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**NARROWING THE RELIGIOUS EXEMPTION TO VACCINATION PROGRAMS – A BALANCED
APPROACH TO PROTECTING INDIVIDUAL FREEDOMS AND PUBLIC WELLNESS**

The New Jersey legislature is currently battling an issue for which there is a clear solution. New Jersey, like many other states, has an increase in whooping cough cases throughout the state.¹ The issue, though, is that the solutions, vaccinations, are easily avoided by parents through the overarching religious exemption. Currently, many New Jersey lawmakers believe that the religious exemption for mandatory vaccinations is too lax and feel that a connection exists between an increase in whooping cough disease and an increase in religious exemption usage.² New legislation would require parents to document how a vaccination would conflict with their religious views³ and further state that they have held this religious view consistently and not just to avoid vaccinations.⁴ The fight against this proposed bill mainly comes from the view that individuals should not have to prove *how* religious they are in order to opt-out of vaccination programs.⁵ However, individuals favoring legislation explain that New

¹ See Lauren T. Taniguchi, *Whooping Cough on the Rise in Cumberland, Salem, Gloucester Counties*, NJ.com, September 3, 2012, http://www.nj.com/cumberland/index.ssf/2012/09/whooping_cough_on_the_rise_in.html (According to the citation, New Jersey, since 2001, has had 3,215 whooping cough cases with about one-third of those cases coming from this year alone).

² See Matthew Friedman, *New Jersey Senate Bill Aims to Tighten Religious Exemptions on Vaccinations*, NJ.com, September 21, 2012, http://www.nj.com/politics/index.ssf/2012/09/nj_senate_bill_aims_to_tighten.html. (According to the citation, New Jersey religious exemptions of vaccinations rose from .3 percent of preschools children claiming the exemption in the 2005-2006 school year to 1.3 percent claiming the exemption in the 2010-2011 school year. Also, nationwide, there were 169 cases of whooping cough in 2010 compared to the 514 cases for 2012 (through September)).

³ The proposed New Jersey legislation specifically addresses religious views and also specifically excludes philosophical and moral objections to vaccines.

⁴ Id. (Note, the proposal would have the parents attest in written form a sworn statement in front of notary public that they hold these religious beliefs and that vaccinations go against these religious beliefs).

⁵ Id.

Jersey has “one of the worst rates for children getting preventative inoculations” because of the relative ease in obtaining a religious exemption.⁶

Many states allow parents to “opt-out” of vaccination programs and treatments for their children. While freedoms and parental rights are important, this “freedom” has endangered the welfare of the community as a whole and must be addressed by the legislature. Religious freedoms and rights need preservation, but this country has always curbed these protected liberties in the name of public welfare. The solution is not an outright ban on the ability to “opt-out” but rather setting standards to raise the bar of inclusion.

In this paper, I will argue that states, particularly New Jersey, need to better protect society by curbing the loopholes and freedoms which allow parents and guardians the ability to easily “opt-out” of vaccination programs and treatments. Part I of this paper will define the history of the vaccinations in the United States. It will discuss how certain diseases have been eradicated or terminated due to these treatments. This section also will discuss the false connections between vaccinations and autism and how that false connection continues to affect parents’ decisions when it comes to vaccinating their children. Part II will examine the legal and scholarly debates surrounding this issue. In Part III, I will describe when a particular outbreak occurs, at what point should the government step in and address the situation with either coercion or enforcement. Part IV will comment on the proposed New Jersey statute and then suggest how to improve this legislation by still protecting both society’s wellness and the religious freedoms of some individuals who feel vaccinations violate their beliefs. Finally, in Part V, I will argue that a more measured statute is necessary for society’s protection and will demonstrate why such legislation is in line with this country’s mandate to protect the public welfare.

⁶ See Joan Quigley, *Are Vaccinations Essential or Harmful?*, NJ.com, October 2, 2012, http://www.nj.com/hudson/voices/index.ssf/2012/10/are_vaccinations_essential_or.html.

I. VACCINATIONS IN THE UNITED STATES

The United States has had a long and oftentimes obfuscated past in regulating vaccinations of its citizens. In particular, all three branches of the government have played a role in developing this interesting history. From smallpox to polio to whooping cough, vaccination policy has not developed predictably. To greater understand the current debate in New Jersey, a survey of this noteworthy history is worthwhile. It starts with the first vaccination against the smallpox disease and how notable presidents attempted to vaccinate the nation. It then moves into a discussion how, from the beginning, many individuals opposed vaccinations for a variety of reasons by briefly touching on a historic Supreme Court case and then touches on the controversies surrounding vaccination policies.

A. HISTORY

Inoculations, the precursor to what is now commonly known as vaccinations, date back hundreds of years to Asian society.⁷ Vaccinations came to colonial America in the mid-1700s, and were brought by Dr. Edward Jenner.⁸ Dr. Jenner dedicated his life's work to vaccinations, particularly combating the smallpox disease by using a strand of the cowpox virus.⁹ Even though Dr. Jenner is now credited with starting the vaccination revolution, other individuals followed suit by creating vaccinations and conducting vaccination research on many other types of diseases such as yellow fever, polio, and whooping cough.¹⁰

The rise of vaccinations in the United States is also credited to Dr. Benjamin Waterhouse who strongly argued for the masses to be vaccinated for the good of the country which some believe prompted then President Thomas Jefferson to vaccinate his own family and create

⁷ See James G. Hodge, Jr. and Lawrence O. Gostin, *School Vaccination Requirements: Historical, Social, and Legal Perspectives*, Center for Law and the Public's Health at Johns Hopkins and Georgetown Universities, 10 (2002).

⁸ Id at 12.

⁹ Id at 13.

¹⁰ Id at 14.

programs to safely transport vaccines to the Southern states.¹¹ However, at this time, many vaccinations were still reserved for the wealthier of society; less affluent individuals and families still lacked appropriate access to such medicines.¹² In 1813, Dr. James Smith, another pioneer in the vaccination revolution, was appointed by President James Madison and United States Congress to pursue and furnish vaccinations to any citizen in the United States.¹³ By 1942, there were fewer than 1,000 smallpox cases in the United States.¹⁴

Even though vaccination usage rose as years passed, there were still personal and legal objections to such treatments from those who believed that the government overstepped its bounds by passing vaccination legislation.¹⁵ Some individuals argued that the diseases which vaccinations protected against were actually sent by God for a specific reason and man should not guard against.¹⁶ One of the first, and probably the most notable, legal arguments against mandatory vaccinations was in the late 20th century and came from a policy in Massachusetts which directed individuals to vaccinate themselves against smallpox or face a \$5 fine.¹⁷ In *Jacobson v. United States*, the United States Supreme Court had to decide if government sponsored vaccinations programs and directives violated a person's freedoms and autonomy – the question focused on how far a government may go in the name of public welfare.¹⁸ In *Jacobson*, the Court decided that mandatory vaccinations programs were an appropriate usage of a government's police power because these programs were aimed directly at the public's

¹¹ Id at 17.

