


**In the
Supreme Court of the United States**



WE THE PATRIOTS USA, INC.; CT FREEDOM
ALLIANCE, LLC; CONSTANTINA LORA;
MIRIAM HIDALGO AND ASMA ELIDRISSI,
Petitioners,

v.

CONNECTICUT OFFICE OF EARLY CHILDHOOD
DEVELOPMENT; CONNECTICUT DEPARTMENT OF PUBLIC
HEALTH; BETHEL BOARD OF EDUCATION;
GLASTONBURY BOARD OF EDUCATION AND
STAMFORD BOARD OF EDUCATION,
Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Second Circuit**

**BRIEF OF AMICUS CURIAE
PHYSICIANS FOR INFORMED CONSENT
IN SUPPORT OF PETITIONERS**

Gregory J. Glaser
Counsel of Record
4399 Buckboard Drive #423
Copperopolis, CA 95228
(925) 642-6651
greg@picphysicians.org

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IDENTITY AND INTEREST OF THE AMICUS CURIAE¹

PHYSICIANS FOR INFORMED CONSENT (“PIC”), a 501(c)(3) nonprofit educational organization focused on science and statistics. PIC delivers data on infectious diseases and vaccines, and unites doctors, scientists, healthcare professionals, attorneys, and families who support voluntary vaccination. In addition, its Coalition for Informed Consent consists of over 300 U.S. and international organizations.

PIC was founded in California in 2015, by doctors, scientists, and attorneys, after SB277 was signed into law and their parental rights to personal belief and religious exemptions from childhood vaccination for both private and public school were usurped—even though both of these rights had been protected since 1911.²

¹ No counsel for a party authored this amicus brief in whole or in part, and no person other than amicus, its members, or its counsel made a monetary contribution to fund the production of the brief. Both parties received timely notice of this filing.

² Conis, E., *The History of the Personal Belief Exemption*, PEDIATRICS (2020) Apr;145(4): e20192551. <https://pubmed.ncbi.nlm.nih.gov/32184337/>



SUMMARY OF ARGUMENT

The lower court rulings should have applied strict scrutiny because Respondents favored secular exemptions while concurrently prohibiting religious exemptions to vaccination. Courts are split on this recurring legal issue. Ethical and scientific reasons support Petitioners under the Equal Protection Clause.



ARGUMENT

A. Unequal Treatment of Religious and Secular Vaccine Exemptions Is a Recurring Legal Issue Splitting Decisions in Lower Courts, and Causing Legislative Confusion, for Decades.

Last month yet another complaint was filed in California challenging the State's unequal treatment of religious and secular exemptions to vaccination. *Doescher v. Aragon*, No. 2:23-at-01313 (E.D. Cal. Dec. 22, 2023). The *Doescher* complaint presents the same essential fact pattern as the instant case,³ and a useful

³ Just as the American people remember the restaurant requirements that Covid-19 masks must be worn while standing but not sitting, likewise the *Doescher* plaintiffs are Christians forced by California law into situations disrespecting their religious beliefs with no scientific precedent. *See e.g.*, Complaint at paragraphs 76-77 ("Further, A.D., and other independent study students exempt from SB277, can attend charter schools in person two days a week unvaccinated, yet are not permitted to attend school outside of the independent study framework in person more than

history of the judicial precedents respecting the Equal Protection Clause in vaccine exemptions:

A recent decision by a United States District Court found that Mississippi's compulsory-vaccination law (a law similar to California's) violated the Free Exercise Clause by excluding religious exemptions. *Bosarge et al. v. Edney et al.*, United States District Court for the Southern District of Mississippi, Case No. 1:22-cv-00233-HSO-BWR.

...

California also allows several categories of children to attend public and private schools without proof of immunity: a. Foster Care Children . . . b. Homeless Children . . . c. Military Families.

...

