Navigating the Legal Landscape on Vaccine Laws

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Conflict of Interest Statement:

- The family owns stock (regular) in GSK.
Plan:

• The Federal Framework
• A Right to Education?
• Religious Freedom:
  – Federal
  – State:
    • Constitutional RFR provision
    • RFRA
• Parental Rights
Basic Framework:

- Jacobson v. Massachusetts, 1905.
- Zucht v. King, 1922.
Basic Framework:

- Prince v. Massachusetts, 1944: Can’t expose community or child to disease, child to ill health or death by refusing forced vaccination.

Right to education?

Children deserve a good education and good health. Immunization requirements help protect both.
Art 9. s. 1. A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement.

SEC. 5. The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.
Okla. Const. art. I, § 5 “[p]rovisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all children of the state....”

Okla. Const. art. XIII, § 1 states that "[t]he Legislature shall establish and maintain a system of free public schools wherein all the children of the State may be educated."
What to Consider?

• Does my constitution address education?
  – What does it say?

• Did the Supreme Court Address it?
  – In what context?
  – What did it say?

• Examine:
  – Application to health/safety issues.
  – Protected Classes.
Hope Delozier died from an ear infection after her anti-vaccine parents used homeopathic and herbal therapies.

Ezekiel Stephan died from meningitis after his anti-vaccine parents used naturopathic and herbal therapies.

Children are not property.
Parents don’t have the right to sacrifice their kids on the altar of their beliefs.
Religious Freedom, federal:


- Prince v. Massachusetts: Especially here.
Limits on Religious Exemptions:

- Cannot be limited to organized religions:

- Your religion does not have to oppose vaccines.

- Unless legislature required it, cannot evaluate sincerity.
Religious Exemptions, State:

- Does my state have a Religious Freedom Restoration Act (RFRA)?
- If yes:
  - Is it a statute, or in the constitution?
  - What does it apply to?
  - Least Restrictive Means?
Children are not property.
Parents do not have a right to sacrifice their children on the altar of their beliefs.
Parental Rights:

• Federally: Matter, but not absolute.

• State: What to Consider:
  – What does Constitution say?
    • How did Supreme Court interpret it?
  – Was a parental rights bill passed?
    • If yes: content?
    • Jurisprudence on that and child’s welfare?
    • Application to school immunization requirements which affect other children?
"My child, my choice..."...to risk giving her classmates measles?

Responding to Parental Rights Argument.
Thank you!

Questions? Comments?

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