

# Will the Law Protect Health Freedom

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Good afternoon. I'm an attorney who practices constitutional and administrative law before the Federal Courts and Agencies and I have sued the Food and Drug Administration countless times. I have defeated the FDA six times in cases and hope to defeat them in another three that are pending right now by my firm against the agency.

What mandatory vaccination involves simply and I think quite obviously to everyone in these audience is that mandatory vaccination is an assault on individual liberty. To force a person to have a foreign substance injected into their body or into the body of their child is a fundamental violation of personal autonomy. If we do not have control over what is injected or forced into our bodies, we really have very little control over ourselves and very little personal liberty.

Now, the law doesn't protect your personal liberty to the degree that our founding fathers would have had the law protect it. We have deviated from the course that our founding fathers set for this nation so fundamentally and that's what I'm going to talk about and explain that vaccination is symptomatic of a loss of personal liberty of an expansion of Federal and State power, of an abdication in certain instances of our own individual responsibility to a Federal or a State nanny, to make ultimate decisions about our biological destiny that should be our own decisions.

Now, let's consider the foundational principles of this country and how far afield we have come in the modern age from those basic inalienable rights that defined us and still define us as Americans. Our foundational principles arise originally in most profoundly in the Declaration of Independence. We have inalienable rights. Governments are instituted among men to protect those rights. That is the fundamental duty of government in our social compact theory upon which we base an understanding of why we have government to begin with in this nation. We start with a sacred promise and that is that government will protect our inalienable rights as its fundamental duty and that in exchange for that guarantee of protection, we will relinquish our rights to pursue self defense to the extent of invoking our own justice upon other citizens who offend us and allow that to be a decision made in the courts but fundamental to the notion of our country, the reason why we rebelled from Great Britain was that inalienable rights to life, liberty, and property were sacrosanct, where ours could not be alienated even if we wish to by contract. They are things that must because they are derived from Almighty God, be a part of us and not be separated from us by the State. The Declaration of Independence stands for that principle. The definition of liberty, we're talking about liberty. Let's understand what it is. Liberty is perhaps best defined by Thomas Jefferson in his letter to Isaac Tiffany of April 4<sup>th</sup>, 1819 when he said, "Of liberty, I would say that in the whole plenitude of its extent, it is unobstructed action according to our will but rightful liberty is unobstructed action according to our will within the limits drawn around us by the equal rights of others. I do not add within the limits of the law because law is often but the tyrant's will and all we sow when it violates the rights of an individual."

Now, as the right of liberty infringed when government mandates vaccination. Well, if we were asking this question in the 1770s, the answer would be a knee-jerk response. Everyone in this audience would laugh me off the stage for asking the question and I would be looked at as a fool because the answer is quite obviously yes. There are means available to prevent the spread of disease that do not involve intruding into the person, into forcing a substance to be injected into a person. Why then when there are less intrusive means available. Do we uphold laws that mandate the intrusive means? This question is never addressed by the States in any serious manner before any of these laws are passed that mandate vaccination.

In instances where infection is spread by particulate matter excreted from the nose and mouth, why not require those who are infected to wear masks, so less intrusive requirement, requiring them to wash their hands to avoid bodily contact. Placing the responsibility on the individual to protect his fellow citizen, holding the individual responsible if that person does not take reasonable measures to prevent the spread of disease. That is a notion derived from an understanding of an individual of liberty. Placing responsibility in the hands of the individual to protect his fellowman and holding the individual liable when they don't take those steps but not imposing a prior restraint on all of the people who are well for the sake of the minority that is ill and forcing all of them to relinquish their liberty rights and be vaccinated on the potential that they may become contaminated and may further spread the disease.

In instances where the infection is spread by sexual contact, abstinence, requiring those infected not to have unprotected sex. In instances where the infection is spread by inhalation of substances that arise from the surface of the skin. We can require quarantining if necessary and that would be a Draconian measure but it is still a better measure than forcing the vaccination of the entire population. We don't presume the innocent guilty and effectively, that's what a forced vaccination program does. It assumes you to be a culprit, a potential person interested in unruly and unreasonable manners towards others to cause them to become infected.

Now, in instances where there are asymptomatic carriers. People wouldn't know that they were carriers. There maybe a need for even greater quarantine. But again, forced vaccination as the first resort is wholly unreasonable and is in deprivation of individual liberty.