¹² Id.

¹³ Id. at 19 (also note that since the United States at the time lacked a coordinated transportation system for the vaccinations, very little occurred from the Act. Also, there was a small outbreak of smallpox due to the mishandling of some vaccinations in North Carolina which lead to Congress' decision to repeal this law in 1922)

¹⁴ Id. at 24.

¹⁵ Id at 19.

¹⁶ See Joan Quigley, *Are Vaccinations Essential or Harmful?*, NJ.com, October 2, 2012, http://www.nj.com/hudson/voices/index.ssf/2012/10/are_vaccinations_essential_or.html.

¹⁷ See Christopher M. O'Conner, *What Right Does the State Have to Compel Vaccination?*, *The Journal of Lancaster General Hospital*, Vol. 3 No. 1 (2008).

¹⁸ *Jacobson v. Massachusetts*, 197 U.S. 11, 25 (1905)

wellness and health.¹⁹ Further, the Court went on to hold that individuals have specific rights and freedoms in this area; however, these rights are not absolute and the government may infringe on such rights in the name of, "...general comfort, health, and prosperity of the State..."²⁰ According to the Supreme Court, the government's interest in protecting the public's health and wellness is paramount to that of individual rights and freedoms.²¹

B. RECENT CONTROVERSY REGARDING VACCINATIONS

Jacobson, though, was not the end to the vaccination controversy in the United States; rather, it was just the beginning. The government still had to balance the vaccination programs with individual rights and show how vaccinations actually addressed a perceived threat in society.²² Individuals have, since the birth of vaccinations, rallied against this intrusion in their personal lives.²³ This anger toward vaccinations seems to stem from unfounded connections between vaccinations and further illness or death.²⁴ For instance, when the polio vaccine saved many lives in the 1950s, some individuals who received the vaccination afterwards also were infected by the disease – leading to the United States Congress suspension of the vaccination program in 1955.²⁵ Similarly, in the 1970s, a well-known British doctor stated that whooping cough vaccinations were “marginal and did not outweigh its dangers” prompting individuals to

¹⁹ Id.

²⁰ Id at 26.

²¹ Id.

²² See Lawrence O. Gostin, *Jacobson v. Massachusetts at 100 Years: Police Power and Civil Liberties in Tension*, American Journal of Public Health, Vol. 95 No. 4, (2005).

²³ See Ross D. Silverman, *No More Kidding Around: Restructuring Non-Medical Childhood Immunization Exemptions to Ensure Public Health Protection*, Summer 2003 12 Ann. Health L. 279

²⁴ See The History of Vaccines, A Project of the College of Physicians of Philadelphia, <http://www.historyofvaccines.org/content/timelines/vaccines-and-society>

²⁵ Id.

forgo vaccination treatments which was followed by a significant uptick in whooping cough cases in both the United Kingdom and the United States.²⁶

This balance was made even more difficult recently by false accusations created against vaccinations. In the late 1990s, Dr. Andrew Wakefield published his “findings” which linked the Measles-Mumps-Rubella (MMR) vaccine to increased probabilities of autism.²⁷ These so-called findings were later proven to be fabricated²⁸; however, the damage was done to vaccinations.²⁹ Many parents crusaded against vaccinations indicating that they were not only invasive but also caused more harm than good, even when the study was debunked and retracted by the well-known British medical journal which first published the information, the *Lancet*.³⁰ Some parents in New Jersey referred to Dr. Wakefield as a hero because they say that his work forced more biomedical research on the topic.³¹ In fact, in late 2008, on the steps of the New Jersey Statehouse, parents protested against mandatory vaccinations because of the alleged connection to autism rates, even after the connection was disproven.³²

Since this rally against all vaccinations, New Jersey has experienced an increase in those parents who claimed a religious exemption for vaccinations. In the 2005-2006 school year,

²⁶ See EJ Gangarosa, AM Galazka, CR Wolfe, LM Phillips, RE Gangarosa, E Miller, and RT Chen, *Impact of anti-vaccine movements on pertussis control: the untold story*, *The Lancet*, Vol. 351 Issue 9099 (1998).

²⁷ See Joan Quigley, *Are Vaccinations Essential or Harmful?*, NJ.com, October 2, 2012, http://www.nj.com/hudson/voices/index.ssf/2012/10/are_vaccinations_essential_or.html.

²⁸ See Jeanne Whalen, *U.K. Renounces Doctor, Vaccine-Autism Study*, *Wall Street Journal*, May 25, 2010, <http://online.wsj.com/article/SB10001424052748704113504575264513643960110.html> (This article details how the vaccine-autism link was totally fabricated and explains that Dr. Wakefield lost his medical license due to this fabrication).

²⁹ It should also be noted that some individuals believe that they do not need to vaccinate themselves or their family members because they believe that having a majority of the population vaccinated also protects them from such harm or illness. This is commonly referred to in the vaccination arguments as “herd immunity.” Many experts believe that herd immunity is also a contributing factor to higher rates of vaccination treatment abstentions among parents and children.

³⁰ See Susan K. Livio, *Study Linking Autism, Vaccines is Retracted by British Medical Journal*, NJ.com, February 2, 2010, http://blog.nj.com/ledgerupdates_impact/print.html?entry=/2010/02/study_linking_autism_vaccines.html.

