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No Shot, No School: The Case for Eliminating the Religious Exemption to Mandatory Vaccinations

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NO SHOT, NO SCHOOL: THE CASE FOR ELIMINATING THE RELIGIOUS EXEMPTION TO MANDATORY VACCINATIONS

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Table of Contents

I. INTRODUCTION	1
II. MANDATORY VACCINATION LAWS AND EXEMPTIONS	3
a. Compulsory Vaccination.....	4
b. Vaccine Exemptions.....	5
c. The Religious Exemption.....	6
III. RECENT TRENDS, ISSUES, AND PROBLEMS.....	12
a. The Anti-Vaccination Movement	12
b. The Resurgence of Measles	14
c. The COVID-19 Pandemic.....	15
IV. ELIMINATING THE RELIGIOUS EXEMPTION	16
a. Alabama: The State With the Worst Vaccination Rate	19
b. California: The Test Case	21
c. Mississippi: The Long-Term Proof.....	22
V. PUSHBACK AND CONCERNS.....	24
a. Pending Legislation in New Jersey	24
b. Lawsuits in Connecticut	26
VI. CONCLUSION	27

I. INTRODUCTION

On September 21, 2018, a child unknowingly returned from Israel to their home in Brooklyn, New York carrying the measles virus.¹ Nine days later, they developed the telltale rash of a measles infection.² By the end of the year, there were over fifty cases of measles in New York.³ By April 2019, that number ballooned to over three hundred, prompting Mayor Bill de Blasio to declare a public health emergency, and impose fines of up to \$1,000 on those who were not vaccinated against measles.⁴ Still, many in the anti-vaccination crowd refused to get the simple shot.⁵

By the time the outbreak was declared over, on September 3, 2019, 649 people had been infected with measles in New York City.⁶ Of those infected, 73% were unvaccinated; another 15% had an unknown vaccination status, and 81% were under age 18.⁷ In response to what turned out to be the worst measles outbreak in 27 years,⁸ New York lawmakers voted to eliminate the religious exemption to immunizations for school-aged children in the interest of public health.⁹ When school came back in session in September, parents of more than 26,000 New York

¹ J.R. Zucker et al., *Consequences of Undervaccination – Measles Outbreak, New York City, 2018-2019*, 382 N. Engl. J. Med. 1009, 1010 (2020).

² *Id.*

³ *Measles*, NYC HEALTH, <https://www1.nyc.gov/site/doh/health/health-topics/measles.page> (last visited July 6, 2021) (hereinafter “Measles”).

⁴ Tyler Pager and Jeffery C. Mays, *New York Declares Measles Emergency, Requiring Vaccinations in Parts of Brooklyn*, THE NEW YORK TIMES (Apr. 9, 2019), <https://www.nytimes.com/2019/04/09/nyregion/measles-vaccination-williamsburg.html>.

⁵ *Id.*

⁶ *Measles*, *supra*.

⁷ *Id.*

⁸ John Elflein, *New cases of measles in the U.S. 1950-2020*, STATISTA (Oct. 6, 2020), <https://www.statista.com/statistics/186678/new-cases-of-measles-in-the-us-since-1950/>.

⁹ Jesse McKinley, *Measles Outbreak: N.Y. Eliminates Religious Exemptions for Vaccinations*, THE NEW YORK TIMES (June 13, 2019), <https://www.nytimes.com/2019/06/13/nyregion/measles-vaccinations-new-york.html>.

schoolchildren who had eschewed vaccination for religious reasons had to make a choice: get vaccinated, home school, or move out of New York.¹⁰

Mandatory vaccinations are not just a New York issue. Vaccinations are required in order to attend school in all fifty states.¹¹ The CDC recommends a suite of vaccinations from birth through age 18 that includes vaccinations against Hepatitis B, Varicella, Polio, Measles, and many other dangerous diseases.¹² While not every state mandates *all* of the CDC recommended vaccines, all states mandate *some* of the CDC recommended vaccines, and have legislation making admittance to public school contingent on vaccination status.¹³ Still, states have been generous in allowing exemptions to the vaccination requirement.¹⁴ However, a recent resurgence in the anti-vaccination movement, the resurgence of measles (a disease declared eliminated from the United States in 2000), and the new COVID-19 pandemic endangers the health and safety of children and adults alike.

This paper will first describe the case law and history of mandatory vaccinations in school, along with the most common exemptions to the vaccination requirement. The paper will specifically focus on the religious exemption: what it is, and if it is necessary or simply a permissive exemption. Section III will then highlight the recent issues plaguing the country, including developments in the anti-vaccination movement, the resurgence of measles outbreaks,

¹⁰ Sharon Otterman, *Get Vaccinated or Leave School: 26,000 N.Y. Children Face a Choice*, THE NEW YORK TIMES (updated Sept. 6, 2019), <https://www.nytimes.com/2019/09/03/nyregion/measles-vaccine-exemptions-ny.html>.

¹¹ *States With Religious and Philosophical Exemptions From School Immunization Requirements*, NATIONAL CONFERENCE OF STATE Legislatures (updated Apr. 30, 2021), <https://www.ncsl.org/research/health/school-immunization-exemption-state-laws.aspx> (hereinafter “Exemptions”).

¹² *Immunization Schedules*, CENTERS FOR DISEASE CONTROL AND PREVENTION (last reviewed Feb. 12, 2021), <https://www.cdc.gov/vaccines/schedules/hcp/imz/child-adolescent.html>.

¹³ Exemptions, *supra* note 11.

¹⁴ *Id.*

and the current COVID-19 pandemic. Section IV will break down the numbers, looking at the states with the highest and lowest vaccination rates in the country and their applicable vaccination statutes, to determine the effect that eliminating the religious exemption across the country would have on public health. This paper will ultimately advocate for the removal of the religious exemption to all vaccines in all states. Finally, Section V will analyze some pitfalls and concerns associated with eliminating the religious exemption, before concluding.