Now, there are limits on constitutional protections, unfortunately, while we looked at the original definition of liberty and what it meant, the law does not embrace the Jeffersonian definition of liberty. It does not embrace what the founders understood liberty to be. In fact, it's antithetical to their notion of liberty. The law does not require the State to rely on means other than vaccination to prevent the spread of disease and this issue of liberty is one that passes in silence all across the nation. The right to refuse treatment is not absolute since 1905 in *Jacobson versus Massachusetts* which is the seminal case that defines the power of the State to compel vaccination. The State can compel the vaccination of its citizens. It's not absolute power. There are reservations in *Jacobson* and those reservations require that if the police power is used in a manner that is arbitrary and oppressive with respect to an individual, there maybe an instance where the courts, they would reserve the power to step in and deny the State the right to mandate vaccination.

There are four essential elements of the Jacobson tests still recognized in the law, that Professor Lawrence Gostin at Georgetown has well summarized and I won't do it but again here, it's up on the screen. But in sum, the State must establish necessity under the modern test. It must establish a necessity. It has to show that it cannot compel...it can compel a person only in instance where there is an absolute necessity and necessity being absolute is one that is necessary for the protection of the safety of the public. Now, this is defined very weakly in modern terms. The safety of the public, in fact, becomes paramount to the interest of an individual in virtually every case. Jacobson establishes a reasonable means test. The means chosen must be reasonable to prevent the threat. So, the manner of vaccination, the degree of vaccination, and the type of person who is susceptible to be vaccinated, all must be taken into account according to the Jacobson test. Again, this is blithely ignored in the States as they mandate vaccination.

Proportionality: the burden imposed must not be wholly disproportionate with the benefit. So, if you're forcing someone to be deprived of their liberty rights under this balancing test, the benefit has to be great. You have to be reasonably assured that this vaccine is actually going to work, something again, that is largely ignored both by the Federal government and by the State governments when it comes to vaccines. Do they actually work? Is there sufficient proof to establish that they do work? Harm avoidance. You cannot require the immunization of those who would actually be harmed by immunization.

Now, all of these points we will later consider come into play when someone is interested in opposing the States' requirement to mandatory vaccination because they go to the medical exemptions in the States. There are several exemptions in the States and we'll take a look at them but the medical exemption is one that is most used, most commonly used.

So let's go on and take a look at the contemporary case law which again reinforces the necessity of the individual relinquishing liberty rights to allow mandatory vaccination. Boone versus Boozman in 2002, although in Boone, the court struck as unconstitutional Arkansas' restriction of its religious exemption. The great irony here is, that in the end, when the religious exemption was struck, they looked at the remaining compulsory aspects of the law and they imposed them on the person who would invoke the religious exemption and compel them to have a vaccination because the exemption was no longer a part of the law. The court held the religious exemption to be improper as it was written in Arkansas law and it struck it. There being no remaining religious exemption left. They imposed upon the person the full weight of the State law and forced the person to be vaccinated. Again, they did not recognize to any extent the right of liberty, the right of personal autonomy against being forcibly vaccinated.

The decision in Jacobson has been cited in numerous cases remains to be the primary decision in the Federal Courts and even in the State Courts on mandatory vaccination. All States recognize some form of exemption from mandatory vaccinations. Three exemptions are recognized in the States. The medical one that based on generally accepted principles governing the practice of medicine. A physician licensed in the State has determined in an individual case that that vaccination would be detrimental to the health of the individuals.

Now, as we'll see as we go on, there is an enormous amount of information coming out about vaccines and their harms and that information when the characteristics of the people involved

mirror the characteristics of the patient in question may be applicable and maybe grist for the mill in the first instance with the doctor, with the pediatrician and establishing that that child or that that individual is not an appropriate candidate for vaccination. And so it is there are religious exemptions. And some States will allow you to simply invoke that this is contrary to your religion. And in other States, you have to provide proof that your basis for objection is truly grounded in religion and not medicine and not science and not a conscientious objection other than religion and that there are tenets in your religion that support the notion that you should not have your child or yourself vaccinated. And then there are philosophical objections allowed in certain States and those States are in the extreme minority.

