

Stop Bringing the Disease Home: Why Issuance of a Passport Should Require Vaccination

I. INTRODUCTION

Towards the end of 2014, the member teams of the National Hockey League (NHL) faced an outbreak of a disease often thought of as eradicated in the United States—mumps.¹ The disease spread to about twelve players in the league—and with it the symptoms of fever, headache, fatigue and swollen glands came with it, taking players out of scheduled games.² Mumps is a vaccine-preventable disease and often the vaccination is given to children as a part of their first set of inoculations. After the vaccination was developed and implemented, it was wildly successful.³ In 2013, there were 584 cases of mumps in the United States.⁴ In 2014, that number spiked and as of the end of November, the number of cases reported was 1,078.⁵ The jump in these reported cases is not subtle and is something that should not only be a concern to public health officials but also the American public.

Vaccination in the United States has become a contentious issue. In the last decade and a half, vaccination rates in young children have dropped to a rate that makes public health officials nervous. Parents in different states are exercising “contentious objector” or religious exemptions to ensure their children can matriculate in grade school without receiving the requisite shots.⁶

Exemptions to vaccination have developed rapidly in the last few years as a response to those who

¹ Kevin Allen, *NHL Working to Fight Mumps Outbreak*, USA TODAY, Dec. 10, 2014, available at <http://www.usatoday.com/story/sports/nhl/2014/12/09/mumps-nhl-francois-beauchemin-ryan-suter-corey-perry/20168999/>.

² *Mumps and the NHL*, CHICAGO TRIBUNE, Dec. 8, 2014 available at <http://www.chicagotribune.com/chi-nhl-mumps-cases-spt-gfx-20141208-htmlstory.html>.

³ See *infra*, Section II. (discussing a history and effectiveness of various vaccines).

⁴ See *supra*, note 2.

⁵ *Id.*

⁶ See *infra*, Section II. (discussing the reaction and reception of vaccines in the United States and around the world).

value autonomy of their person as well as have doubts about the efficacy and risks associated with the ingredients of vaccines. Small pockets of this type of groupthink pop up around the US; for example, Vashon Island in Washington.⁷ These outposts utilize the exemptions and their children go to school unvaccinated, potentially putting other children at risk.

These vaccine-preventable diseases make their way into the United States in a number of different ways. However, at least 50% of these outbreaks can be attributed to international travel.⁸ This means that someone travels abroad to a place where the disease is present and then brings the disease back and infects another person who does not have the vaccine (do to abstention or they simply cannot receive a vaccine). To travel, some countries require a traveller entering their territory to prove that they have the required vaccinations before they are issued a visa or allowed to enter the country through customs and immigration.⁹ Therefore, the onus is on the traveller to ensure that they are vaccinated.¹⁰ However, many countries waive this requirement for citizens of developed countries under the assumption that the disease has been eradicated in that place and the traveller does not register as much of a risk to their own citizens. This does not stop the importation of a vaccine-preventable disease to the United States after a citizen is finished with their romp abroad. Because there are outbreaks of vaccine-preventable diseases in other countries, the potential of an issue such as this is very real and has real consequences in the United States. Therefore, it is imperative that the United States Department of State starts tying the privilege of a passport to its citizens to successful completion of vaccine schedules for certain diseases. This would help alleviate the direct importation of vaccine-preventable diseases and infection rates to those who rely on herd

⁷ Donald G. McNeil, Jr., *When Parents Say No to Child Vaccinations*, NEW YORK TIMES (Nov. 30, 2002) available at <http://www.nytimes.com/2002/11/30/us/when-parents-say-no-to-child-vaccinations.html>.

⁸ See *infra*, Section IV. (discussing transmission rates of vaccine-preventable diseases in the United States due to direct contact with someone who was recently abroad).

⁹ U.S. Department of State, *Vaccinations*, last accessed Dec. 11, 2014, available at <http://travel.state.gov/content/visas/english/immigrate/vaccinations.html>. (examples of required vaccines include Hepatitis A and B, measles, mumps, pertussis, polio, and rubella).

¹⁰ *Id.*

immunity for their own health. Although religious exemptions should be honored, contentious objections shall not be tolerated in the context of international travel.

