

March 10, 2015

TO: The Illinois Legislature

Re: S.B. 1410 relating to health examinations and vaccine exemptions.

With respect to the wording of the following section of S.B. 1410:<sup>1</sup>

26 (8) Parents or legal guardians who object to health,  
1 dental, or eye examinations or any part thereof, or to  
2 immunizations, **on religious grounds** shall not be required to  
3 submit their children or wards to the examinations or  
4 immunizations to which they so object if such parents or legal  
5 guardians present to the appropriate local school authority a  
6 Department of Public Health signed statement of objection form,  
7 detailing the grounds for the objection **and signed** by the  
8 parent or legal guardian, **as well as a religious official**  
9 **attesting to a bona fide religious objection** whose signature . . .

The wording in this section violates the U.S. Constitution. This bill should be withdraw or the bill revised to bring its language within proper Constitutional boundaries.

Federal courts have consistently held that a requirement of membership in an organized religion for a vaccine religious exemption violates the First Amendment of the U.S. Constitution. For example:

- 1987: 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.” Sherr and Levy vs. Northport East-Northport Union Free School District, 672 F. Supp. 81, 99 (E.D.N.Y., 1987)
- 1988: “[I]t is sufficient if the belief ‘occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God.’” 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).
- 1989: A federal court upheld a religious exemption for a child whose parents’ personal religious beliefs sprung from their past membership in a community of people from the Chumash, Navaho and Hopi tribes. In Lewis v. Sobel, 710 F. Supp. 506, 508 (S.D.N.Y. 1989), The court in Lewis “awarded damages . . . [for the] violation of [the parents’] First Amendment right to free exercise of their religion,” and underscored the fact that the plaintiffs’ lack of membership in “an organized religion does not preclude them from protection under the Free

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<sup>1</sup> S.B. 1410,

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Exercise clause if their beliefs are in fact religious.” The *Lewis* court stated that the plaintiff’s beliefs, “upon which their opposition to immunization is based, stem from ‘ultimate concerns’ that are clearly more than intellectual in nature.”

- 1994: A federal court upheld a vaccine religious exemption for Jewish parents, despite the testimony of a Rabbi that “there is nothing in the teaching of the Jewish religion that would proscribe immunization for children.” Berg v. Glen Cove City School Dist., 853 F. Supp. 651, 654 (E.D.N.Y. 1994)
- 2000: “The beliefs need not be consistent with the dogma of any organized religion, whether or not the plaintiffs belong to any recognized religious organization.” Farina v. The Board of Education, 116 F. Supp.2d 503, 507 (S.D.N.Y. 2000) held: (citing Sherr, 672 F. Supp. at 91).

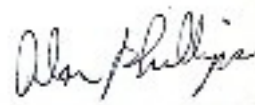
State and federal courts have been consistently held that vaccine religious exemption statutes requiring church membership are unconstitutional.

- 1987: A New York federal court ordered the state to revise its statute requiring church membership to meet Constitutional boundaries. Sherr and Levy vs. Northport East-Northport Union Free School District, 672 F. Supp. 81, 99 (E.D.N.Y., 1987)
- 2002: An Arkansas federal court held that the statute requiring church membership violated both the First and Fourteenth Amendments. McCarthy v. Boozman, 212 F.Supp.2d 945 (W.D.Ark. 2002).
- State courts in Massachusetts in 1971 and Maryland in 1982 held that similar statutes in those states were unconstitutional. <sup>1</sup> Dalli v. Board of Education, 358 Mass. 753, 267 N.E.2d 219 (1971), and Davis v. State, 294 Md. 370, 451 A.2d 107 (1982).

There are two anomalous rulings: 1) The Mississippi State Supreme Court ruled in 1979 that vaccine religious exemptions violate the U.S. Constitution (the only state to ever do so), Brown v. Stone, 378 So.2d 219 (Miss. 1979); and 2) Kentucky’s exemption requirement that applicants be members of a “nationally recognized and established church or religious denomination” was held not to violate the First Amendment’s Establishment Clause in Kleid v. Board of Educ., 406 F.Supp. 902 (W.D. Ky. 1976). However, the Kentucky exemption has since been changed to remove the organized religion requirement.

Given the above, S.B. 1410 should be withdrawn or revised to bring its language within proper Constitutional boundaries.

Respectfully Submitted at the  
Request of Illinois Residents,



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