California is one of only five states that does not offer a religious exemption from compulsory school-vaccination laws. See National Conference of State Legislatures, *States With Religious and Philosophical Exemptions From School Immunization Requirements*, last updated August 3, 2023, available at: <https://www.ncsl.org/health/states-with-religious-and-philosophical-exemptions-from-school-immunization-requirements>

In 2001, in the matter *In re LePage*, 18 P.3d 1177 (Wyo. 2001), the Supreme Court of

two days a week because of not being fully vaccinated. Diseases do not know what day of the week it is." [emphasis added])

Wyoming held that the state Department of Health was not authorized to inquire about the sincerity of a mother's religious beliefs when determining whether her daughter was exempt from a public school immunization requirement. The Supreme Court of Wyoming held that the Department of Health is required to grant an exemption upon the submission of a written objection and does not allow the Department of Health to make an inquiry into the sincerity of the requestor's religious beliefs. In reversing the lower court, the court balanced a valid state interest in protecting schoolchildren from disease with the relatively low number of requests for exemption and its confidence in parents to make decisions in the best interest of their children's physical and spiritual health.

Arkansas previously had a limited religious exemption to school-required vaccinations similar to that allowed in California in 1960. In *Boone v. Boozman*, 217 F. Supp. 2d 938 (E.D. Ark. 2002), a mother who possessed religious objections unrecognized by the Arkansas statute challenged the limited religious exemption on First Amendment grounds. *Boone, supra*, 217 F. Supp. 2d at 951. The court held that the limitation of the statutory exemption to a "recognized church or religious denomination" violated the Free Exercise Clause. *Id.* Arkansas soon thereafter enacted a comprehensive religious exemption for school-required vaccinations, which remains the law today.

This split in the lower courts was most prominently renewed in 2023 based on *Bosarge v. Edney*, Civil Action No. 1:22-cv-00233-HSO-BWR, 2023 U.S. Dist. LEXIS 152814, at *2 (S.D. Miss. Aug. 29, 2023)

Because Mississippi affords a discretionary medical exemption process by statute, it must similarly afford a religious accommodation process. *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876, 210 L. Ed. 2d 137 (2021). For these reasons, and those set forth in the Court's preliminary injunction order (Dkt. 77), Miss. Code § 41-23-37 ("Compulsory Vaccination Law") is DECLARED unconstitutional as applied to Plaintiffs, who have sincerely held religious beliefs about vaccination.

The split is clear and explicit, as we see for example in *W. Va. Parents for Religious Freedom v. Christiansen*, No. 5:23-CV-158, 2023 U.S. Dist. LEXIS 151429, at *15 n.7 (N.D.W. Va. Aug. 2, 2023) ("This Court declines to follow the rationale applied in *Bosarge v. Edney*, 2023 U.S. Dist. LEXIS 67439 (S.D. Miss. Apr. 18, 2023) (granting preliminary injunction relating to state's vaccination scheme) as cited in plaintiff's briefing.")

Future court decisions are likely to continue splitting over the Equal Protection Clause until SCOTUS provides the needed clarity.

1. Ethical Reasons Support Petitioners.

Universally recognized by physicians, informed consent/refusal in vaccination is ethically the standard of care.

“Informed consent to medical treatment is fundamental in both ethics and law. Patients have the right to receive information and ask questions about recommended treatments so that they can make well-considered decisions about care. Successful communication in the patient-physician relationship fosters trust and supports shared decision making.” Citation: American Medical Association (2022). *AMA Principles of Medical Ethics: I, II, V, VIII, Informed Consent*. <https://www.ama-assn.org/delivering-care/ethics/informed-consent>.

“Informed consent is a core component of the ethical clinical relationship. As with all forms of medical therapy, informed consent should precede vaccination administration. . . . If the patient declines, this informed refusal of recommended vaccination should be respected Patients who decline vaccination should continue to be supported with appropriate care options that honor their autonomous choices.”

Ethical Issues with Vaccination in Obstetrics and Gynecology. (2021) Committee Opinion No. 829. American College of Obstetricians and Gynecologists. *Obstet Gynecol* 2021;138:e16–23. <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2021/07/ethical-issues-with-vaccination-in-obstetrics-and-gynecology>.

