I. INTRODUCTION

In the year 2020 alone, we witnessed first-hand the consequential lack of preparedness in governments around the world addressing emerging health crises. One would think that advanced healthcare systems developed world-wide would have been more equipped to take on the novel COVID-19 virus. However, this life-altering virus has shown us that there are a multitude of cracks in the world’s healthcare foundation. One of the more visible cracks throughout history has been the handling of mandated vaccinations. A key example of this problem can be seen with the United States’ management of the 9th century disease, measles.2

The World Health Organization declared measles eliminated from the United States in 2000 after the success of the measles’ vaccine.3 However, on October 1, 2018, measles resurfaced in four New York State counties, causing a spread of about 1,282 individual cases of measles over the next year in 31 different states.4 How did this 9th century disease resurge almost twenty years after it had been eliminated from the United States?5 Had a new strain of the measles disease developed with the capability of undermining the measles vaccine? Or was there something wrong with the measles vaccine itself? The issue was neither a new strain or the vaccine itself, but rather that measles had been brought into the United States by travelers and was attacking unvaccinated communities, including unvaccinated children whose parents chose to leave them vulnerable against this highly contagious and highly dangerous disease.6 In New York, measles resurfaced from “close-knit and under-vaccinated Orthodox Jewish communities . . . [who] accounted for seventy-five percent of the measles

1 George Mason University Antonin Scalia Law School, J.D. Expected May 2021. With special thanks to my parents Michelle and Boyd Cousoulis, my brother Corey, and the ILJ editing team for their unwavering support.
cases in the United States during 2019.” From October 2018 to October 2019 the amount of measles reported “would be the largest [amount] reported in a [single] year since 1992.”

With its first traces dating back to the 9th century, measles first became a “nationally notifiable disease in the United States,” in 1912. Since there are no federal laws concerning childhood immunization, “each state is left to legislate its own [vaccine] requirements.” All states require children entering any public school from kindergarten through Grade 12 to meet certain immunization requirements, but families can avoid compliance with these requirements by claiming a state-level exemption. The three main forms of exemptions include medical exemptions, religious exemptions, and philosophical exemptions. All fifty states and D.C. permit a medical exemption that allows children to forgo the immunization requirement if he or she has “a written certification by a private physician, his or her representative, or the public health authorities that immunization is medically inadvisable.” Another exemption most states accept are religious exemptions; forty-five states and D.C. allow religious exemptions. Prior to its recent measles epidemic, New York also permitted religious exemptions from its immunization requirements. However, after becoming the epicenter for the measles outbreak in the United States, New York ended religious exemptions from its vaccination requirements. “Since the start of the outbreak in October 2018, there have been 654 measles cases in [New York City] and 414 in other parts of [New York State]….” Therefore, the New York legislature took immediate action to address its drastic health situation that its citizens created by not vaccinating their children.

In addition to medical and religious exemptions, fifteen states also allow a form of philosophical exemption from immunization requirements. This exemption allows parents to put entire communities, as

---

7 See id.
9 See CDC, History of Measles, supra note 2.
10 Nicole Le Hudson, The Childhood Vaccinations Debate, 22 TYL 8, 8 (2017).
12 See id.
14 PROCON.ORG, supra note 11.
16 See id.
17 Id.
18 PROCON.ORG, supra note 11.
well as their own children, at risk and opens the door to future measles outbreaks. The United States and foreign countries around the world are forced to face the dangers that vaccination exemptions create.

The measles resurgence has advanced both in the United States and abroad, affecting 90,000 people across the European Region in 2019 compared with the 44,175 people affected in the first six months of 2018.\textsuperscript{19} France and Canada are two countries which have also struggled to respond to the measles resurgence.\textsuperscript{20} After dealing with a substantial measles outbreak in 2017, France enforced legislation that required parents to vaccinate their children, including the measles vaccination and eleven other vaccinations.\textsuperscript{21} Additionally, Canada’s province of Ontario has addressed its own measles outbreak by requiring parents who wish to use the religious or philosophical exemptions to complete “an immunization education session with a medical officer of health or with a medical officer of health’s delegate.”\textsuperscript{22}

The United States should remove religious and philosophical exemptions to make sure it can address contagious diseases quickly, efficiently, and safely with a verified vaccine. In Part I of this comment, I will examine the history of vaccinations, how vaccines were created and how they are transmitted, with a focus on the creation of the measles vaccine. I will then explain the United States’ governmental role in immunization efforts and the states’ verified police power to carry out children vaccinations prior to their enrollment in public schools. Next, I will present the anti-vaccination argument and the rise of the movement worldwide, followed by my counterargument debunking myths that anti-vaccination supporters rely on. Then, I will explain the three main types of vaccination exemptions: medical exemption, religious exemption, and the philosophical exemption. I will then analyze and compare the state immunization regulations in the United States and immunization regulations in Canada and France to understand how they have addressed their measles outbreaks.

In Part II of this comment, I will analyze both the legal and practical problems that arise from state compulsory vaccination laws, followed by three proposed solutions to these problems. In order to secure a future where preventable diseases remain eliminated, states must learn from France and Canada and address unsubstantiated anti-vaccination

\textsuperscript{21} Code de la Santé Publique [C.S.P.] [Code of Public Health] art. L. 3111-2 (Fr.); see also Katie Forster, \textit{France to Make Vaccination Mandatory from 2018 as It Is ‘Unacceptable Children are Still Dying of Measles’}, INDEP. (July 5, 2017).
\textsuperscript{22} Immunization of School Pupils Act, R.S.O. 1990, c I.1 (Can.).
movements by either (1) only allowing medical exemptions, (2) requiring parents to attend educational classes on vaccination requirements before invoking an exemption, or (3) implementing penalties if parents refuse to vaccinate their children.

First, all states should follow the strides of France and five other states in the United States by only allowing medical exemptions from state compulsory vaccination laws. This proposed solution would be the most direct response to the measles epidemic and to ensure that all children are safe when attending public school and public day care centers. Although one may argue that this solution infringes on individual rights, this question has already come before the Supreme Court of the United States as well as several state supreme courts, each of which found that the safety of the community takes priority over individual claims to prevent future health epidemics.23

Second, states which continue to allow religious or philosophical exemptions must also require the parents using these exemptions to attend mandatory educational sessions on the benefits of vaccinations with a licensed medical professional before they can use either exemption. This educational method is already in use in Ontario, Canada and should be implemented in the United States to reeducate the public.24 States need to promote the real benefits of vaccinations to expel anti-vaccination myths. The anti-vaccination movement is based on falsified studies, a lack of trust in the government, and unfounded claims.25 Therefore, it is vital that state legislatures reeducate their citizens to understand the true risks they are taking when they chose to not vaccinate their children. All fifty states must take significant steps towards assuring that preventable diseases, like measles, remain eliminated by taking the time to educate their communities.