II. MANDATORY VACCINATION LAWS AND EXEMPTIONS

Vaccines have played an important role in global health for more than 200 years. The CDC defines a vaccine as “a product that stimulates a person’s immune system to produce immunity to a specific disease, protecting the person from that disease.”¹⁵ Dr. Edward Jenner has come to be known as the “Father of Vaccination,” and is credited with creating the first vaccine in the 18th century.¹⁶ In 1796, as smallpox was ravaging England, Dr. Jenner became the first to inject a human with live viral material, which ultimately proved effective at preventing smallpox.¹⁷ Over the next 175 years, vaccination evolved and gained traction across the globe.¹⁸ Smallpox was declared eradicated in 1977, due in no small part to compulsory vaccination statutes enacted all around the world during the 1800s.¹⁹

This section begins with a discussion on the history of compulsory vaccination in the United States. It then breaks down the common exceptions to the compulsory vaccination statutes, focusing extensively on the religious exemption. This section describes the purpose of religious

¹⁵ *Vaccine Basics*, CENTERS FOR DISEASE CONTROL AND PREVENTION (last reviewed June 28, 2019), <https://www.cdc.gov/healthyschools/bam/diseases/vaccine-basics.htm>.

¹⁶ James G. Hodge, Jr. and Lawrence O. Gostin, *Article: School Vaccination Requirements: Historical, Social, and Legal Perspectives*, 90 Ky. L.J. 831, 838 (2002).

¹⁷ *Id.* at 839.

¹⁸ *Id.* at 840.

¹⁹ *Id.*

exemptions, and whether statutes must include religious exemptions, or if religious exemptions are merely permissive. After analyzing a case approving of the removal of the religious exemption to vaccinations, this section closes by analyzing a case that may change the way religious exemptions are examined by the Supreme Court.

a. Compulsory Vaccination

The issue of compulsory vaccination was first addressed in the United States Supreme Court in 1905 in the landmark decision, *Jacobson v. Massachusetts*.²⁰ At the turn of the twentieth century, Massachusetts allowed city or town boards of health the option of mandating vaccinations when, in their opinion, vaccinations were “necessary for the public health or the public safety.”²¹ In 1902, incidences of smallpox in Cambridge, Massachusetts were increasing.²² To stop the spread of the deadly disease, the Board of Health of the city of Cambridge adopted a regulation mandating that all residents receive the smallpox vaccine.²³ Mr. Jacobson refused to get vaccinated, and was adjudicated guilty by the trial court.²⁴ The verdict was upheld by the Supreme Judicial Court of Massachusetts, and Jacobson appealed to the United States Supreme Court.²⁵

At the Supreme Court, Jacobson argued that to require he get vaccinated was “unreasonable, arbitrary and oppressive,” hostile to his bodily autonomy, and a de facto assault on his person.²⁶ The Supreme Court, upheld the lower court’s ruling and affirmed the constitutionality of mandatory vaccinations in the interest of public health, holding:

[T]he liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times

²⁰ *Jacobson v. Massachusetts*, 197 U.S. 11 (1905).

²¹ *Id.* at 27.

²² *Id.* at 12.

²³ *Id.*

²⁴ *Id.* at 14.

²⁵ *Id.*

²⁶ *Id.* at 26.

and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good.²⁷

Less than two decades later, the Supreme Court once again tackled the issue of mandatory vaccination in *Zucht v. King*.²⁸ The city of San Antonio, Texas passed an ordinance mandating that all children attending school must present a certificate of vaccination.²⁹ Rosalyn Zucht was an unvaccinated child who was expelled from school for violating the San Antonio ordinance.³⁰ Zucht brought a claim against public officials, arguing that the ordinance violated her due process rights.³¹ Citing back to *Jacobson*, the Supreme Court held for the city officials, restating that it is *settled* law that it is “within the police power of a State to provide for compulsory vaccination.”³² *Zucht* reiterated that vaccinations can be mandated, even for school children, as long as they protect public health.³³ Unlike in *Jacobson*, there was no imminent health crisis when *Zucht* was decided, yet the Supreme Court still found reason to uphold the ordinance.

b. Vaccine Exemptions

Today, all states have legislation making admittance to public school contingent on vaccination status.³⁴ All states also provide statutory exemptions to mandatory vaccinations, which fall into three categories: (1) medical exemptions, (2) religious exemptions, and (3) philosophical exemptions.³⁵ Medical exemptions allow unvaccinated children to attend school if their immune system is compromised and they cannot be vaccinated, they have a severe allergic reaction to

²⁷ *Jacobson*, 197 U.S. at 26.

²⁸ *Zucht v. King*, 260 U.S. 174 (1922).

²⁹ *Id.* at 175.

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 176.

³³ *Id.* at 177.

³⁴ Exemptions, *supra* note 11.

³⁵ *Vaccination Exemptions*, THE COLLEGE OF PHYSICIANS OF PHILADELPHIA, <https://www.historyofvaccines.org/index.php/content/articles/vaccination-exemptions> (last visited July 6, 2021).

vaccines, or vaccines have previously made them ill.³⁶ Religious exemptions allow unvaccinated children to attend school if getting vaccinated violates their or their parent’s religious beliefs.³⁷ Finally, philosophical exemptions allow unvaccinated children to attend school if their parents simply philosophically or personally object to vaccination.³⁸ As of the writing of this paper, fifteen states allow medical, religious, and philosophical exemptions.³⁹ Twenty-nine states plus Washington D.C. allow religious and medical exemptions, but not philosophical exemptions.⁴⁰ The final six states allow only medical exemptions.⁴¹

c. The Religious Exemption

There is no major religious group in the United States whose core principles include advocating against vaccinations in children.⁴² Many Jews and Muslims do not consume pigs, and some vaccines contain gelatin, an additive derived from pigs.⁴³ Religious leaders have said, however, that vaccines are permissible in the Jewish and Muslim religions.⁴⁴ Not even the Christian Science Church, known for advocating “healing through prayer,” recommends that its members skip vaccinations.⁴⁵ Still, largely attributed to the lobbying efforts of the Christian Science Church in the 1960s and 1970s, forty-four states plus Washington D.C. include a statutory exemption from the mandatory vaccination requirement for religious reasons.⁴⁶

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Exemptions, *supra* note 11. (Arizona, Arkansas, Colorado, Idaho, Louisiana, Michigan, Minnesota, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Utah, and Wisconsin)

⁴⁰ *Id.*

⁴¹ *Id.* (California, Connecticut, Maine, Mississippi, New York, and West Virginia)

⁴² Aleksandra Sandstrom, *Amid measles outbreak, New York closes religious exemption for vaccinations – but most states retain it*, PEW RESEARCH CENTER (June 28 2019), <https://www.pewresearch.org/fact-tank/2019/06/28/nearly-all-states-allow-religious-exemptions-for-vaccinations/>.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

The religious exemption is implemented in different ways across the country. Some states, such as Nebraska, are strict, requiring “an affidavit signed by...a legally authorized representative...stating that the immunization conflicts with the tenets and practices of a recognized religious denomination of which the student is a...member.”⁴⁷ Other states, such as Montana, require a notarized form affirming that to have their child receive a vaccination would be contrary to the parent’s religious beliefs.⁴⁸ In Oregon, in order to take advantage of an exemption, a parent is required to review educational material detailing the “risks and benefits of immunization” either on their own, or with a health care practitioner.⁴⁹ Still other states, like Pennsylvania, simply require a written statement by a parent that they object to immunization on religious grounds.⁵⁰ Regardless of the method allowed, in the vast majority of states across the country parents can use their religious beliefs to exempt their children from being vaccinated while attending school with minimal “proof” of a sincerely held belief outside of a signature.