³¹ *Id.*

³² See Joe Ryan, *Parents, at Statehouse Rally, Protest Mandatory Vaccinations for Children*, NJ.com, October 16, 2008, http://www.nj.com/news/index.ssf/2008/10/parents_protest_mandatory_chil.html.

about 0.3 percent of preschool through high school students claimed some type of vaccination for religious reasons.³³ However, in the 2010-2011 school year, 1.3 percent of such students claimed the same exemption.³⁴

Further, the diagnoses of whooping cough (a disease which is protected against by vaccinations) continued to climb nationwide. In 2010, there were 169 cases of whooping cough; however, by September 2012 there were already 514 such cases.³⁵ Washington state has the highest rate in the country for vaccination abstentions in children and was also experiencing one of the highest rates of whooping cough cases – in fact, whooping cough cases rose 1300 percent in Washington state in the last year alone.³⁶ Further, Minnesota, which had one of the highest vaccination rates in the country, recently had an increase in vaccination abstention rates between 2007 and 2009 – coupled with a higher per capita rate of whooping cough cases than California.³⁷

The vaccination debate is once again pitting government policies against individual freedoms – the line that *Jacobson* attempted to draw between the government’s police power and individual freedoms is yet again in question. This is especially important now because a debate

³³ See Matthew Friedman, *New Jersey Senate Bill Aims to Tighten Religious Exemptions on Vaccinations*, NJ.com, September 21, 2012, http://www.nj.com/politics/index.ssf/2012/09/nj_senate_bill_aims_to_tighten.html.

³⁴ Id. and Susan K. Livio, *Study Linking Autism, Vaccines is Retracted by British Medical Journal*, NJ.com, February 2, 2010, http://blog.nj.com/ledgerupdates_impact/print.html?entry=/2010/02/study_linking_autism_vaccines.html (New Jersey has the highest rate of autism with 1 in 94 children affected/diagnosed; the national average is 1 in 100 children)

³⁵ See Matthew Friedman, *New Jersey Senate Bill Aims to Tighten Religious Exemptions on Vaccinations*, NJ.com, September 21, 2012, http://www.nj.com/politics/index.ssf/2012/09/nj_senate_bill_aims_to_tighten.html.

³⁶ See Steven Salzberg, *Anti-Vaccine Movement Causes the Worst Whooping Cough Epidemic in 70 Years*, Forbes, July 23, 2012, <http://www.forbes.com/sites/stevensalzberg/2012/07/23/anti-vaccine-movement-causes-the-worst-whooping-cough-epidemic-in-70-years/>.

³⁷ See Vaccine Weekly via NewsRx.com, *New Report from Children’s Hospitals and Clinics Shows Vaccinations Rates Declining Among Children*, March 16, 2011.

regarding human papillomavirus (HPV) vaccinations is currently ongoing.³⁸ While this debate is not focusing on any link between the HPV vaccine and autism, now the skeptics argue that such a treatment for HPV will promote pre-marital sex and undermine a parent's right of choice for their own children.³⁹ This begs the question of when a government must decide that a disease is an outbreak demonstrating a need for coercion, creation, or enforcement. First, a survey of how the legislature and the judiciary dealt with vaccination issues in governance is helpful and worthwhile.

II. LEGAL AND SCHOLARLY REVIEW OF VACCINATIONS IN THE UNITED STATES

The struggle in balancing vaccination and individual rights began when vaccinations first surfaced in the United States in the mid-1700s.⁴⁰ The balance between government police power and individual rights is something courts continue to grapple with, but the Supreme Court and many other courts⁴¹ took on this challenge with regards to mandatory vaccination policies from the beginning. What follows is an in-depth review on the most important of these decisions. First, the decisions of lower court decisions on this issue up to the notable Supreme Court decision in *Jacobson v. Massachusetts* are discussed. Then, the history of how courts and legislatures followed *Jacobson* is examined.

³⁸ See Lawrence O. Gostin, *Mandatory HPV Vaccination and Political Debate*, The Georgetown Law Scholarly Commons, Vol. 306 No. 15 (2011) and see Christopher M. O'Conner, *What Right Does the State Have to Compel Vaccination?*, The Journal of Lancaster General Hospital, Vol. 3 No. 1 (2008).

³⁹ See Lawrence O. Gostin, *Mandatory HPV Vaccination and Political Debate*, The Georgetown Law Scholarly Commons, Vol. 306 No. 15 (2011). (A recent study in the Journal of Adolescent Health determined that young females realize the HPV vaccine only protects against the cervical cancer illness and will not protect them from sexually transmitted diseases. The researchers concluded that a mandatory vaccination will most likely not trigger a national promiscuity issues among young females since the young females mostly seem to grasp that the vaccination will not protect them from sexually transmitted infections. See Rachel Caskey, Stacey Tessler Lindau, and G. Caleb Alexander, *Knowledge and Early Adoption of the HPV Vaccine Among Girls and Young Women: Results of a National Survey*, The Journal of Adolescent Health, Vol. 45 Issue 5 (2009)).

⁴⁰ See James G. Hodge, Jr. and Lawrence O. Gostin, *School Vaccination Requirements: Historical, Social, and Legal Perspectives*, Center for Law and the Public's Health at Johns Hopkins and Georgetown Universities, 10 (2002).

⁴¹ See *Hazen v. Strong*, 2 Vt. 427 (Vt. 1830); *Duffield v. School Dist.*, 162 Pa. 476 (Pa. 1894); *Viemeister v. White*, 179 N.Y. 235 (N.Y. 1904); *Writt v. DeWitt Sch. Dist.*, 385 S.W.2d 644 (Ark. 1965)

A. UP TO *JACOBSON*

The most notable case regarding the state's interest in setting and enforcing mandatory vaccinations is the Supreme Court's decision in *Jacobson v. Massachusetts*. However, even though this is the most recognizable case, and perhaps the most cited due to the precedent set by the Court, it is not the first case regarding enforcement by the state.

In the early to mid 1800s, some states incorporated mandatory vaccinations laws into statute.⁴² The result was increased litigation regarding these specific programs. The issue in many of the cases was how far the government may go in protecting the public through mandatory treatments (vaccinations) by balancing the personal rights of its people.

One of the first cases reflecting this balancing issue came to the Vermont State Supreme Court in 1830. In *Hazen v. Strong*, the judiciary upheld the power of a local town's council to pay for vaccinations against the smallpox disease even when there were no present smallpox cases in the town.⁴³ However, a different result occurred in Illinois, Wisconsin, Utah, and North Dakota in which the judiciary determined that a presence of smallpox was a necessary factor in the usage of mandatory vaccinations (for schools).⁴⁴

Following the *Hazen* decision, the Pennsylvania State Supreme Court in 1834 upheld the state's school vaccination law. In *Duffield v. School District of Williamsport*, the court decided not if vaccinations were right or wrong, but rather if it was reasonable at the time or an abuse of power that justified courts engaging in school board decisions.⁴⁵ In other words, the court

⁴² See James G. Hodge, Jr. and Lawrence O. Gostin, *School Vaccination Requirements: Historical, Social, and Legal Perspectives*, Center for Law and the Public's Health at Johns Hopkins and Georgetown Universities, 36 (2002).