Third, if a child’s vaccination requirements are not met before his or her first day of public school, the child’s parents should be issued penalties and the child should not be allowed to attend school.26 If the child’s parents have not claimed one of the exemptions allowed by that state’s vaccination laws and still do not vaccinate their child, then it would be appropriate for these penalties to be issued. This method has recently been implemented in New York to assure that parents understand the severity of the situation and meet their responsibility of vaccinating their

24 See R.S.O. 1990, c I.1 (Can.).
26 See Forster, supra note 21; Melissa Eddy, Germany Considers Fines for Not Vaccinating Children Against Measles, N.Y. TIMES (May 7, 2019); see also Otterman, supra note 15.
children. Each of these three proffered solutions provide states with efficient methods of combatting the anti-vaccination movement and ensuring the health and safety of its citizens. Furthermore, each of these proffered solutions work to prevent future measles outbreaks from affecting thousands of citizens throughout the United States.

II. BACKGROUND

This section will go through the historical evolution of vaccinations, taking a focus on the measles vaccine. I will then analyze the United States’ governmental role in immunization efforts and the initial pushback to state compulsory vaccination laws. Next, I will examine the arguments used in support of the anti-vaccination movement both in the United States and abroad, followed by counterarguments to these myths and misconceptions. Then, I will analyze the three main forms of vaccination exemptions. Finally, I will compare the exemptions allowed in the United States to the exemptions allowed in Canada and France.

A. The History of Vaccinations

First, I will look at what a vaccine is and its origins in fifteenth-century Europe. Next, I will look to how vaccines are transmitted through vaccinations. Finally, I will turn a focus to the measles vaccination and how it was developed.

i. What Is A Vaccine?

A vaccine is a powerful medicine, developed to prevent a specific disease, that stimulates the immune system to produce antibodies as if a person were exposed to the disease. A vaccine contains “the same germs that cause the disease.” A vaccination is the process of transferring a vaccine containing a virus to a non-exposed individual allowing the individual to build resistance against the virus. These vaccinations cause the body to produce antibodies that attack and kill the life-threatening virus before it has the opportunity to spread. “After getting vaccinated, [the body] develops an immunity to that disease, without having to get the

---

27 See Otterman, supra note 15; Eddy, supra note 26.
28 See Hodge & Gostin, supra note 25, at 838.
29 See id. at 837.
31 Id.
32 Hodge & Gostin, supra note 25, at 838.
Before vaccinations, humanity was seriously threatened by diseases such as “smallpox, the bubonic plague, polio, diphtheria, tuberculosis, measles, mumps, and rubella.” These infectious diseases were the number one killer of human beings, having the capability of wiping out thousands of individuals. Without the life-saving work of Dr. Edward Jenner, these diseases may have led to the end of the human species.

Vaccinations first developed in response to the smallpox disease. The smallpox disease traces its roots back to fifteenth-century Europe. Dr. Edward Jenner, a physician from England often referred to as the “Father of Vaccination,” took the first influential steps of controlling the smallpox disease. After years of experimentation, Dr. Jenner discovered that individuals who had cowpox sores on their body from milking cows did not contract the smallpox disease. Dr. Jenner tested this theory by taking the live material from the cowpox sore, injecting that material into an eight year old boy, James Phipps, and then weeks later, injected the live material of someone infected with smallpox into James as well. The boy did not contract smallpox, thus making this the first successful vaccine in 1796. Due to this success, the term “vaccine” was “derived from the Latin word vaccinus” referring to cows. This newly developed smallpox vaccination effectively changed smallpox from an uncontrollable epidemic to a completely eradicated disease.

In addition to predisposing the immune system, vaccines successfully irradiate disease by establishing herd immunity in the community. Herd immunity occurs when a critical portion of the population, which is “the minimum percentage of vaccinated persons essential to provide herd immunity” is vaccinated against the same contagious disease thus creating little opportunity for an outbreak. For highly contagious diseases, if enough people are vaccinated, the infections stop spreading due to the strength of herd immunity. When the majority of

---

34 CDC, Vaccines: The Basics, supra, note 30; see also Calandrillo, supra note 33, at 838.
35 Calandrillo, supra note 33, at 362-63.
36 See id. at 363.
37 Hodge & Gostin, supra note 25, at 836.
38 Id. at 838.
39 Id. at 839.
40 Id. at 840.
41 Id.
42 Id. at 840-41.
43 Id. at 840.
44 Id.
46 Id. at 600-01.
the community’s population is vaccinated, vaccines such as the measles vaccine have successfully prevented the spread of the contagious disease.47

ii. The Measles Disease

Measles first became a nationally notifiable disease in the United States in 1912.48 After becoming a notifiable disease, the first decade of reported cases held an average of 6,000 measles-related deaths per year.49 In 1954, John F. Enders and Dr. Thomas C. Peebles “collected blood samples from several ill students during a measles outbreak in Boston, Massachusetts...with the goal of isolating the measles virus and creating a measles vaccine.”50 This goal was accomplished by isolating measles in 13-year-old David Edmonston’s blood.51 In 1963, John Enders transformed “Edmonston-B strain of measles virus into a vaccine and licensed it in the United States.”52 Due to the great success of the measles vaccine, the World Health Organization (WHO) declared measles eliminated in the United States in 2000.53 In addition to the focus of creating a safe and sustainable vaccine, it was also essential for governments to take a leadership role in immunization efforts.

B. The Governmental Role in Immunization Efforts

To ensure that citizens were utilizing these lifesaving vaccines, governments across the world took an active role in leading immunization efforts. The first government-led immunization efforts took place in Europe in the early 1800s, with several European countries developing compulsory vaccination programs.54 In 1818, one of the earliest school vaccination requirements was put into law by the King of Wittenberg, which required every child to be vaccinated without any possible exemptions.55 A series of legislative acts throughout Europe followed, requiring and regulating vaccinations throughout the 1800s.56 This included Napoleon’s requirement of vaccinations for all his soldiers, the British Parliament’s enactment of a series of legislative acts providing free medical vaccinations in England and Wales, and other laws which helped drastically reduce the smallpox mortality rate in Europe.57

47 CDC, Measles Elimination, supra note 3.
48 CDC, History of Measles, supra note 2.
49 Id.
50 Id.
51 Id.
52 Id.
53 CDC, Measles Elimination, supra note 3.
54 Hodge & Gostin, supra note 25, at 840-41.
55 Id. at 841.
56 Id.
57 Id. at 841-42.
After seeing the success of Dr. Jenner’s smallpox studies, Dr. Benjamin Waterhouse advocated for the use of vaccinations in the United States in 1816.\(^\text{58}\) Initially, vaccinations in the United States were only available to wealthy citizens who could afford them.\(^\text{59}\) However, over time, Congress worked to implement methods of providing vaccinations to the public for free as a matter of public health objectives.\(^\text{60}\) In order to ensure public health objectives, scientists and researchers had to ensure that each vaccine was fully approved before distributing it to the public.