Advocates of the religious exemption point to the free exercise clause in the First Amendment to the United States Constitution, which states, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”⁵¹ They claim that any law requiring mandatory vaccination would inherently limit their ability to practice their religion. However, the Supreme Court has opined on the delicate balance between the *completely* free exercise of religion, and limiting parental freedom in the name of child welfare in *Prince v. Massachusetts*.⁵²

⁴⁷ Neb. Rev. Stat. Ann. § 79-221 (2005).

⁴⁸ Mont. Code Ann. § 20-5-405 (2019).

⁴⁹ Or. Rev. Stat § 433.267 (2011).

⁵⁰ 28 Pa. Code § 23-84 (2021).

⁵¹ U.S. Const. amend. I.

⁵² *Prince v. Massachusetts*, 321 U.S. 158 (1944).

At issue in *Prince*, was a state law forbidding children from selling newspapers or magazines in any public place.⁵³ Sarah Prince and her niece, both Jehovah's Witnesses, were stopped one evening as they were selling traditional religious material, in contravention of the state law.⁵⁴ On appeal to the Supreme Court, Prince argued that the law prohibited her and her niece's freedom of religion; hers by interfering with her ability to teach faith to her niece, and her niece's by interfering with her ability to preach the gospel.⁵⁵ The Supreme Court, however, reasoned that "neither rights of religion nor rights of parenthood are beyond limitation," especially when the state acts as *parens patriae*, and stated in dicta that:

The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death...[T]he state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare; and that [] includes, to some extent, matters of conscience and religious conviction.⁵⁶

The Court held that in this circumstance, the state's interest in controlling child labor outweighed any parental interest in proclaiming their religion, and affirmed the judgment of the lower courts.⁵⁷

When a law incidentally burdens religion, it does not violate the free exercise clause so long as it is neutral, generally applicable, and absent religious animus.⁵⁸ Further, although it can be desirable, a religious exemption to the law is not constitutionally required.⁵⁹ In *Employment Division v. Smith*, two members of the Native American Church were denied unemployment benefits because they had ingested peyote, a controlled substance outlawed in Oregon.⁶⁰ While the law concerned controlled substances for all, and was absent religious animus, the two church

⁵³ *Id.* at 160.

⁵⁴ *Id.* at 162.

⁵⁵ *Id.* at 164.

⁵⁶ *Id.* at 166-67.

⁵⁷ *Id.* at 170.

⁵⁸ *Employment Div. v. Smith*, 494 U.S. 872 (1990).

⁵⁹ *Id.* at 890.

⁶⁰ *Id.* at 874.

members argued that the law violated the free exercise clause of the Constitution because they had ingested the peyote for a religious ceremony.⁶¹ The Supreme Court was not convinced, holding that, “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).”⁶² In dicta, in response to the church members’ argument that other states had enacted a religious exemption to their controlled substance laws, the Supreme Court opined, “to say that a nondiscriminatory religious-practice exemption is *permitted*...is not to say that it is constitutionally *required*.”⁶³ Thus, although the law may have incidentally burdened religion, it did not violate the free exercise clause, and no religious exemption was required.

States are free to repeal their religious exemptions so long as the repeal is not driven by religious animus.⁶⁴ After New York eliminated their religious exemption following the measles outbreak in 2018, a class of parents sued the state, claiming that the repeal of the religious exemption violated the Free Exercise Clause of the United States Constitution.⁶⁵ The parents argued that the repeal of the religious exemption specifically targeted their class based on their religious beliefs, triggering strict scrutiny which the repeal, they argued, could not satisfy.⁶⁶ The Supreme Court of New York, Albany County cited numerous examples and concluded that, “the overall history and context of New York’s vaccination law...all lead to the inexorable conclusion that the repeal was driven by public health concerns, not religious animus.”⁶⁷ Because the repeal

⁶¹ *Id.*

⁶² *Id.* at 879 (internal quotations omitted).

⁶³ *Id.* at 890 (emphasis added).

⁶⁴ *F.F. v. State of New York*, 114 N.Y.S.3d 852, 858 (N.Y. Sup. Ct. Dec. 3, 2019) *aff’d* 194 A.D.3d 80 (N.Y. App. Div. Mar. 18, 2021).

⁶⁵ *Id.* at 859.

⁶⁶ *Id.* at 862.

⁶⁷ *Id.* at 863.

was found to have not been driven by religious animus, rational basis review applied, and the repeal easily passed this standard. However, the court bulletproofed their opinion, reasoning that the repeal of the religious exemption would pass strict scrutiny as well.⁶⁸ The court opined that preventing the spread of a contagious disease is a compelling state interest, and that requiring vaccinations could be the least restrictive means to protect the public health.⁶⁹ Therefore, the court held, “compulsory vaccination laws without religious exemptions are constitutional, regardless of whether rational basis or strict scrutiny applies.”⁷⁰

In the context of vaccinations, it would *seem* that the law is settled. While the First Amendment to the Constitution provides for the free exercise of religion, that right can be abridged when there is a compelling state interest. One such compelling interest is the state’s interest in protecting public health through mandatory vaccination. The mandatory vaccination policy, however, may not be founded in religious animus. A policy mandating vaccines for school children must be neutral and generally applicable. Typically, policies mandating vaccines apply to all children, unless there is a specific exemption. Although a religious exemption is not necessary, forty-four states, plus the District of Columbia, provide for one by statute. Still, a state is free to eliminate their religious exemption at any time, again, so long as the repeal is not rooted in religious animus.