This type of administrative solution to a public health issue would greatly benefit the United States as well as individuals who are harmed by those who are not vaccinated based on personal views and infect someone who cannot receive vaccination. This paper will discuss in part one, a brief history of vaccination in the United States as well as global responses to major vaccine-preventable disease epidemics. Then, a discussion regarding the State Department's ability to screen and approve passports to US citizens and how a policy and administrative change is feasible. Finally, a discussion about the importance of a program like this when rates of vaccination are dropping in the United States and that this program would pass scrutiny by a court.

Maintaining a high rate of vaccination is imperative to the health and well-being of the United States public and help alleviate pain and the high cost of health care for a disease that could have been easily avoided. Who knows, perhaps the outbreak of mumps in the NHL could have been prevented if those who were infected were vaccinated?

II. A BRIEF, CONCISE HISTORY OF VACCINATION AND RECEPTION

Crude methods of vaccination date as far back to 1000 AD where people would take the scabs of people to deliberately infect them with a weakened form of smallpox.¹¹ This practice eventually evolved in into the types of vaccination we are used to today.¹² Eventually, vaccines against smallpox were developed and countries instituted mandatory vaccination programs.¹³

Eventually, after major developments in the science of vaccination and successful implementation of

¹¹ See Donald A. Henderson & Bernard Moss, Smallpox and Vaccinia, in *Vaccines 74* (Stanley A. Plotkin & Walter A. Orentstein eds., 3d ed., 1999).

¹² See J. Alastair Dudgeon, Historical Introduction, in *Immunization: Principles and Practice 2* (J. Alastair Dudgeon & William A.M. Cutting eds., 1991). The development of vaccines actually developed out of a doctor taking a disease (cowpox) from one person and injecting it into a healthy person. *Id.* The newly inoculated person developed an immunity to the disease. *Id.* The findings were eventually published and disseminated worldwide. *Id.*

¹³ *Id.* at 9.

public health programs, smallpox was eradicated in 1980.¹⁴ This remains one of the greatest feats of medical technology and public health in human history.

Today, there are many recommendations about what vaccines should be given to children in order to prevent childhood sickness and mortality.¹⁵ Generally, compulsory vaccination laws are left to the purview of the states.¹⁶ It is up to the state to require what vaccines they wish their citizens to receive. Additionally, they have the power to require vaccination to enroll in public school or tie it to another privilege they provide their citizens.¹⁷ Although the states have this power, the federal government, after some negative reactions to various vaccines, have set up a system of “vaccine courts” to ensure that those who are injured by a vaccine can receive compensation and protects the manufacturer and developer from suits against aggrieved parties, allowing them to pursue additional research and innovation in vaccination.¹⁸

Although vaccines and their efficacy of preventing disease is nearly undisputed in the realm of public health as well as most societies, there is a growing sense of unease regarding the risk

¹⁴ See World Health Organization, *The Global Eradication of Smallpox: Final Report of the Global Commission for the Certification of Smallpox Eradication*, 4 *History of International Public Health* (1980). Although eradicated, the smallpox virus exists in small amounts in a few different labs around the world. *Id.*

¹⁵ See Centers for Disease Control, *Recommended Childhood Immunization Schedule – United States, 1999*, 48 *Morbidity & Mortality Wkly. Rpt* 12-6 (1999). This schedule recommended vaccines including DTaP, MMR, OPV and OPV, and the flu. Although none of these diseases are much of a threat in the United States anymore, they still can be lethal to newborns or pregnant women. These diseases, when contracted, can lead to miscarriage or other horrific outcomes.

¹⁶ See John Duffy, *The Sanitarians: A History of American Public Health*, at 56 (1990). The federal government passed a national compulsory vaccination program in 1813, but was repealed nine years later because of the belief that the laws should be controlled by the states. There does exist an exception to this policy when there is a public emergency. *Id.*

¹⁷ Christine Parkins, *Note: Protecting the Herd: A Public Health, Economics, and Legal Argument for Taxing Parents who Opt-Out of Mandatory Childhood Vaccinations*, 21 *S. CAL. INTERDIS. L.J.* 437, 438 (2012).