For the government to accept a vaccination for distribution in the United States today, the vaccination must go through an extremely thorough vaccine approval process.\(^\text{61}\) The vaccine approval process has become significantly more stringent over time.\(^\text{62}\) Before vaccines are approved by the Food and Drug Administration (FDA), they are extensively tested to ensure their safety and effectiveness.\(^\text{63}\) Before vaccines are licensed by the FDA, they go through meticulous rounds of clinical studies and laboratory tests.\(^\text{64}\) Vaccines are first tested on animal subjects and eventually on human subjects to ensure the safety of the vaccine and for scientists to predict how the vaccine will interact with the human immune system.\(^\text{65}\) The licensing of a vaccine can take up to ten years or longer to ensure that they are safe for use in the general public.\(^\text{66}\) Even after a vaccine is licensed, the FDA requires vaccine manufactures to provide all data of any side effects or delayed reactions that may occur.\(^\text{67}\) This information is filed in a surveillance system to monitor any adverse events following vaccination.\(^\text{68}\) This surveillance system, known as the Vaccine Adverse Event Reporting System (VAERS), was put into effect in 1990 in response to the National Childhood Vaccine Injury Act.\(^\text{69}\)

The National Childhood Vaccine Injury Act (NCIVA) was implemented after several lawsuits were filed against vaccine manufactures

\(^{58}\) Id. at 842.  
^{59}\) Id. at 843.  
^{60}\) Id. at 843-44.  
^{62}\) Id.  
^{63}\) Id. Although no vaccine can be 100 percent effective for every single person because everyone’s body reacts to vaccines differently, these tests are done to make sure they are successful for the general population. Id.  
^{64}\) Id.  
^{65}\) Id.  
^{66}\) Id.  
^{67}\) Id.  
^{68}\) Id.  
and healthcare providers. These lawsuits were conducted by citizens who believed they had been injured by their vaccinations. Even though some claims lacked scientific evidentiary support, the paying of damages in these lawsuits lead to several vaccine manufacturers halting production. A vaccine shortage resulted, and public health officials became extremely concerned about the return of an epidemic. In response to this concern, Congress passed the NCVIA in 1986.

The NCVIA established the National Vaccine Program Office to coordinate immunization activities between Department of Health and Human Services (HHS) agencies including: the Centers for Disease and Prevention (CDC), the FDA, the National Institutes of Health (NIH), and the Health Resources and Services Administration (HRSA). The NCVIA requires health care providers to report adverse events following a vaccination to the VAERS to monitor side effects and conduct research relevant to vaccine safety. The NCVIA significantly increased communication between the HHS agencies, allowing for more transparency on the effectiveness of government approved vaccinations. The communication between these agencies helped establish the legitimacy of vaccinations as well as its effectiveness. Congress went on to pass the Vaccination Assistance Act in 1962, which appropriated funds to the CDC to support mass immunization campaigns throughout the United States. As vaccinations became well known for their success, U.S. state governments took steps towards enacting compulsory vaccination laws for children attending public schools.

C. Compulsory Vaccination Policies in Schools and Initial Pushback

When first implementing compulsory vaccination laws, state legislatures and health departments struggled to balance the need for children to receive these life-saving vaccinations while also protecting individual rights and freedoms. In 1827, Boston became the first city to require parents to produce documentation of their children’s vaccination history before enrolling them in public school. Soon after, other states across the country began implementing their own vaccination requirements, first spreading through northeastern states and eventually spreading

---

71 Id.
72 Id.
73 Id.
74 Id.
75 Id.
76 Id.
77 See Calandrillo, supra note 33, at 382.
78 Hodge & Gostin, supra note 25, at 851.
79 See Calandrillo, supra note 33, at 353-54.
80 Hodge & Gostin, supra note 25, at 851.
throughout the country.\footnote{\textit{Id.} at 851.} Forty-four states had smallpox vaccination statutes by 1905.\footnote{Alicia Novak, Comment, \textit{The Religious and Philosophical Exemptions to State-Compelled Vaccination: Constitutional and Other Challenges}, 7 U. P.A. J. CONST. L. 1101, 1104 (2005).} As state-compelled vaccination laws developed across the country, individuals began bringing claims against states that were requiring its citizens to comply with these laws. One of the main contentions of these claims was that individuals believed that state-compelled vaccinations violated their personal liberties.\footnote{JULIE A. BOOM & RACHEL M. CUNNINGHAM, \textit{UNDERSTANDING AND MANAGING VACCINE CONCERNS} 4 (2014).} By 1905, the United States Supreme Court stepped in to voice its opinion for the first time on the constitutionality of state-compelled vaccinations.\footnote{Calandrillo, \textit{supra} note 33, at 383-84.}

In \textit{Jacobson v. Commonwealth of Massachusetts}, the Supreme Court evaluated the constitutionality of Massachusetts’ compulsory vaccination laws.\footnote{Jacobson v. Commonwealth of Massachusetts, 197 U.S. 11, 12 (1905).} The statute required all inhabitants to be vaccinated, with an exception for children who had proof from a physician that they were “unfit” for vaccination.\footnote{\textit{Id.}} Any person over the age of twenty-one who did not comply with these requirements was fined five dollars, which is approximately one-hundred and forty dollars accounted for inflation.\footnote{\textit{Id.}} The plaintiff in this case refused to get vaccinated and argued that Massachusetts was violating his individual rights.\footnote{\textit{Id.} at 12-13.} The Supreme Court held that the state had the police power to protect and legislate for the public’s safety, and “a community has the right to protect itself against an epidemic of disease which threatens the safety of its members.”\footnote{\textit{Id.} at 27.}

The Supreme Court went on to affirm this reasoning in the 1922 case, \textit{Zucht v. King}, finding that it was appropriate for lawmakers to make compulsory vaccination a prerequisite to school enrollment.\footnote{Zucht v. King, 260 U.S. 174 (1922); see also Novak, Comment, \textit{supra} note 82, at 1105-06.} The Supreme Court reasoned that it was in the public’s interest to require compulsory vaccinations for school enrollment, which is a stance that most Americans held well into the 1960s when “the modern era of compulsory state immunization laws took off.”\footnote{Zucht, 260 U.S. at 177; see also Calandrillo, \textit{supra} note 33, at 381-82.} Therefore, each of these cases strengthened the police powers of the state to authorize governmental action in the interest of public health.\footnote{Hodge & Gostin, \textit{supra} note 25, at 856.} These police powers were to be based on “the necessity of the case” and could not be exercised in “an arbitrary,
unreasonable manner.” Specifically, Jacobson supports the proposition that “police powers authorize states to compel vaccination for the public good,” and “may condition certain benefits upon the individual on whether he or she has been vaccinated.” By the end of the 1970s, all fifty states had enacted and enforced school entry immunization requirements.