A recent Supreme Court decision calls all of this into question. In *Tandon v. Newsom*, decided in April 2021, the Supreme Court, in a *per curiam* opinion, cast doubt on the constitutionality of neutrally applicable laws which include secular exemptions but do not include a religious exemption.⁷¹ In the wake of the exponential rise of COVID-19, California instituted

⁶⁸ *Id.* at 867.

⁶⁹ *Id.* at 868.

⁷⁰ *Id.* at 867.

⁷¹ *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (*per curiam*).

restrictions on certain activities that brought together more than three households at one time.⁷² These restrictions had the effect of preventing in-home religious services.⁷³ Hair salons, movie theaters, concerts, retail stores, and indoor restaurants, among other essential businesses, were exempt from the restrictions and allowed to operate, albeit with precautionary measures in place.⁷⁴ The Supreme Court seemingly broke with precedent and opined that “government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise.”⁷⁵ This opinion, though couched in the context of banning certain in-home gatherings during a global pandemic, could have far-reaching consequences.

The Supreme Court has hinted that it is open to moving away from looking specifically for religious animus. Instead, the Court will treat *any* activity as burdening religion enough to trigger strict scrutiny simply because there is a secular exemption but not a religious exemption. The Supreme Court had the ability to overturn *Employment Division v. Smith* in the 2021 case *Fulton v. Philadelphia*, but decided the case on narrower grounds, choosing not to overturn precedent just yet.⁷⁶ In the context of vaccination, while this paper argues that the religious exemption should be eliminated, there is no question that, medically, there are children who should not be vaccinated. A medical exemption is a clearly secular exemption, and the Supreme Court’s decision in *Tandon* suggests that if vaccination laws continue to provide secular exemptions, they will be required to provide religious exemptions as well. While the holding in *Tandon* is yet untested, it is only a matter of time before the Supreme Court is given opportunity to flesh out this holding.

⁷² *Id.* at 1297.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.* at 1296.

⁷⁶ *Fulton v. Philadelphia*, 593 U.S. ___ (2021).

III. RECENT TRENDS, ISSUES, AND PROBLEMS

There is a popular saying, “If it ain’t broke, don’t fix it.”⁷⁷ Implementing a religious exemption to vaccinations is likely not mandatory, however it may be better to let sleeping dogs lie, and not create an issue where one does not exist. Forty-four states, plus the District of Columbia, currently provide a statutory religious exemption, and it would require significant legislative hurdles to repeal even a handful of them. However, the growth of the anti-vaccination movement has caused a sharp increase in the number of vaccine exemptions claimed across the country. Further, measles, a disease declared “eliminated” in 2000 has made a resurgence, infecting more people in 2019 than it had in almost three decades. Finally, the COVID-19 pandemic continues on, and while vaccines are not yet authorized for the youngest age group, exemptions may make it harder to ensure the safety of our children. This section will dive in to the aforementioned issues, arguing that the problems needs to be addressed by the removal of the religious exemption.

a. The Anti-Vaccination Movement

The anti-vaccination movement has been around since at least the late 19th century.⁷⁸ Those against vaccinations have taken a stand opposing vaccines from smallpox; diphtheria, tetanus, and pertussis (DTP); measles, mumps, and rubella (MMR); and more.⁷⁹ Early vaccination skeptics opposed vaccination because they claimed vaccines harmed children, thought vaccines were “unclean,” or simply did not trust the science behind the spread of infectious diseases.⁸⁰ In the late 1990s, a fraudulent paper wreaked havoc by claiming a link between the MMR vaccine

⁷⁷ *Emphasizing the M in OMB*, NATION’S BUSINESS, May 1977, at 27.

⁷⁸ *History of Anti-vaccination Movements*, THE COLLEGE OF PHYSICIANS OF PHILADELPHIA, <https://www.historyofvaccines.org/index.php/content/articles/history-anti-vaccination-movements> (last visited July 6, 2021).

⁷⁹ *Id.*

⁸⁰ *Id.*

and autism.⁸¹ Due to a discovery that the author had a financial stake in the findings resulting in a “fatal conflict of interest,” the paper was retracted twelve years after publishing.⁸² While the author of the original paper has since lost his license to practice medicine, fear over the safety of vaccines has continued to grow.⁸³ Today, powerful anti-vaccination groups, such as the contrarily-named National Vaccine Information Center urge their members and the public at large to refrain from vaccination by claiming religious or philosophical exemptions.⁸⁴ Popular social media platforms have worked to de-platform these groups spreading misinformation⁸⁵; however the numbers speak for themselves.

The number of students claiming exemptions to vaccinations has grown in recent years. Between 2011 and 2020, two out of the top four states by population (California and New York) *eliminated* their religious exemptions.⁸⁶ This alone should lead to fewer students claiming exemptions. Still, between 2011 and 2020, the percentage of kindergartners with exemptions grew by almost 60%.⁸⁷ During the 2011-12 school year, 1.6% of kindergarteners claimed a vaccine exemption.⁸⁸ During the 2019-20 school year, 2.5% claimed a vaccine exemption.⁸⁹ This rise in vaccine exemptions, even while the number of states that *offer* exemptions shrinks, can, at least

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Catherine Thompson, *How Vaccine Skeptics Game the System With ‘Religious Exemptions’*, TALKING POINTS MEMO (Feb. 11, 2015), <https://talkingpointsmemo.com/news/religious-exemptions-vaccine-skeptics>.

⁸⁵ *NVIC Suspended from Twitter*, NATIONAL VACCINE INFORMATION CENTER (May 24, 2021), <https://www.nvic.org/NVIC-Vaccine-News/May-2021/nvic-twitter-account-suspended.aspx>

⁸⁶ Exemptions, *supra* note 11 (California eliminated the religious exemption in 2015. New York eliminated the religious exemption in 2019).

⁸⁷ *Vaccine Coverage and Exemptions among Kindergartners*, CENTERS FOR DISEASE CONTROL AND PREVENTION (last reviewed May 14, 2021), <https://www.cdc.gov/vaccines/imz-managers/coverage/schoolvaxview/data-reports/index.html> (hereinafter “Vaccine Coverage”).