Now, the bigger problem, we've talked about the expansion of the State. We've said that vaccination is symptomatic of a movement by the government in all areas of our lives and let's take a look at a bigger picture that affects vaccination and that is the propensity of the Food and Drug Administration to approve drugs at the behest of the pharmaceutical industry without any serious review of safety and against the objections of the agency's own medical reviewers. And as we will see, there is an enormous investment by the pharmaceutical industry in the area of vaccination. It is one area in which if you come up with a drug and the State mandates that it be used, you have an instant cash cow potential. And so it is that the drug industry is in the business of defining symptomatology as certain diseases and then, using its power with the Food and Drug Administration to cause the agency to recognize those diseases as diseases and then to proceed to find drugs to treat those diseases some of which include vaccines. And as we'll see, the agency, the Food and Drug Administration, is very much a captive of the pharmaceutical industry. You will see as I will present to you that the Food and Drug Administration's own medical reviewers object routinely to the approval of drugs that this Agency approves on safety grounds. Nonetheless, it is approved and we will find out why.

Now, there used to be a basic proposition in the law. It is a constitutional proposition. Here it is in Latin. A delegated authority cannot be delegated again and a delegate or deputy cannot appoint another. In this notion, was a guardian of the notion of the separation of powers that helps keep the legislature in control of making laws and the judiciary in control of adjudicating these disputes and the executive in charge of enforcing the laws but as we will see, a fundamental symptom that must be addressed if this question of personal liberty, personal autonomy is ever to be solved in our favor concerns what has happened to our government and we have to address these fundamentals if we are ever to change the dynamic. We are increasingly not sovereign. This country was founded upon the proposition that the individual is sovereign and that the State is its servant. We are increasingly becoming the servants of the State and that problem is at root, why? You can be ordered by your pediatrician to vaccinate your child against your will and the full weight of the government stands behind that pediatrician and actually is a gun to his head because he can have his medical license revoked if he doesn't follow what the State defines as the practice of medicine. And so let's take a look at these things.

This is not the way it was, this delegation of power. You see, the delegation of power that I'm talking about is the transfer of constitutional power from the delegated constitutional entities; the judiciary, the legislator, and the executive to independent regulatory commissions and this happens on the Federal and on the State level. And these independent regulatory commissions are headed by unelected individuals and they wheeled combined legislative, executive, and

judicial powers. They are the prosecutor, the judge, and the jury and this, as our founding fathers told us, is the very definition of tyranny. John Adams said, "I think a people cannot long be free nor ever happy whose government is in one assembly because a single assembly possessed of all the powers of government would make arbitrary laws for their own interest. Execute all laws arbitrarily for their own interest and adjudge all controversies in their own interest." And James Madison said, "The accumulation of all powers, legislative, executive, and judicial in the same hands, whether of one, few, or many and whether hereditary self-appointed or elected may justly be pronounced the very definition of tyranny." And George Washington told us the same.

Now, how did this happen? How did it happened that a republic, and that's what we're talking about with these powers inside these constitutional branches would have these fundamental powers transferred out of those branches into unelected hands so that people in health agencies can dictate to you how to care for your own children and so, the Federal government in innumerable ways can have executive orders pursued by independent regularly commissions against individuals without your say-so whatsoever. How did this happen? Well, in the Schechter Poultry case in the 1930s as the depression was weighing down upon the United States, President Roosevelt wanted to assume extraordinary powers. He looked at the government, the constitutional government, and realized that the passage of laws was a cumbersome means by which to achieve something that needed to be achieved efficiently. And so, he abandoned the constitutional structure of government in favor of the alphabet soup agencies, independent regulatory commissions. He tried to do this initially and was unsuccessful. In the Schechter Poultry case, that's why I have the chicken up there, in the Schechter Poultry case, the Supreme Court held this delegation of power unconstitutional, recognizing that it violated the Separation of Powers doctrine, recognizing that the person who is invested with constitutional authority by the Constitution of the United States couldn't redelegate that authority outside to an unelected, unrepresentative body that would function as oligarch. Because you see, this transformation that I'm talking about is the transformation of our constitutional republic as constituted by the constitution into a bureaucratic oligarchy. A rule of unelected individuals who make the laws and force the laws and judge the laws and that is not liberty that is tyranny according to the founders of this county.