⁴³ *Jacobson v. Massachusetts*, 197 U.S. 11, 25 (1905)

⁴⁴ *Hazen v. Strong*, 2 Vt. 427 (Vt. 1830)

⁴⁵ See James G. Hodge, Jr. and Lawrence O. Gostin, *School Vaccination Requirements: Historical, Social, and Legal Perspectives*, Center for Law and the Public's Health at Johns Hopkins and Georgetown Universities, 36 (2002).

⁴⁵ *Duffield v. School Dist.*, 162 Pa. 476 (Pa. 1894)

determined that the judiciary may only intervene if there was an abuse of discretion by the governing body, in this case a local school board.⁴⁶ As long as there was no abuse of discretion, then the court found the government acting reasonably.⁴⁷

The benchmark decision in the government's police power to enforce vaccination programs came in the Supreme Court's *Jacobson v. Massachusetts* decision in 1905. Massachusetts, at the turn of the 20th century, enacted a statute allowing local boards of health to require vaccinations onto the people if such a policy is necessary for public health or safety.⁴⁸ The Cambridge Board of Health, in response to this statute, created such a regulation by determining that if smallpox was present in the city, then the city's inhabitants would have to be vaccinated.⁴⁹ One man, Mr. Jacobson, refused to be vaccinated and was subsequently convicted by the trial court – the appellate court then affirmed the conviction bringing the case to the United States Supreme Court.⁵⁰ In *Jacobson v. Massachusetts*, the Court held that the police powers of a government may include forcing vaccinations onto the general public so long as it is for the public health and welfare and that the relationship between the invasion the individual feels and the public health was reasonably proportional.⁵¹ The Court in this decision demonstrated that public health and welfare was paramount and that the government was allowed to infringe on the individual's rights, so long as the relationship was reasonable and proportional.⁵²

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ See James G. Hodge, Jr. and Lawrence O. Gostin, *School Vaccination Requirements: Historical, Social, and Legal Perspectives*, Center for Law and the Public's Health at Johns Hopkins and Georgetown Universities, 36 (2002).

⁴⁹ Id.

⁵⁰ Id.

⁵¹ *Jacobson v. Massachusetts*, 197 U.S. 11, 25 (1905)

⁵² Professors Hodge and Gostin utilize an example stating when such a relationship would be unreasonable – the example is if a state had such a mandatory vaccination program for vaccinations, the state still could not force a

B. AFTER *JACOBSON*

Since the *Jacobson* decision set the stage for the government to set mandatory vaccination programs, courts and legislatures still confronted this issue on a fairly regular basis. Immediately following the *Jacobson* decision, the New York Court of Appeals decided *Viemeister v. White*.⁵³ In *Viemeister*, the court determined that even though every child had a right to a free education provided by the state (or government), when the sole purpose of a mandatory vaccination treatment for school admission was to promote public health, then the mandatory vaccination requirement was legal.⁵⁴ Further, this court also determined, in dicta, that the medical community (generally) believed that smallpox vaccinations protect against the disease.⁵⁵

In 1922, the Supreme Court again upheld the mandatory vaccination requirement for children attempting to enter both public and private schools.⁵⁶ In *Zucht*, the child did not have the required vaccination certificate to obtain admission to the San Antonio, Texas school district, so the school board denied her admission to the public and private school system.⁵⁷ The plaintiff attempted to show that her due process rights were violated because, she argued, enforcement of the requirement was at the behest of the school board who did not have proper guidance on the matter.⁵⁸ The Supreme Court rejected that argument and further infused the notion that the compulsion to vaccinate runs concurrent with the government's police power to promote and protect the public's health and welfare.⁵⁹

person to get a vaccination if that person is "hyper-susceptible" to the vaccinations and may have a sever or debilitating reaction.

⁵³ *Viemeister v. White*, 179 N.Y. 235 (N.Y. 1904)

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Zucht v. King*, 260 U.S. 174, 177 (1922)

⁵⁷ *Id.*

⁵⁸ *Id.* at 176.

⁵⁹ *Id.* at 177.

Just as quickly as the mandatory vaccination cases were upheld in the Supreme Court, another challenge to these programs manifested as fast – opponents to mandatory vaccinations programs protested forced vaccinations as against their religion. At first, courts seemed to show that the balance tilted more to the side of protection of society rather than to individuals’ religious beliefs. For example, the Supreme Court of Arkansas in *Writt v. DeWitt Sch. Dist.*, held that the mandatory vaccination requirement trumps an individual’s religious beliefs so long as it is a reasonable government regulation intended to benefit the whole of society.⁶⁰ This trend lasted until the late 1960s, but then years later, the balance began to tilt in favor of religious exemptions over the mandatory vaccination policies of several states.

The legislature responded to some of these earlier judicial decisions when presented with some evidence that vaccinations could cause harm in some individuals.⁶¹ When this connection between vaccines and harm/illness was realized, the legislature held the government responsible for damages. In 1988, the United States Department of Health and Human Services created the National Vaccine Injury Compensation Program (NVICP) organization aimed at providing damage recovery to those individuals harmed by the diphtheria, pertussis (whooping cough) and tetanus (DPT or DTap) vaccine.⁶² The NVICP provides compensation to such individuals in a no-fault system in which the suspected injury is possibly caused by the vaccine.⁶³ This evidences how the government relaxed its position in mandatory vaccinations by showing that connections

⁶⁰ *Writt v. DeWitt Sch. Dist.* 385 S.W.2d 644, 648 (Ark. 1965)(Arkansas still does not have a religious exemption for vaccination treatments as of the date of this paper)

⁶¹ See Ross D. Silverman, *No More Kidding Around: Restructuring Non-Medical Childhood Immunization Exemptions to Ensure Public Health Protection*, Summer 2003 12 Ann. Health L. 272. (Professor Silverman writes that the federal government established the Child Abuse Prevention and Treatment Act of 1974 and forced states to adopt this and other similar legislation, to include vaccination religious exemptions, by conditioning the acceptance on increased federal government funding.)

