUIPA). Religious Land Use and Institutionalized Persons Act of 2000 § 106, 42 U.S.C. § 2000cc (2000). RLUIPA focuses on two kinds of state and local actions: (1) the law regulates government decisions concerning the uses of land by religious organizations (most decisions involve zoning matters or issues of historic preservation); and (2) the act aims to protect the religious freedom of prison inmates and other incarcerated persons in state or local institutions, such as jails or mental hospitals. *Id.* Prison officials and courts must now apply RLUIPA on a case-by-case basis to the particular religious freedom claims of prisoners and other institutionalized persons. *Id.*

In *Gonzales v. O Centro*, a Brazilian religion, O Centro Espirita Beneficiente Uniao do Vegetal, sued the federal government under RFRA to challenge its interference with the church's use of the drug *hoasca* as a sacrament.<sup>91</sup> Usage of *hoasca* is prohibited by the Controlled Substances Act, having been found by Congress to be unsafe and in violation of an international treaty when imported or distributed.<sup>92</sup> The Court unanimously decided that O Centro was entitled to an exemption from the Controlled Substances Act's prohibition on *hoasca*.<sup>93</sup> Specifically, the Court found that the government had not met its burden of demonstrating that the prohibition on *hoasca* use for religious purposes served a compelling government interest, having failed to submit sufficient evidence of health and safety risks associated with the *hoasca* or the need for compliance with an international treaty.<sup>94</sup> Notably, Justice Scalia emphasized that RFRA allows there to be an exception to all federal statutes where there is a religious objection and a court makes a finding there can be an exception.<sup>95</sup>

In *O Centro*, the Court notably delineates how to decide whether an exemption undermines the government's interest.<sup>96</sup> Here, the Government argued that the effectiveness of the Controlled Substances Act will be "necessarily ... undercut" if the Act is not uniformly applied.<sup>97</sup> The Court noted the existence of a peyote exception, which "fatally undermines the Government's broader contention that the Controlled Substances Act establishes a closed regulatory system that admits of no exceptions under RFRA" and analyzed whether the peyote exemption destroyed the law.<sup>98</sup> The Court made it clear that the peyote exception has been in place since the Controlled Substances

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<sup>91</sup> *Gonzales v. O Centro Espirita Beneficiente Uniao do Vegetal*, 546 U.S. 418 (2006).

<sup>92</sup> *Id.* at 437.

<sup>93</sup> *Id.* at 439.

<sup>94</sup> *Id.* at 434.

<sup>95</sup> Lyle Denniston, Herbal Tea Case: A Government Loss? (Nov. 1, 2005), <http://www.scotusblog.com/2005/11/herbal-tea-case-a-government-loss/>.

<sup>96</sup> *O Centro*, 546 U.S., at 546.

<sup>97</sup> *Id.* at 421–22.

<sup>98</sup> *Id.* at 434.

Act's outset, and there is no evidence that this exception has undercut the Government's ability to enforce the ban on peyote use by non-Indians or that it destroys the law, so adding a few more church members for a *hoasca* exemption would not destroy it either.<sup>99</sup> Ultimately, the Court decided that the Government did not show that granting O Centro an exemption would cause the kind of administrative harm recognized as a compelling interest, and the Government "cannot [attempt] to compensate for its failure to convince the Court as to its health or diversion concerns with the *bold* argument that there can be no RFRA exceptions at all to the Controlled Substances Act."<sup>100</sup>

Similarly, in *Burwell v. Hobby Lobby Stores, Inc.*, the Court interpreted RFRA broadly to protect the rights of religious entities who object to neutral statutes.<sup>101</sup> The Court analyzed religious objections to the Patient Protection and Affordable Care Act, and the *Hobby Lobby* majority interpreted RFRA to afford greater protection to religious exercise than was previously recognized under the Free Exercise Clause prior to *Smith*. Here, the United States Department of Health and Human Services (HHS) passed regulations that required closely held corporations, including Hobby Lobby Stores to provide health-insurance coverage for certain methods of contraception. The methods of contraception violated the sincerely held religious beliefs of Hobby Lobby's owners. Consequently, Hobby Lobby brought suit, claiming that the HHS regulations violated RFRA. The Court ultimately decided that a regulation that requires a closely held corporation to provide health-insurance coverage for contraception violated RFRA because the regulation impinges on the sincerely held religious beliefs of the corporation's owners.

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<sup>99</sup> *Id.* at 435.

<sup>100</sup> *Id.* at 421-22.