⁸⁸ *Id.*

⁸⁹ *Id.*

indirectly, illustrate the growth in the anti-vaccination movement and in anti-vaccination sentiment across the country.⁹⁰

b. The Resurgence of Measles

The problem with measles is that while it is not very deadly, it is dangerous and highly contagious. The reproduction number of measles is greater than ten.⁹¹ That means that for every one person who contracts measles, in a vacuum, assuming that nobody is vaccinated, that person can be expected to transmit measles to more than ten others, who in turn each spread it to more than ten others and so on.⁹² Luckily, the case fatality rate for measles is fairly low--only about one to three out of every one thousand cases of measles results in death.⁹³ Further, the fact that a large portion of the population *is* vaccinated helps to slow the spread of measles. Still, measles, if unchecked, or allowed to spread in a highly unvaccinated area, can be very dangerous.

According to the Centers for Disease Control and Prevention (CDC), measles was eliminated from the United States in the year 2000.⁹⁴ The World Health Organization (WHO) defines elimination as “the absence of endemic measles virus transmission in a defined geographical area for at least twelve months.”⁹⁵ This does not mean that measles can never pop up in the United States. Measles is not eradicated across the globe, and an unvaccinated person can bring measles back with them when they travel internationally. Still, the incidence of measles cases in the United States is very low. In fact, from 1998 to 2010, there were only two years with more

⁹⁰ Maggie Fox, *Anti-vaccine hot spots on rise across U.S., study finds*, NBC NEWS (June 12, 2018), <https://www.nbcnews.com/health/health-news/anti-vaccine-hotspots-rise-across-u-s-study-finds-n882461>.

⁹¹ A. Wilder-Smith, *COVID-19 in comparison with other emerging viral diseases: risk of geographic spread via travel*, 7 Trop Dis Travel Med Vaccines 1, 4 (2021).

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Measles Elimination*, CENTERS FOR DISEASE CONTROL AND PREVENTION (last reviewed Nov. 5, 2020), <https://www.cdc.gov/measles/elimination.html> (hereinafter “Elimination”).

⁹⁵ *Id.*

than one hundred cases of measles in the United States.⁹⁶ However, the following decade, from 2011 to 2019, there were only two years with *fewer* than 100 cases of measles in the United States.⁹⁷ In that same time period, the United States had 667 cases of measles in 2014, and 1,282 cases of measles in 2019--the most since 1992.⁹⁸ The CDC attributes the increase in measles cases to two main reasons: (1) increased travel into the United States, and (2) measles spreading within pockets of unvaccinated people.⁹⁹ The minimization of travel into and out of the United States, combined with social distancing and mask policies of 2020 and 2021 led to an unusually low number of measles cases: thirteen in 2020, and only two thus far in 2021.¹⁰⁰ However, there is now a new virus—a global pandemic threatening the world.

c. The COVID-19 Pandemic

COVID-19 has wreaked havoc across the country since March 2020. As compared to measles, COVID-19 is not as transmissible.¹⁰¹ In a vacuum, without widespread vaccination, COVID-19 has a reproduction number somewhere between 2.5 and 3.2.¹⁰² However, the case fatality rate is much higher than measles--about eighteen out of every one thousand cases results in death.¹⁰³ Thus, if there is an outbreak of COVID, as compared to measles, the spread will be significantly slower, but a higher proportion of people will die.¹⁰⁴ That is, unless the COVID-19 vaccine becomes as widely adopted as the measles vaccine.

⁹⁶ Elflein, *supra* note 8 (116 cases in 2001; 140 cases in 2008).

⁹⁷ *Id.* (55 cases in 2012; 86 cases in 2015).

⁹⁸ *Id.*

⁹⁹ Elimination, *supra* note 94.

¹⁰⁰ *Measles Cases and Outbreaks*, CENTERS FOR DISEASE CONTROL AND PREVENTION (last reviewed July 9, 2021), <https://www.cdc.gov/measles/cases-outbreaks.html>.

¹⁰¹ *See Wilder-Smith*, 7 *Trop Dis Travel Med Vaccines*.

¹⁰² *Id.* at 4.

¹⁰³ *Mortality Analyses*, JOHNS HOPKINS UNIVERSITY & MEDICINE, <https://coronavirus.jhu.edu/data/mortality> (last visited July 6, 2021).

¹⁰⁴ *Id.*

On December 11, 2020, the FDA granted emergency use authorization to begin distributing Pfizer-BioNTech's COVID-19 vaccine to persons aged 16 or older.¹⁰⁵ On May 10, 2021, the emergency use authorization was expanded to include children ages twelve to fifteen.¹⁰⁶ While vaccination rates across the country are on the rise, at the time of the writing of this paper, less than 50% of the total population has been fully vaccinated against COVID-19.¹⁰⁷ Though the vaccine isn't expected to be authorized for use in children under the age of twelve until the fall, the question remains: will schools add the COVID-19 vaccine to their list of required vaccines in order to attend either now, or in the future once the vaccine receives full FDA approval? Thus far, the Los Angeles Unified School District, the nation's largest school district, has expressed interest in doing just that.¹⁰⁸ Whether the mandate will happen once the vaccine is authorized for younger children under emergency use, or if school districts will wait for full approval remains to be seen. For now, the anti-vaccination movement, the resurgence of measles, and the devastation of COVID-19 remain issues best dealt with by eliminating the religious exemption to mandatory vaccinations.

IV. ELIMINATING THE RELIGIOUS EXEMPTION

The ultimate goal of widespread vaccination against a disease is to reach community immunity, also known as herd immunity. The CDC defines herd immunity as, "a situation in which

¹⁰⁵ *Pfizer-BioNTech COVID-19 Vaccine*, U.S. FOOD & DRUG ADMINISTRATION, <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/pfizer-biontech-covid-19-vaccine> (last visited July 6, 2021).

¹⁰⁶ *Coronavirus (COVID-19) Update: FDA Authorizes Pfizer-BioNTech COVID-19 Vaccine for Emergency Use in Adolescents in Another Important Action in Fight Against Pandemic*, U.S. FOOD & DRUG ADMINISTRATION (May 10, 2021), <https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-authorizes-pfizer-biontech-covid-19-vaccine-emergency-use>.

¹⁰⁷ *COVID-19 Vaccinations in the United States*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://covid.cdc.gov/covid-data-tracker/#vaccinations> (last visited July 6, 2021).