¹⁸ See Walter A. Orenstein et al., *Public Health Considerations – United States, Vaccines 1011* (Stanley A. Plotkin & Walter A. Orenstein eds., 3d ed.) (1999). This system tracks adverse vaccination events. *Id.* The government then has the ability to monitor these events and ensure the safety of the immunization programs currently implemented in the United States. *Id.* at 2012. This helps retain confidence in these programs – a cornerstone in public health. See Robert Rabin, *Some Thoughts on the Efficacy of a Mass Toxics Administrative Compensation Scheme*, 52 *MD. L. REV.* 951, 959 (1993). This system set up a “no-fault” scheme of reimbursement for those harmed by a vaccine. Although this grants vaccine manufacturers immunity for suits resulting in normal adverse reactions, it does not provide immunity for anything “untoward” in their vaccines. *Id.* at 965.

associated with receiving a vaccine.¹⁹ This is fueling the current debate about the ingredients in vaccines as well as the risk-benefit analysis of requiring vaccination for children to enter grade school in the United States.²⁰ Researchers posit that people with these beliefs rely on the fact that the illnesses prevented by the vaccines are no longer killers in the United States and the need for vaccination (and the potential risks associated with it) is now moot.²¹ Although some exemptions have proven wildly successful for members of the antivaccination movement, the risks associated with a rising number of children being unvaccinated is posing a risk to society in general and may lead to a resurgence of certain diseases.²²

In a legal context, the laws that these “antivaxxers” (those who are a part of the antivaccination movement) are opting out of are constitutional.²³ However, these exemptions are only to be able to enroll their children in public school in the United States. These types of laws, tying mandatory vaccination and education together, have been challenged numerous times and are often futile.²⁴ The State’s interest in public health generally outweighs the harms and challenges plaintiffs bring.

This paper does not advocate for a change to the current systems in place by the states and their current regulations. Although the author agrees with the two states that do not allow any

¹⁹ See Steve P. Calandrillo, *Article: Vanishing Vaccinations: Why are so many Americans Opting out of Vaccinating Their Children?*, 37 U. MICH. J.L. REFORM 353, 388 (2004).

²⁰ *Id.* There are some instances of antivaccination movements globally, however, this paper’s scope will focus on current U.S. sentiment.

²¹ *Id.* Additional to this belief is the focus on person autonomy and freedom from government. It is because of these feelings that philosophical and religious exemptions to vaccination programs have increased. *Id.* at 389.

²² Many people who opt not to vaccinate their children utilize the philosophical objection because they believe there is a link between vaccination and autism—a belief that has been vastly contested by the scientific community. In reaction to these beliefs, vaccine manufacturers have removed thimerosal (a distant relative of mercury) from all recommended vaccines for children. *Id.* at 400. However, this hasn’t quelled the feelings held by the antivaccination movement.

²³ See *Jacobson v. Massachusetts*, 197 U.S. 11 (1905). This is the seminal compulsory antivaccination case. The Court held that a State’s police power to protect their citizen’s health allowed them to require all the citizens of Cambridge to receive a smallpox vaccination. The Court held that individual rights cannot intrude upon other people’s rights. Therefore, when the health of society is endangered, the state may infringe on the rights of its citizens. *Id.*

²⁴ See *Viemester v. White*, 84 N.Y.S. 712 (1903); *Maricopa County Health Dep’t v. Harmon*, 750 P.2d 1364 (Ariz. 1987) (both of these cases held that the state or health department had the authority to exclude children from public education for not being vaccinated).

exemptions to vaccination, the current system in place by the several states cannot easily be changed.²⁵ Instead, the federal government's ability to regulate travel should be used to tie vaccination and international travel and passports. This is a much easier solution to ensure that those who are unvaccinated from these exemptions do not fall through the cracks entirely and inadvertently contract and infect others with a vaccine-preventable disease.

III. THE CONSTITUTION, THE LAW, AND INTERNATIONAL TRAVEL

The Supreme Court has granted strong constitutional protects for US citizens to enjoy the right to travel among the states.²⁶ However, the Court has not been persuaded to extend as strong of protections to the right to international travel.²⁷ Additionally, the Court has clearly spoken on the issue. In *Aptheker v. Secretary of State*, the Court explained: “without reference to other constitutional provisions, Congress has, in my judgment, broad powers to regulate the issuance of passports under its specific power to regulate commerce with foreign nations.”²⁸ In 1956, the Department of State published regulations outlining the requirements and scrutiny for the receipt of a passport.²⁹ Essentially, these regulations stated that when the Department foresees that a person's activities abroad would: “(1) Violate the laws of the United States; (2) be prejudicial to the orderly conduct of foreign relations; or (3) otherwise be prejudicial to the interests of the United States.”³⁰ Although these requirements can be construed broadly, when they were implemented they were not