<sup>101</sup> *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

The Court in *Hobby Lobby* decided that there was a clear alternative. The Court decided that the Act prevents the federal government from acting in any way that burdens the free exercise of religion unless the action is the least-restrictive means of serving a compelling government interest. In this case, the Court assumes that HHS's interest in adopting the regulations is compelling. However, the regulations are not the least-restrictive means of serving that interest. Under other HHS regulations, religious nonprofit employers are exempt from having to provide contraception if they object to it; their insurers provide it to employees instead. There is no reason why these regulations cannot be applied to closely held corporations as well. Because the HHS regulations substantially burden the Hobby Lobby's free exercise of religion and are the not least-restrictive means of serving the government's compelling interest, the regulations violate the act.

In the Court's application of the strict scrutiny framework in RFRA cases presented above, the Government was unable to show a compelling interest that was being furthered by a least restrictive alternative. Alternatively, in its Free Exercise Clause cases, the Court tackled the question of whether the repeal of the exemption targeted religion in a way that violates the Free Exercise Clause. The Court addresses animus and hostility toward religion and how that implicates the protections provided by the Free Exercise Clause: to protect against laws that "discriminat[e] against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons."<sup>102</sup>

Later on, after *Smith*, the Court in *Church of Lukumi Babalu Aye v. City of Hialeah*, returned to the notion that religiously motivated conduct is not entitled to special protection and laws may not single out religiously motivated conduct for adverse treatment.<sup>103</sup> The Court held that the city of Hialeah violated the First and Fourteenth Amendments when it passed a set of

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<sup>102</sup> *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 532 (1993).

<sup>103</sup> *Id.* at 520.

restrictive ordinances explicitly targeting the Church of Lukumi Babalu Aye’s Santeria religion and its practice of animal sacrifice.<sup>104</sup> The City argued that the ordinances were aimed at protecting the mistreatment of sacrificed animals and avoiding health hazards from improper disposal. Contrariwise, the Court determined that the ordinances “disclose an object remote from these legitimate concerns” and that the design of these ordinances achieves instead a “religious gerrymander.”<sup>105</sup> Although, formally neutral laws of general applicability may regulate religious conduct regardless of the adverse prohibitory effects on religious exercise, the Court “establish[ed] the general proposition that a law [of] neutral and of general application need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice.”<sup>106</sup> In sum, the animus and hostility engrained in the ordinances which aimed to suppress the Santeria religion made the ordinance not facially neutral and the underinclusive or overbroad nature of the ordinance did not make them of general applicability. Ultimately, the ordinance fails strict scrutiny because “a law that targets religious practice for disfavored treatment both burdens the free exercise of religion and, by definition, is not precisely tailored to a compelling government interest.”<sup>107</sup>

In 2018 the Supreme Court determined in *Masterpiece Cakes* that “[t]he Commission’s hostility was inconsistent with the First Amendment’s guarantee that our laws be applied in a manner that is neutral toward religion”,<sup>108</sup> and that “the Commission’s treatment of Phillips’ case violated the State’s duty under the First Amendment not to base laws or regulations on hostility to a religion or religious viewpoint.”<sup>109</sup> The Court went on to say that “in view of these factors, the

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<sup>104</sup> *Id.* at 577.

<sup>105</sup> *Id.* at 534–35.

<sup>106</sup> *Id.* at 531.

<sup>107</sup> *Id.* at 579.

<sup>108</sup> *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719, 1732 (2018).

<sup>109</sup> *Id.* at 1731.

record here demonstrates that the Commission’s consideration of Phillips’ case was neither tolerant nor respectful of Phillips’ religious beliefs.”<sup>110</sup> The Court ultimately found that members of the Colorado Civil Rights Commission had expressed hostility to religion, and concluded that there was a violation of the Establishment Clause without the need to reach the questions concerning whether it would violate the First Amendment’s speech or religion clauses to hold Phillips liable for his refusal to design and bake a cake for a same-sex wedding.<sup>111</sup>

One of the greatest issues presented with religious exemptions is state-compelled vaccinations. Vaccinations are inextricably linked to vital and occasionally competing interests such as the free exercise of religion, parental rights, public health, bodily autonomy and compulsory education. Balancing these interests is extremely complicated and elicit questions such as: Are the government interests in protecting public health compelling enough to supersede the free-exercise rights of children and parents who are religiously opposed to some or all vaccinations? Where and how do parental rights and the bodily autonomy of children factor into this dilemma? How does granting religious exemptions muddle our system of compulsory education? These are just some of the difficult questions presented in the debate of religious exemptions for vaccinations.

#### **b. APPLYING PRECEDENT TO THE COMPULSORY VACCINE LAWS**

The question presented in this analysis is whether the Free Exercise Clause mandates the religious exemption. The answer is no.

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<sup>110</sup> *Id.* at 1722.

<sup>111</sup> *Id.* at 1732.

