



An Overview of State and Federal Authority to Impose Vaccination Requirements

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According to the latest available [data](#) from the Centers for Disease Control and Protection (CDC), 7 states in the United States are currently in the midst of 10 separate measles outbreaks. With 880 total confirmed cases so far this year, 2019 now has the greatest number of reported cases of measles since 1994 and since measles was declared eliminated in the United States in 2000. These cases, the majority of which involves unvaccinated individuals, follows a number of notable measles outbreaks over the past several years, including an outbreak of 383 cases in 2014 among unvaccinated Amish communities in Ohio and another multi-state outbreak of 147 cases in 2015 linked to an amusement park in California. In addition to measles, for about every 5 years since 2006, outbreaks of other vaccine-preventable diseases, such as mumps, have also been [reported](#) in the United States. In light of these outbreaks and their [association](#) with unvaccinated individuals, this Sidebar provides an overview of the relevant state and federal authority to require vaccination for U.S. residents.

State and Local Authority Over Vaccination

Under the federalist system of the United States, state governments have the [general authority](#), within constitutional limits, to enact laws “to provide for the public health, safety, and morals” of the states’ inhabitants. In contrast to this general police power, as discussed below, Congress’s power to legislate is [confined](#) to those powers enumerated in the Constitution.

The states’ general police power to promote public health and safety encompasses the authority to [require mandatory](#) vaccinations. Pursuant to this authority, states and localities have long enacted various compulsory vaccination laws for certain populations and circumstances, including for [school children](#) and certain [health care workers](#) and in cases of [public health emergency](#). In the early part of the 20th Century, the Supreme Court twice considered constitutional challenges to such mandatory vaccination requirements. Each time, the Court rejected the challenges and recognized such laws to fall squarely within the states’ police power. In 1905, the Supreme Court in *Jacobson v. Commonwealth of Massachusetts* upheld a state law that gave municipal boards of health the authority to require the vaccination of persons over the age of 21 against smallpox, determining that the vaccination program had a “real and substantial relation to the protection of the public health and safety.” In doing so, the Court rejected the argument that such a program violated a liberty interest that, under [more](#) modern

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jurisprudence, would likely have been asserted as a substantive due process right. Less than two decades later, in *Zucht v. King*, parents of a child who was excluded from school due to her unvaccinated status challenged the local ordinance requiring vaccinations for schoolchildren, arguing that the ordinance violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment. Relying on *Jacobson*, the Supreme Court rejected the constitutional challenges, concluding that “it is within the police power of a State to provide for compulsory vaccination” and that the ordinance did not bestow “arbitrary power, but only that broad discretion required for the protection of the public health.”

All 50 states, as well as the District of Columbia, currently have laws requiring specified vaccines for students. This requirement is generally subject to certain exemptions, which vary from state to state. While all student immunization laws grant exemptions to children for medical reasons (e.g., if a child is allergic to vaccines or immunocompromised), most but not all states grant religious exemptions for those whose beliefs counsel against immunization. Sixteen states also provide a broader philosophical exemption for those who object to immunizations because of personal, moral, or other beliefs. While compulsory vaccination requirements have faced legal challenges since *Jacobson* and *Zucht*, courts have consistently rejected these challenges and given considerable deference to the use of the states’ police power to require immunizations to protect the public health. A number of relatively recent decisions, for instance, have concluded that a state is not constitutionally required to provide a religious exemption, upholding compulsory vaccination laws that provide only a medical exemption. In states that provide a religious exemption and where parents have filed suit to challenge their unsuccessful invocation of the exemption, courts, applying the relevant state law, have, at times, scrutinized whether their objections to vaccination are based on a sincere religious belief.

Federal Authority Over Vaccination

Although states have traditionally exercised the bulk of authority in this area, Congress, as a result of various enumerated powers in the Constitution, likewise has some authority over public health matters, including regulation of vaccination. This authority derives from, among other sources, the Commerce Clause and the Spending Clause of the U.S. Constitution. The Commerce Clause grants Congress the power “[t]o regulate Commerce with foreign Nations, and among the several States.” This authority empowers Congress to regulate “three broad categories of activities”: (1) “channels of interstate commerce,” like roads and canals; (2) “persons or things in interstate commerce,” and (3) activities that substantially affect interstate commerce. The Spending Clause empowers Congress to tax and spend for the general welfare. Under this authority, Congress may offer federal funds to nonfederal entities and prescribe the terms and conditions under which the funds are accepted and used by recipients. This power is generally expansive, but the funding conditions on grants to the states are subject to certain limitations, including that they must be germane to the federal interest in the particular national projects or programs to which the money is directed.

