The Constitutionality of Compulsory Vaccinations: Governmental Power versus Individual Liberty

MJC Talk Outline by Dr. Stephen Routh, CSUS

I. A Federalist System of Governance

II. The Historical Contentiousness of Mandate Vaccinations in the US

III. Anti-vaccinationism: anti-vaxxers, vaccine safety advocates, vaccine skeptics/hesitant/resistant; distrust of gov’t & elites, $ scam, risk psychology, inconvenience, fear of needles, cultural & political identity, disinformation

IV. State and Local Authority over Vaccinations

   A. States: police power/reserved powers from the 10th Amendment = public health, safety, welfare, and morals... the vast majority of vaccine mandates are done at state level

   B. Federal Government: enumerated powers in Article I

   C. Jacobson v. Massachusetts (1905) = the U.S. Constitution does not prevent states from requiring adult vaccines:
      (1) Due Process Clause in 14th Amendment
      (2) “real and substantial relation to the protection of the public health and safety”
      (3) the reasonability standard set forth in Jacobson = judicial deference to legislative branch and executive branch judgments/decision in this type of matter

   D. Zucht v. King (1922) = the U.S. Constitution does not prevent states from requiring vaccines for school children

   E. Prince v. Massachusetts (1944) = doctrine of “parens patriae” and the limits of religious exercise rights

   F. State litigations from late 1800s onward = courts mostly ruled in favor of state mandates, except for judges imposing limitations on executive officials ordering a mandate, preferring legislatures to do the mandating (the delegation doctrine)

   G. Charles Tiedeman’s 1886 treatise on police power in the U.S. = “salus populi suprema lex esto”

   H. The critique of Jacobson, and that line of thought; the Supreme Court’s 20th century jurisprudence on protecting individuals’ fundamental rights; and the role of elite knowledge/scientific expertise in a democracy.

V. Federal Authority over Vaccinations

   A. Article I, Section 8 = regulation of interstate commerce clause, spending clause, necessary and proper clause


   C. Immigration, the Military, and Federal Workers

   D. COVID Pandemic and Potential Federal Vaccination Mandates = Section 361 of the Public Health Service Act (PHSA) and the Occupational Safety and Health Act (OSHA) of 1970
      (1) narrow and broad interpretations of what 361 of PHSA would allow (as seen in the eviction moratorium decision by the Supreme Court); the CDC is able to: “prevent transmission.”
(2) The delegation doctrine
(3) Narrow and broad interpretations of what the OSHA statute would allow the Department of Labor to be able to do: “grave danger”
(4) The current Roberts Court with its 6-3 conservative majority and its potential directions

VI. Exemptions from Compulsory Vaccinations

A. Medical Exemptions: immune-compromised and prior allergic reactions to vaccines

B. Religious Exemptions: heightened scrutiny versus rational basis

   (1) Sherbert v. Verner (1963) = Substantial Burden/Compelling Interest standard, requires exemptions where a law is a substantial religious burden with no compelling gov’t interest—federal laws

   (2) Employment Division of OR v. Smith (1990) = does not require religious-based exemptions from laws that are neutral towards religion and are of general applicability—state laws

C. Philosophical Exemptions

D. Exemptions from Private Employers Requiring Vaccinations = Civil Rights Act and Americans with Disabilities Act; reasonable accommodations needed except when they pose an undue hardship/burden on employer

RELATED LINKS:

MJC Civic Engagement Project (readings and MJC Vaccine Science talks here - https://www.mjc.edu/president/cep/

MJC CEP Youtube Channel (for the recording of this talk): https://www.youtube.com/channel/UCZxiqzEUeUgbYpkaz7co4iQ or https://tinyurl.com/ywz6mdj4