As acknowledged previously in this analysis, we apply strict scrutiny<sup>112</sup> in cases where claimants have established a “constitutionally cognizable burden on religious exercise.”<sup>113</sup> In the application of strict scrutiny to a compulsory vaccine law that does not contain an exemption, the religious parent seeking the exemption must first evidence that the law creates a substantial burden on their religious practice of raising their children in their faith.

There is arguably a substantial burden on religious parents who are being forced to vaccinate their children in contradiction to their genuine religious beliefs. In states like New York where the religious exemption to vaccination has been repealed, parents are faced with a big problem: their children can no longer attend school until they have met the immunization requirements for school enrollment. Religious parents may therefore be forced to go against their religious beliefs and be forced to vaccinate their children in order for them to attend school. Parents may therefore be faced with guilt for contradicting their religious beliefs, fear of ecclesiastical condemnation, and fear of possibly evading one’s obligation to their respective religious faith. Alternatively, parents may opt to not allow their children to go to school which may cause legal implications for the parents.<sup>114</sup> Forcing religious parents to vaccinate their kids not only hinders them from exercising their religious beliefs, but it also inhibits them from raising their children in their faith.

Flowing from this, if the parent is able to prove that the law creates a substantial burden on their religious practice of raising their children in their faith, the state then has the burden to prove

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<sup>112</sup> The *Smith* rule, “requir[es] the government to justify *any* substantial burden on religiously motivated conduct by a compelling state interest and by means narrowly tailored to achieve that interest.” *Smith*, at 894, 110 S. Ct., at 1608 (emphasis added).

<sup>113</sup> *Lukumi*, 508 U.S. at 520.

<sup>114</sup> Education is compulsory for most children between the ages of roughly six and 17 (compulsory education laws are handled at the state level). While there are broad exemptions for homeschooling and private school, courts also have carved out some more narrowly defined exemptions to such laws. An example of such exemption is *Yoder* (Amish parents were exempt from compulsory education laws past eight grade). *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

that the law is the least restrictive means of advancing a compelling interest in public health. The government must show that the only way to advance its interest is to require uniform application of the law.

There is no question that deterring an outbreak of a deadly disease is a compelling government interest. The government has a very compelling interest in protecting its citizens from dangerous diseases, preventing the spread of such deadly diseases and to ensuring that the public health is maintained. Science has helped us create vaccinations that have eradicated fatal diseases. If we were to stop vaccinating, there would be grave consequences.<sup>115</sup> Diseases that are almost unknown and eradicated would stage a comeback and before long, we would see epidemics of diseases that are nearly under control today.<sup>116</sup> As a result, more children would get sick and more would die.<sup>117</sup>

Smallpox –one of the most terrible diseases in history– has been eradicated by vaccination.<sup>118</sup> Nowadays, children do not have to get smallpox vaccines anymore because the disease no longer exists outside the laboratory.<sup>119</sup> If we continue to vaccinate against other diseases, the same will someday be true for those diseases as well.<sup>120</sup> Vaccinations are one of the best and by far the most effective ways to put an end to the serious effects of certain diseases.<sup>121</sup>

The government’s goal is to create herd immunity<sup>122</sup> in order to limit the spread of diseases. It is more difficult for a contagious disease to spread and maintain a chain of infection when the

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<sup>115</sup> CENTER FOR DISEASE CONTROL AND PREVENTION: VACCINES & IMMUNIZATION (2016), <https://www.cdc.gov/vaccines/imz-managers/laws/state-reqs.html>.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> Herd Immunity Definition, DICTIONARY.COM, <https://www.dictionary.com/browse/herd-immunity?s=t>. (“the resistance to the spread of a contagious disease within a population that results if a sufficiently high proportion of individuals are immune to the disease, especially through vaccination.”).

population is vaccinated, and as the number of those vaccinated increases, the protective effect of herd immunity increases.<sup>123</sup> When only a small percentage of the population is vaccinated, the risk of a disease outbreak is substantially greater than if many were vaccinated.<sup>124</sup> Consequently, the unvaccinated members of the populations are not protected and will pose a higher risk of becoming infected on each member of the population.<sup>125</sup> It is extremely important that the government ensures it is doing everything in its power to maintain a healthy society and prevent the spread of potentially fatal diseases, many of which have previously been eradicated by vaccines.

Vaccinating children not only contributes to the betterment of their health but the overall health of the population. Avoiding vaccinations will create severe health risks, bring back eradicated diseases, cause various deaths and create even more problems. It is within the government's interest to ensure that this does not happen and that everyone is vaccinated to prevent this.