Congress’s exercise of these authorities is also subject to certain external constraints. In the context of public health regulations, the key constraints are those grounded in federalism and the protection of individual rights. Pursuant to the principles of federalism, the Supreme Court has interpreted the Tenth Amendment to prevent the federal government from commandeering or requiring state officers to carry out federal directives. In the context of vaccination, this principle prevents Congress from requiring states or localities to pass mandatory vaccination laws, but it does not impede Congress from using its Spending Clause authority to provide incentives (in the form of federal grants) to states to enact laws concerning vaccination. In terms of protection of individual rights, there are few external constraints on Congress’s ability to impose mandatory vaccination requirements. Potential due process and equal protection concerns, as noted above, are limited under *Jacobson* and *Zucht*. Moreover, while the First Amendment’s Free Exercise Clause seemingly could provide a limit on the federal government’s ability to require vaccinations for those who would otherwise refuse on religious grounds, this constitutional concern is

mitigated under *Employment Division, Department of Human Resources of Oregon v. Smith*. In *Smith*, the Court held that neutral, generally applicable laws (i.e., ones that do not target specific religious groups)—which would include a law mandating vaccination—generally do not violate the Constitution.

Nonetheless, federal statutes can also restrict federal authority with regard to public health regulations. Under the Religious Freedom Restoration Act of 1993 (RFRA), for instance, the federal government is **prohibited** from substantially burdening a person’s sincere exercise of religion, unless the government “demonstrates the application of the burden to the person” represents “the least restrictive means” of advancing a compelling government interest. Thus, to the extent a federal law prescribes certain public health requirements that may impose substantial burdens on a regulated person’s exercise of religion, RFRA **may** require certain religious exemptions to the federal law for the regulated entities. RFRA does not, however, apply to the actions of state governments, as the Court held the law to be **unconstitutional** as applied to the states because the law exceeded Congress’s enforcement authority under the Fourteenth Amendment. As a result, unless a state has chosen to enact a state version of RFRA (as 21 **states** have), states generally have broad authority under their police power to impose mandatory vaccination requirements without providing a religious exemption.

Considerations for Congress

Currently, the federal government has generally limited its role with respect to vaccination to promoting, facilitating, or monitoring the use and/or manufacture of vaccines, such as **requiring** insurance coverage for recommended vaccinations, **providing** clinical guidance on vaccinations, and **ensuring** vaccine safety. Except for certain populations, including **immigrants** seeking permanent residence in the United States and **military personnel**, the federal government has not sought to invoke its authority to impose federal vaccination requirements on the populace. Nonetheless, Congress has “**granted** broad, flexible powers to federal health authorities who must use their judgment in attempting to protect the public against the spread of communicable disease” under the Public Health Service Act (PHSA). This **authority** to make and enforce regulations necessary “to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession” could **conceivably** be used to mandate vaccinations, **provided** that the authority is not exercised in a way that otherwise violates the Constitution or fails to comply with other statutory requirements, such as the Administrative Procedure Act. Current regulations issued pursuant to this authority, however, are limited to measures that **include** quarantine and isolation measures to halt the spread of certain communicable diseases.

In addition, Congress’s Spending Clause authority empowers it to prescribe certain vaccination requirements that must be implemented by states or localities as a condition of receiving certain federal funds. Currently, **Section 317** of the PHSA, among other functions, provides federal immunization grants to numerous states, cities, and territories to implement measures that would improve vaccination rates, including by reducing the out-of-pocket costs for families for vaccines, providing targeted education services, and providing targeted vaccination reminders for patients. The conditions of a Section 317 grant at present do not include vaccination requirements. A bill introduced in the 116th Congress, the **Vaccinate All Children Act of 2019**, would, however, impose an additional condition requiring a grant applicant to demonstrate that it requires every student enrolled in the state’s public elementary and secondary schools to have received the recommended vaccinations. This requirement, which appears germane to one of the federal interests of Section 317 (i.e., to improve vaccination rates), would thus expand the federal government’s role in mandating vaccinations through Congress’s Spending Clause authority.

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