Despite all fifty states embracing state-compelled immunization requirements for schools, anti-vaccination sentiment still developed over time, sprouting from distrust in the government, suspicions about vaccine manufactures, and fraudulent medical myths connecting vaccinations to other ailments such as autism.

**D. The Rise of the Anti-Vaccination Movement**

Although vaccinations are generally accepted globally for their effectiveness, opponents to compulsory vaccination laws have voiced their concerns about the safety of transmitting vaccinations and possible side effects. Anti-vaccination beliefs existed during Dr. Jenner’s creation of the smallpox vaccine in 1796 and continue to take place centuries later in today’s modern age. The first organized anti-vaccination movement can be traced back to the Anti-Compulsory Vaccination League formed in England in 1866. This group was formed against the British government’s passage of a bill requiring all children to be vaccinated against smallpox. As a result of this push back, the British government passed a “conscientious objection law” in 1898 that allowed parents to object to vaccinating their children.

The number of parents utilizing this conscientious objection law spiked, and immunization coverage rates drastically decreased, causing England to “experience high morbidity and mortality” from smallpox.

One of the most detrimental events regarding vaccinations occurred in 1955, becoming known as “The Cutter Incident.” In this situation, a small Californian pharmaceutical company, Cutter Laboratories,

---

93 Id. at 856 (quoting Jacobson v. Massachusetts, 197 U.S. 11, 12 (1905)).  
94 Hodge & Gostin, supra note 25, at 857.  
95 Calandrillo, supra note 33, at 383.  
96 Hodge & Gostin, supra note 25, at 844-45.  
98 BOOM & CUNNINGHAM, supra note 83, at 3-4. More than 200 anti-vaccination groups would form in the following 30 years. Id.  
99 Id. Parents who did not comply with compelled vaccination requirements could be fined or imprisoned. Id.  
100 Id. at 4.  
101 Id.  
was in a rush to produce polio vaccinations. By rushing through its production, Cutter Laboratories ended up administering several batches of vaccinations that contained live polio virus instead of the usual inactive virus administered in vaccinations. “Of those who received the vaccine, 70,000 [individuals] suffered mild polio, 200 were permanently paralyzed, and 10 died.” The Cutter Incident became one of the worst pharmacologic disasters in US history, creating a severe distrust in the pharmaceutical industry.

Less than thirty years later, a documentary titled “DPT: Vaccine Roulette” further ignited the anti-vaccination movement. This program depicted parents who believed that their children had been materially harmed after the issuance of the DPT vaccine. The program detailed children with “mental retardation, seizures and other intellectual and physical disabilities.” The program’s airing led to the creation of the well-known anti-vaccination network, “the National Vaccine Information Center (NVIC), which remains a major source of vaccine misinformation in the USA.” After thousands of parents refused to vaccinate their children with the DPT vaccine out of fear, Congress responded by passing the National Childhood Vaccine Injury Act, hoping to address parents’ fears while also ensuring the continuation of the national vaccination program. The NCVIA stressed the importance of transparency so that parents could have all the information regarding each vaccine and feel comfortable vaccinating their children.

Although the NCVIA addressed vaccination fears from the DPT documentary, fears resurfaced in 1998 after an English doctor, Andrew Wakefield, falsely concluded in his study that the measles vaccine (MMR) was linked to causing autism in children. Wakefield’s paper fueled more public fear and caused a large decrease in MMR vaccination rates, leading to measles outbreaks throughout the United Kingdom. However, this consequential paper was declared fraudulent and the United Kingdom

---

103 BOOM & CUNNINGHAM, supra note 83, at 5.
104 Id.
105 Id.
106 Id.
107 See id. “DPT: Vaccine Roulette” was a one-hour documentary released on April 19, 1982 on an NBC affiliate in Washington D.C. Id.
108 Id.
109 Id.
110 BOOM & CUNNINGHAM, supra note 83, at 5.
111 See id. at 6. The NCVIA required health care providers to report adverse events following a vaccination to the Vaccine Adverse Event Reporting System to monitor side effects and conduct research relevant to vaccine safety. Id.
113 BOOM & CUNNINGHAM, supra note 83, at 6.
114 Id.
struck Andrew Wakefield off its medical register, charging him with callous disregard and dishonesty.115

Even though this paper was declared fraudulent and unsound by the medical community, it continues to be the bedrock for the continuing growth of the anti-vaccination movement. American actress Jenny McCarthy generated a significant amount of doubt and distrust amongst parents after she relied on the falsified study from Wakefield, believing that the MMR vaccine was “the autism shot.”116 Having no legitimate science to back up her conclusion, McCarthy promoted her ideas on multiple television platforms, criticizing the medical community and lobbying against vaccinations.117 Parents across the nation, like Jenny McCarthy, continued to rely on Wakefield’s unfounded conclusion that the MMR vaccine is linked to autism.

To combat this false correlation between the MMR vaccine and autism, a Danish study published in April 2019 debunked the proffered link between the two.118 It evaluated whether the MMR vaccine increases the risk for autism in children after vaccination.119 The study compared thousands of MMR-vaccinated children with unvaccinated children over a period of time after vaccination, and concluded that the “MMR vaccination does not increase the risk for autism, does not trigger autism in susceptible children, and is not associated with clustering of autism cases after vaccination.”120 Thus, the artificial link between the measles vaccine and autism in children has been discredited by the medical profession and does not serve as a justification for parents to not vaccinate their children.