⁶² The United States Department of Health and Human Services, Health Resources and Services Administration <http://www.hrsa.gov/vaccinationcompensation/index.html>

⁶³ *Id.*

to future medical problems may be a result of such treatment; the NVICP demonstrates some level of culpability by the government.

Further, since the government relaxed some of the vaccination program requirements, the current system in many states is to allow “opt-out” procedures for parents who want to send their children to school but who do not want to vaccinate.⁶⁴ Many of these “opt-out” programs focus on the parents’ religious beliefs and how those beliefs are violated by a mandatory vaccination program. In one such example, the United States District Court for the Northern District of New York held that a religious exemption does not violate the Establishment Clause because it does not promote one religion over any others and no religion gets a special benefit from the government.⁶⁵ Basically, in *Turner v. Liverpool Cent. Sch.*, the religious exemption was allowable so long as the religious beliefs⁶⁶ were genuine, sincere, and the beliefs held that vaccinations were in violation of the religion.⁶⁷

The strength of *Jacobson* and those which came before appears to be now waning. It is now acceptable to obtain monetary damages from the government for illnesses and conditions connected to vaccinations. It is also possible to not follow mandatory vaccination programs by simply stating that it is against one’s religion. The protection against these diseases and the protection of public health and welfare seem to have been minimized in importance and significance. Yet, *Jacobson* is still controlling – the government still has the power to compel individuals into obtaining vaccination treatments.

⁶⁴ There are actually two exemptions allowing individuals to opt-out of vaccination treatments. The first exemption is related to the physical state of the individual up for vaccinations; the exemption allows individuals who are not physically able to introduce vaccines into their immune system because it will cause increased sickness or possibly death. The other exemption is the religious exemption which is the focus for this paper.

⁶⁵ *Turner v. Liverpool Cent. Sch.*, 186 F. Supp. 2d 187 (N.D.N.Y 2002)

⁶⁶ In *Turner*, the religious belief in question is referred to as the Universal Life Force. The Universal Life Force holds that vaccinations interfere with one’s natural balance with the life force and therefore violates the sanctity of the body. The Turners were denied the religious exemption by the School Board because the Board felt that the beliefs held were more akin to a belief in science or philosophy rather than a religion.

⁶⁷ *Id.*

III. WHEN SHOULD THE GOVERNMENT DECIDE THAT VACCINATIONS ARE MANDATORY

Currently, the debate surrounding the HPV vaccine can be used to examine the advisability of a mandatory vaccination program. A survey of how similar debates of other diseases and vaccination treatments against the disease allowed the disease to live a longer life in the United States than necessary. Then the discussion will turn to the societal costs accompanying a prolonged stay by such diseases.

A. THE HUMAN PAPILLOMAVIRUS (“HPV”) DEBATE

The current HPV vaccination debate is a perfect platform to discuss when, under the *Jacobson* decision, the government must step in and force vaccination programs onto its citizens. HPV is the most common sexually transmitted infection in the United States.⁶⁸ The prevalence among females is quite frequent – in fact, 26.8 percent of females (regardless of age) have some type of HPV.⁶⁹ From this percentage, there is a positive correlation between individuals with lower education and higher poverty with increased rates of HPV infection.⁷⁰ Some types of HPV are associated with different forms of cancer, most notably, cervical cancer.⁷¹

In 2008, 42 states considered legislation regarding the HPV vaccination, with 24 states proposing a mandatory HPV vaccination in females.⁷² The drug was approved in 2006 by the FDA to serve as the HPV vaccine.⁷³ Virginia is the only state, as of 2008, which mandates teenage females obtain an HPV vaccination.⁷⁴ The Virginia mandate is connected to a young

⁶⁸See Lawrence O. Gostin, *Mandatory HPV Vaccination and Political Debate*, The Georgetown Law Scholarly Commons, Vol. 306 No. 15 (2011).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² See Christopher M. O’Conner, *What Right Does the State Have to Compel Vaccination?*, The Journal of Lancaster General Hospital, Vol. 3 No. 1 (2008).

⁷³ *Id.*

⁷⁴ *Id.*

females' admission into school.⁷⁵ Other states have enacted legislation on this matter, but many are not connected to the school mandate.⁷⁶ The opt-out program is still available to many parents, like those in Washington D.C., where parents are required to complete an opt-out form if they desire.⁷⁷

The issue remains, though, at what point does the government create a mandatory vaccination program to protect society. The government must balance the rights of its people to and the health of society. The government must also address the method by which it achieves an acceptable level of balance in vaccination participation – mere persuasion or more draconian means.⁷⁸

B. WHOOPING COUGH

Washington, Colorado, and Utah all are experiencing epidemic levels of whooping cough – with Minnesota and Wisconsin fast approaching similarly sized outbreaks.⁷⁹ Washington state has the highest number of whooping cough cases in 70 years with over 4,500 cases in 2012 (through November).⁸⁰ According to a recent report by the Center for Disease Control and Prevention (CDC), 50 percent of all United States whooping cough cases come from six states – Arizona, Pennsylvania, Ohio, Texas, Washington, and Wisconsin.⁸¹

⁷⁵ See The National Conference of State Legislatures, July 2012, <http://www.ncsl.org/issues-research/health/hpv-vaccine-state-legislation-and-statutes.aspx>.

⁷⁶ Id.

⁷⁷ See Katrina Trinko, *How Many States Have Mandated HPV Vaccines*, September 16, 2011, The National Review Online, <http://www.nationalreview.com/corner/277496/how-many-states-have-mandated-hpv-vaccines-katrina-trinko>.

⁷⁸ See James Colgrove and Ronald Bayer, *Manifold Restraints: Liberty, Public Health, and the Legacy of Jacobson v. Massachusetts*, American Journal of Public Health Vol. 95 No. 4 (2005).

⁷⁹ See Wendy Leonard, *Pertussis Outbreak Can be Blamed on Low Vaccination Rates*, Deseret News, October 11, 2012, <http://www.deseretnews.com/article/print/865564282/Pertussis-outbreak-can-be-blamed-on-low-vaccination-rates.html>.

⁸⁰ See *Whooping Cough Epidemic Slows, But Disease will Stick Around*, Mukilteobeacon.com, November 16, 2012, <http://mukilteobeacon.villagesoup.com/p/whooping-cough-epidemic-slows-but-disease-will-stick-around/926461>.

