

June 16, 2025

Religious Liberty Commission
c/o White House Faith Office
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500
RLC@usdoj.gov

Position Statement: A Constitutional Path Forward to Defend States' Rights and Religious Exemptions to Vaccination in All States

Dear Members of the Religious Liberty Commission,

The undersigned organizations represent citizens defending health freedom by advocating for informed consent and policies that protect natural rights, including freedom of conscience and religion.

The White House's Executive Order "Establishment of the Religious Liberty Commission" calls for a comprehensive report on the foundations of religious liberty in America, the impact of religious liberty on American society, current threats to domestic religious liberty, strategies to preserve and enhance religious liberty protections and explicitly includes the topic of "conscience protections in the health care field and concerning vaccine mandates." **We are writing to urge you to elevate federalism in your review of the foundations and impact of our religious liberties, and in any potential strategies relevant to vaccine mandates.** The federal government's powers are enumerated, and we are living in a time of great overreach, where data and personal information can easily be weaponized by central authorities. The undersigned organizations have linked arm in arm to take a stand for states' rights and be the voice for protection of our God-given rights.

Any suggested federal action that would invite a lawsuit based on religious exemptions to vaccination mandates and states' rights will put religious exemptions in peril in the U.S., which is a domain constitutionally reserved to the states. Federal actions such as the following would put religious exemptions in danger across all 50 states: (1) an Executive Order and legislation to withhold federal funds from educational institutions denying religious exemptions to vaccination requirements; (2) legal action by the US Attorney General against New York, California, Connecticut, West Virginia and Maine for First Amendment violations; and (3) regulations and legislation to prohibit medical providers, who receive federal funds, from denying non-emergency care based on religious objections to vaccinations. We strongly disagree with these three strategies on the grounds of federalism.

We affirm our unwavering commitment to restoring religious liberty for families in New York, California, Connecticut, West Virginia and Maine, where sincerely held religious beliefs are not honored as valid grounds for exemption from mandatory vaccination laws. While it may not technically violate the First Amendment's Free Exercise Clause as interpreted in precedent-setting Supreme Court cases like *Jacobson v. Massachusetts* (1905)¹ and *Prince v. Massachusetts* (1944)², the denial of religious exemptions to vaccination in these five states—exemptions that are explicitly codified in the public health laws of 45 other states—is nonetheless a clear violation of religious freedom.³

While the undersigned organizations do not support any form of medical mandates, including vaccine mandates, we assert that the appropriate venue for addressing religious and conscientious exemptions is at the state level. Our advocacy for states' rights in this context is not an endorsement of coercive public health policies, but a defense of the constitutional structure that serves as a safeguard against federal overreach.

It is our position that the people's best defense against tyranny is found in the U.S. Constitution itself, which preserves the authority to protect the health and welfare of a state's citizens for state government. Placing pressure on the President of the United States and Congress to reach beyond enumerated constitutional powers to usurp roles that are historically reserved to the states not only interferes with the balance of power between state and federal government, but it also sets a dangerous precedent for the erosion of our nation's decentralized governmental system. Once state authority is ceded to the federal government, it is unlikely ever to be returned to the states.

Particularly in public health policy and law, we don't have to look further than the federal government's response to the Covid-19 pandemic to find evidence for why state authority over public health law must be defended. It was the decentralized structure of the U.S. that empowered each state, albeit belatedly in many cases, to implement individualized responses—creating opportunities for greater public input and a check on federal overreach. While many states adopted harmful or coercive policies, this constitutional structure ensured that no single federal policy could override all dissent or impose a one-size-fits-all response nationwide. Unlike nations with centralized governments, the United States' federal system served as a critical check on federal power, safeguarding Americans from the widespread tyranny observed around the world.

In the wake of September 11, 2001, the U.S. Centers for Disease Control and Prevention (CDC) set a goal to expand police powers that could be wielded by public health officials during a public health emergency declared by the Secretary of DHHS or a state governor.⁴

¹ *Jacobson v. Massachusetts*, 197 U.S. 11 (1905).

² *Prince v. Massachusetts*, 321 U.S. 158 (1944).

³ United States Courts. Freedom of Religion. <https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/first-amendment-and-religion>

⁴ Centers for Law and the Public's Health. The Model State Emergency Health Powers Act (MSEHPA). Developed for the CDC, December 2001.

Because public health is not a power delegated to the federal government in the U.S. Constitution, it is reserved to the states under the Tenth Amendment.⁵ This meant CDC officials could not impose their goals through a federal mandate. Instead, they partnered with attorneys at Georgetown University and Johns Hopkins University to draft the Model State Emergency Health Powers Act (MSEHPA) and then lobbied state legislatures to adopt it.⁶

In a nation still reeling from the shock of 9-11, by 2002 most state legislatures had passed some version of the MSEHPA, which included provisions that would allow state public health officials to use the state militia during public health emergencies to:

- take control of all roads leading into and out of cities and states;
- seize homes, cars, telephones, computers, food, fuel, clothing, firearms and alcoholic beverages for their own use (and not be held liable if these actions result in the destruction of personal property);
- arrest, imprison and forcibly examine, vaccinate, and medicate citizens without consent (and not be held liable if these actions result in your death or injury).