¹⁰⁸ Kristine Bowman, *Can schools require COVID-19 vaccines for students 12 and up?*, PBS NEWS HOUR (May 17, 2021), <https://www.pbs.org/newshour/health/can-schools-require-covid-19-vaccines-for-students-12-and-up>.

a sufficient proportion of a population is immune to an infectious disease...to make its spread from person to person unlikely.”¹⁰⁹ Herd immunity does not help those who are vaccinated avoid infection; because the disease is unlikely to spread, herd immunity helps those who are unable to be vaccinated, such as those with a serious medical illness, or newborn and young children.¹¹⁰ Further, maintaining herd immunity for a long enough period of time can result in disease eradication.¹¹¹

The requisite herd immunity percentages vary depending on the communicability of the disease. The herd immunity threshold for smallpox is 84%.¹¹² For polio, the threshold is 80%.¹¹³ For Ebola, the threshold is only 33%.¹¹⁴ Experts predict that the herd immunity threshold for COVID-19 is somewhere between 70 and 90%.¹¹⁵ Since measles is highly transmissible, the herd immunity threshold is quite high at 95%.¹¹⁶ Unfortunately, due to the factors laid out in Section III above, the United States is in danger of dipping below the herd immunity threshold, allowing measles the opportunity to reappear, and wreak havoc when it does.

Currently, 29 states have a vaccination rate at or below the measles herd immunity level of 95%.¹¹⁷ This number includes 12 out of the 15 states that still offer philosophical exemptions, the widest-ranging exemption.¹¹⁸ All but one of the 29 states under the herd immunity threshold offer

¹⁰⁹ *Glossary*, CENTERS FOR DISEASE CONTROL AND PREVENTION (last reviewed July 30, 2020), <https://www.cdc.gov/vaccines/terms/glossary.html#commimmunity>.

¹¹⁰ *Id.*

¹¹¹ Walter R. Dowdle, *The Principles of Disease Elimination and Eradication* (Dec. 31, 1999), <https://www.cdc.gov/mmwr/preview/mmwrhtml/su48a7.htm>.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Vaccine Coverage, *supra* note 87.

¹¹⁸ Presented another way, out of the 21 states that have vaccination rates over 95% for measles, only three offer a philosophical exemption.

a religious exemption to vaccinations.¹¹⁹ Conversely, out of the six states that offer only medical exemptions, five of them are above the herd immunity threshold.¹²⁰ The sixth state, Maine, is currently just below herd immunity at 94.1%, and the elimination of their religious exemption does not go into effect until September 2021.¹²¹

There is an inverse relationship between non-medical vaccination exemptions and vaccination rate: the more non-medical exemptions that a state offers (and by extension, the easier it is to *obtain* those exemptions), the more people will apply for and receive that exemption, which in turn lowers the vaccination rate.¹²² Of course, there is also an inverse relationship between vaccination rate and the incidence of vaccine-preventable diseases: the lower the vaccination rate, the higher the incidence of vaccine-preventable diseases.¹²³ How strong is this relationship? A recent study indicated that someone who has received an exemption from the measles, mumps, and rubella vaccine is 35 times more likely to contract measles than a vaccinated person.¹²⁴

Would fully eliminating the religious exemption aid in the process of reaching herd immunity for measles? This section will first analyze Alabama, the state with the lowest rate of vaccination among kindergarteners, to illustrate the potential effect of eliminating the religious exemption. Next, this section will discuss California, a state for which there is data before and after it eliminated the religious exemption to vaccinations, to prove that parents will overwhelmingly choose vaccination over homeschooling. Finally, this section will discuss Mississippi, a state which has not had a religious exemption in two generations, to analyze the

¹¹⁹ Vaccine Coverage, *supra* note 87.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Michael Devitt, *Study Finds Disturbing Trends in Vaccination Exemptions*, AMERICAN ACADEMY OF FAMILY PHYSICIANS (June 20, 2018), <https://www.aafp.org/news/health-of-the-public/20180620vaccineexempts.html> (hereinafter “Disturbing Trends”).

¹²³ *Id.*

¹²⁴ *Id.*

benefits of long-term elimination of the religious exemption to vaccination. After scrutinizing the statutes and vaccination rates, this section will conclude that, yes, eliminating the religious exemption helps immensely, and is a course of action that every state should consider.

a. Alabama: The State With the Worst Vaccination Rate

Alabama’s kindergartners are the kindergarteners least vaccinated against measles in the country; only 86.6% have gotten the MMR vaccine.¹²⁵ This number has gotten worse over the last few years, dropping from a ten-year high of 93.8% vaccinated in the 2016-17 school year, to an all-time low of 86.6% in the 2019-20 school year.¹²⁶ It is not a coincidence that the percentage of students claiming an exemption has nearly doubled over the same time frame.¹²⁷ During the 2016-17 school year, 0.7% of students claimed an exemption.¹²⁸ In the 2019-20 school year, that number ballooned to 1.2%, a 71% increase in just four years.¹²⁹

Alabama recognizes both medical and religious exemptions to mandatory school vaccinations, and allows parents to opt out of these vaccinations by simply submitting an objection in writing:

“[the mandatory vaccination statute] shall not apply if: (1) In the absence of an epidemic or immediate threat thereof, the parent or guardian of the child shall object thereto in writing on grounds that such immunization or testing conflicts with his religious tenets and practices.”¹³⁰

¹²⁵ Vaccine Coverage, *supra* note 87.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ AL Code § 16-30-3 (2018).

While Alabama offers a medical exemption, this exemption is claimed by only 0.1% of the population.¹³¹ The rest of the exemptions are claimed for religious reasons.¹³² These numbers leave Alabama extremely vulnerable to a measles outbreak.

The two states with the next lowest rates of vaccination against measles among kindergarteners are Idaho (89.1% vaccinated), and Hawaii (89.7% vaccinated).¹³³ These states are remarkably similar to Alabama: all three states have lower vaccination rates now than they did just a few years ago, and exemption rates have grown significantly over the same time period.¹³⁴ Similar to Alabama, Idaho and Hawaii also allow a parent to opt out of mandatory vaccinations by simply submitting their objection in writing.^{135,136} Of course, it follows that the vast majority of exemptions in Idaho and Hawaii are non-medical exemptions.¹³⁷ The ease of obtaining a non-medical exemption has had a clear effect on the vaccination rate. By definition, non-medical exemptions are not claimed because the child physically *cannot* be vaccinated for risk of causing harm, but rather for reasons stemming from personal belief. This leads to the inexorable conclusion that by eliminating the religious exemption in Alabama, Idaho, and Hawaii (along with countless other states), the vaccinated population would dramatically rise, increasing public safety for all.

¹³¹ Vaccine Coverage, *supra* note 87.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ Idaho Code § 39-4802(1) (2020) (“Any minor child whose parent or guardian has submitted a signed statement to school officials stating their objections on religious or other grounds shall be exempt from [the mandatory vaccination statute].”).

