

Alan G. Phillips, J.D.
Attorney and Counselor at Law

VACCINE RIGHTS
600 Merrimon Ave., Ste. 1-F
Asheville, NC 28804
828-575-2622
attorney@vaccinerights.com

May 1, 2015

Representative Michael Zalewski
243-E Stratton Office Building
Springfield, IL 62706

By Fax: 773-304-1450

1 Riverside Road
Suite 204 A
Riverside, IL 60546

RE: SB 1410 SCH CD-IMMUNIZATION EXEMPTION

Dear Representative Zalweski:

I am writing at the request of one of your constituents, Ms. [name removed], regarding S.B. 1410 concerning Illinois' vaccine religious exemption to immunizations required for school and daycare enrollment. Please allow me to introduce myself. 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; daycare, school and college enrollment; healthcare workers and other employees; military members, families and civilian contractors; immigrants, including foreign adopted children; children of parents in child custody disputes; international travel; and various other contexts.

There is language in SB 1410, which recently passed the State Senate, that 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 sentence from the end of line 19 to line 26 of the section of the bill quoted below:

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.

Please see the Analysis below regarding why this language violates parents' Constitutional rights.

On a related note, Ms. [name] reports that you asked her what her religion was when she indicated that she held religious objections to immunizations. The First Amendment provides the boundaries for vaccine religious exemptions, and federal courts have ruled that it doesn't matter whether or not the exemption applicant belongs to any religious organization at all, nor does it matter which church the applicant belongs to if she does belong to one. The applicant needn't even believe in 'God' in the Western theological sense of the word; one need only have a belief that is "religious in nature" and "sincerely held" as the law defines these phrases.¹ Therefore, the concern that religious exemptions are being abused is likely misplaced the vast majority of the time. Indeed, considering that vaccines kill far more people than the diseases in western countries, and that 90-95% of childhood infectious disease mortality decline *preceded* the introduction of vaccines, we are morally and ethically compelled to provide exemptions on personal belief or philosophical reasons rather than restricting exemption to religious and medical grounds only. Please see the attached one-page Vaccine Fact Sheet for information that may help you to understand how the pharmaceutical industry has inserted its marketing agenda in place of objective health policy where vaccines are concerned.

Thank you for your kind attention to the above and the attached. Please let me know if I may be of any further assistance.

Respectfully Submitted,

Alan G. Phillips
NC State Bar No. 30436

¹ See, e.g., *Sherr and Levy vs. Northport East-Northport Union Free School District*, 672 F. Supp. 81, 99 (E.D.N.Y., 1987) (holding that the "limitation of the availability of a religiously-based exemption from immunization to 'bona fide members of a recognized religious organization' whose doctrines oppose such vaccinations violates both the establishment and free exercise clauses of the First Amendment to the United States Constitution"; *Mason v. General Brown Cent. School Dist.*, 851 F.2d 47, 51 (2nd Cir. 1988) (quoting *United States v. Seeger*, 380 U.S. 163, 166, 85 S.Ct. 850, 854) (holding that "it is sufficient if the belief 'occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God'"; and *Farina v. The Board of Education*, 116 F. Supp.2d 503, 507 (S.D.N.Y. 2000) (holding that "[t]he beliefs need not be consistent with the dogma of any organized religion, whether or not the plaintiffs belong to any recognized religious organization."

ANALYSIS

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

A. The language highlighted above (lines 19-26) would violate 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 by default, 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 than 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 a vaccine “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 applied fairly—evenly and consistently—throughout the state to all persons seeking a religious exemption.

Finally, a vaccine "education" for persons with religious objections fails the common sense test. The only purpose for such "education" would be to try to convince parents to violate their religious beliefs and get vaccinated, or to punish them with guilt for not doing so. This may amount to State interference with religion, crossing the "separation of church and state" in violation of the First Amendment establishment clause.

II. First Amendment "free speech"

When the State requires exemption applicants to be educated about the State's view of 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, 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.

