

March 10, 2015

TO: The Texas Legislature

Re: H.B. No. 2006, relating to exemptions from immunizations requirements for public school students and students at public institutions of higher education.

With respect to the wording of H.B. No. 2006, section (1)(B):¹

(B) an affidavit signed by the applicant or, if a minor, by the applicant's parent or guardian stating that the applicant declines immunization for a specified and verifiable religious-based reason and that the immunization conflicts with the tenets and practices of a recognized church or religious denomination of which the applicant is an adherent or member;

This section violates the Constitutional.

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 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.”

¹ <http://www.capitol.state.tx.us/tlodocs/84R/billtext/html/HB02006I.htm>

- 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).

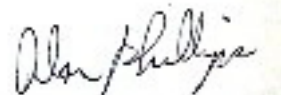
State and federal courts have been largely consistent in holding that vaccine religious exemption statutes requiring church membership are unconstitutional.

- 1987: A New York federal court ordered the state to revise its statute to make it Constitutional. 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 such a statute 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. ¹ 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: 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). 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, H.B. 2006 (1)(B) should be withdrawn, or its language revised to bring it within proper Constitutional boundaries.

Respectfully Submitted at the
Request of Texas Residents,



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