

PROTECTING OUR CHILDREN:

The California Public School Vaccination Mandate Debate

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INTRODUCTION

In late December of 2014, a measles outbreak sickened 147 people in the United States.¹ Of those cases, 131 were in California.² Six of these measles cases were among infants who were too young to be vaccinated.³ Health officials suspected that this outbreak originated from an overseas visitor who spread the disease at Disneyland in Anaheim, California.⁴ While measles outbreaks are rare in the United States, outbreaks have occurred in U.S. communities with low vaccination rates.⁵ The Disneyland measles outbreak highlighted a small, but growing population of parents who refuse to vaccinate their children for religious or other personal reasons.⁶

While the United States does not have federal vaccination laws, each of the fifty states have laws mandating vaccination of children against diphtheria, tetanus, pertussis, polio, measles, and rubella as a condition of enrolling in public schools.⁷ However, there are exemptions to this rule.⁸ All states allow a medical exemption where vaccinations would complicate the health of the child; most states have a religious exemption; and nineteen states have a personal-belief exemption.⁹ California is one of nineteen states that allow all three of these exemptions [prior to enactment of SB 277 in June 2015].¹⁰

As children, and particularly those who are unvaccinated, are at higher risk of contracting and spreading diseases, public schools have become

¹ Alicia Chang, *Disney Measles Outbreak That Sparked Vaccination Debate Ends*, ASSOCIATED PRESS (Apr. 17, 2015, 4:44 PM), http://hosted2.ap.org/APDEFAULT/bbd825583c8542898e6fa7d440b9febc/Article_2015-04-17-US--Measles%20Outbreak-Things%20to%20Know/id-23d959cc52384abb72c1b7c9d320a1b.

² *Id.*

³ Christopher Ingraham, *California's Epidemic of Vaccine Denial, Mapped*, THE WASH. POST (Jan. 27, 2015), <http://www.washingtonpost.com/blogs/wonkblog/wp/2015/01/27/californias-epidemic-of-vaccine-denial-mapped/>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *State Vaccination Exemptions for Children Entering Public Schools*, PROCON.ORG, <http://vaccines.procon.org/view.resource.php?resourceID=003597> (last visited Mar. 8, 2015).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

the hotbed for the vaccination debate. Pro-vaccinators argue that children must be vaccinated in the absence of a medical issue in order to maintain herd immunity.¹¹ Herd immunity occurs when approximately 90 percent of a community is vaccinated and protected from disease.¹² The higher this percentage of immunization is, the less potential there is for an outbreak.¹³ This could be a matter of life or death in cases of children who cannot be vaccinated due to weak immune systems caused by chemotherapy or other health issues.¹⁴ On the other hand, anti-vaccinators who claim a personal-belief exemption cite the purported link between vaccinations and autism.¹⁵

Recently, the California Senate introduced SB 277, a bill that would eliminate California's religious and personal-belief exemptions from the mandate requiring vaccinations for students seeking to attend public school.¹⁶ The bill was recently passed by the California Senate and referred to the California Assembly Committee on Health for additional amendments.¹⁷ Anti-vaccinators, however, continue to oppose the bill, arguing that the bill forces their children to be homeschooled.¹⁸ They further contend that homeschooling is infeasible for single-parent and low-income families and would strip their children of their right to obtain a

¹¹ *Community Immunity* ("Herd Immunity"), VACCINES.GOV, <http://www.vaccines.gov/basics/protection/> (last visited Apr. 18, 2015).

¹² Emily Willingham & Laura Helft, *What is Herd Immunity*, KVIE, <http://www.pbs.org/wgbh/nova/body/herd-immunity.html> (last visited Mar. 8, 2015).

¹³ *Id.*

¹⁴ Lisa Aliferis, *To Protect His Son, A Father Asks School to Bar Unvaccinated Children*, NPR (Jan. 27, 2015, 5:05 PM), <http://www.npr.org/blogs/health/2015/01/27/381888697/to-protect-his-son-a-father-asks-school-to-bar-unvaccinated-children>.

¹⁵ Steven Salzberg, *Anti-Vaccine Movement Causes the Worst Whooping Cough Epidemic in 70 Years*, FORBES (July 23, 2012, 6:00 AM), <http://www.forbes.com/sites/stevensalzberg/2012/07/23/anti-vaccine-movement-causes-the-worst-whooping-cough-epidemic-in-70-years/>.

¹⁶ A Senate Bill Removing Religious and Personal Belief Exemptions from Vaccination Mandates, S.B. 277, 2015 Sess. (C.A. 2015), https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB277 [hereinafter SB 277 Bill Text].

¹⁷ *Id.*

¹⁸ Tracy Seipel, *Vaccine Exemption: California SB 277 Opponents Vow to Pull Kids from School if Bill Passes*, SAN JOSE MERCURY NEWS (Apr. 13, 2015, 6:24 PM), http://www.mercurynews.com/health/ci_27907241/vaccine-exemption-california-sb-277-opponents-vow-pull.

public school education.¹⁹ The fundamental issue underlying this debate is whether one student's right to an education trumps another student's right to stay healthy.²⁰

This paper argues that SB 277 is constitutional. Part I provides background to the debate on balancing health and education in California public schools. Part II discusses foundational case law and statutes on vaccination. Part III analyzes the constitutional complexities that SB 277 brings to the debate. Part IV addresses concerns of inability to access vaccinations and adjustments to the terms of SB 277 with future biomedical advances. Part V is a summary and conclusion.

I. BACKGROUND: THE ANTI-VACCINATION DEBATE

This section provides a general background to the vaccination debate. It first discusses the idea of “herd immunity” and why low vaccination rates in public schools are of concern. It then tracks the increasing level of unvaccinated children in California and what contributed to the recent trend of unvaccinated children. Finally, this section discusses the demographics of anti-vaccinators in California.

A. HERD IMMUNITY

Pro-vaccinators emphasize the importance of immunization because of the idea of community immunity, or “herd immunity.”²¹ Herd immunity is critical to a community's health because it prevents the potential for outbreak and infection of individuals who are particularly vulnerable to disease.²² These persons include infants, pregnant women, or immunocompromised individuals.²³ While the threshold vaccination percentage for herd immunity is dependent on the disease, most diseases meet

¹⁹ Dave Marquis, *Bill Requiring Student Vaccinations Headed to Committee, Again*, News 10 ABC (Apr. 22, 2015, 10:48 AM), <http://www.news10.net/story/news/local/california/2015/04/22/vaccine-bill-immunize-home-school-amendments-vaccinate/26167515/>.

²⁰ *Id.*

²¹ *Community Immunity*, *supra* note 11.

²² *Id.*

²³ *Id.*