On a more practical note, the "benefits" and "risks" provided by medical doctors are unlikely to be objective and complete, due to an inherent conflict of interest. Doctors earn money administering vaccines, and would earn additional money providing vaccine educational material to parents, and doctors are not taught, and so will not present, facts critical to the vaccine question but that don't support the pharmaceutical profit agenda. For example, doctors are generally not aware and will not report to parents that the federal government pays out over \$220 million each year for vaccine injuries and deaths; that according to the CDC, there are 5 to 10 times more non-immune vaccinated children than exemption children (because vaccines don't work in everyone) and that outbreaks most often occur in vaccinated children; or that the pharmaceutical industry had to pay back over \$19.2 billion over five years due to attempts to defraud federal health programs, among many other relevant concerns. Please see the one page Vaccine Fact Summary below.²

CONCLUSION

SB 1410 requires significant revisions to address the Constitutional concerns discussed above.

² Also available here: <http://vaccinerights.com/pdf/2-20-15%20Vaccine%20Fact%20Summary.pdf>

Vaccine Fact Summary

1. In 2011, the U.S. Supreme Court affirmed that vaccines are “unavoidably unsafe.” *Bruesewitz v. Wyeth LLC*, 131 S. Ct. 1068, 179 L.Ed.2d 1 (2011).¹
2. National Vaccine Injury Compensation Program (NVICP) vaccine injury and death payouts²:
 - a. Total to date (1989-2015): \$ 3.1 Billion
 - b. Average annual payout 2005-2009: \$ 75,630,051 per year
 - c. Average annual payout 2010-2014: \$221,822,386 per year
 - d. Cases pending: 1,943
3. There is vast underreporting of vaccine adverse events. FDA: As few as 1% of serious adverse reactions are reported.³ CDC: Only about 10% are reported.⁴ Congress: Has heard testimony that medical students are told not to report suspected adverse events,⁵ yet, federal law requires doctors to do so.⁶ National Vaccine Information Center (NVIC) survey: 1 out of 40 doctor's offices (2.5%) in New York report a death or injury following vaccination.⁷ Association of American Physicians and Surgeons (AAPS): Only 10% of serious vaccine adverse events are reported.⁸
4. The Federal Court of Claims lists about 140 attorneys that accept vaccine injury and death cases.⁹ This number has been steadily increasing in recent years.
5. The National Childhood Vaccine Injury Act of 1986 (NCVIA) shields vaccine manufacturers from liability for the death and disability caused by their vaccines. There is no financial incentive for manufacturers to produce safer vaccines.¹⁰
6. 90-95% of 1900's infectious disease decline preceded the vaccines.¹¹ Vaccines did not cause infectious disease deaths to decline. Therefore, absence of vaccination will not bring back infectious disease rates of pre-vaccine days.
7. According to the CDC:
 - a. Vaccines are 85 – 95% effective (5 - 15% of children do not develop immunity from their vaccines), and most outbreaks start in vaccinated children.¹²
 - b. The median vaccine exemption rate in the U.S. is 1.8%.¹³ There are more than 5+ times more non-immune *vaccinated* children than exempt children.
 - c. Exempt children can get natural immunity, without even developing symptoms.¹⁴ You can't tell a child's immune status based on their immunization status.
8. The American Medical Association Code of Medical Ethics recommends “medical, religious, or philosophic” exemptions to immunizations for medical doctors.¹⁵
9. The pharmaceutical industry is the biggest defrauder of the federal government under the False Claims Act.¹⁶ In the last 5 years, \$19.2 billion were returned from attempts to defraud federal health programs, more than double that of the previous 5 years (as of February 2014).¹⁷
10. In 8 years (2004-2012), there were twenty pharmaceutical company settlements in the \$345 million to \$3 billion range.¹⁸ Criminal fines in the \$100's of millions are common, and have been as high as \$1 billion (Pfizer 2009, GlaxoSmithKline 2012). This is routine business practice.
11. Merck, manufacturer of the mumps vaccine, is going to trial in two separate lawsuits for allegedly falsifying the efficacy rate of its mumps vaccine. One suit was filed by former employee-whistleblowers, the other by pharmaceutical competitors.¹⁹

Conclusions:

1. Childhood infectious diseases have extremely low mortality rates in developed nations. Vaccines kill and permanently disable far more children than the diseases, and the mortality decline from the diseases preceded the introduction of vaccines.

2. There is insufficient data available to determine whether or not vaccines provide a net benefit, and no way to determine the risk of vaccine injury or death for any given child or adult.
3. Individual freedom of choice provides a necessary “check and balance” to the pharmaceutical industry’s overreaching, no-liability, marketing influence over vaccine policy and law.
4. Young adults are not required to risk their lives with mandatory military service, but newborn infants are required to risk their lives with a Hep B vaccine, for a disease they are not at risk of acquiring or spreading unless the mother is a carrier. This is unconscionable!
5. Parents for their children, and adults for themselves, must be allowed to make vaccine decisions, in consultation with the healthcare professional of their choice. No one should ever be required, absolutely, to take a product from an industry that routinely engages in large-scale criminal behavior.

