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To: The Pennsylvania Legislature
Harrisburg, PA 17120

Re: HB 883, Regarding immunizations for pupils¹

Honorable Pennsylvania Legislators:

I am a nationally recognized legal expert on vaccine exemption and waiver law. I have advised clients, attorneys, legislators, and legislative committees throughout the country on vaccine policy and law as they pertains to vaccines required for birth, school and daycare enrollment, college, healthcare and other employment, military members, immigrants, parents in “vaccine custody disputes,” international travel, and various subcategories of these different vaccine contexts. There are 140 attorneys who manage vaccine injury and death cases, but I am the nation’s only attorney whose practice is focused solely on vaccine exemptions and legislative activism.

Respectfully, there are serious Constitutional problems with HB 883:

First, for purposes of the Constitutional analyses below, states must draft and interpret their state laws to conform with Constitutional boundaries, pursuant to the supremacy clause of the U.S. Constitution, U.S. Const. art. VI, § 2, cl. 2.²

1. Fourteenth Amendment “due process,” First Amendment “free exercise” of religion, First Amendment “free speech”

HB 883 would require of parents seeking a vaccine religious exemption to provide an affidavit [that] must be signed by a health care practitioner [which] signature . . . indicates that the parent or guardian has been given information regarding the benefits of vaccination and the risks associated with not vaccinating have been explained to the parent or guardian.

a) This language raises a 14th Amendment due process concern. Parents have a 14th Amendment due process right to parent their children. In *Troxel v. Granville*, 530 U.S. 57 (2000), the U.S. Supreme Court states:

The Fourteenth Amendment's Due Process Clause also has a substantive component that “provides heightened protection against government

¹ <http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2015&sessInd=0&billBody=H&billTyp=B&billNbr=0883&pn=1086>

² “This Constitution, and the Laws of the United States . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.” U.S. CONST. art. VI, § 2, cl. 2.

interference with certain fundamental rights and liberty interests,” *Washington v. Glucksberg*, 521 U.S. 702, 720, including parents’ fundamental right to make decisions concerning the care, custody, and control of their children, *see, e. g., Stanley v. Illinois*, 405 U.S. 645, 651. Pp. 63-66.

The *Troxel* Court further explains:

There is a presumption that fit parents act in their children's best interests, *Parham v. J. R.*, 442 U.S. 584, 602; there is normally no reason for the State to inject itself into the private realm of the family to further question fit parents’ ability to make the best decisions regarding their children, *see, e. g., Reno v. Flores*, 507 U.S. 292, 304.

The *Troxel* “fit parents” presumption may be rebutted by a showing (evidence) that a parent is unfit, but such a showing requires a case-by-case analysis for each parent suspected of being unfit. By requiring parents to first be educated about vaccines before exercising the exemption, the State unlawfully presumes that all parents wishing to exercise the exemption are unfit, without the required case-by-case showing. Therefore, the state cannot lawfully require a vaccine education as a condition obtaining the exemption.

b) This language also violates parents’ First Amendment “free exercise” rights. Federal courts have held that all the First Amendment requires for a vaccine religious exemption is a belief that is religious in nature and sincerely held. *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 Cent. School Dist.*, 851 F.2d 47 (2nd Cir. 1988), *Lewis v. Sobel*, 710 F. Supp. 506, 512 (S.D.N.Y. 1989); and *Farina v. The Board of Education*, 116 F. Supp.2d 503 (S.D.N.Y. 2000) (which cases cite *United States v. Seeger*, 380 U.S. 163, 85 S.Ct. 850 and other U.S. Supreme Court cases). While States are free to be more lenient in their exemption requirements than the First Amendment requires, States may not lawfully be more restrictive than the First Amendment by adding additional substantive requirements beyond those established by the courts. So, by requiring parents to receive “information regarding the benefits of vaccination and the risks associated with not vaccinating,” the state would be unlawfully adding additional substantive requirements to the First Amendment requirements.

c) First Amendment “free speech”

Finally, this language in HB 883 may violate parents’ First Amendment free speech rights. The U.S. Supreme Court has held that the right to free speech includes the right to be free from being compelled to speak. *See, e.g., Wooley v. Maynard*, 430 U.S. 705 (1977). Requiring exemption applicants to agree with the State’s views on vaccine risks and benefits may constitute compelling exemption applicants to speak, thereby violating their First Amendment rights. However, if the State requires instead that exemption applicants merely acknowledge the State’s views, without stating or implying that those views are necessarily accurate, and without requiring that exemption applicants agree, then the language may not violate exemption applicants’ free speech rights. (But that would not resolve the above two Constitutional concerns).

2. Additional First Amendment “free exercise” concern

Finally, the phrase in this bill, “a religious belief shall not include a strong moral or ethical conviction similar to a religious belief,” represents an unlawful attempt by the State to define the parameters of qualifying beliefs. Requirements for vaccine religious exemptions

are determined by the First Amendment’s “free exercise” and “establishment” clauses as interpreted by the courts. For example, the U.S. Supreme Court has held that religion need not “be founded upon a belief in the fundamental premise of a ‘God’ as commonly understood in Western Theology,” *Torcaso v. Watkins*, 367 U.S. 488, 81 S.Ct. 1680, 6 L.Ed.2d 982 (1961); that “the test of belief ‘in relation to a Supreme Being’ is whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God,” *United States v. Seeger*, 380 U.S. 163, 165-66, 85 S.Ct. 850, 854, 13 L.Ed.2d 733 (1965); and that religion involves “the ‘ultimate concerns’ of individuals,” *Seeger*, 380 U.S. at 187, 85 S.Ct. at 865). This and other relevant Supreme Court precedent is codified in federal civil rights law with respect to religious accommodation in the workplace (which accommodation is governed by the same First Amendment “free exercise” boundaries as vaccine religious exemptions, or any other religious right, for that matter):

Protected religious beliefs include theistic beliefs—those that include a belief in God—but also non-theistic “moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views,” “ultimate” ideas about “life, purpose, and death.”³

Thus, HB 883’s stated exclusion of moral and ethical beliefs is overreaching, crossing over superseding Constitutional boundaries. For example, one could reasonably have a serious moral or ethical objection to vaccines cultured on aborted human fetal cells or cell lines derived from aborted fetuses, which is the case with several current vaccines. Such a belief would fall clearly within the scope of protected First Amendment beliefs pursuant to applicable legal precedent, but may be unlawfully screened out by the language of HB 883. So, the State of Pennsylvania should refrain from codifying specific boundaries for vaccine religious exemptions, as those boundaries are determined by the courts in a process that is continually evolving over time, as ongoing court cases generate new legal precedent that may refine or even overturn previously established boundaries.

CONCLUSION

HB 883 should be withdrawn, or substantially revised to address and resolve the above concerns. In the meantime, please let me know if I may be of any further assistance in this matter.

Respectfully Submitted at the Request of
Pennsylvania Residents,



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³ The U.S. Equal Employment Opportunity Commission, Title VII: Religious Accommodation, March 5, 2012 discussion letter.