Though the passage of these laws was influenced by federal authority, the fact remains that state legislators have the authority to repeal the MSEHPA, if they so choose. It is up to the citizens of each state to ensure that their elected representatives protect civil liberties and natural rights when it comes to public health policy and law.

While we support elevating the natural right for Americans to exercise freedom of conscience in vaccine decisions—which includes the free exercise of religious beliefs—to national awareness, we strongly oppose strategies that would call for any branch of the federal government to intervene in state public health lawmaking effectively contravening state authority. These well-meaning efforts could have catastrophic consequences for religious liberty nationwide, when an inevitable lawsuit challenging either the authority of state legislatures to make their own vaccine policy - or the power of the President or of Congress to override state public health authority - is driven to the U.S. Supreme Court (SCOTUS). Such a lawsuit would open the door for SCOTUS to make a ruling that re-affirms the scientifically and morally bankrupt ruling in *Jacobson v. Massachusetts*, which could further restrict religious exemptions to vaccination that is now allowed in 50 states.

The seminal *Jacobson v. Massachusetts* ruling by SCOTUS was a case in which a Lutheran pastor, Henning Jacobson, challenged a state law mandating smallpox vaccination by arguing that forcing him to be vaccinated was “an assault on his person” and violated his constitutional rights. The Court stated that “the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. The Court concluded that the

⁵ U.S. Const. amend. X. “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively , or to the people.”

⁶ The Model State Emergency Health Powers Act (MSEHPA). (2001). Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities.

“police power” of the states includes “such reasonable regulations established directly by legislative enactment as will protect the public health and safety.”⁷

Whether or not one agrees with the scientific and moral underpinnings of the rationale used by SCOTUS to make the ruling in *Jacobson*, the high court unequivocally affirmed the constitutional authority of state legislatures to make public health laws, which may or may not include exemptions to those laws. It is important to acknowledge that the immediate past and current Supreme Court majority has a record of repeatedly ruling in favor of liability protection for vaccine manufacturers, federal vaccine mandates and limited vaccine exemptions.^{8 9} In addition, federal court decisions have upheld the authority of the government to eliminate religious exemptions to vaccination, citing flawed precedent-setting cases like *Employment Division v. Smith*.¹⁰

The risk is real, and it is structural. If the Supreme Court is asked to rule on an executive order or federal legislation involving public health lawmaking, it would not be deciding the constitutionality of a state legislature denying religious exemption to a vaccine mandate – the Court would be deciding whether the federal government has the power to override state authority and use federal dollars to control state public health policy and lawmaking. If SCOTUS upholds that federal power, we could find ourselves in a scenario where all 50 states lose the legal right to exercise freedom of religion when it comes to public health policy.

What, then, should be done? We believe the priority must be to preserve states’ rights when it comes to making public health policy and law. With elected state legislators voting to enact the will of the people, we have 50 opportunities to defend freedom of conscience and autonomy instead of placing all authority in a centralized federal government.

Over the past decade, there has been an increase in citizen participation in the vaccine law making process of state legislatures. Advocacy for vaccine freedoms has resulted in the introduction of many more bills in state legislatures that protect informed consent rights, restrict new vaccine mandates and expand vaccine exemptions. In fact, in the past few years there have been more positive vaccine-related bills proposed in state legislatures than bills which erode informed consent rights.¹¹

The only way to make meaningful change in public health policy and law, without sacrificing our safeguard against federal overreach, is to continue the hard work in the states that will result in constructive permanent change. This is a winning strategy for securing lasting legal protection of informed consent and religious freedom for all Americans.

⁷ *Jacobson v. Massachusetts*, 197 U.S. 11 (1905).

⁸ *Bruesewitz v. Wyeth LLC*, 562 U.S. 223 (2011).

⁹ *Biden v. Missouri*, 595 U.S. 87 (2022)

¹⁰ *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990).

¹¹ National Vaccine Information Center. 2024 State Vaccine Legislation Report: State Legislatures Lead the Way to Protect Informed Consent. Nov. 20, 2024.

<https://www.nvic.org/newsletter/nov-2024/nvics-2024-state-vaccine-legislation-report>

Regarding religious exemptions to vaccine requirements, the Religious Liberty Commission's report could review the Attorney General's memorandum of 2017 entitled "Federal Law Protections for Religious Liberty", which should be revised and updated in light of disastrous Covid-era lockdowns and censorship policies, which targeted citizens with religious beliefs.

We support the Religious Liberty Commission in its effort to investigate threats to religious freedom. At the same time, we urge the Commission to proceed cautiously and with a clear understanding of the constitutional challenges and potential danger in attempting to alter the balance of power between the federal and state governments, which could jeopardize fundamental liberties for future generations.

