

April 25, 2015

Illinois State Legislators
Springfield, IL 62706

RE: SB 1410 SCH CD-IMMUNIZATION EXEMPTION

Honorable Illinois State 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 regarding vaccines required for birth, school and daycare enrollment, college, employment, military members, immigrants, international travel, and various subcategories of these vaccine contexts. There are 140 attorneys in the U.S. who manage vaccine injury and death cases, but I am the nation's only attorney whose practice is focused solely on vaccine exemptions and waivers and vaccine legislative activism.

I wish to call your attention to language in SB 1410, which bill recently passed the State Senate, that substantially violates the Constitution's First Amendment's "free exercise" and "free speech" clauses, and the 14th Amendment's "due process" clause. The language in question is the highlighted section of the bill quoted below, followed by a formal legal analysis:

5 (8) Children of parents or legal guardians who object to
6 health, dental, or eye examinations or any part thereof, to
7 immunizations, or to vision and hearing screening tests on
8 religious grounds shall not be required to undergo the
9 examinations, tests, or immunizations to which they so object
10 if such parents or legal guardians present to the appropriate
11 local school authority a signed Certificate of Religious
12 Exemption detailing the grounds for objection and the specific
13 immunizations, tests, or examinations to which they object. The
14 grounds for objection must set forth the specific religious
15 belief that conflicts with the examination, test,
16 immunization, or other medical intervention. The signed
17 certificate shall also reflect the parent's or legal guardian's
18 understanding of the school's exclusion policies in the case of
19 a vaccine-preventable disease outbreak or exposure. The
20 certificate must also be signed by the authorized examining
21 health care provider responsible for the performance of the
22 child's health examination confirming that the provider

23 provided education to the parent or legal guardian on the
24 benefits of immunization and the health risks to the student
25 and to the community of the communicable diseases for which
26 immunization is required in this State.

ANALYSIS

I. 14th Amendment “due process” and First Amendment “free exercise”

A. The language highlighted above would violate the exemption applicants’ 14th Amendment Constitutional “due process” rights. Parents have a 14th Amendment due process right to parent their children that includes the right to medical decision-making. 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 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 explained:

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 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 persons choosing to exercise the exemption are, necessarily, unfit to make the decision, without the required case-by-case showing that each such parent is allegedly “unfit.”

B. This language also violates exemption applicants’ First Amendment “free exercise” of religion 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) (*citing 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 that the First Amendment requires, States may not lawfully be more restrictive than the First Amendment by adding further substantive requirements beyond those established by

the courts—in this instance, the “religious in nature” and “sincerely held” requirements. Requiring parents to undergo and “education” would amount to the State adding a new substantive requirement in violation of the First Amendment. However, the addition of non-substantive requirements such as completing a short form, signing a statement, etc. probably would not violate exemption applicants’ “free exercise” rights.

Please note that while it is probably not unconstitutional for the State to require exemption applicants to state the specific beliefs they hold that are opposed to immunizations, a law requiring scrutiny of those beliefs would, in being implemented, run afoul of the 14th Amendment’s “equal protection” clause, as it would be virtually impossible to develop proper legal criteria that would be fairly and evenly applied throughout the state to all persons seeking a religious exemption.

II. First Amendment “free speech”

When the State requires exemption applicants to agree with the State’s view about vaccine “health risks to the student and to the community,” that violates the exemption applicant’s 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*. If the State requires exemption applicants to agree with the State’s views on vaccine risks and benefits, that would constitute compelling the applicants to speak. *See, e.g., Wooley v. Maynard*, 430 U.S. 705 (1977). However, if the State requires instead that exemption applicants merely acknowledge the State’s views that are presented briefly so as not to constitute a new substantive requirement such as a lecture from a medical doctor, (see section I. above), and if the State does not require exemption applicants to agree with the State’s views, but merely to briefly acknowledge them, then that probably would not violate the exemption applicants’ free speech rights.

CONCLUSION

SB 1410 requires significant revisions to bring it into compliance with the Constitutional boundaries set forth above. Please make these revisions at your earliest convenience.

Thank you for your kind time and attention to the above. Please do not hesitate to ask if I may be of any further assistance.

Sincerely Yours,



Alan G. Phillips
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