



Ohio Advocates for Medical Freedom, Inc.

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May 19, 2017

The Honorable Bob D. Hackett, Chair
Finance - Health and Medicaid Subcommittee
Senate Building
1 Capitol Square, Ground Floor
Columbus, OH 43215

Subject: House Bill 49 – State Operating Budget (public testimony)

Dear Chair Hackett and Subcommittee Members:

Regarding testimony on HB49, Ohio Advocates for Medical Freedom is opposed to any amendment or legislative language that attempts to insert another person, including a physician, in the decision-making process of a parent or guardian regarding immunization of their child, whereby the parent or guardian is protected by the U.S. Constitution as stated below:

- A. 14th Amendment due process violation. Parents have a 14th Amendment due process right to parent their children that includes the right to make medical decisions. In *Troxel v. Granville*, 530 U.S. 57 (2000), the U.S. Supreme Court stated:

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" (providing of evidence) that a parent is unfit, but such a showing requires a case-by-case analysis for each parent suspected of being unfit. By requiring parents to first be counseled about vaccines as a condition of exercising the exemption, the State unlawfully presumes that all parents wishing to exercise the exemption are unfit with respect

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to the exemption decision, without first providing the legally required case-by-case showing or evidence that each parent is unfit to make the decision.

- B. Amendments or Legislative language that violates parents' First Amendment free exercise of religion. The First Amendment has only two requirements for a vaccine religious exemption. Beliefs opposed to vaccines that are "religious in nature" and "sincerely held" are protected religious beliefs. *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) (which cases cite *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 First Amendment requirements, States may not be more restrictive than the First Amendment by adding any additional requirements, because the U.S. Constitution is the higher legal authority. U.S. CONST. art. VI, 2, cl. 21. The State requiring parents to get a vaccine education amounts to the State amending the U.S. Constitution, which of course state legislatures cannot lawfully do.
- C. Amendments or Legislative language that may violate parents' First Amendment free speech rights. By requiring parents to be educated by medical doctors about the alleged benefits of vaccines, the state is imposing upon parents its view of the facts concerning vaccines and infectious disease. Regardless of the ultimate veracity of the State's (via doctor's) beliefs, this imposition would violate parents' First Amendment "free speech" rights. The U.S. Supreme Court has held the right to free speech to include the right to be free from being compelled to speak. Requiring exemption applicants to agree with the State's views on vaccine risks and benefits would constitute compelling exemption applicants to speak. *See, e.g., Wooley v. Maynard*, 430 U.S. 705 (1977).
- D. The sniff test. The "vaccine education" as a condition to obtaining a religious exemption doesn't pass the sniff test. It is offensive to parents, and to one of this nation's founding principles, the free exercise of religion. The State's and medical doctors' opinions about the science is irrelevant with respect to religious objections; requiring parents to be exposed to that to be able to exercise a religious exemption amounts to the State putting itself between parents and their God. It amounts to attempting to persuade parents to disobey God, and to punish them with guilt or fear when they hold firm to their faith in God despite pressure to disobey God.

Inserted Language That Ignores the Ethical and Moral Imperative for Philosophical Exemptions.

Insofar as any legislative language that would insert another individual in the process for parents' right to refuse vaccines on philosophical grounds, it fails to recognize the moral and ethical imperative for vaccine philosophical (reasons of conscience) exemptions. For example:

- A. The CDC claims vaccines are "safe and effective." Yet in 2011, the U.S. Supreme Court said that vaccines are "unavoidably unsafe."

- B. Federal government payouts for vaccine injury and death:
 - 1. Total to date (1989 - February 2016): \$ 3.4 Billion
 - 2. Average annual payout FY 1989-2015: \$120 Million per year
 - 3. Average annual payout FY 2011-2015: \$227 Million per year
 - 4. Cases pending (Aug 1, 2016): 2,465

Based on the above precedents and points, as well as the very gravity of the issue of mandated immunization and related exemptions, OAMF asks that the subcommittee not consider or propose any amendments to the state budget that would circumvent the full legislative process to amend Ohio Revised Code.

Sincerely,



Heather J. Coy, Esq.