²⁵ James G. Hodge Jr., School Vaccination Requirements, Legal and Social Perspectives, NCSL State Legislative Report (LexisNexis 2008). Currently, Mississippi and West Virginia are the only two states that do not allow either a religious exemption or a philosophical exemption. The only exemption is a medical exemption—that the citizen physically cannot receive a vaccine. *Id.*

²⁶ See Jeffrey Kahn, *International Travel and the Constitution*, 56 UCLA L. REV. 271, 284-287 (2008). Although the right to travel within the United States is not explicitly found in the Constitution, the Court has extended it protection because of its close entanglement and relation to other explicit rights.

²⁷ *Id.*

²⁸ 378 U.S. 500 (1964). After this case, Congress quickly started regulating foreign travel as foreign commerce

²⁹ See Kahn, note 29 at 315.

³⁰ See *Id.*, citing Passports Miscellaneous Amendments, 21 Fed. Reg. 336 (Jan 17, 1956) (amending C.F.R. § 51.136).

contentious as international travellers were few and far between and the government's travel restrictions were often only temporary and were required to be a grave threat to the United States.³¹

Then, another development to US passport policy occurred in 1978. Congress amended the Passport act to include language that aligned US policy with international standards. This new language included the sentence: "Unless authorized by law, a passport may not be designated as restricted for travel to or for use in any country, other than a country with which the United States is at war, where armed hostilities are in progress, or where there is imminent *danger to the public health or the physical safety of United States travelers.*"³² This new language is used in federal government's Do Not Fly program to restrict travellers who pose a threat to the United States as well as to restrict travel to certain countries.

Since the passage of these acts, the regulation of passports went from being simply an optional aid to those who wanted to traverse abroad to a highly regulated method of monitoring the movement of citizens across international boundaries and a mandatory element of international travel. Today, restrictions on international travel and passports are still regulated by the State Department and in addition to the criteria established in the 1950's, Congress has passed laws furthering the grounds for the Department to deny a passport application.³³ However, for most US citizens, applying for and receiving a passport is a non-event. Passport revocation and denial cases are still being played out today in various circuits. Generally, these cases involve someone with relations to the Middle East who has US citizenship and the right to international travel is implicated in the case. Critics of a weak protection to international travel point to the a recent Ninth Circuit decision stating that restrictions to the right of foreign travel "must be justified by an important or

³¹ *Id.* at 316.

³² Foreign Relations Authorization Act, Fiscal Year 1979, Pub. L. 95-426, tit. I § 124, 92 Stat. 971 (codified at 22 U.S.C. § 211a (2000)). (emphasis added).

³³ *See* 22 C.F.R. § 51.60. This section outlines the different reasons the State Department may deny a passport application including defaulting on child support payments in excess of \$2,500.

compelling government interest and must be narrowly tailored to that end.”³⁴ A public health requirement for the issuance of passports may hold water against judicial review as it meets both statutory requirements as well as muster of strict scrutiny (if a court provides that international travel is entitled to that level of review).

IV. ARGUMENT

International travel is now easily accessible for many Americans. Visiting foreign places for work or play has increased exponentially since the passage of the Passport Acts. Along with these new rates of travel, potential places for exposure for harm increase as well. Travel concerns do not stop once travellers have safely boarded, flown, and deplaned from their point of origin. Harms and disease may travel with a person who has been abroad and may inadvertently infect people with whom he comes into contact. For example, in 2011, a twenty-seven-year old unvaccinated woman traveled from the United Kingdom to various cities on the East Coast of the United States. She was infected with measles, which is highly contagious and can infect 90 percent of those who are exposed to it.³⁵ This included airport employees, fellow travellers, as well as citizens of the cities she visited.