Safeguarding informed consent/refusal is quite essential to a successful doctor-patient relationship. Vaccination carries risk of harm and is an invasive medical procedure that punctures the skin for direct

access to the patient's tissue and bloodstream. For a state or federally-funded institution to engage in coercing this medical procedure upon patients (by threatening to strip their education) is unethical and has been illegal for much of U.S. history unless exemptions were allowed. *See* footnote 2.

2. Scientific Reasons Support Petitioners.

Petitioners are guided by their religious beliefs. And the greater context is Americans are constantly in different stages of learning about the benefits and risks of vaccination.

The Equal Protection Clause provides a vital safeguard for these interests. The scientific authorities presented in the remainder of this amicus brief emphasize that each childhood vaccine has not been proven safer than the disease in normal-risk children who are healthy enough to attend school.

a. What Do Parents and Guardians Need to Know Regarding the Risk of Polio Versus the Risk of the Polio Vaccine?

The following are highlights of essential facts from PIC's educational document on polio, called a Disease Information Statement (DIS):⁴

- Before the introduction of the polio vaccine in 1955, paralytic poliomyelitis was a disease of low incidence, occurring in about 1 in 22,000 or 0.005% in the U.S. population.
- Before the polio vaccine was introduced, about 0.0005% (1 in 190,000) of children at

⁴ <https://physiciansforinformedconsent.org/polio-dis/>

normal risk contracted polio that was fatal or led to permanent paralysis.

- About 95% of people who contract polio have no symptoms (asymptomatic).
- The great majority of polio infections that are fatal or result in permanent paralysis occur in people who have had their tonsils surgically removed (tonsillectomy) or do not rest after feeling sick.

As a necessary comparison, highlights from PIC's Vaccine Risk Statement (VRS) on the polio vaccine are here:⁵

- The polio vaccine does not prevent asymptomatic infection or transmission.
- The Institute of Medicine has not ruled out the possibility that IPV vaccination can lead to Guillain-Barré syndrome or sudden infant death syndrome (SIDS).
- Seizures may occur in about 1 in 829 children vaccinated with IPV vaccine.
- A study published in the Journal of the American Medical Association (JAMA) shows an IPV-containing vaccine may cause permanently injury 38 times more often than permanent injury from polio infection.
- The polio vaccine has not been proven safer than polio infection for normal-risk children.

⁵ <https://physiciansforinformedconsent.org/polio-vrs/>

b. What Do Parents and Guardians Need to Know Regarding the Risks of Diphtheria, Tetanus, and Pertussis Versus the Risks of the DTaP Vaccines?

The following are highlights of PIC's Disease Information Statements on diphtheria, tetanus, and pertussis:

- In the modern era, it is rare to contract a fatal case of diphtheria,⁶ tetanus⁷ or pertussis⁸ in the United States.
- Between 1900 and 1945, before widespread use of the DTP vaccine, the mortality rate of diphtheria, tetanus, and pertussis dropped significantly (by 97%, 79% and 92% respectively) due to advancements in living conditions, sanitation, nutrition, and health care.
- In the absence of mass vaccination, for children under age 10, the annual risk⁹ of fatal diphtheria, tetanus, and pertussis respectively is 1 in 1.7 million (or 0.00006%), 1 in 784,000 (or 0.0001%), and 1 in 323,000 (or 0.0003%) — and the cumulative annual risk of a fatal case of any of those diseases is about 1 in 200,000 (or 0.0005%).

⁶ <https://physiciansforinformedconsent.org/diphtheria-dis/>

⁷ <https://physiciansforinformedconsent.org/tetanus-dis/>

⁸ <https://physiciansforinformedconsent.org/pertussis-dis/>

⁹ <https://physiciansforinformedconsent.org/dtap-vaccine-risk-statement/>

As necessary comparisons, highlights from PIC's Vaccine Risks Statements on the DTaP vaccine are here:

- DTaP is a descendant of the DTP vaccine, which was introduced in 1948; it contains aluminum, a neurotoxin.
- The DTaP vaccine does not prevent asymptomatic infection or the spread of diphtheria or pertussis, and it has no effect on the transmission of tetanus because tetanus is not contagious. The Institute of Medicine has not ruled out the possibility that DTaP vaccination can lead to neurological disorders (e.g., encephalitis, infantile spasms, ataxia, autism, transverse myelitis, optic neuritis, multiple sclerosis, Guillain-Barré syndrome, and Bell's palsy), autoimmune diseases (e.g., chronic urticaria, serum sickness, and arthropathy), myocarditis, and sudden infant death syndrome.
- The manufacturer's package insert states that the DTaP vaccine has "not been evaluated for carcinogenic or mutagenic potential or impairment of fertility."¹⁰
- The DTaP vaccine has not been proven safer than diphtheria, tetanus, and pertussis.