So, here it is, Congress wholesale begins after the Schechter Poultry case, how did the court changed its position? Well, the President of the United States, President Roosevelt and his Attorney General came up with a court packing plan. It was a law that said that for every justice on the Supreme Court above a certain age, there would be added another justice and that other justice would be one who agreed with the new deal, with the expansion of government outside the constitutional bounds into the independent regulatory commissions, to create an efficient bureaucratic oligarchy in lieu of a republic. And so, it was that the court in fear of loss of its fundamental powers did what the newspapers of day called 'the switch in time that saved 9.' Nine justices of the Supreme Court passed these laws that they previously held unconstitutional ushering in a grant of constitutional authority for the wholesale delegation of these legislative, executive, and judicial powers from the Congress of the United States to the independent regulatory commissions. And this movement of extending the power out of Congress and into the independent regulatory commissions has preceded a pace from 1938 to the present. There has not been one delegation of power from Congress to the independent regulatory commissions that has been held unconstitutional. Not in one instance has the doctor and of separation of powers

been invoked by the court to strike down any delegation regardless of how extreme it is, regardless of the degree of legislative, executive, and judicial power that is invested in these agencies, these unelected individuals and that is the tragic story of our time and that is the underlying problem. The drug industry law being expensive over the last 10 years is one billion dollars. The drug industry law being expensive in 2007 was 168 million.

The drug industry is said by the FDA's own medical reviewers to be in control of the agency. Look at this, David Ross, FDA medical reviewer, "Even if a product doesn't work or we don't know how it works, there is pressure on managers that gets transmitted down to reviewers to find some way of approving it. There has been a cultural shift at the FDA and the pharmaceutical industry is now viewed as the client." If you think the FDA protects your interest, you are sorely mistaken. Take a look at this; this is the Associate Director of the FDA's Office of Drug Safety. He says in the testimony to Congress, "FDA is inherently biased in favor of the pharmaceutical industry. It views industry as its client whose interest must represent and advance. It views its primary mission as approving as many drugs as it can regardless of whether the drugs are safe or needed."

In 2006, a survey was conducted by the Union of Concerned Scientists at the Food and Drug Administration. It was an anonymous survey, 997 FDA scientists were surveyed. Sixty percent responded affirmatively to the question of whether they knew of cases in which HHS or the FDA political appointees had inappropriately injected themselves into FDA determinations or actions. Sixty percent knew of cases where commercial interests have inappropriately induced or attempted to induce the reversal, withdrawal or modification of FDA determinations or actions. 20% responded affirmatively to the question of whether they had been asked for nonscientific reasons to inappropriately exclude or alter technical information or their scientific conclusions in an FDA scientific document. Forty percent said they could not publicly express concerns about public health without fear of retaliation. Thirty six percent felt that they could not do so within the agency. The only 50% thought FDA routinely provides complete and accurate information to the public.

Here are some gratuitous quotes offered by these scientists. There are many more. I have chosen two. Scientific discourse is strongly discouraged when it may jeopardize an approval. Whenever safety or efficacy concerns are raised on scientific grounds, these concerns are not taken seriously. First class scientists are leaving the FDA and recruiting new ones will be very difficult.

Just recently, September 2nd 2009 and this, I would submit to you is the tip of the iceberg. The Department of Justice announced the largest healthcare fraud settlement in American history. Pfizer, Inc. and its subsidiary Pharmacia an Upjohn company agreed to pay 2.3 billion to the United States Treasury to resolve criminal and civil charges arising from the illegal promotion of certain pharmaceutical products. The subsidiary plead guilty to a felony violation to the Food Drug and Cosmetic Act for misbranding the antiinflammatory drug, Bextra, with intent to defraud or mislead.

Now, this is what the acting U.S. Attorney had to say at a press conference announcing the settlement - "The size and seriousness of this resolution including the huge criminal fine reflect

the seriousness and scope of Pfizer's crimes. Pfizer violated the law over an extensive time period. Furthermore, at the very same time, Pfizer was in our office negotiating and resolving the allegations of criminal conduct. Pfizer was itself and its other operations, violating those same laws. Here are examples of drugs approved by the FDA and kept in the market over the FDA's own medical reviewer's objections. The FDA is a dictatorship. The commission or the FDA is one person. That commissioner makes all ultimate decisions. That commissioner can overrule any decision that is brought to him by underlings. If medical reviewers at the FDA questioned the safety of a product, the FDA commissioner can overrule them and immediately allow the introduction of a drug into the market regardless of the scientific integrity of their positions. So, it was that Vioxx, a pain killer, when entered into the market and it is linked to 140,000 heart attacks and 60,000 deaths. That was a drug for which FDA medical reviewers objected in advance of its release. The same is true for all of these: Redux, an appetite suppressant, linked to potentially lethal pulmonary hypertension released in the market anyway. Rezulin, a Type II diabetes drug linked to liver and heart toxicity, released anyway. Avandia, a Type II diabetes drug linked to heart toxicity also released. Ketek, an antibiotic, linked to liver toxicity, also released. It goes on and on and on and on. Gardasil, HPV vaccine, linked to limited effectiveness and in 7% of the cases, adverse effects including in extreme cases, permanent disability, and death, allowed into the market anyway. It is a situation where we as attorneys who fight this agency and I am speaking as a committee of one because I'm the only attorney who does. Guess which one of these is the FDA and which one of these is me.