This type of situation is not an anomaly. Unvaccinated individuals travelling pose a serious risk to those who rely on herd immunity to ensure their own health and well-being. Generally, visitors to the United States are required to prove they are vaccinated against a variety of diseases before they are issued a visa for entry.³⁶ However, this requirement is not extended to US citizens who are travelling abroad unless a country they visit requires proof of vaccination, such as the polio

³⁴ *Eunike v. Powell*, 302 F.3d 971, 981 (9th Cir. 2002) (Kleinfeld, J., dissenting). This sounds much like strict scrutiny. However, because the judge was dissenting, his argument is likely only a potential policy argument for those plaintiffs who are challenging the United States.

³⁵ Christine Parkins, *Note: Protecting the Herd: A Public Health, Economics, and Legal Argument for Taxing Parents who Opt-Out of Mandatory Childhood Vaccinations*, 21 S. CAL. INTERDIS. L.J. 437, 438 (2012).

³⁶ *See supra*, note 9.

vaccine, for entry. Another situation occurred in California when a ten-month-old contracted measles after going to a pediatrician's office where he was exposed to the virus from a seven-year-old who had traveled abroad to Switzerland.³⁷ The parents of the infecting child had used a philosophical exemption to opt out of the mandatory vaccines that would have prevented this harm.³⁸

Had the people travelling abroad been vaccinated, they would not have caused harm to their communities. Because of the increase of Americans travelling abroad as well as the falling vaccination rates in the United States as well as abroad, it is time for the State Department to utilize the power given to them to tie the privilege of having a passport to being vaccinated. It is well within their authority under the Foreign Relations Authorization Act to determine that those who are unvaccinated and travelling abroad are threats to the public health of the United States and its travellers. It is in the best interests of those who require herd immunity, the healthcare system in the United States, as well as the travelling public to require vaccination for certain diseases.

These diseases are only a plane ride away from the United States. We are not an isolated country. Many of the outbreaks or occurrences of vaccine-preventable diseases in the United States are related to international travel. Although measles is thought to be eradicated in the US, it still has occurred in different populations due to travel. For example, in 2001 more than half of all measles cases in the United States have a direct link to travel abroad.³⁹ An outbreak of typhoid occurred in the US in 2002 when over 80% of those who had contracted the disease had traveled abroad within six weeks prior to the infection.⁴⁰ Although these are outbreaks of diseases that sparked media

³⁷ See *supra*, note 38, at 438. In Switzerland, at the time the travel was completed, the vaccination rate against measles was below the 95% threshold to ensure herd immunity for those who are unvaccinated.

³⁸ *Id.*

³⁹ See Yvonne A. Malonado, Current Controversies in Vaccination: Vaccine Safety, 288 J. Am Med. Ass'n 3155 (2002).

⁴⁰ See *supra* note 22, at 428. (discussing the history of vaccine-preventable outbreaks which are directly traceable to international travel). Two other diseases thought to be brought to the United States through travel that the author mentions also includes HIV/AIDS as well as the outbreak of SARS in the early 2000's. *Id.* The infection rates of SARS is thought to be attributed to international travel and researchers put this rate at above 95%. *Id.*

attention, smaller and more confined instances do occur outside of major metropolitan areas that have international airports.⁴¹ For example, in central Minnesota in 2011 there was an outbreak of measles that sickened nineteen children and two adults.⁴²

Because so many of these outbreaks in children and adults are related to international travel, it is imperative that the State Department flexes their administrative prowess and require proof of vaccination before US citizens travel abroad and return to the United States. The effects of these outbreaks have a tangible effect on the healthcare system as well. In a system that already includes rising medical costs, adding the care and treatment of those who contract a vaccine-preventable disease only causes more harm. A two-year measles outbreak in the late 80s and 90s cost around \$100 million for direct medical costs and many lost work hours for those who were unfortunate enough to contract the disease.⁴³ It is even harder to quantitatively analyze the amount of money and work hours saved by vaccines that have helped eliminate polio as there have been very few outbreaks in the United States. However, resurgence of the disease in Pakistan could lead to higher contraction rates globally if left unchecked and freedom of movement is not challenged for those travelling to and from that country.⁴⁴

Complacency in vaccination will not bode well for the United States or the global community. Some scientists theorize that if left unchecked, the polio virus may lead to 855,000 deaths, 4 million paralytic polio cases and 40 million disability adjusted life years between 1970-

⁴¹ See Vaccine-Preventable Outbreaks Map, Council on Foreign Relations, *available at* http://www.cfr.org/interactives/GH_Vaccine_Map/#map. This map outlines all of the outbreaks of vaccine-preventable diseases around the world. Nearly every state in the country has at least one instance of a vaccine-preventable occurrence. *Id.* Although most cases are located around major metropolitan areas, there are still outbreaks in small communities in rural areas as well.