Despite the overwhelming scientific evidence that proves the safety of vaccinations and debunks proposed medical horror stories, some parents today remain uninformed and choose to not vaccinate their children out of fear.121 These parents utilize state-level exemptions that allow unvaccinated children to attend public schools. In addition to the anti-vaccination movement being grounded in misinformation and fear, other anti-vaccination stances are rooted in maintaining individualism and

115 Id. at 6-7; see Fitness to Practise Panel Hearing, GEN. MED. COUNCIL (Jan. 28, 2010), https://briandeer.com/solved/gmc-charge-sheet.pdf. Soon after this information was released “ten of the thirteen co-authors then withdrew their support of the…paper.” Andrew Wakefield’s Harmful Myth of Vaccine-induced “Autistic Enterocolitis,” GI Soc’y: Can. Soc’y of Intestinal Rsch, https://badgut.org/information-centre/a-z-digestive-topics/andrew-wakefield-vaccine-myth/ (last visited November 20, 2020). Furthermore in 2010, the Lancet formally retracted Wakefield’s paper. Id.
116 See BOOM & CUNNINGHAM, supra note 83, at 7.
117 See id. at 8.
119 Id.
120 Id. at 519.
121 BLOOM & CUNNINGHAM, supra note 83, at 11.
freedom from government interference in their personal lives.122 These citizens have argued that mandatory vaccinations are an unwarranted interference with one’s basic civil liberties.123 However, the Supreme Court has addressed these issues stating that although Americans do have the First Amendment right to be free from state infringement on their personal beliefs, it remains the right of the state to interfere with these personal beliefs if they have harmful effects on a community.124

Although each of the anti-vaccination movement concerns have been addressed by fixing previous vaccination issues, debunking medical myths, and confirming the powers of the state to interfere for the safety of the community, states still allow exemptions from its compulsory vaccination laws.125 By maintaining vaccination exemptions, states permit parents to put their children and their communities at risk.

E. The Three Main Types of Vaccination Exemptions

The three main types of exemptions from state compulsory vaccination laws are medical exemptions, religious exemptions, and philosophical exemptions. If individuals meet the specific qualifications of one of these exemptions, which are unique to each state, the state will allow the individual to avoid state-compelled vaccination obligations. This section will analyze each type of exemption by describing which exemptions each state allows and discussing certain state-specific requirements.

i. Medical Exemptions

A medical exemption is utilized when an individual has a medical condition that prevents him or her from receiving a vaccine.126 Currently, “all states and the District of Columbia allow medical exemptions” from state or local requirements.127 There has been almost no dispute about the need for medical exemptions from state-compelled vaccinations since vaccines can process differently in some people.128 This exemption is necessary to protect individuals whose bodies cannot properly receive

---

122 See Calandrillo, supra note 33, at 393-94.
123 Id. at 394.
124 Id. at 394-95. The First Amendment to the U.S. Constitution states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. Const. amend. 1.
125 See Calandrillo, supra note 33, at 411.
127 Id.
128 Id.; Centers for Disease Control & Prevention, Table 2. Recommended Adult Immunization Schedule by Medical Condition and Other Indications, United States 2020, (Feb. 3, 2020), https://www.cdc.gov/vaccines/schedules/hcp/imz/adult-conditions.html.
vaccinations in their system. The five states in the U.S. that only allow medical exemptions and nothing else are: California, Maine, Mississippi, New York, and West Virginia.

New York is a recent addition to the list of states that only allow medical exemptions. The state previously allowed religious exemptions from its compulsory vaccination laws, however, it removed this exemption after its recent measles outbreak. The measles resurgence in New York started on September 30, 2018 and caused more than 600 confirmed cases of measles. Many of these cases began in New York’s Orthodox Jewish communities, where vaccination rates were lower due to families’ use of the religious exemption. To immediately address the measles outbreak in these communities, New York removed its religious exemption. In August of 2019, New York issued emergency regulations “further strengthening the process by which physicians can grant medical exemptions to school vaccination requirements in order to prevent them from being used for non-medical purposes.” “Under the new law, all children must [get] their vaccines within the first two weeks of classes and complete them by the end of the school year.” If parents refuse to comply with these requirements, they must either homeschool their unvaccinated children or move out of the state. With the passage of this law, New York became only the fifth state to ban all nonmedical exemptions to its vaccination requirements and now has among the strictest policies in the nation.

---

129 CDC, School Vax View: What is an Exemption, supra note 126.
130 PROCON.ORG, supra note 11.
131 See Otterman, supra note 15.
132 Id.
135 Id.
136 Id. note 15.
137 Id.
138 Id. note 4.
139 Id. note 15.
ii. Religious Exemption

States across the U.S. have different requirements for individuals to qualify for a religious exemption from compulsory vaccination laws. Some states evaluate a person’s claimed religion to see if it is an established religion with actual stances against receiving vaccinations, while other states evaluate the individual person herself to see if her beliefs are genuinely held. For example, Virginia allows religious exemptions from school vaccination requirements if the student’s family submits “an affidavit to the admitting official stating that the administration of immunizing agents’ conflicts with the student’s religious tenets or practices.” Even though a large majority of states allow religious exemptions for vaccinations, “researchers and journalists have struggled to identify a single major U.S. religious group that advocates against vaccination for children.” Although some state religious exemptions were due to lobbying by the Christian Science Church in the 1960s, this group does not advocate for its members to not vaccinate their children. Additionally religious leaders from “Judaism and Islam have said that the [MMR vaccines] are permissible.” Even so, forty-five states including D.C. allow religious exemptions from compulsory vaccination requirements. Although there is no single major U.S. religion that advocates against child vaccinations, the majority of U.S. states still allow religious exemptions, further putting communities at risk.

iii. Philosophical Exemption

The philosophical exemption, or personal exemption as it is referred to in some states, carries an even lower burden of proof than most states’ religious exemptions. The philosophical exemption allows a parent or student enrolling in public school to assert a reason why he or she objects to vaccines. These reasons can range from “objections based on

---

140 See Novak, Comment, supra note 82, at 1107-08.
141 See id.
143 Sandstrom, supra note 134.
144 Id.
145 Id.
146 See PROCON.ORG, supra note 11. States that allow both medical and religious exemptions, but not philosophical exemptions include Alabama, Alaska, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, Washington, and Wyoming. Id.
147 See Sandstrom, supra note 134.
148 See Novak, Comment, supra note 82, at 1108-09; see also Sandstrom, supra note 134.
149 See Novak, Comment, supra note 82, at 1107.
‘personal’, ‘philosophical’, ‘moral’ beliefs, or other.” For example, Arizona’s state code requires for its philosophical exemption that “[t]he parent or guardian has received information about immunizations provided by the department of health services, understands the risks and benefits of immunizations and the potential risks of non-immunizations, and that due to personal beliefs, the parent or guardian does not consent to the immunization of the pupil.” Fifteen states in the U.S. allow philosophical exemptions. The breadth of reasons that one could fit under the philosophical exemption make this exemption dangerous for abuse. Families who may be unaware of the benefits of vaccinations or who may believe one of the anti-vaccination myths can take advantage of states’ philosophical exemptions, increasing the likelihood of another measles outbreak. Unlike the states with expansive vaccination exemptions, Canada and France exemplify that restricting vaccination exemptions can be used to effectively address measles outbreaks.

