



Perspective

Shifting Vaccination Politics — The End of Personal-Belief Exemptions in California

Michelle M. Mello, J.D., Ph.D., David M. Studdert, L.L.B., Sc.D., and Wendy E. Parmet, J.D.

It's not often that California, West Virginia, and Mississippi are politically aligned, but that unlikely trio formed on June 25, 2015, when California Governor Jerry Brown signed into law Senate Bill (SB) 277,

substantially narrowing exceptions to school-entry vaccination mandates. With that law, California becomes the third state to disallow exemptions based on both religious and philosophical beliefs; only medical exemptions remain. The move represents a stunning victory for public health that affects not only California schoolchildren but also the prospects for strengthening vaccination requirements nationwide.

In 2014, California tightened its personal-belief exemption by requiring parents seeking such exemptions to obtain a physician's attestation that they had re-

ceived information about vaccine-preventable illnesses and the benefits and risks of immunization. Just 18 months later, the legislature decided that that wasn't sufficient. The new law applies to elementary and secondary schools and day-care centers both public and private, exempting only home-schooled students. It prohibits these institutions from unconditionally admitting children who are not up to date on vaccinations against a prescribed list of diseases (see box) unless they have a medical exemption. The law also allows the state Department of Public Health (DPH)

to add diseases to the list but, anomalously, permits personal-belief exemptions for any such additions.

The passage of SB 277 was anything but a foregone conclusion. Although California's predominantly liberal populace generally tolerates assertive public health policies, a vocal libertarian minority ardently opposes vaccination mandates. The bill's opponents mobilized fiercely against it, attending hearings with toddlers in tow and organizing strident protests. The pediatrician-senator who sponsored the bill received death threats.

Nevertheless, four factors converged to enable its passage. First, legislative supporters showed extraordinary backbone in resisting pressure to abandon the measure. Second, the DPH publicized data

Vaccines Required for Unconditional Entry into Schools, Child-Care Centers, Day Nurseries, Nursery Schools, Family Day-Care Homes, and Development Centers in California.*

Diphtheria

Haemophilus influenzae type b

Measles

Mumps

Pertussis

Poliomyelitis

Rubella

Tetanus

Hepatitis type B

Varicella

“Any other disease deemed appropriate by the [State Department of Public Health], taking into consideration the recommendations of the Advisory Committee on Immunization Practices of the United States Department of Health and Human Services, the American Academy of Pediatrics, and the American Academy of Family Physicians.”

* From Senate Bill (SB) 277, Section 2.

showing that rates of personal-belief exemptions in California have doubled since 2007,¹ and analysts noted that vaccination coverage is low enough to jeopardize herd immunity in a quarter of schools.² Third, the widely publicized Disneyland measles outbreak brought home the risks posed by lost herd immunity. Researchers swiftly concluded that “substandard vaccination compliance is likely to blame for the 2015 measles outbreak.”³ The outbreak created a political opening and energized legislators, parents, and interest groups that aren’t ordinarily activated around vaccination issues.

Fourth, the bill’s proponents focused on the specific threat to schoolchildren who are too medically fragile to receive vaccinations, effectively framing vaccine refusal as a decision that endangers others rather than a purely

“personal” one. For this argument, they found an appealing poster child in 7-year-old Rhett Krawitt, a patient with leukemia who made headlines when he and his parents asked his school to bar unvaccinated children and testified in support of SB 277.

The legislation still faces substantial challenges. An effort is already under way to collect signatures for a referendum to repeal it.⁴ Constitutional challenges have also been threatened — but are unlikely to succeed.

In 1890, the Supreme Court of California upheld a state law requiring vaccination to attend school (*Abeel v. Clark*). Fifteen years later in *Jacobson v. Massachusetts*, the U.S. Supreme Court rejected a claim that a Massachusetts vaccination mandate not linked to school entry violated the constitutional right to due process of law. Later, the Court applied *Jacobson* in *Zucht v. King* (1922) to reject a challenge to school-entry mandates in Texas.

Despite these precedents, SB 277 challengers are apt to argue that the lack of a religious exemption violates their First Amendment right to free exercise of religion. Although individuals are generally permitted to decline medical treatment when it conflicts with their religious beliefs, the First Amendment does not require the state to exempt believers from generally applicable laws that protect the health of others. The U.S. Supreme Court has never directly evaluated a First Amendment claim regarding vaccination, but it has written in the context of other parental-rights claims that religious freedom “does not include liberty to expose the community or the child to communicable disease” (*Prince v. Massachusetts*, 1944). More re-

cently, two appellate courts concluded that the First Amendment does not require religious exemptions for vaccination mandates (*Phillips v. City of New York*, 2nd Cir., 2015; *Workman v. Mingo Cnty Bd. of Educ.*, 4th Cir., 2011). Somewhat paradoxically, the strongest constitutional arguments may arise in states that allow exemptions for religious but not secular reasons. Mississippi’s Supreme Court ruled that such a distinction violated the U.S. Constitution’s Equal Protection Clause by favoring religion over philosophical objectors (*Brown v. Stone*, 1979).