So, the way back to liberty. The way back to liberty involves greater alliance on the medical exemption to State vaccination laws, certainly, proof of lack of adequate safety testing before the FDA approves the drug it should be an important aspect of this and the adverse effects databases should be accumulated by private organizations like this one. And individual profiles of the characteristics of the people who suffered those adverse events should be available to all of us in order to use as a basis to influence physician determinations and give them the grist necessary to defend your private right, your individual liberty right, to refuse to have your children be vaccinated.

Enact the Congressional Responsibility and Accountability Act. I wrote this bill for Congressman Ron Paul and as you've heard before, Congressman Paul's name. He is the single most profound defender and sincere member, in my view of liberty, in this country. Now, I don't like politicians and I don't get along with them very well but I do get along with Congressman Ron Paul because he is the most unpolitician-like person that I've met in Congress and he happens to believe strongly in the fundamentals of this country, the basic rights that we've been talking about.

Now, what is this Congressional Responsibility and Accountability Act do? Well, we've talked about how the vaccination, forced vaccination issue is really symptomatic of an overall loss of liberty that is a result of the virtually unrestricted expansion of Federal and State power into our lives and that it has come at a cost of individual liberty. The separation of powers we've talked about, the original constitutional design was a bulwark of liberty, a defense of liberty and when that design was destroyed and these powers have been delegated outside to these independent regulatory commissions, we've seen these abuses take place such as happened at the Food and Drug Administration where the pharmaceutical industry holds that agency captive with its

willing consent because for future employment reasons, the commissioner of the Food and Drug Administration and the senior management know if they are to have a lucrative position in the pharmaceutical industry when they leave, they have to take care of that industry while they are there. So, it is that in order for us to change this dynamic, we must alter the Federal establishment in a fundamental way. But the only way to pass a law of this sort is to do so in a way that does not cause earth-shattering consequences that will make the political reality that exists today be something that is at odds with those who are in office. That's impossible but this is the simplest means of achieving the objective that we see.

How does it work? Under the Congressional Responsibility and Accountability Act, no regulation of an independent regulatory commission may have the force of law and be enforceable against you and against businesses and against groups of individuals in this country unless the Congress of the United States adopts the individual regulation as a law and it is passed into law by the President of the United States forcing Congress to be responsible and accountable for these regulations. Because you see, the reason why these regulations came into the hands of these independent unelected officials to begin with was because it was in the political self interest of members of Congress to avoid controversy. Reelection involves pleasing everybody as much as possible. A member of Congress is loathe to offend any significant constituency. Any major issue involves a rift between 15% or 30% of a population. Rather than deal with that directly, they delegate a way the ultimate responsibility to an independent regulatory commission. So they become mere figureheads. We have - pardon the expression, I don't mean to offend - we have 435 queens in the Congress of the United States, queens as in England, titular heads who really are making little or no difference in the day to day action of government, in the lives of the American people because these decisions are being made by the independent regulatory commissions. If any of you come into contact with government, you are most likely coming into contact with a bureaucrat. You are most likely not going to experience a prosecution from the United States attorney that arises from the law itself. You will come into contact with a regulation that you found objectionable. When you're forced to be vaccinated, you are looking at a regulation by a State Health Agency. You're looking at the force of will of an unelected official upon you.

Alright, we have to get back to a constitution of liberty. We need to enact laws in the States that recognized what I said in the beginning which was that there are less intrusive means of achieving this public health objective, of protecting the public from the disease than forcibly vaccinating the healthy. The best way to do it is to isolate those who are ill and ensure that they take reasonable steps to protect their fellowman and if you wish to make that a legal requirement, so be it. But it places the onus on those who are responsible and should be responsible and not on the entire population.

Thank you very much.