⁴² Amy Norton, *How one Unvaccinated Child Sparked Minnesota Measles Outbreak*, CBS NEWS, June 9, 2014. This outbreak was directly related to travel to Somalia. When the family returned home with their child, he was brought to a daycare facility and infected more children. Eventually, the number of potential contacts of people to the measles virus is thought to be at around 3,000 from one infected child. *Id.*

⁴³ See Washington DOH, *Childhood Immunizations*, *available at* <http://www.doh.wa.gov/clh/immunize/childhood.htm>.

⁴⁴ Declan Walsh, *Polio Crisis Depends in Pakistan, With New Cases and Killings*, NEW YORK TIMES, Nov. 26, 2014. India has already threatened Pakistan to severely limit the movement of Pakistan's citizens over its borders if the polio outbreak there does not come under control. *Id.*

2050.⁴⁵ Outside of the polio vaccine, the financial toll of vaccine-preventable diseases occurring in the United States impose about \$10 billion worth of healthcare costs and 30,000 avoidable deaths.⁴⁶ If over half of these cases are from direct contact with someone who has travelled abroad, then the United States may see a dramatic drop in healthcare costs associated with these outbreaks.

Administratively, the implementation of this sort of new requirement for a passport would not burden the State Department or violate privacy laws. In all fifty states, parents must prove that their children have received the requisite vaccinations before they will be allowed to enroll in grade school. This complies with health privacy laws in the United States.⁴⁷ These disclosures are legal as long as the covered entity complies with federal law. If implemented, the State Department will become a covered entity and will have to comply with HIPAA and other privacy laws. Currently, there already exists data programs and services utilized by the federal government to monitor proof of vaccination for those who apply for and receive a visa to visit the United States.⁴⁸ This information is then shared with the National Security Administration, Customs and Border Protection, immigration authorities, etc., to ensure that the people who are entering the United States do not threaten its national security or citizens.⁴⁹

The State Department already has the statutory authority to condition the receipt of a passport to public health issues.⁵⁰ Because the falling rates of vaccination as well as the rising number of vaccine-preventable disease outbreaks around the world, it threatens the public health of the United States and its citizens travelling abroad. As already stated, the contraction rates for these types of disease are overwhelmingly due to international travel by someone who is unvaccinated.

⁴⁵ See M.M. Khan & J. Ehreth, *Costs and Benefits of Polio Eradication: A Long-Run Global Perspective*, 21 VACCINE 702 (2003). This article notes the arguments for discontinuing the polio vaccine after 2010.

⁴⁶ See *supra*, note 42.

⁴⁷ See generally, HIPAA: The Privacy Rule 45 C.F.R. 164.

⁴⁸ Most foreigners who wish to visit or do business in the United States must meet with a foreign officer at an embassy or consulate abroad. See *supra*, note 9.

⁴⁹ The author understands that HIPAA may not be required for those citizens of foreign states, however if a program like this is implemented, then it will certainly be necessary for the State Department to be HIPAA-compliant.

⁵⁰ See *supra*, note 35 and accompanying text. (discussing the inclusion of a public health exception to passport issuance).

Because herd immunity is required to ensure that those who have a medically necessary exemption to vaccines remain healthy (especially for small children who are not yet old enough to receive the vaccinations), requiring vaccination prior to receiving a passport is tailored to the issue that the government is trying to resolve.⁵¹ The threat to public health is very real and already threatens the health system in the United States.⁵²

Because of the nature of herd immunity and the potential for people to opt out of vaccines due to convenience by electing a philosophical exception, the State Department should not allow philosophical or religious exemptions to those who intend to travel abroad. Two states already do not recognize these types of exemptions and it would be no different for the federal government not to recognize them either.⁵³ Allowing these exemptions would obliterate the profound effectiveness of this type of regulation.