F. Canada and France’s Stances on Vaccination Exemptions

Canada and France are two countries which narrowed their vaccination exemptions to effectively address their own measles outbreaks. The United States should look to the actions taken by these two countries to learn how to effectively address its own measles outbreak. Canada and France have both experienced their own measles outbreaks and have employed two different methods of regulation to contain the outbreaks.

The European Centre for Disease Prevention and Control published a monthly monitoring report indicating that France has had 2,699 cases of measles and rubella between October 2018 and September 2019.


152 See PROCON.ORG, supra note 11. States that allow philosophical exemptions include Arizona, Arkansas, Colorado, Idaho, Louisiana, Michigan, Minnesota, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Utah, and Wisconsin. Id.

153 See Tyler Choi, Measles Outbreak in Canada’s British Columbia Province Affects 9, REUTERS (Feb. 19, 2019); see also Forster, supra note 21.

154 See Rubella Symptoms and Causes, MAYO CLINIC, https://www.mayoclinic.org/diseases-conditions/rubella/symptoms-causes/syc-20377310 (last visited Nov. 2, 2020). Rubella is a contagious viral infection often associated with measles, “it is also called German measles or three-day measles.” See id.
with about 2,500 cases reported in 2019 alone.\footnote{155} The WHO stated that measles had made a “dramatic resurgence” in the European continent due to a rising wave of individuals refusing to be vaccinated.\footnote{156} The number of cases in the European region doubled in comparison to the case amounts in 2018.\footnote{157} On the other hand, Canada only reported that 113 cases of measles were documented in 2019.\footnote{158}

Canada’s methods of promoting vaccinations focus on educating its population on the benefits of child immunization.\footnote{159} Vaccines used in Canada are “approved and licensed by the Bureau of Biologics and Radiopharmaceuticals of the Health Protection Branch [of] Health Canada,” and are closely monitored after their approval.\footnote{160} Canada monitors its approved childhood vaccinations and, as of this article’s release, no long-term effects have been reported.\footnote{161} In terms of child vaccination requirements, “[t]wo Canadian provinces, Ontario and New Brunswick, make childhood vaccinations mandatory for school attendance.”\footnote{162} Both of these provinces allow parents to use the religious exemption for the family’s “conscience or religious belief.”\footnote{163} Canada’s common law requires “consent of the patient, or in the case of children, with parental consent.”\footnote{164} To give consent, Canada’s provinces required parents to be informed of vaccination benefits.\footnote{165} To inform parents, Canada’s provinces use methods ranging from “providing a pamphlet or information sheet with general information about vaccinations, to having a more detailed discussion with the patient or parent.”\footnote{166} Canada’s province of Ontario has gone further by requiring parents to meet with a medical professional to be fully educated on the benefits of vaccinations before they can utilize an exemption.\footnote{167} Ontario’s Immunization of School Pupils Act, implemented in 1990, states that before a parent can be granted an exemption they must complete “an immunization education session with a medical officer of health or with a medical officer

\footnote{156}{Palko Karasz, W.H.O. Warns of ‘Dramatic’ Rise in Measles in Europe, N.Y. TIMES, (Aug. 29, 2019).}
\footnote{157}{Id.}
\footnote{159}{See LAW REFORM COMM’N OF SASK., Vaccination and The Law; Report to the Minister of Justice, 2009 CanLII Docs 281, at 7 (Can. Sask.).}
\footnote{160}{See id. at 10.}
\footnote{161}{Id. at 7.}
\footnote{162}{See id.}
\footnote{163}{Id.}
\footnote{164}{Id.}
\footnote{165}{Id.}
\footnote{166}{Id.}
\footnote{167}{See R.S.O. 1990, c I.1 (Can.).}
of health’s delegate.”  

This requirement allows Ontario to ensure that its citizens are educated about the decisions they are making in hopes of clarifying the falsities of the anti-vaccination movement.  

France has taken a step further in addressing its measles outbreak by making the measles vaccine mandatory and only allowing medical exemptions. France’s immunization policy is drawn up by the Minister of Health who sets the conditions of immunizations, publishes the schedule of vaccinations, and makes the necessary recommendations. Vaccinations carried out by the French government are free to its citizens. France has made the measles vaccination obligatory unless the child has a recognized medical exemption. France’s Public Health Code also holds parents personally liable for meeting these vaccination requirements and mandates that parents must prove compliance for their children to be admitted in any public school, nursery, or other communities of children. After “79 cases of measles were reported in France in the first two months of 2017,” France implemented its new mandatory vaccination requirements into law on December 30th, 2017. By bolstering its law, France made it more difficult for its citizens to take advantage of vaccination exemptions and helped ensure the public health and safety of its citizens from future measles outbreaks. The actions of Canada and France exemplify that countries can utilize different methods of regulation to successfully contain outbreaks.  

III. Analysis  

The United States should remove religious and philosophical exemptions to make sure it can address contagious diseases quickly, efficiently, and safely with a verified vaccine. In this section, I will analyze the legal arguments made against state-compelled vaccination requirements and how time and time again U.S. courts have verified states’ police power to ensure the safety of their communities by requiring and implementing state-compelled vaccinations.

---

168 Id.  
169 See id.  
170 C.S.P. art. L. 3111-2; see also Forster, supra note 21.  
171 See C.S.P. art. L. 3111-1.  
172 C.S.P. art. L. 3111-11.  
174 Id.  
175 See Forster, supra note 21.  
177 See Choi, supra note 153; see also Forster, supra note 21.
A. Legal Arguments Made Against Mandatory Vaccinations Analysis

Legal positions against state-compelled vaccination laws have unsuccessfully argued that these laws infringe on individual liberties protected under the Due Process Clause, that a child has an absolute right to enter a school even without immunizations, or that compulsory vaccination laws with no religious exemption violate the free exercise clause of the First Amendment. Each of these legal arguments have been struck down in favor of the states’ police power to require and implement compulsory vaccination laws.

In terms of individual liberty under the Due Process Clause, the Supreme Court held in *Jacobson v. Commonwealth of Massachusetts*, that “while this court should guard with firmness every right appertaining to life, liberty, or property … the safety and the health of the people of Massachusetts are, in the first instance, for that commonwealth to guard and protect.” Here the Supreme Court verified the state’s police powers to implement mandatory vaccinations in order to prioritize the health of the entire community over one individual’s beliefs. The Supreme Court extended this sentiment in *Zucht v. King*, finding that a city ordinance that made vaccination a prerequisite to school attendance did not infringe on the family’s Fourteenth Amendment rights. The Supreme Court stated that Texas’ “ordinances confer not arbitrary power, but only that broad discretion required for the protection of the public health.” This confirmed that Texas may implement these vaccination laws to protect the safety of the community. In these decisions, the Supreme Court deemed it constitutional for the state police powers to require and implement compulsory vaccination laws to ensure the safety of their communities.