⁸¹ Sari Harrar, *Ups and Downs of Whooping Cough Vaccine*, Philly.com, July 23, 2012, http://www.philly.com/philly/blogs/healthy_kids/Debating-the-whooping-cough-vaccine.html (This article goes on

In Utah, the vaccination rates are considered very low, with only 66.7 children fully immunized.⁸² New York Health officials are currently wary about a recent increase in whooping cough cases – the state in the first six months of 2012 had 1,217 whooping cough cases compared to only 970 in all of 2011.⁸³ In fact, three infants in New York state died in 2011 from whooping cough; these are the first such deaths since 2007.⁸⁴ Since 2001, New Jersey has had 3,215 documented whooping cough cases throughout the state; one-third of those cases, about 970, are from 2012 alone.⁸⁵ In Cumberland county, New Jersey, since 2001, there have been 61 cases with half of those cases from 2012.⁸⁶

C. OTHER OUTBREAKS

In April 2011, a high school in Salt Lake City, Utah had a confirmed case of measles found in one student who was never vaccinated but possibly contracted the disease on a trip to Poland.⁸⁷ The Salt Lake Valley Health Department mandated that everyone in the school system - including students, teachers, and administrators - determine through records or blood testing whether they were inoculated against the disease.⁸⁸ Many students and faculty were ordered to stay home and many extra work hours were utilized by the nursing facilities in the school system ensuring that individuals were protected.⁸⁹ The Salt Lake Valley Health Department estimated its cost at \$107,000 for this one particular event.⁹⁰

to state that another possibility for an increase in whooping cough cases could be that the vaccines are weaker than there were in previous years).

⁸² Id.

⁸³ See Jackie Bischoff, *Whooping Cough Cases Spark Concern*, Wall Street Journal, July 24, 2012, <http://blogs.wsj.com/metropolis/2012/07/24/whooping-cough-cases-spark-concern/>.

⁸⁴ Id.

⁸⁵ See Lauren T. Taniguchi, *Whooping Cough on the Rise in Cumberland, Salem, Gloucester Counties*, NJ.com, September 3, 2012 http://www.nj.com/cumberland/index.ssf/2012/09/whooping_cough_on_the_rise_in.html

⁸⁶ Id.

⁸⁷ See Carol Spackman Moss, *State Should Tighten Laws Requiring Vaccinations*, The Salt Lake Tribune, April 30, 2011, <http://www.sltrib.com/sltrib/opinion/51714627-82/teachers-health-utah-april.html.csp>

⁸⁸ Id.

⁸⁹ Id.

⁹⁰ Id..

The CDC recently warned that due to the traveling of United States citizens to Europe to watch the Olympic Games and World Cup soccer matches, the United States could have an uptick in measles infections due to a lack in measles inoculations in both Europe and South America.⁹¹ The rate of measles in the United States has been on a steady rise even though the disease was close to elimination levels in 2000.⁹² Some medical professionals speculate that this rise in measles is due to the fraudulent medical report by Dr. Wakefield which connected the MMR vaccine to autism.⁹³

To a lesser scale, but still important, some medical professions fear of a polio resurgence.⁹⁴ The belief was, until recently, that many countries eradicated polio like smallpox; however, recently such places like China, Tajikistan, and even Minnesota had significant polio cases causing some alarm.⁹⁵ In the Congo Republic, the World Health Organization found 201 cases of polio in two weeks with over 100 deaths from the disease.⁹⁶

Professors Hodge and Goskin cite many studies in which a correlation between vaccination rates and disease rates were examined.⁹⁷ In all of the studies cited the results are the same, the schools with higher rates of students having vaccination protection have lower rates of or reduced rates of disease than those schools with students having lower vaccination protection

⁹¹ Elizabeth Weise, *Measles Outbreak Could hit the USA*, USA Today, March 20, 2012, http://usatoday30.usatoday.com/NEWS/usaedition/2012-03-20-Measles_ST_U.htm

⁹² Id.

⁹³ Id.

⁹⁴ See Rachel Hills, *Why Polio Just Became a Global Health Crisis – and a Global Governance Crisis*, the Atlantic, May 29, 2012, <http://www.theatlantic.com/international/archive/2012/05/why-polio-just-became-a-global-health-crisis-and-a-global-governance-crisis/257761/#>

⁹⁵ Id. Note that the cases in Minnesota are from an Amish community which had five children infected however no children infected became paralyzed.

⁹⁶ See Donald G. McNeil Jr., *Congo Republic Declares Polio Emergency*, The New York Times, November 9, 2010, <http://www.nytimes.com/2010/11/10/world/africa/10polio.html>

⁹⁷ James G. Hodge, Jr. and Lawrence O. Gostin, *School Vaccination Requirements: Historical, Social, and Legal Perspectives*, Center for Law and the Public's Health at Johns Hopkins and Georgetown Universities, 58-59 (2002).

rates.⁹⁸ But government still allows for an easy exemption to these requirements. If society stays on this path by exempting individuals based on false or weak religious beliefs,⁹⁹ then society will pay the cost with higher rates of illness and disease. The choices that people make with this decision truly affect the whole of society and the government must intercede by closing the loopholes which exist under these exemptions. The next section explores the New Jersey legislature's proposal to close such an exemption.

IV. RELIGIOUS EXEMPTIONS TO VACCINATIONS IN THE UNITED STATES

Courts have upheld the right of states to compel mandatory vaccination as an exercise of their police power.¹⁰⁰ Many states do this through their department of health as well as through regulations by school districts.¹⁰¹ A majority of states, 47, allow an opt-out procedure of mandatory vaccinations based on religious grounds – Arkansas, Mississippi, and West Virginia are the only states which offer no religious exemption.¹⁰²

New Jersey introduced legislation on March 25, 2012 which attempted to curb the usage of the religious exemption in mandatory vaccination cases. The portion of the bill which seems to contain the most controversial issue is:

(2) documentation, as set forth in subsection b. of this section, which is submitted to the elementary or secondary school or the institution of higher education, as applicable, by the student, or the student's parent or guardian if the student is a minor, explaining how the administration of the vaccine conflicts with the bona fide religious tenets or practices of the student, or the parent or guardian, as appropriate; except that: a general

⁹⁸ Id. (Professors Hodge and Gostin go on to report that other factors contribute to positive developments in the disease rates, such as public attitudes toward vaccination. This is interesting because if the public attitude changes to be more doubtful to vaccination, then the negative correlation will occur, which is possibly occurring at the present time.)