The right to international travel is not a fundamental right and conditioning a person's ability to travel internationally upon their being vaccinated does not trigger strict scrutiny. Alternatively, if a court is reluctant to find that the regulation is not "justified by an important or compelling government interest and must be narrowly tailored to that end," conditioning travel on airlines or by ship can also be entertained by the respective agencies that regulated those modes of transportation. However, the federal government's interest in protecting its citizens from vaccine-preventable diseases is compelling, as it ensures the health of not only US citizens but also the integrity of the health care system in the United States. These types of regulations would be narrowly tailored to fit

⁵¹ A compelling argument is that people who do not receive vaccinations based on a religious or philosophical exemption are violating the Fourteenth Amendment for those who cannot receive a vaccine for a medical reason. See Allan J. Jacobs, *Do Belief Exceptions to Compulsory Vaccination Programs Violate the Fourteenth Amendment?*, 42 U. MEM. L. REV. 73 (2011).

⁵² In fact, some argue that medical tourism may be enough to deny a person a passport. See Nathan Cortez, *Patients without Borders: The Emerging Global Market for Patients and the Evolution of Modern Health Care*, 83 IND. L.J. 71 (2008). (Specifically, footnote 426 cites the Secretary of State may prohibit the use of passports for public health reasons and may conceivably restrict passports for medical tourism.)

⁵³ *Id.* This would also remove the sticky issues of defining what a "sincerely held religious belief" is or what a religious qualify for the exemption. *Id.* Both issues have thrown wrenches in public health vaccination programs and should generally be avoided entirely to pass constitutional scrutiny. *Id.*

the regulation as it does not remove the right to opt-out of vaccination at the school level for parents in the states. The federal government's power would only come into play when someone applies for a passport. If a person never decides to go abroad, they will not need to receive a vaccine. This type of regulation does not infringe on the rights of the states to regulate and implement their own vaccination policies and programs, which is important for potential police power violations.

Requiring proof of vaccination is not difficult, especially when healthcare is now generally available to all people through the Affordable Care Act. Vaccination records are also now easily accessible from healthcare providers who have online patient charts to which the patient has access. A person applying for a passport may go online, print out a copy of their vaccinations and attach it to their passport application.⁵⁴ Once received, the person processing the application will simply be able to verify the vaccinations or see that the applicant has a medically necessary exemption to receiving a vaccination. An additional step in this process does not add administrative strain or an additional substantial cost to the agency processing passport applications.

V. CONCLUSION

These types of regulations may seem drastic. But in the face of a very real health threat, they are necessary—especially when the culprit and nexus of these vaccine-preventable outbreaks are overwhelmingly traceable to international travel. Since the Supreme Court has never found the right to international travel a fundamental right, and the possession of a passport only to be a privilege, tying vaccination and passports together is a constitutionally sound solution to a problem that may only become worse.

Vaccines are one of the most cost-effective medical treatments humanity has developed. By ensuring high rates of vaccination, we are ensuring that diseases such as polio, mumps, and measles

⁵⁴ Fraud prevention may also play a major component of this program. However, most citizens applying for a passport will have easy access to their records and may sign a notarized affidavit that they swear that the medical records are correct.

remain eradicated from the United States and thereby ensures herd immunity and lowers the costs associated with the treatment of these diseases. Most people today do not have the fear instilled in them that their parents or grandparents had when these types of diseases were rampant, which leads to complacency when it comes to vaccinating their children or themselves. This has a very real effect on our healthcare system.

This article does not call for an end to exemptions to compulsory vaccination programs tied to education. Rather, those programs may function along side this new type of regulation. Those who do not want their children vaccinated need not vaccinate them and may use a religious or philosophical exemption. Although these people may not recognize or realize the benefit of adding an additional step to the safety and security of our own country by requiring these vaccinations for travel abroad, they will nonetheless experience the benefits as infection rates will drop from direct transmission due to international travel.

The State Department holds the ultimate authority to decide who will receive a passport and who will not. They also already have the authority to deny passports to those whose travel will be a threat to the public health of the United States and its travellers. It is time that a part of the federal government start acting in the best interest of public health of United States citizens and work towards ensuring high vaccination rates.

Perhaps Eula Biss, in her book *On Immunity*, said it best when it comes to inoculation in the sense of community and how we rely on each other for safety, regardless of our own beliefs in autonomy: “However we choose to think of the social body, we are each other’s environment. Immunity is a shared space—a garden we tend together.”⁵⁵

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⁵⁵ Eula Biss, *On Immunity: An Inoculation*, 163 (2014).