State courts have also supported the legal authority of states’ police power to prescribe mandatory vaccination laws. The Ohio Court of Appeals held that “a child does not have an absolute right to enter school without immunization” and that “the school board has authority to make and enforce rules and regulations to secure immunization.” Furthermore, the Arizona Court of Appeals found that its health department had the authority to exclude unvaccinated children from school since “attendance by unimmunized children posed a risk of spreading contagious disease.”

---

181 See *Jacobson*, 197 U.S. at 38; see also *Wright*, 385 S.W.2d 644; *State ex rel. Mack*, 204 N.E.2d at 90.
182 See *Jacobson*, 197 U.S. at 38.
183 Id.
185 Id.
Also, in 1979, the Mississippi Supreme Court declared its religious exemption statute unconstitutional because this exemption put the entire school at risk.\textsuperscript{188} The Supreme Court of Arkansas, moreover, has held that a state’s compulsory vaccination law with no religious exemption is constitutional and benefits the society as a whole.\textsuperscript{189} Therefore, both the Supreme Court of the United States and multiple state court of appeals and state supreme courts have each verified the legal authority of states’ police power to mandate and execute state compulsory vaccination laws to protect their community. Thus, states should utilize this police power to remove unnecessary vaccination exemptions to protect their communities from future outbreaks.

Unlike France, the United States’ success will depend on each state revising its state-specific vaccination exemptions.\textsuperscript{190} To create uniformity amongst the states on the types of exemptions allowed, each state would have to change its own vaccination law, rather than one sweeping federal change like what France accomplished when it removed its religious and philosophical exemptions from its public health code.\textsuperscript{191} Although one may argue that this state-by-state method is ineffective, we have seen states, including New York, utilize their state police power to make direct changes to their vaccination exemptions and successfully address outbreaks in their community.\textsuperscript{192} Therefore, state specific legislation is effective in addressing the forms of vaccination exemptions that are permitted.

Canada has also shown that jurisdiction specific legislation is effective. Like the legislative methods used by the provinces of Canada, the state’s police powers allow it to establish and carry out mandatory vaccination requirements.\textsuperscript{193} Although each state in the United States has the police power to curate its own compulsory vaccination law, states differ on the type of exemptions they allow.\textsuperscript{194} Each U.S. state has the police power to implement changes similar to Ontario’s vaccination law requiring parents to attend education courses with a medical professional before using a religious or philosophical exemption.\textsuperscript{195} Although some may argue that requiring each state to individually change their vaccination laws will be

\textsuperscript{188} Brown v. Stone, 378 So. 2d 218, 224 (Miss. 1979).
\textsuperscript{189} Wright v. DeWitt Sch. Dist., 385 S.W.2d 644, 648 (Ark. 1965).
\textsuperscript{191} C.S.P. art. L. 3111-1.
\textsuperscript{194} See PROCON.ORG, \textit{supra} note 11.
\textsuperscript{195} See R.S.O. 1990, c I.1 (Can.).
cumbersome, Canada has proven that this method is possible and effective in addressing measles outbreaks.\(^\text{196}\)

We have seen France, and specific provinces in Canada, utilize their full power to effectively protect against measles outbreaks. Therefore, like France and the select provinces in Canada, each state in the U.S. should utilize its constitutionally protected police power to remove unnecessary vaccination exemptions to protect the safety of its communities and prevent future measles outbreaks.

\textbf{B. Practical Problem Analysis}

Even though the state’s police power to implement compulsory vaccination laws has received significant legal support from both the Supreme Court and state courts around the country, most states still allow religious and philosophical exemptions for its vaccination requirements.\(^\text{197}\) One issue with allowing these types of exemptions is the ability of members of the anti-vaccination movement to abuse these exemptions, basing their decisions on unfounded scientific studies and claims.\(^\text{198}\) Members of the anti-vaccination movement have also brought their fight to their state legislatures, with about 92 bills being introduced across the country between 2011 and 2017 that would “make it easier to get exemptions from vaccine requirements.”\(^\text{199}\) Although the majority of these bills “based on misinformation and pseudoscience” are not enacted into law, anti-vaccination groups continue to put on political pressure by helping “draft model state legislation and encourag[ing] people to lobby their state representatives about increasing exemptions.”\(^\text{200}\) These individuals of the anti-vaccination movement take advantage of the exemptions that states have left available and in turn put other children at risk of another dangerous measles outbreak.\(^\text{201}\) Furthermore, states are allowing politics to distract from the direct and real threat of allowing unvaccinated children to attend public schools. Permitting unvaccinated children to attend school disrupts the development of herd immunity and can quickly develop into an epidemic, as seen with the measles outbreak in New York.\(^\text{202}\) Below, I propose three solutions to these practical problems to prevent further measles outbreaks from happening again in the United States.

\(^{196}\) See Walkinshaw, supra note 193.

\(^{197}\) See PROCON.ORG, supra note 11.

\(^{198}\) See Novak, Comment, supra note 82, at 1124-25.


\(^{200}\) Id.

\(^{201}\) See Novak, Comment, supra note 82, at 1124-25.

\(^{202}\) See id. at 1127.
C. Solutions

States should utilize at least one or more of the three solutions I propose to prevent future measles outbreaks from taking place. First, states should remove religious and philosophical exemptions from its compulsory vaccination laws and only allow medical exemptions. Second, states that desire to maintain religious and medical exemptions should require individuals to attend an educational course on the actual benefits of vaccines before being granted the exemption. Third, states should impose penalties on families who do not vaccinate their children.

i. Only Allow Medical Exemptions

Each state in the U.S. should follow in the footsteps of France and five U.S. states by eliminating religious and philosophical exemptions.203 Child vaccinations not only help protect the individual child, but also the children who cannot be vaccinated such as infants or those with compromised immune systems.204 Requiring measles vaccinations develops herd immunity in the community and can protect those who must utilize a medical exemption due to their individualized risk to the vaccine. New York’s recent measles outbreak shows that a small number of individuals choosing to not vaccinate their children, for non-medical reasons, can have significant impacts on the whole community, such as by reducing herd immunity.205

New York addressed its measles outbreak head on by using its police power to remove religious and philosophical exemptions.206 U.S. courts have affirmed the type of police power that New York used, prioritizing the safety of the community against preventable diseases.207 By removing religious exemptions, New York reduced the amount of individuals affected by measles from 20 cases per month to zero cases within three months.208 New York successfully ended its measles outbreak and the United States’ reinstated its measles elimination status on October 4th 2019.209 By utilizing its state police power to remove religious exemptions from its vaccination law, New York was able to address its measles outbreak head on and ensure the safety of its community.