⁹⁹ Honest religious beliefs which run counter to vaccinations should still be maintained. It is the exploitation of the religious exemption which needs to be addressed; tightening the religious exemptions may force individuals who would otherwise misuse the exemption to now participate in vaccinations programs.

¹⁰⁰ *Jacobson v. Massachusetts*, 197 U.S. 11, 25 (1905)

¹⁰¹ See Ross D. Silverman, *No More Kidding Around: Restructuring Non-Medical Childhood Immunization Exemptions to Ensure Public Health Protection*, Summer 2003 12 Ann. Health L. 277.

¹⁰² Id.

philosophical or moral objection to the vaccination shall not be sufficient for an exemption on religious grounds; and an exemption on religious grounds may be suspended by the [State] Commissioner of Health and Senior Services during the existence of an emergency as determined by the [State Commissioner of Health] commissioner.

b. The documentation required pursuant to paragraph (2) of subsection a. of this section shall include the following:

(1) a written statement, which shall be notarized, signed, and sworn by the person submitting the statement, and which shall include:

(a) an explanation of the nature of the person's religious tenet or practice that is implicated by the vaccination and how administration of the vaccine would violate, contradict, or otherwise be inconsistent with that tenet or practice;

(b) information that indicates that the religious tenet or practice is consistently held by the person, which may include, but need not be limited to, expression of the person's intent to decline any vaccination;

(c) a statement that the religious tenet or practice is not solely an expression of that person's:

(i) political, sociological, philosophical, or moral views;¹⁰³

Basically, this proposed statute forces a parent or guardian to prove to the state that the child, or in many cases the parent or guardian, is religious and has held these religious beliefs for some time. Further, the proposal also forces the parent or guardian to explain how a vaccination would prevent the child from exercising his or her true religious beliefs and in fact how vaccinations are inconsistent with such beliefs.

A recent New York case set the bar quite low for religious exemption qualification.¹⁰⁴ In *Turner v. Liverpool Cent. Sch. Dist.* the district court determined that to qualify for a religious exemption, the individual must ask two questions: i) is the belief religious and ii) is the belief sincere?¹⁰⁵ In this particular case, even though the child did not have the ability to readily recite

¹⁰³ Proposed New Jersey Senate Bill No. 1759, 215th Legislature for the State of New Jersey, March 25, 2012.

¹⁰⁴ The New York exemption was provided first that the parent (and child) be a part of a bona fide recognized religious organization; however, that was struck down as a violation of the Establishment Clause and Free Exercise of Religion in the First Amendment in *Sherr v. Northport-East Northport Union Free Sch. Dist.* 672 F. Supp. 81 (E.D.N.Y. 1987), so the New York Legislature changed the law in 1989 to a requirement that the person maintain a genuine and sincere religious belief.

¹⁰⁵ See Ross D. Silverman, *No More Kidding Around: Restructuring Non-Medical Childhood Immunization Exemptions to Ensure Public Health Protection*, Summer 2003 12 Ann. Health L. 277.

tenets of the church's ideology, meaning she did not understand all of the religious guideposts and practices, just her belief that the immunization would violate these tenets was adequate to grant her relief.¹⁰⁶

V. REGULATING THE RELIGIOUS EXEMPTION

The New Jersey statute recited above clearly heightens the standard followed by New York in the *Turner* case by adding the written declaration of the held religious belief. Some experts would argue that when applying for such an exemption, the individual would have to go through a process of refusal which would consist of meeting with health professionals and discuss the benefits and risks of vaccinations.¹⁰⁷ However, this seems to be treading into the undue burden and substantial obstacle tests as discussed in Supreme Court abortion cases.¹⁰⁸ In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the Supreme Court determined that in abortion cases, the undue burden standard was an appropriate test in determining if a state regulation of abortion treads too far into a woman's ability to seek an abortion.¹⁰⁹ There is no Supreme Court precedent relating the undue burden test and a parent's decision to exempt their children from vaccinations programs; however, one may argue that the New Jersey proposed statute regulating the use of religious exemptions does just that – placing an undue burden onto the parent or guardian.

New Jersey, through the proposed legislation attempts to balance the government interference with individual choice by placing the responsibility onto the individual by proving a sustained religious belief exemption. The individual now must evidence a long-standing prior

¹⁰⁶ Id.

¹⁰⁷ Id.

¹⁰⁸ In both *Casey* and *Gonzales*, the Supreme Court discusses the government's interaction with individuals seeking an abortion and further discusses whether certain requirements in seeking such a procedure place unnecessary hurdles in the way of the individual.

¹⁰⁹ *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992) (the Court determines that certain regulations by a state which will hinder a woman seeking an abortion is an undue burden placed onto that woman and thus are invalid).

religious belief which is sincerely held; however, the proposed statute does not set a bright-line on an actual time frame for holding such beliefs and thus allows flexibility in the standard. Obviously, the individual seeking the exemption has extra work placed on him or her which he or she would argue is an undue burden. However, seeking an abortion and exempting one from vaccination programs are inapposite due to the issue of timing. A person seeking an abortion has a finite timeframe to render a decision. Contrarily, a parent or guardian exempting a child from vaccination treatments would have more time to make the decision; it is not as time sensitive as an abortion decision. Further, even if a religious exemption is sought and granted, a parent may still change one's thoughts on the matter and choose to vaccinate their children at a later date; there is no changing one's mind after an abortion is sought and given. Thus, the New Jersey proposal would not be an undue burden placed on parents seeking a religious exemption from vaccines.

Another way in which the government could encourage vaccinations would be through some incentive program. One incentive program would reward participating individuals a tax advantage. The government could provide some refund to parents who vaccinate their children; this would incentivize the parents who may be on the fence regarding vaccination and who would possibly utilize the religious exemption to opt-out of the treatment. Arguably, the individuals with true religious beliefs and true medical needs against vaccination would still have the opt-out program to protect themselves from what they perceive as an overly intrusive government.

However, this could present an Equal Protection issue since the government is rewarding families for a specific action in vaccination treatment. This proposed idea though is not intended to reward certain types of religions over others; rather, the proposal merely grants a benefit to

those who would otherwise potentially misuse the opt-out program. It also encourages individuals to make choices for the public's health.¹¹⁰ Another means to obtain this result would be for the government to encourage medical insurance companies to adjust premiums if families are properly vaccinated. This would still encourage the masses to vaccinate their children and the benefit would come more from private party than directly from the government.