Please, let us fight the right battle, in the right venue, with the right arguments at the right time. The stakes are way too high to get this wrong.

With respect and appreciation,

Barbara Loe Fisher - **National Vaccine Information Center**

Leslie Manookian - **Health Freedom Defense Fund**

Leah Wilson, J.D. - **Stand for Health Freedom**

Sally Fallon Morell - **Weston A. Price Foundation**

Twila Brase - **Citizens' Council for Health Freedom**

Catherine Austin Fitts - **Solari Report**

Dr. Sherri Tenpenny

Dr. Kat Lindley

Bailey Kuykendoll - **Stand for Health Freedom Florida**

Erica Comerford - **Stand for Health Freedom Indiana**

Susan Sweetin - **Freedom Travel Alliance**

Melanie Dragone - **Innovative Parenting NJ**

Sarah Clendenon - **Health Freedom Idaho**

Miste Karlfeldt - **Health Freedom Idaho**

Dr. Andrea Lamont Nazarenko - **Global Health Project**

Rev. Caspar McCloud - **The Upper Room Fellowship**

Community Pregnancy Clinics

Children of God for Life

Defend Florida

The Hollow Alliance

We The People Health & Wellness Center

Dr. Avery Brinkley

ADDENDUM

After completion of our letter above, the draft of a proposed Executive Order for President Trump's consideration written by those calling for federal action to resolve denial of religious exemptions to vaccine mandates in some states, was brought to our attention.

We have three grave concerns about this proposed EO which are outlined below:

First, the proposed EO is framed as the President's findings "Based on available evidence and constitutional analysis." This framing infers the specious claim that the US Constitution authorizes vaccine mandates. Nowhere in the US Constitution or any of our founding documents is the government authorized to mandate a pharmaceutical product or other medical intervention. In fact, our nation's founding documents serve as a *restraint* on government, not on the people. Our natural rights do not come from any government entity; they come from our Creator.

While *Jacobson v. Massachusetts*, a 1905 US Supreme Court case, determined that state legislatures could promulgate vaccine mandates during smallpox epidemics, this ruling by eight justices interpreted constitutional rights through a utilitarian lens. That ruling was morally bankrupt, scientifically flawed and legally unsound, and has had a profound negative effect on public health policymaking. It was used by the Supreme Court in 1927 (*Buck v. Bell*) to justify the practice of eugenics and forced sterilization of women deemed by government officials as unfit to procreate, which illustrates how wrong the courts can be. *Jacobson v. Massachusetts* is a court case, not the US Constitution.

Second, Sec. 4 of the proposed EO is titled "Ending Vaccine Mandates that Do Not Provide a Religious Accommodation." This language serves to affirm that a government entity should **mandate** vaccines in the US as long as a religious accommodation is provided in the vaccine law.

There are citizens living in every state who stand with us in supporting the ethical principle of informed consent for *all* medical interventions. We reject the use of coercion and societal sanctions for declining to comply with federal vaccine recommendations, and take the position that no government entity, federal or state official, private business owner, educational or other institution has the moral authority to mandate use of any pharmaceutical product or medical intervention.

The Ninth Amendment to the US Constitution makes clear that the Bill of Rights is not an exhaustive list of the rights of the people. While autonomy is not explicitly addressed in the Ninth amendment, there can be no freedom more fundamental than the freedom to protect bodily integrity in all matters. If Americans are not free to make their own voluntary decisions about how to stay well, we do not live in a free country.

Third, the proposed EO tacitly sanctions a variety of government regulated medical protocols such as “individualized assessment or alternative protective measures,” deemed acceptable to justify mandating certain medical procedures for “preventing disease transmission.” The proposed EO states, “(b) Any compelling governmental interest in preventing disease transmission can be achieved through less restrictive means, including but not limited to: individualized health assessments, temporary exclusions during outbreaks, enhanced health monitoring, alternative educational arrangements, or other accommodations that protect both public health and religious exercise.” Implicit in this language is a continuation of coercive and unscientific Covid era policies such as electronic tracking, testing, exclusion, and forced alternative education for unvaccinated children. In effect, these policies represent not only an invasion of privacy, they discriminate against healthy unvaccinated children and their families by violating informed consent rights and applying societal sanctions through shaming, isolation, and removal of the ability to receive a school education and otherwise fully participate in society.

In closing, while we acknowledge the goodwill and perspective of those offering this proposed EO, we, the undersigned, strongly reject the notion that any local, state or federal official or agency has the Constitutional authority to mandate medical interventions, including mandating use of a pharmaceutical product labeled a “vaccine,” a product that the US government in 1986 (National Childhood Vaccine Injury Act) and the US Supreme Court in 2011 (*Bruesewitz v. Wyeth*) both acknowledged can injure or kill an individual.

Signed,

National Vaccine Information Center
Health Freedom Defense Fund
Stand for Health Freedom
Weston A. Price Foundation
Health Freedom Idaho