

Why WA State SB 5005 is Unconstitutional
By Alan Phillips, J.D.
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Proposed legislation in Washington State, SB 5005, would require that forms for all exemptions, whether medical, religious or philosophical, “include a statement, signed by a health care practitioner, that the parent or guardian has been informed of the benefits and risks of the immunization.”[1] Aside from failing the common sense test—it is not appropriate to make doctors gatekeepers for non-medical exemptions, generally—this proposed legislation would be unconstitutional with regard to religious exemptions, specifically.

Federal law is a higher level of authority than state law, and generally supersedes state law. Federal court cases have held that religious exemptions to immunizations must meet a two-prong test for federal, First Amendment protection: 1) That the beliefs be religious in nature, and 2) that they be sincerely held.[2] There is nothing in these cases that would suggest any further requirement; therefore, a state’s imposition of further requirements would violate the First Amendment. This only makes sense. No doctor should ever be in the position of trying to argue a medical opinion over and against a parent’s religious beliefs and rights, and no parent should ever be in the position of having a doctor try to talk them into violating their religious beliefs. Religious beliefs and practices cannot legally be, and should never be, subject to medical or scientific scrutiny, except in emergency situations where states already have authority to impose medical care (or, in the case of emergency vaccines, quarantine) over the religious objections of the parent. By definition, routine immunizations do not involve any such emergency situations.

Washington State residents opposed to this legislation should share the above legal opinion with their state legislators, and that should cause the bill to die a quick death. However, if the proposed legislation were passed in its current form, it could be immediately challenged on Constitutional grounds, and the likelihood is that the statute, or at least that portion pertaining to religious exemptions if the statute were severable under state law, would be stricken.

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Vaccine Rights: <http://www.vaccinerights.com>
The Pandemic Response Project: <http://www.pandemicresponseproject.com>

[1] Senate Bill Report SG 5005, <http://apps.leg.wa.gov/documents/billdocs/2011-12/Pdf/Bill%20Reports/Senate/5005%20SBA%20HEA%2011.pdf>.

[2] See, e.g., Sherr and Levy vs. Northport East-Northport Union Free School District, 672 F. Supp. 81 (E.D.N.Y., 1987), Mason v. General Brown Central School Dist., 851 F.2d 47, 54 (2d Cir. 1988), and Lewis v. Sobel, 710 F. Supp. 506, 511 (S.D.N.Y. 1989).