Such an arrangement, though, could possibly pit poor individuals against their truly held religious beliefs, since it is possible that a less affluent family may seek the tax incentive solely for monetary gain which may run counter to their genuinely held religious tenets. To counter this possibility, the incentive program must not overly reward individuals making such a choice; the monetary incentive needs to be reasonably related to the cause. Further, this incentive program should probably concentrate and make the incentive a tax deduction as opposed to a tax benefit. Many of the indigent then would not benefit as much to induce unwanted behavior with the tax deduction since normally the poor do not live near taxable levels; a write-off would merely lower their taxable gross income whereas a tax benefit would give credit to the tax payer no matter the income. Having a tax deduction would still encourage those individuals looking to misuse the religious exemption to not do so, but would not overly induce individuals to violate their sincerely held religious beliefs.

Admittedly, the New Jersey proposal still leaves some unknowns. It does not expressly indicate how often the religious exemption needs to be sought nor does it expressly state if the exemption covers multiple vaccines or just one vaccine per exemption. It appears that the exemption is aimed at parents with newborns or very young children with the burden thrust onto

¹¹⁰ The idea is similar to individuals' who donate to charities. If a United States taxpayer donates to established charities, that taxpayer is normally allowed a deduction against their tax base. The idea is to encourage those who can afford to donate to a charity to do so because it benefits society. Similarly, if a tax benefit exists regarding obtaining certain vaccinations, some individuals who may have not vaccinated their families will ultimately vaccinate and better help society protect against many diseases and illnesses.

the parent to make the choice of exemption during one of the newborn's doctor's appointments. The proposed legislation should be redrafted to cover the differences in vaccinations as they pertain to individual age groups and individual vaccines.

First, New Jersey lawmakers could create legislation aimed at different stages of vaccination – meaning parents with newborns could be given one opportunity to utilize the religious exemption for all newborn vaccinations. This would lower the burden placed on parents and establish a formal and simple process all new parents could follow. Then, as a child grows older, and perhaps attends school with other children, and other vaccinations become necessary,¹¹¹ the legislation could ask the question again and place more emphasis on which vaccines the child is opting out of and which ones the child would like to receive (if there is a choice needed). These changes to the legislation would still allow parents, guardians, and children to make the choice to use the religious exemption, yet clarifies for these individuals when they can exercise this decision. Further, such changes in the legislation allow for changes in lifestyle, so if a family first believes in a religion which does not favor vaccinations, they may formally opt-out of any vaccination treatment program; however, if the family changes their religious beliefs for any reason, there is another opportunity provided by the government to then vaccinate.¹¹²

The proposed legislation, though, still leaves uncertainty because it allows the State Commissioner of Health and Senior Services to override any religious exemption during the course of an emergency, with the emergency defined by the State Commissioner of Health. This

¹¹¹ The United States Department of Health and Human Services, Center for Disease Control and Prevention has an established vaccination schedule which advises individuals on when vaccines should be administered. Arguably, this schedule could be used by New Jersey to establish appropriate timeframes for requiring the activation of the religious exemption. (see <http://www.cdc.gov/vaccines/schedules/index.html> for the vaccination schedule)

¹¹² It is assumed that even if a family changes their religious beliefs, they may not understand or realize that they may then go forward with vaccinations after first opting out of such treatments. These changes would give such a family another bite at the apple.

definition of emergency needs to be clarified for New Jersey citizens as to when the State Commissioner of Health and Senior Services would override a religious exemption. Admittedly, it is difficult to yield a bright-line rule establishing these terms; however, defining these circumstances would actually help in increasing vaccination participation because it would explain how prevalent a specific disease is in the state¹¹³ – possibly showing parents who would otherwise utilize an exemption that a safer choice is to vaccinate. Conversely, it may, though, show individuals on the fence of the vaccination choice how long they may wait in actually vaccinating their families. Either way, the statute as it is currently drafted leaves this emergency area in a confused state and more information about how and when these commissioners would make their decisions would help clarify the law.

Similarly, the statute uses the term “consistently” to set the guideline for how long a person must adhere to the religious beliefs when exempting one’s self or children from vaccination treatments. This term does not properly give guidance to a time frame nor does it explain why a time frame is necessary for such an exemption. A better phrase would be centered on one’s true religious beliefs at the time of opting out. If the statute substituted “truly” for the word “consistently” then it would better show that the government is aimed only at the sincere beliefs of the individual. Further, it allows an individual to change those beliefs when the individual truly wants to change them. Some may argue that a person can then just “truly” believe in a tenet against vaccinations for the time when signing the opt-out form. This attempt to misuse use the statute guidelines would be undercut by the requirement to give a sworn, signed, and notarized statement attesting that the reason to hold such beliefs is not solely for the

¹¹³ Arguably, the HPV debate discussed earlier would be a good issue for any health profession to use as guidance as to when a possible “emergency” exists since there appears to be a national wide HPV issues which could be addressed with vaccine treatments.

purpose of abstaining from vaccinations. Thus, the word “truly” would satisfy the statute’s intent to better regulate religious exemption usage.

VI. CONCLUSION

Vaccinations are not the perfect cure for disease and illness; in fact, admittedly, they are not 100 percent effective in all situations. However, as more people decide to forgo vaccinations, more people in society are put at serious risk. The people who are physically able to obtain vaccinations have the responsibility to do so for the good of society and the bodies of government should encourage this action by all means possible and through narrowing any loopholes in the current system. Further, if individuals are injured through vaccination treatments, the government still maintains the ability to pay for these damages with a no-fault system established under the NVICP.

Under the power of *Jacobson*, government bodies may infringe on individual rights and freedoms in the name of public health. While the government should not easily infringe on these rights, in the case of vaccinations programs and treatments, it is crucial for the government to exercise this power. Statistics show that as the government extended specific programs allowing individuals to opt-out of such programs, the health of society was negatively affected which can be costly to the individuals and the government. Many New Jersey lawmakers are currently fighting this battle to narrow the existing loopholes and they are fighting against misinformed individuals. The proposed New Jersey statute which seems invasive, is really an attempt to protect society as a whole – something that the government was established to do under the United States Constitution. Further, the solution is not an outright ban of religious exemptions; a protection of religious freedoms and views is still provided under this proposal. The benefits of vaccinations clearly outweigh the potential negatives for a healthy society to prosper and thus the

more people who are vaccinated because they are able, should be encouraged to do so by closing loopholes and even offered incentives.