¹ *Bruesewitz v. Wyeth LLC*, <http://www.supremecourt.gov/opinions/10pdf/09-152.pdf>

² NVICP Statistics Report, February 2015, <http://www.hrsa.gov/vaccinecompensation/statisticsreport.pdf>

³ Less than 1%, according to Barbara Fisher, citing former FDA Commissioner David Kessler, 1993, JAMA, Statement of the National Vaccine Information Center (NVIC), Hearing of the House Subcommittee on Criminal Justice, Drug Policy and Human Resources, “Compensating Vaccine Injuries: Are Reforms Needed?” September 28, 1999.

⁴ American Association of Physicians and Surgeons, Fact Sheet on Mandatory Vaccines at <http://www.aapsonline.org/>.

⁵ Jane Orient, M.D., Director of the American Association of Physicians and Surgeons, “Mandating Vaccines: Government Practicing Medicine Without a License?” 1999.

⁶ 42 U.S.C. § 300aa-25.

⁷ National Vaccine Information Center (NVIC), 512 Maple Ave. W. #206, Vienna, VA 22180, 703-938-0342; “Investigative Report on the Vaccine Adverse Event Reporting System.”

⁸ Statement of the AAPS to the Subcommittee on Criminal Justice, Drug Policy and Human Resources of the Committee on Government Reform U.S. House of Representatives, Re: Hepatitis B Vaccine, Jane Orient, MD, June 14, 1999, <http://www.aapsonline.org/testimony/hepbcom.htm>

⁹ <http://www.uscfc.uscourts.gov/sites/default/files/20141208%20Vaccine%20Attorneys.pdf>

¹⁰ See the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. § 300aa-1 *et seq.*, and *Bruesewitz v. Wyeth, LLC*, *supra*.

¹¹ See, e.g., graphs here: <http://www.theoneclickgroup.co.uk/documents/vaccines/Immunization%20Graphs%20PPT%20-%20RO%202009.pdf>, <https://childhealthsafety.wordpress.com/graphs/>

¹² Centers for Disease Control and Prevention, Vaccines and Immunizations, Misconception #2. The majority of people who get disease have been vaccinated. The original link, <http://www.cdc.gov/vaccines/vac-gen/6mishome.htm>, is now directed to a new CDC page that does not state these facts (but does not state contrary facts). The original CDC page can be viewed here: <http://web.archive.org/web/20150120055820/http://www.cdc.gov/vaccines/vac-gen/6mishome.htm>

¹³ Vaccination Coverage Among Children in Kindergarten – United States 2012-2013 School Year, Morbidity and Mortality Weekly Report (MMWR), CDC, http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6230a3.htm?s_cid=mm6230a3_eThe

¹⁴ Centers for Disease Control and Prevention, Vaccines and Immunizations, Glossary, “Asymptomatic infection: The presence of an infection without symptoms. Also known as inapparent or subclinical infection.” <http://www.cdc.gov/vaccines/about/terms/glossary.htm>

¹⁵ American Medical Association, Opinion 9.133 Routine Universal Immunization of Physicians, <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion9133.page>

¹⁶ “Public Citizen Study: Pharmaceutical Industry Is Biggest Defrauder of the Federal Government Under the False Claims Act,” Dec. 20, 2010, <http://www.pharmpro.com/news/2010/12/public-citizen-study-pharmaceutical-industry-biggest-defrauder-federal-government-under-false-claims-act>

¹⁷ False Claims Act Whistleblowing Blog, February 2014 archive, <http://www.fraudwhistleblowersblog.com/2014/02/>

¹⁸ List of largest pharmaceutical settlements (2004 – 2012), Wikipedia, http://en.wikipedia.org/wiki/List_of_largest_pharmaceutical_settlements

¹⁹ Lawsuits claiming Merck lied about mumps vaccine efficacy headed to trial, Fierce Vaccines, September 9, 2014, <http://www.fiercevaccines.com/story/lawsuits-claiming-merck-lied-about-mumps-vaccine-efficacy-headed-trial/2014-09-09>