In *Gonzales*, the use of *hoasca* was at issue.<sup>126</sup> The use of *hoasca*, though illegal, was allowed because there was a compelling government interest in allowing the people of *O Centro* to exercise their religion. Though this was the case in *Gonzales*, there is a larger issue at stake in the context of vaccinations. In *O Centro* the government's compelling interest was that by allowing the use of *hoasca*, it would undermine the government and destroy their law. The Court did not buy into that argument. In the vaccine context the compelling government interest is much more critical: it isn't merely that a law is destroyed, it is that the possibility of an epidemic is at stake and the lives of American citizens are at risk. Allowing people to not vaccinate their children

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<sup>123</sup> The College of Physicians of Philadelphia, *Herd Immunity*, THE HISTORY OF VACCINES: AN EDUCATIONAL RESOURCE BY THE COLLEGE OF PHYSICIANS OF PHILADELPHIA (2019), <https://www.historyofvaccines.org/content/herd-immunity-0>.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Gonzales v. O Centro*, 546 U.S. at 418.

creates a substantial risk to the health of the citizens of the United States and can cause a major state of emergency and possible epidemic of a disease that has already been eradicated thanks to science. Allowing a few people to do *hoasca* as part of their religions has far fewer negative consequences than allowing a few people to not vaccinate their children and start a deadly disease epidemic.

One may argue that a less restrictive alternative is to create new vaccines that have the same effect. This is a very difficult, costly and frankly an unattainable alternative. It has taken years and billions of dollars for scientists to create vaccines that prevent the infection and spread of harmful diseases. The government has invested a significant amount of money to get to where we are today, and they are implementing a significant amount of money to create solutions to other infectious diseases which we do not currently have a vaccine or cure for.

Investing in alternative vaccines for diseases we already have a vaccine for in order to satisfy a small minority of people is unjustified. Creating vaccines requires a substantial monetary and scientific investment which would be unfair to require the government to do this. Vaccines available now have already been made through lots of research and money. It is within the interest of the government to spend its budget on creating vaccine solutions for other diseases which we have not yet found a cure for.

In *Hobby Lobby*, the Court decided that although HHS's interest in adopting the new Affordable Care Act regulation was compelling, the regulations were not the least-restrictive means of serving that interest.<sup>127</sup> HHS already had regulations in place that exempted nonprofit employers from having to provide contraception if they objected to it and it would be logical and easy to apply the same exact regulations already in place, to closely held corporations as well. In

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<sup>127</sup> *Hobby Lobby*, 573 U.S. at 735–36.

the vaccination context it would not be as ‘logical and easy’ to allow some people to not be vaccinated and find them an alternative to vaccination. It is extremely costly, time consuming and difficult to find a least-restrictive alternative to the currently available vaccines.

Furthermore, even if we were to create another vaccine, an even greater problem is likely to emerge. People who have already taken the vaccines we currently have in place—a vast majority of people over the past several years— have already been injected with that specific strain of the vaccine and have grown immune to the disease. The creation of another vaccine will be made from different components and the interaction and consequences between the existing vaccine and the new vaccine is unknown. If the interaction goes poorly, it can create a separate and distinct chain of another disease, generating an even bigger problem and establishing another disease we will have to seek to eradicate. We do not know what the effects of will be of creating another vaccine for the same diseases and how the new strains of the new vaccines will interact with the ones we currently have. An even graver problem is highly likely to emerge from the creation of this alternative. There is therefore, not least-restrictive alternative available.

A question may be posed as to whether *Lukumi* is violated by targeting the religious objection for suppression by repealing the exemptions, but, since it has been established in the paragraph above that the Free Exercise Clause does not mandate states to require a religious exemption to vaccination, the states are free to repeal them. In *Lukumi*, the local ordinance failed strict scrutiny because it targeted the religious practice of Santeria and was not tailored to a compelling government interest. As shown above, in the vaccine context, requiring children to be vaccinated is a compelling government interest and therefore the Free Exercise Clause does not mandate a religious exemption to vaccination.

Ultimately, the compelling government interest to prevent the spread of diseases and to maintain a healthy society, supersedes the religious parent's substantial burden of vaccinating their children contrary to their faith. There is also no least-restrictive alternative available. As a result of this strict scrutiny analysis, it is evident that that the Free Exercise Clause does not mandate a religious exemption to vaccination.

## **CLOSING**

The research presented above presents clear evidence that the Free Exercise Clause does not mandate a religious exemption to mandatory vaccinations. Through the strict scrutiny framework, it is nearly impossible and simply not feasible to show that there is a least-restrictive alternative to mandating vaccinations. It is an extremely compelling government interest to ensure that the health of its citizens is not threatened and that deadly diseases that have been eradicated by vaccines, do not return and create severe health risks and deaths. Therefore, religious vaccine exemptions should not be allowed because they are not mandated by the Free Exercise Clause of the United States Constitution.