Challengers may also claim that SB 277 violates children’s right to education. The U.S. Supreme Court has never recognized a federal constitutional right to education, but 16 state constitutions (including California, West Virginia, and Mississippi) elevate education to the status of a fundamental right. Litigation to enforce this right has focused mainly on states’ obligations to provide a public education system and prevent large resource disparities among school districts (*Serrano v. Priest*, Cal. 1976; *Butt v. State*, Cal. 1992). In the leading right-to-education case discussing vaccination, New York’s high court held that the state’s constitutional right to attend public schools may be subordinated to “restrictions and limitations in the interest of the public health” (*Viemeister v. White*, N.Y. 1904).

Enforcement, not legal attack, is likely to be the greater challenge for SB 277. Like many states, California puts schools and day-care centers in charge of verifying students’ receipt of required vaccinations. They can and do allow students to begin school despite being out of compliance, as long as parents pledge to ob-

tain missing vaccinations. However, many commitments are not kept, and educational institutions do not face penalties for failing to ensure follow-through. SB 277 does not change this situation.

Reposing responsibility for enforcement in schools and day-care centers allows information about immunizations to be readily collected along with other paperwork required at school entry. But forcing school administrators and day-care directors to act against the educational interest of their charges and convert trusting relationships with parents into adversarial ones is bad policy. We believe that state laws should instead task health departments with enforcement responsibility for vaccination mandates. When children are permitted to enroll with incomplete vaccinations, schools and day-care centers could notify the health department, which could conduct the necessary follow-up.

Another enforcement-related issue is whether a cadre of “willing providers” will step forward to serve the antivaccination community by providing “medical” exemptions. Vaccination opponents are well connected, and if even a small number of physicians begin to broadly interpret the criteria for medical exemptions, the law’s objectives may be undermined.

Finally, it remains to be seen how many parents will respond by home-schooling, choosing nannies over day care, or moving out of state to avoid unwanted immunizations. Home-schooling decisions would not thwart one goal of SB 277 — keeping schools and day-care centers safe for children too young or medically fragile to be fully vaccinated. Such choices might, however, undercut the goal of safeguarding the population’s herd immunity.

California’s legislative victory may embolden other states to eliminate philosophical and religious exemptions or increase the barriers to obtaining them. Eighteen states allow both types of exemptions, and legislation has been introduced in many to tighten the requirements. Although California politics may be distinctive, its experience with SB 277 indicates that even strong opposition can be overcome with the right combination of astute public education, political strategy, and legislative fortitude.

There is persuasive evidence that stringent vaccination mandates reduce the risk of vaccine-preventable illness.⁵ Less clear is the effect California’s move will have on the politics of vaccination. Will it fortify antivaccination sentiment, leading objecting parents to more extreme tactics to shield their children? Or will it

serve to normalize vaccination and marginalize opposition? Time will tell. What is clear is that California’s experience will be closely watched. Fewer vaccination exemptions and vaccine-preventable illnesses would be accomplishments that other states would find difficult to ignore.

Disclosure forms provided by the authors are available with the full text of this article at NEJM.org.

From Stanford Law School and Stanford University School of Medicine — both in Stanford, CA (M.M.M., D.M.S.); and Northeastern University School of Law, Boston (W.E.P.).

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1. Immunization levels in child care and schools. Sacramento: California Department of Public Health (http://www.cdph.ca.gov/programs/immunize/pages/immunization_levels.aspx).
2. Bloch M, Keller J, Park H. Vaccination rates for every kindergarten in California. *New York Times*. February 6, 2015 (<http://www.nytimes.com/interactive/2015/02/06/us/california-measles-vaccines-map.html>).
3. Majumder MS, Cohn EL, Mekaru SR, Huston JE, Brownstein JS. Substandard vaccination compliance and the 2015 measles outbreak. *JAMA Pediatr* 2015;169:494-5.
4. White JB. Tim Donnelly files referendum to overturn California vaccine bill. *Sacramento Bee*. July 1, 2015 (<http://www.sacbee.com/news/politics-government/capitol-alert/article26005486.html>).
5. Wang E, Clymer J, Davis-Hayes C, Buttenheim A. Nonmedical exemptions from school immunization requirements: a systematic review. *Am J Public Health* 2014;104(11):e62-e84.

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