¹³⁶ Haw. Rev. Stat. § 302A-1156 (2016) (“A child may be exempted from the required immunizations: . . . (2) If any parent, custodian, guardian, or any other person in loco parentis to a child objects to immunization in writing on the grounds that the immunization conflicts with that person’s bona fide religious tenets and practices.”).

¹³⁷ Vaccine Coverage, *supra* note 87.

b. California: The Test Case

California is the state for which there is the most recent data on vaccination numbers both before and after eliminating the religious exemption. California, the most populous state in the United States, suffered a severe outbreak of measles traced to Disneyland in 2014.¹³⁸ In total, 147 cases of measles across seven states, Canada, and Mexico were linked to the highly publicized outbreak.¹³⁹ Working swiftly, in 2015 California legislators enacted a law that removed the religious and philosophical exemptions to mandatory school vaccinations across public schools, private, schools, and child care centers.¹⁴⁰ The only option for parents who wished to keep their children unvaccinated was to homeschool.¹⁴¹

Faced with the choice to vaccinate their children or bring them home to enroll them in homeschool instruction, the overwhelming majority of parents chose vaccination.¹⁴² During the 2013-14 school year, the last full school year during which California still allowed both a religious and philosophical exemption to vaccinations, only 92.3% of kindergarteners were vaccinated against measles.¹⁴³ A full 3.3% of students claimed an exemption, with 94% of *those* students opting for non-medical exemptions.¹⁴⁴ During the 2016-17 school year, the first full school year after the legislature removed the religious and philosophical exemptions to vaccinations, the percentage of kindergarteners claiming an exemption dropped to 1.1%, and California hit an all-

¹³⁸ *Year in Review: Measles Linked to Disneyland*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Dec. 2, 2015), <https://blogs.cdc.gov/publichealthmatters/2015/12/year-in-review-measles-linked-to-disneyland/>.

¹³⁹ *Id.*

¹⁴⁰ *Disturbing Trends*, *supra* note 122.

¹⁴¹ Jane Adams, *Quick Guide: What schools and parents need to know about California's vaccination law*, EDSOURCE (updated Dec. 30, 2019), <https://edsource.org/2019/what-schools-and-parents-need-to-know-about-the-new-vaccination-law/82242>.

¹⁴² *Vaccine Coverage*, *supra* note 87.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

time high of 97.3% of kindergarteners vaccinated against the measles.¹⁴⁵ From the data, it is clear that when faced with a choice between vaccinating their children (when the reason for vaccination is non-medical) and being forced to homeschool, the vast majority of parents choose vaccination.¹⁴⁶

c. Mississippi: The Long-Term Proof

To see what happens to a state that functions without religious exemptions for a long period of time, look no further than Mississippi. Mississippi has mandated vaccinations to attend school since 1900.¹⁴⁷ In 1960, Mississippi carved out a religious exemption to this law, which stated that in order to be exempt, families must be “bona fide members of a recognized denomination whose religious teachings require reliance on prayer or spiritual means of healing.”¹⁴⁸ A six-year old boy, Chad Brown, attempted to gain admittance to a public school, but was unvaccinated.¹⁴⁹ In order to obtain a religious exemption, a minister of the Brown’s family church wrote a letter saying that although the church does not teach against the use of medicines or vaccinations, they supported the strong convictions of the child’s father who did not believe that medication should be used at all.¹⁵⁰ When the boy was denied admittance into the school, the father filed a complaint which wound its way up to the Mississippi Supreme Court in 1979.¹⁵¹

In deciding the case, the Mississippi Supreme Court analyzed the rights and duties of parents, and the rights and duties of the state toward children.¹⁵² The court opined that, “[t]he relationship of parent and child is one in which the law concerns itself more with parental duties

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ James Colgrove and Abigail Lowin, *A Tale Of Two States: Mississippi, West Virginia, And Exemptions To Compulsory School Vaccination Laws*, 35 Health Affairs 348, 350 (2016).

¹⁴⁸ *Brown v. Stone*, 378 So.2d 218, 219 (Miss. 1979).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 219-20.

¹⁵¹ *Id.* at 219.

¹⁵² *Id.* at 221-23.

than with parental rights.”¹⁵³ The court emphasized that a parent must provide the necessities—food, clothing, and shelter—and must also protect the child from danger—disease and immorality.¹⁵⁴ The court went further, however, stating that the state had a duty to protect schoolchildren from disease as well.¹⁵⁵ The court reasoned that to allow a religious exemption to certain children based on the religious views of their parents would discriminate against those children whose parents did not share those religious convictions, in violation of the Fourteenth Amendment.¹⁵⁶ Though the risk may be slight, the court opined that vaccinated children should not be forced to expose themselves to illness or death from polio or smallpox because of a religious exemption.¹⁵⁷ Finding that the religious exemption was severable from the rest of the law, and that the law served a compelling state interest, the court held that the religious exemption was void as a violation of the Fourteenth Amendment, while keeping the mandatory vaccination requirement intact.¹⁵⁸

Mississippi, having had a mandatory vaccination requirement with no non-medical exemptions for more than forty years, is a great example to show what can happen over the long term if there is no religious exemption to vaccination. It should not be surprising that out of all states, Mississippi has the highest rate of kindergarteners vaccinated against measles.¹⁵⁹ In the 2019-20 school year, 99.1% of kindergarteners in Mississippi had been given the MMR vaccine.¹⁶⁰

¹⁵³ *Id.* at 223.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 224.

¹⁵⁹ Vaccine Coverage, *supra* note 87.

¹⁶⁰ *Id.*

Further, Mississippi has been at or above 99% vaccinated for at least a decade.¹⁶¹ The last measles case in Mississippi was reported in 1992.¹⁶²

If the goal is to reach herd immunity, for measles or any disease, states must increase their vaccination numbers. In California, in the span of just a few years, the state catapulted above the measles herd immunity threshold after the religious exemption was removed. Mississippi, a long-term test case, has not had a religious exemption on the books in over forty years, is consistently vaccinated at 99% or greater, and hasn't had a case of measles in over thirty years. Removing the religious exemption is a proven method, and should be implemented everywhere to protect public safety.