¹⁰ *Id.*

c. What Do Parents and Guardians Need to Know About the Risks of Chicken Pox (Varicella) Versus the Risks of the Chicken Pox Vaccine?

The following are highlights from PIC's Disease Information Statement on chicken pox:¹¹

- More than 96% of new varicella infections are benign and not reported to public health departments.
- Even before the introduction of the varicella vaccination program, fatal cases of varicella were already rare at a rate of 1 in 40,000 or 0.003% of varicella cases.
- Because varicella infection resolves on its own in almost all cases, usually only rest and hydration are necessary.
- Immune globulin is available to treat immunocompromised patients who are exposed to chicken pox, such as those on chemotherapy.

As a necessary comparison, highlights from PIC's Vaccine Risk Statement on the chicken pox vaccine are here:¹²

- The Centers for Disease Control and Prevention (CDC) states, "It is not known how long a vaccinated person is protected against varicella."
- The Institute of Medicine has not ruled out the possibility that varicella vaccination can

¹¹ <https://physiciansforinformedconsent.org/varicella-dis/>

¹² <https://physiciansforinformedconsent.org/varicella-vrs/>

lead to stroke as well as several neurological and autoimmune disorders, including encephalopathy, cerebellar ataxia, transverse myelitis, Guillain-Barré syndrome, small fiber neuropathy, arthropathy, and thrombocytopenia.

- Seizures may occur in about 1 in 940 children vaccinated with the varicella vaccine.
- A study published in The Pediatric Infectious Disease Journal shows the varicella vaccine may cause permanent injury 44 times more often than fatal varicella.
- The chicken pox (varicella) vaccine has not been proven safer than chicken pox.

d. What Do Parents and Guardians Need to Know Regarding the Risks of Hepatitis B Versus the Risks of the Hepatitis B Vaccine?

The following are highlights from PIC's Disease Information Statement about hepatitis B:¹³

- An unvaccinated normal-risk child has a 1 in 7,000,000 (or 0.00001%) chance of contracting fatal hepatitis B annually.
- About 50% of hepatitis B-vaccinated children lose their immunity by age 5, and the vaccine has not made a measurable impact on the prevalence of chronic hepatitis B infection.

¹³ <https://physiciansforinformedconsent.org/hepatitis-b/>

<https://physiciansforinformedconsent.org/hepatitis-b-vaccine/>

As a necessary comparison, highlights from PIC's Vaccine Risk Statement on the hepatitis B vaccine are here:

- Seizures may occur in about 1 in 1,300 children vaccinated with the hepatitis B vaccine.
- The hepatitis B vaccine contains an amount of aluminum that is 75 times greater than the maximum safe level of aluminum in the bloodstream per day for a 7.3-pound infant.
- The Institute of Medicine (IOM) found that evidence is inadequate to rule out the possibility that hepatitis B vaccination leads to more than two dozen neurological and autoimmune disorders.
- The hepatitis B vaccine has not been proven safer than hepatitis B infection for normal-risk children.

e. What Do Parents and Guardians Need to Know Regarding the Risks of Measles, Mumps, and Rubella Versus the Risks of the MMR Vaccine?

The following are highlights from PIC's Disease Information Statement on measles:¹⁴

- In 1963, before the measles vaccine was introduced in the U.S., almost everyone had measles by age 15, which provided lifelong immunity. And measles was a generally

¹⁴ <https://physiciansforinformedconsent.org/measles/>

benign infection, with 99.99% of people experiencing a full recovery.

