



## NATIONAL HEALTH FREEDOM ACTION

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## NHFA's Opposition to California SB 277 Regarding Vaccine Exemption Rights in Jeopardy

To: State of California Assembly Health Committee  
Date: June 2, 2015

Dear Committee Members:

We write this letter today with sincere concern for the citizens of the State of California and their right to make health care decisions for their families. We ask that you oppose SB277 and protect their rights to make health care decisions and uphold America's deep commitment to personal liberties and the right of self-determination to care for oneself and one's family members.

NHFA opposes CA SB 277 because it would eliminate the personal belief exemption from California immunization law thus obstructing parental rights for health care decision-making and education decision-making as well as infringing on the human rights of children. It also provides for an overly broad delegation of authority to the California State Department of Health Services for making recommendation of future immunizing agents and modes of administration obstructing the authority of licensed physicians to recommend treatments for their patients and obstructing parental and human rights.

NHFA holds that CA SB 277, if passed, would be **unconstitutional** because:

- a. It does not pass the reasonableness test for use of state police powers described in *Jacobson v. Massachusetts*, 197 U.S. 11(1905) for compulsory vaccination of citizens;
- b. It requires a strict or intermediate scrutiny review of constitutionality rather than *Jacobson's* rational basis review;
- c. It infringes upon substantive due process rights and violates the equal protection clause of the 14th Amendment; and
- d. It provides for an overly broad and impermissible delegation of rulemaking power to the State Department of Health Services to modify the Educational and Child Care Facility Immunization Requirements mandating additional vaccines through exclusive deference to federally

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recommended immunization protocols that prohibits the state from reflecting its own independent judgement on behalf of its citizens.

For these reasons NHFA respectfully requests the Committee to vote NO and find that SB 277 is not warranted.

The bill language put forth would negatively impact and jeopardize the legal constitutional rights of California parents and the human rights of children and has the potential of putting thousands of children at risk of not being afforded a public education and in addition has the potential of putting children unnecessarily at risk of bodily harm without un-coerced parental consent.

Although SB 277 contains an exemptions so that parents may avoid immunizations for their children as long as they are open to educating their children without participating in a school system, this exemption is coercive, unconstitutional, and undermines parental rights of choosing the health care treatments for their children for preventive care as well as choosing the type of education they deem best for their children.

NHFA requests the Committee to vote NO on SB 277 and uphold California's law honoring the role of California parents in the upbringing of their children regarding health and education.

### **National Health Freedom Action – a brief description of our work**

National Health Freedom Action (NHFA) is a 501(c)4 non-profit corporation with many California subscribers and members and working to protect maximum health care options for consumers.<sup>1</sup> NHFA works to protect the right of all people to access their preferred health care health care products and practitioners that resonate with people's path to wellness.

Americans are concerned. There is a growing awareness among Americans that personal choice in health care directly impacts how, and whether, a person will gain a full sense of health and wellness. Americans have become deeply concerned about infringements on their ability to make choices caused by regulatory systems that do not adequately protect a person's ability to choose.

NHFA works with citizens to empower them to take action to address their concerns. NHFA educates and trains citizens on health freedom principles and on how to develop and pass proactive legislation that will protect their rights to make choices and ensure their rights to have access to products, practitioners, and information.

NHFA responds to calls year-round from individuals and groups throughout the country who wish to promote legal reform in laws and regulations having to do with health choices on the state level, and with federal and international product laws and regulations having to do with access to desired products.

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<sup>1</sup> National Health Freedom Action, [www.nationalhealthfreedom.org](http://www.nationalhealthfreedom.org).

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NHFA staff works to serve citizens and citizen groups by drafting legislation, testifying at legislative hearings and public policy meetings, giving presentations and public speaking, and by providing strategic support and lobbying assistance. NHFA is a Voting Member of the US Health Freedom Congress. NHFA staff are currently in contact with groups in over 30 states to support health care reform efforts.

### **NHFA's Health Freedom work in California**

NHFA became familiar with consumers in California immediately upon its founding in 2001, when in February 2001, California Senator Burton introduced SB577 regarding complementary and alternative health care practitioners. NHFA became aware of the thousands of Californians working to protect the rights of citizens to make their own health care choices and we heard from many of them. NHFA supported California Health Freedom Coalition in their efforts to pass SB577 and protect consumer choices in health care by protecting the many complementary and alternative practitioners right to practice. [Click Here](#) to view the California Complementary and Alternative Health Care exemption law as passed in 2002.

NHFA has been involved with leaders across the country working for passage of the California complementary and alternative health care type of Health Freedom legislation in nine states, with differences in language to reflect the unique needs of each state.<sup>2</sup> The Health Freedom states with these Exemption laws are Minnesota, Rhode Island, California, Louisiana, Idaho, Oklahoma, Arizona (for homeopaths), New Mexico, and Colorado. [Click here](#) to view state bills.

### **NHFA's response to SB 277 in 2015**

NHFA opposes CA SB 277 because it eliminates the personal belief exemption from California immunizations thus obstructing parental rights for health care decision-making and education decision-making as well as infringing on the human rights of children, and it provides an overly broad delegation of authority to the California State Department of Health.

SB 277 if passed would go beyond the state police power balancing parameters described in *Jacobson* for compulsory vaccination of citizens and necessary state action to be taken when citizens are endangered by dangerous contagious epidemic diseases prevalent and increasing. NHFA believes the *Jacobson* authoritative value regarding the issue of immunization regulations today needs to be deeply scrutinized and questioned to protect the integrity of our evolving society.

Since some states are still relying on *Jacobson* and *Zucht* to support their laws NHFA has assessed SB 277 under the principles outlined in those cases. Detailed summaries of these cases can be provided upon request but for purposes of this short letter only the relevant rule from *Jacobson* is presented.

It is NHFA's contention that SB277 is not reflective of the facts and circumstances on which the *Jacobson* holding was justified. Instead of focusing on protecting the public from dangerous epidemics that are present and imminent in the population as described in *Jacobson*, the current SB277 is addressing general disease prevention and the making of laws to promote one form of treatment, (the

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<sup>2</sup> [http://www.nationalhealthfreedom.org/InfoCenter/laws\\_passed.html](http://www.nationalhealthfreedom.org/InfoCenter/laws_passed.html).

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use of federally promoted vaccines), over other options to support immunity. This type of statute would be promoting the injection of federally recommended foreign antigens into the bodies of children for the purpose of general disease prevention without parental un-coerced consent, and without consideration of the proper limits on police power to do so.

The regulation being challenged by Mr. Jacobson in 1905 was justified as reasonable and necessary upon specific recognition that it imposed “one vaccine, on the entire adult population, in the context of a contagious, deadly epidemic, with a relatively small fine for non-compliance.” It had nothing to do with general disease prevention or multiple types of modern day vaccines including complex and dangerous ingredients. Legal scholars distill from the *Jacobson* decision the following rule: utilizing state police powers in support of vaccination requirements is constitutionally permissible only if the powers are exercised in conformity with the following principles: (1) public health necessity, (2) reasonable means, (3) proportionality, (4) harm avoidance, and (5) fairness. We are open to sharing our further constitutional analysis with this Committee upon request under this standard.

NHFA urges the California Assembly Health Committee Members to vote NO on SB277 because, after detailed analysis, NHFA finds that the proposed law does not pass constitutional muster under the *Jacobson* factors.

Thank you for your consideration.

Sincerely,

Diane Miller JD

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