203 See Forster, supra note 21; Otterman, supra note 15.
204 See Chemerinsky & Goodwin, supra note 45, at 600.
205 See U.S. Dep’t of Health & Hum. Servs, supra note 192.
206 See id.
209 See N.Y.C. HEALTH, supra note 208; N.Y.C. DEP’T OF EDUC., supra note 139.
Therefore, D.C. and the remaining forty-five states who allow religious and philosophical exemptions should follow in the steps of New York and utilize their state police power to remove these exemptions and protect their citizens before an outbreak strikes their own communities.

Eliminating religious exemptions does not infringe on individual liberties because states have the police power to prevent an epidemic.210 Members of the anti-vaccination movement have lost sight of the true devastation that these vaccinations prevent and have replaced these realities with medical myths and ungrounded fears. Five states in the U.S. have followed France’s mandatory vaccination policy by removing religious and philosophical exemptions.211 Only allowing medical exemptions would help maintain each state’s herd immunity and protect those who are too young to get vaccinated or whose immune systems are too weak to handle the vaccination.212 New York’s success in eliminating its measles outbreak by utilizing its state police power exemplifies the importance of compulsory vaccination laws with limited exemptions. Utilizing state police powers by allowing only medical exemptions is the most effective way of protecting the wellbeing of the communities.

However, if some states still wish to maintain religious exemptions to their vaccination laws, these states should follow the policy of Ontario, Canada – requiring parents to attend educational courses before they can enroll their children in school without vaccinations.213

ii. Required Education on Vaccine Benefits

If a state chooses to maintain religious and philosophical exemptions, it should mandate that parents using these exemptions attend an educational course on the benefits of vaccines before gaining access to the exemption. If parents are allowed to endanger not only their child, but the rest of the community by not vaccinating their child, they should be required to attend an education session with a licensed health professional to learn the actual benefits of vaccinations.214 States have the police powers to ensure the safety of their communities and can use this power to mandate their citizens to learn the consequences of their decision to not vaccinate their children. As discussed above, a large majority of the fears that fuel the anti-vaccination movement are founded on medical myths or the fraudulent research of a discredited doctor.215 Instituting an educational program will allow worrisome parents to be put as ease when deciding to vaccinate their

210 See Jacobson v. Massachusetts, 197 U.S. 11, 27 (1905); see also Brown v. Stone, 378 So. 2d. 218, 224 (Miss. 1979).
211 See PROCON.ORG, supra note 11; see also Forster, supra note 21.
212 See Chemerinsky & Goodwin, supra note 45, at 600.
213 See R.S.O. 1990, c I.1 (Can.).
214 Id.
215 BOOM & CUNNINGHAM, supra note 83, at 5.
children. This program will play a vital role in making scientific proof of vaccine success even more accessible to parents. Having more parents understand the science behind vaccines and vaccinations is the best way to ensure that decisions to not vaccinate are not based in fear or ignorance.

Essentially, the education program captures parents on the margin who are choosing to not vaccinate their children because they are unaware of the tried and tested benefits of vaccinations. Therefore, these parents need to be educated on the real benefits of vaccinations and the life-threatening risks of choosing not to vaccinate their children.

Requiring educational courses also addresses fears of infringing upon citizen’s religious freedoms by investing both resources and time into educating the public on the benefits of vaccines and addressing falsified reports linking vaccines to other ailments. Reeducating the public will allow citizens to realize the significant benefits of the measles vaccine. Substantial time and resources need to be put into educating the American public since the current resurgence of the measles diseases both in the United States and abroad has been linked to anti-vaccination movements. Even if a state wants to allow for more than just a medical exemption, it can fulfill its purpose of preventing disease by mandating that people fully understand the reasons and implications of their vaccination decisions. As explained by the Supreme Court in *Jacobson*, states have a responsibility to ensure the safety of the community.216 Therefore, they should fulfill this vital role either by removing the religious and philosophical exemption or by requiring a mandated education of the state’s citizens on the benefits of vaccinations.

iii. Penalties

In addition to the first two solutions, states have the third and final option of following New York’s lead by issuing penalties to families who do not comply with the state’s vaccination requirements.217 Implementing financial penalties effectively motivates families to either follow through with vaccinating their child, or alternatively take the time to get educated about vaccines and choose the best option for their child.218 New York has already put this method in place, since it was the epicenter of the recent U.S. measles outbreak, so that it could address the outbreak quickly and effectively.219 Instead of financial penalties, states could require that the child not be allowed in public schools until he or she is vaccinated, or the child will have to be home schooled. Each of these penalties allow the child’s parents to stick with their strong beliefs against vaccinations while

217 See Otterman, supra note 15.
218 See id.
219 See id.
also protecting other children in the community by not compromising herd immunity.

To secure a future where preventable diseases remain eliminated, states must learn from France and Canada and address unfounded anti-vaccination movements by either only allowing medical exemptions, requiring parents to attend educational classes on vaccination requirements before using an exemption, or implementing penalties if a child’s vaccinations are not met.220

IV. CONCLUSION

A 9th century disease that was declared eliminated from the United States almost twenty years ago resurged due to false anti-vaccination studies, vaccination exemption abuse, and government distrust. The United States must learn from Canada, France, and New York, which have all faced measles outbreaks, and each took direct measures to swiftly address it. Each state in the U.S. should utilize at least one of the three proffered solutions to prevent future outbreaks either by (1) only allowing medical exemptions, (2) requiring parents to take educational courses on the benefits of vaccines when attempting to use religious or philosophical exemptions, or (3) imposing penalties for families who do not adhere to the immunization requirements.221 State police power and anti-vaccination sentiments are more important than ever in the face of the current global pandemic. Now that multiple vaccines for COVID-19 have gone through the required verification steps, at a historically faster pace than the process described above, it is crucial that states utilize their police powers to make sure their compulsory vaccination laws will protect the community as a whole. If these solutions are not followed when administering COVID-19 vaccinations, it will prolong both the length and severity of the pandemic, while unnecessarily endangering communities and individuals.

To ensure the safety and security of the public and to put an end to the anti-vaccination movement, it is vital for the United States to reeducate its citizens on the scientifically proven benefits of vaccinations and make changes to each state’s vaccination exemptions. This will not only help in ending the current global health crisis, but will also prevent future outbreaks from occurring, or reemerging, in the future.

---

220 See id.
221 See Novak, Comment, supra note 82, at 1107.