As a necessary comparison, highlights from PIC's Vaccine Risks Statement on the MMR vaccine are here:

- Seizures from the MMR vaccine occur in about 1 in 640 children within two weeks of receiving the first dose of the MMR vaccine. This amounts to approximately 5,700 cases of MMR-vaccine seizures annually in the U.S., and a significant portion of MMR-vaccine seizures cause permanent harm, as 5% of febrile seizures result in epilepsy. Consequently, about 300 MMR-vaccine seizures (5% of 5,700) lead to epilepsy annually.
- In 2007, the Centers for Disease Control and Prevention (CDC) conducted a study on waning immunity after two doses of the MMR vaccine. The results, published in *Archives of Pediatrics and Adolescent Medicine*, show that even after being previously vaccinated twice for measles, about 35% of vaccinated 7-year-olds and 60% of vaccinated 15-year-olds are susceptible to subclinical infection with measles virus. And by age 24–26, a projected 33% of vaccinated adults are susceptible to clinical infection. Consequently, nearly 50% of schoolchildren and more than 60% of adults fully vaccinated with the MMR vaccine can still be infected with measles virus and spread it to others, even with mild or no symptoms of their own.

- The CDC conducted another study in 2016, published in *The Journal of Infectious Diseases*, which concludes that a third dose (booster shot) of the MMR vaccine is short-lived, lasting only one year. The authors state: “MMR3 [a third dose of MMR] is unlikely to solve the problem of waning immunity in the United States . . . We did not find compelling data to support a routine third dose of MMR vaccine.”

f. What Do Parents and Guardians Need to Know About the Risks of Aluminum in Vaccines?

PIC provides the public with an Aluminum – Vaccine Risk Statement (VRS) titled “Aluminum in Vaccines: What Parents Need to Know.”¹⁵ The document explains that both the FDA and ATSDR have raised concerns about the negative effects of aluminum exposure in humans. Scientific studies have shown that small amounts of aluminum can interfere with cellular and metabolic processes in the nervous system. Some of the most damaging effects of aluminum range from motor skill impairment to encephalopathy (altered mental state, personality changes, difficulty thinking, loss of memory, seizures, coma, and more).

Studies have also shown that adverse effects of aluminum may not be restricted to neurological

¹⁵ <https://physiciansforinformedconsent.org/aluminum-in-vaccines-vrs/>

conditions.¹⁶ A study referenced in the PIC document and published in *Academic Pediatrics* found that asthma occurred in 1 in 183 vaccinated children for every 1 mg (1,000 mcg) increase in aluminum exposure. In the United States, up to 22 doses of aluminum-containing vaccines are administered to children, with 11 doses administered from birth to 6 months of age.

g. The Idea of ‘Under-Vaccination’ in Connecticut or Any Other State Is a False Concept.

Under-vaccination is not an ethical, legal, scientific, or medical concept. It is a politically motivated false concept which distracts focus from the main issues at hand, namely the 1) rights of individuals to informed consent and refusal of medical procedures, without penalties for choices which are unpopular in the current political climate, and the 2) rights of individuals to safeguard their children’s health, without penalties for choices which are unpopular in the current political climate.

The history of vaccine mandates is inseparable from strife over these inalienable rights, and vaccine mandates have only been allowed to enjoy a peaceful existence when political compromise has respected both secular and religious exemptions. *See* footnote 2.

¹⁶ In 2008, the Agency for Toxic Substances and Disease Registry (ATSDR), a division of HHS, used studies of the neurotoxic effects of aluminum to determine that no more than 1 milligram (mg) (1,000 micrograms [mcg]) of aluminum per kilogram (kg) of body weight should be taken orally per day to avoid aluminum’s negative effects.



CONCLUSION

Proper application of the Equal Protection Clause is necessary to resolve the split among lower courts. Petitioners should retain the right and dignity of informed consent/refusal without penalty. The scientific data currently available demonstrate that vaccines mandated for school attendance have not been proven safer than the infections they were designed to prevent.

Respectfully submitted,

Gregory J. Glaser
Counsel of Record
4399 Buckboard Drive #423
Copperopolis, CA 95228
(925) 642-6651
greg@picphysicians.org

Counsel for Amicus Curiae
Physicians for Informed Consent

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