

The Constitutionality of Compulsory Vaccinations: Governmental Power versus Individual Liberty
MJC Talk Outline by Dr. Stephen Routh, CSUS



I. A Federalist System of Governance

II. The Historical Contentiousness of Mandate Vaccinations in the US

III. Anti-vaccinationism: anti-vaxxers, vaccine safety advocates, vaccine skeptics/hesitant/resistant; distrust of gov't & elites, \$ scam, risk psychology, inconvenience, fear of needles, cultural & political identity, disinformation

IV. State and Local Authority over Vaccinations

A. **States:** police power/reserved powers from the 10th Amendment = public health, safety, welfare, and morals... the vast majority of vaccine mandates are done at state level

B. **Federal Government:** enumerated powers in Article I

C. ***Jacobson v. Massachusetts (1905)*** = the U.S. Constitution does not prevent states from requiring adult vaccines:

- (1) Due Process Clause in 14th Amendment
- (2) “real and substantial relation to the protection of the public health and safety”
- (3) the reasonability standard set forth in *Jacobson* = judicial deference to legislative branch and executive branch judgments/decision in this type of matter

D. ***Zucht v. King (1922)*** = the U.S. Constitution does not prevent states from requiring vaccines for school children

E. ***Prince v. Massachusetts (1944)*** = doctrine of “*parens patriae*” and the limits of religious exercise rights

F. **State litigations from late 1800s onward** = courts mostly ruled in favor of state mandates, except for judges imposing limitations on executive officials ordering a mandate, **preferring legislatures** to do the mandating (the delegation doctrine)

G. **Charles Tiedeman’s 1886 treatise on police power in the U.S.** = “*salus populi suprema lex esto*”

H. The **critique of *Jacobson***, and that line of thought; the Supreme Court’s **20th century jurisprudence** on protecting individuals’ fundamental rights; and the role of **elite knowledge/scientific expertise** in a democracy.

V. Federal Authority over Vaccinations

A. **Article I, Section 8** = regulation of interstate commerce clause, spending clause, necessary and proper clause

B. **10th Amendment Limitation** on the Federal Gov’t Commandeering State Officials to Carry Out Federal Directives = ***Printz v. US (1997)***

C. **Immigration, the Military, and Federal Workers**

D. **COVID Pandemic and Potential Federal Vaccination Mandates** = **Section 361** of the Public Health Service Act (**PHSA**) and the Occupational Safety and Health Act (**OSHA**) of **1970**

- (1) narrow and broad interpretations of what 361 of PHSA would allow (as seen in the eviction moratorium decision by the Supreme Court); the CDC is able to: “prevent transmission.”

- (2) The delegation doctrine
- (3) Narrow and broad interpretations of what the OSHA statute would allow the Department of Labor to be able to do: “grave danger”
- (4) The current Roberts Court with its 6-3 conservative majority and its potential directions

VI. Exemptions from Compulsory Vaccinations

A. **Medical Exemptions:** immune-compromised and prior allergic reactions to vaccines

B. **Religious Exemptions:** heightened scrutiny versus rational basis

(1) *Sherbert v. Verner* (1963) = Substantial Burden/Compelling Interest standard, requires exemptions where a law is a substantial religious burden with no compelling gov’t interest—federal laws

(2) *Employment Division of OR v. Smith* (1990) = does not require religious-based exemptions from laws that are neutral towards religion and are of general applicability—state laws

C. **Philosophical Exemptions**

D. **Exemptions from Private Employers Requiring Vaccinations** = Civil Rights Act and Americans with Disabilities Act; reasonable accommodations needed except when they pose an undue hardship/burden on employer



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MJC Civic Engagement Project (readings and MJC Vaccine Science talks here - <https://www.mjc.edu/president/cep/>)

MJC CEP Youtube Channel (for the recording of this talk): <https://www.youtube.com/channel/UCZxiqzEUeUgbYpkaz7co4iQ> or <https://tinyurl.com/ywz6mdj4>