



# CENTER for PERSONAL RIGHTS

February 29, 2012

Dear Vermont Legislators:

Re: S. 199, Repeal of the Philosophical Exemption to Vaccination

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I am a board member of the Center for Personal Rights and am writing to oppose Vermont's proposed legislation to repeal its philosophical exemption to vaccination. The Center for Personal Rights supports vaccination choice as a human right. In 2011, the Center for Personal Rights produced a book entitled *Vaccine Epidemic*, which makes the case for vaccination as a human right. It explores critical questions of "the greater good," ethics, science, the media, the vaccine business model, and presents compelling narratives of families who have suffered vaccine injury. I would be pleased to send copies; you can learn more about the book at [www.vaccineepidemic.com](http://www.vaccineepidemic.com). In addition to serving on the Center's board, I am a Research Scholar at [the NYU School of Law](http://www.nyu.edu) and have written several scholarly articles about vaccination law and policy.

As you may be aware, many countries uphold vaccination choice as an explicit constitutional or legal right. Canada, your neighbor to the north, provides a constitutional right to vaccination choice. The United Kingdom, the country to which the U.S. largely owes its legal heritage, has had a statutory right to conscientious objection to vaccination since 1898. Many other developed countries with better overall health outcomes than the United States, including Japan and Australia, do not compel vaccination. The global community of 193 nations, including the United States, has articulated the principle in the 2005 *Universal Declaration on Bioethics and Human Rights* that "prior, free and informed consent" must be given to "any preventive, diagnostic, and therapeutic medical intervention."<sup>1</sup> There is no carve-out for vaccination. One must question the logic of compulsion in the face of failure through persuasion. Coercion frequently engenders a backlash of resentment, not cooperation.

The U.S. does not now recognize a constitutional right to philosophical exemption from vaccination, but that is not to say that all vaccination mandates are valid exercises of the state police power. *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), which established that states may impose vaccination mandates, articulated essential requirements: necessity; proportionality; harm avoidance; and non-discrimination. Does Vermont's requirement that preschoolers be vaccinated with the

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<sup>1</sup>*Universal Declaration on Bioethics and Human Rights*, Oct. 19, 2005, <http://www.unesco.org/new/en/social-and-human-sciences/themes/bioethics/bioethics-and-human-rights>, article 6 on consent.

hepatitis B vaccine, a sexually transmitted disease, really comport with these requirements? I have argued that such a mandate does not.<sup>2</sup>

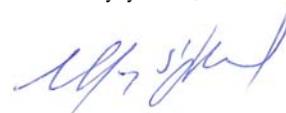
The hallmark of all ethical medicine is informed consent, as the Universal Declaration noted above acknowledges. Vaccination mandates make true consent a fiction; there is no consent to coercion. Furthermore, vaccination mandates violate many of the principles that more recent Supreme Court cases have established in the areas of personal autonomy and bodily integrity. States may no longer impose forced sterilization; bar contraception and abortion services; impose criminal sanctions for individuals' private, consensual, sexual conduct; and impose unwanted medical treatments on citizens without substantial due process hearings. There are real questions about whether many state mandates for non-contagious (tetanus), mild (varicella) and sexually-transmitted (hepatitis B) diseases comport with constitutional standards. If Vermont repeals the philosophical exemption, individuals who might otherwise have exercised their philosophical rights may elect to challenge state vaccination mandates, with perhaps unanticipated and far-reaching consequences.

One of the peculiarities of this battle in Vermont, which follows a similar one in Washington State, is that it will change little in practice. Those who do not elect to challenge the repeal will likely be able to lawfully express their deeply held objections to vaccination in religious and ethical terms; religious exemption will continue to be firmly grounded in the First Amendment's free exercise of religion clause. To attack the philosophical exemption while leaving in place the religious exemption smacks of symbolism, not substance.

Infectious diseases are deadly serious, and in the event of an infectious disease outbreak, children who are unvaccinated must remain at home. This has long been a successful strategy for accommodating those who have strong philosophical beliefs against vaccination.

I urge you to retain the philosophical exemption in Vermont law and respect the human rights of your citizens. Please feel free to contact me if you would like to discuss this further at (212) 486-6270.

Sincerely yours,



Mary S. Holland

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<sup>2</sup> Mary Holland, *Compulsory Vaccination, the Constitution, and the Hepatitis B Mandate for Infants and Young Children*, XII:1 YALE J. HEALTH POL'Y L. & ETHICS, 39 (2012).