V. PUSHBACK AND CONCERNS

Even if the numbers point to a simple solution, implementing the guidance can be difficult if not impossible. Some states, like New Jersey, have had pending legislation hit roadblocks and stall in state government, due in large part to grassroots pushback. Other states, like Connecticut, who repealed their religious exemption in April 2021, face lawsuits from religious and political advocacy groups which could waste valuable taxpayer dollars and state resources. This section will discuss some of the real-world problems with eliminating the religious exemption, and the likely outcomes of the scenarios.

a. Pending Legislation in New Jersey

Pending bills often hit roadblocks in state legislatures. In late 2019, New Jersey legislators attempted to advance a bill that would eliminate the religious exemption in public school, private

¹⁶¹ *Id.*

¹⁶² *Health Official Investigate Measles Exposure in Mississippi*, MISSISSIPPI STATE DEPARTMENT OF HEALTH (Apr. 19, 2019), https://msdh.ms.gov/msdhsite/_static/23,20853,341.html.

school, college, and daycare.¹⁶³ This bill would have been similar to the California law,¹⁶⁴ which raised California above the 95% measles herd immunity threshold. The bill would have effectively forced anyone who objected to vaccination on religious grounds to homeschool their children. After rounds of compromise negotiations, the bill was amended to apply only to public schools, though this amendment was not without opposition.¹⁶⁵ Opposition to the amended bill came from both sides of the aisle, though the argument was the same: removing the exemption for public schools only would allow the wealthiest families to buy their way out of following the law by sending their children to private school.¹⁶⁶ Some in support of the bill were cynical that the loophole would undermine the bill's effectiveness; others against the bill were envious that they may not be able to use the loophole to buy their way out of compliance.¹⁶⁷ Faced with weeks of boisterous protest outside the state capitol building, the bill, even in its amended form, fell just one vote shy of passage.¹⁶⁸

Lawmakers immediately vowed to pass the bill in a future session and planned to reintroduce the bill as soon as possible.¹⁶⁹ However, the COVID-19 pandemic, while emphasizing the importance of vaccines, has put a pause on this legislation for now. Still, passing legislation aimed at removing the religious exemption is bound to face pushback wherever it is proposed.

¹⁶³ Tracey Tully, *Bill to End Religious Exemptions for Vaccinations Collapses in N.J.*, THE NEW YORK TIMES (Jan. 13, 2020), <https://www.nytimes.com/2020/01/13/nyregion/nj-vaccines-bill.html>.

¹⁶⁴ *Supra*, Section IV(b).

¹⁶⁵ *Supra*, note 163.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ Monica Haider, *Future uncertain for bill that would eliminate religion as a reason not to vaccinate public schoolchildren*, CNN (Jan. 13, 2020), <https://www.cnn.com/2020/01/13/health/new-jersey-vaccine-religion-vote/index.html>.

b. Lawsuits in Connecticut

Even if legislation is signed into law, the battle is far from over. Connecticut was finally able to pass legislation removing their religious exemption on April 27, 2021.¹⁷⁰ The law will officially go into effect on September 1, 2022.¹⁷¹ The law grandfathers in those public school students currently taking advantage of a religious exemption, who will be able to keep it until high school graduation; new students will no longer be able to claim a religious exemption.¹⁷² The bill was passed and signed into law over fierce protestors who gathered outside the state capitol.¹⁷³ Just three days after the bill's passage, the state was sued.¹⁷⁴

A federal lawsuit brought by two political advocacy groups, We the Patriots USA and the CT Freedom Alliance, in conjunction with three parents whose children currently claim religious exemptions was filed on April 30, 2021.¹⁷⁵ The lawsuit claims violations under the Free Exercise Clause of the First Amendment, as well as deprivation of Fourth, Fifth, and Fourteenth Amendment rights.¹⁷⁶ The lawsuit also claims unlawful discrimination under the Individuals with Disabilities Education Act (IDEA).¹⁷⁷ The lawsuit seeks an injunction, and a declaration that the law is unconstitutional.¹⁷⁸ Established case law, some of which was discussed earlier in this paper, overwhelmingly favors the state's position. It is very likely that, if decided on the merits, a court will determine that there was no violation of any rights guaranteed by the Constitution. Still, this

¹⁷⁰ Jenna Carlesso, *Federal lawsuit takes on CT's law ending religious exemptions for vaccines*, THE CT MIRROR (Apr. 30, 2021), <https://ctmirror.org/2021/04/30/federal-lawsuit-takes-on-cts-law-ending-religious-exemptions-for-vaccines/>.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

lawsuit may drag on and be costly for the state, which in turn is costly for taxpayers. That non-frivolous lawsuits can be filed, regardless of their chance of success on the merits, suggests another reason for legislators to shy away from passing legislation eliminating the religious exemption.

VI. CONCLUSION

It is well-settled Supreme Court precedent that vaccinations can be mandated in the interest of public health. Further, the Supreme Court has affirmed their judgment in the context of mandatory vaccinations as a condition of school admittance. All states currently require vaccines to attend school, and the vast majority of states include a religious exemption to those statutes. A parent with sincerely held religious beliefs can, in a variety of ways, opt their child out of the mandatory vaccination requirement. However, a religious exemption is not required—in some states, the court has mandated its removal, and in others, the legislature removed the exemption and subsequent cases affirmed their judgment. Yet the removal or retention of the religious exemption remains a hot-button issue.

There would not be as much controversy surrounding the religious exemption if its removal did not provide results, however removal of the religious exemption protects against disease and increases the overall public health. Removing the religious exemption raises vaccination rates, thus lowering the incidences of significant illness and death both in the short and long terms. Eliminating the religious exemption can push a state above herd immunity in just a few short school years. Further, states that have not had religious exemptions in decades are able to keep their vaccination rates above herd immunity levels year-after-year.

Still, even though removing the religious exemption *works* for raising vaccination rates and achieving herd immunity, if there were no issues, the need to eliminate the religious exemption would not be as dire. Unfortunately, the rise of the anti-vaccination movement, a resurgence of

measles, and the new threat of COVID-19 loom large. While removing the religious exemption is not the only way to solve those issues, it is a very cost-effective method of doing so.

New York City suffered a dangerous measles outbreak in 2018 and promptly voted to remove their religious exemption. In the ensuing years, vaccination rates have increased, and exemption rates have decreased in New York. The numbers do not lie. Wherever the religious exemption is removed, public health increases. If the goal is to prevent the spread of infectious diseases, achieve herd immunity, and protect the community, the religious exemption to mandatory school vaccinations must be eliminated in every state across the country.