

**RELIGIOUS EXEMPTIONS AND MEDICINE:
UNDERSTANDING THE IMPACT ON PATIENTS AND HEALTH
CARE COSTS**

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Introduction

The topic of universal health care is one often subject to intense debate in the United States (“U.S”). An inherent problem is inadequate availability of health care resources with a predominate focal point of the debate being cost. Health care costs influence all aspects of care ranging from medical professionals on staff, treatments, preventative care, follow up care, health education, administration and overhead.¹ This hot button debate on the affordability and access to health care often sees a religious component being weaved in.² This religious component often centers

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¹ Gary Branning & Martha Vater, *Healthcare Spending: Plenty of Blame to Go Around*, 9 AM. HEALTH DRUG BENEFITS 445, 445-47 (2016), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC5394555/>.

² Danielle Kurtzleben, *Democratic Debate Exposes Deep Divides Among Candidates Over Health Care*, NPR (Sept. 13, 2019), <https://www.npr.org/2019/09/13/760364830/democratic-debate-exposes-deep-divides-among-candidates-over-health-care>; Dena Bunis, *Health Care Leads Off Latest Democratic Presidential Debate*, AARP (Sept. 13, 2019), <https://www.aarp.org/politics-society/government-elections/info-2019/democrats-debate-health-care.html>; Hannah Brown & Dylan Scott, *The Democratic Debates Have Spent 93 Minutes on Health Care*, VOX (Oct. 15, 2019), <https://www.vox.com/policy-and-politics/2019/10/15/20914415/democratic-debates-health-care-issues>.

around the constitution's separation of church and state.³ However, people utilize religion (religious exemptions) to prevent medical care,⁴ but then run the risk of needing medical services downstream to solve the issue. The problem is the severity has often increased and therefore imposed an increase cost on the already stressed health care system. However, some findings suggest bellowing to religious groups, even if higher cost, have better self-reported health care.⁵ This note will explore various medical services that often have religious exemptions utilized to stop care that results in more costly downstream medical services. The focus will be placed upon religious exemptions used in blood transfusions, vaccinations, reproductive health, and a case study on the 2019-2020 coronavirus epidemic.

1. Background

Religious exemptions are protected by the First Amendment allowing for the free exercise of religious beliefs.⁶ This issue is not just limited to patients refusing medical care, but also some medical professionals wanting to refuse providing care based on their religious beliefs. Protections for medical professionals have been growing with the most recent proposal being from the Department of Health and Human Services ("HHS") in 2018.⁷ Also, minors have their parents exercise religious exemptions to prevent health care.⁸ Note, topics will be discussed broadly focusing on commonly talked

³ Myrick C. Shinall, Jr., *The Separation of Church and Medicine*, 11 VIRTUAL MENTOR 747, 747-49 (2009), <https://journalofethics.ama-assn.org/article/separation-church-and-medicine/2009-10>.

⁴ James G. Hodge, Jr., *Respecting Religious Freedoms and Protecting the Public's Health*, 130 PUB. HEALTH REP. 546, 546-49, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4529841/>.

⁵ Christopher P. Scheittle & Amy Adamczyk, *High-Cost Religion, Religious Switching, and Health*, 51 J. OF HEALTH & SOC. BEHAV. 325, 325-42 (2010), <https://www.jstor.org/stable/20798295?seq=1#>.

⁶ U.S. CONST. amend. I.

⁷ Protecting Statutory Conscience Rights in Health Care; Delegations of Authority, 83 Fed. Reg. 3880 (Jan. 26, 2018) (to be codified at 45 C.F.R. pt. 88), <https://www.federalregister.gov/documents/2018/01/26/2018-01226/protecting-statutory-conscience-rights-in-health-care-delegations-of-authority>.

⁸ Robert Orr, *Faith-Based Decisions: Parents Who Refuse Appropriate Care for Their Children*, *Commentary 1*, 5 VIRTUAL MENTOR 223, 223-25 (2003), <https://journalofethics.ama-assn.org/article/faith-based-decisions-parents-who-refuse-appropriate-care-their-children-commentary-1/2003-08>.

about religious exemptions and the care refused in the U.S. There are numerous religions, and therefore, numerous religious exemptions with different justification based upon that specific religion. Failure to discuss a particular religion or the justification for the religion to not allow for a particular treatment within a particular category of treatment being discussed is simply due to efforts to establish the foundation of religious exemptions in order to discuss the problem of religious exemptions driving up health care costs.

a. Vaccinations

Vaccinations⁹ are one form of treatment that often has religious exemptions used to go against medical direction. The basis for current vaccinations stems from Edward Jenner's inoculation of a child with cowpox from a dairy maid in 1796 to prevent contracting smallpox.¹⁰ Jenner's results were initially rejected but continued to gain traction eventually replacing variolation¹¹ in 1840.¹²

Vaccination has proven highly successful over the last two centuries, but has now resulted in complacency by some of the population from never having witnessed the debilitating diseases vaccines protect against.¹³ This has given rise to an anti-vaccination movement,¹⁴ which gained considerable followers after a 1998 study published in "The Lancet" by Wakefield and several colleagues.¹⁵ The underlying theme of the article was that there was a link

⁹ *Vaccines and Preventable Diseases, Vaccines: The Basics*, CTRS. FOR DISEASE CONTROL & PREVENTION (Mar. 14, 2012), <https://www.cdc.gov/vaccines/vpd/vpd-vac-basics.html>.

¹⁰ Stefan Riedel, *Edward Jenner and the History of Smallpox and Vaccination*, 18 PROCEEDINGS (BAYLOR UNIV. MED. CTR.) 21, 21-25 (2005), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1200696/>.

¹¹ *Smallpox A Great and Terrible Scourge*, NIH U.S. NAT'L LIBR. OF MED. (July 30, 2013), https://www.nlm.nih.gov/exhibition/smallpox/sp_variolation.html.

¹² Riedel, *supra* note 10, at 21-25 (variolation had become prohibited by law).

¹³ Calandrillo SP, *Vanishing Vaccinations: Why Are so Many Americans Opting Out of Vaccinating Their Children?*, 37 UNIV. MICH. J.L. REFORM 353, 353-440 (2004), <https://www.ncbi.nlm.nih.gov/pubmed/15568260>.

¹⁴ *BMJ: Wakefield Paper Alleging Link Between MMR Vaccine and Autism Fraudulent*, HIST. OF VACCINES: THE COLL. OF PHYSICIANS OF PHILA. (Jan. 6, 2011), <https://www.historyofvaccines.org/content/blog/bmj-wakefield-paper-alleging-link-between-mmr-vaccine-and-autism-fraudulent>.

¹⁵ Laura Eggertson, *Lancet Retracts 12-Year-Old Articles Linking Autism to MMR Vaccines*, 182 CANADIAN MED. ASS'N J. E199, E199-200 (Feb. 4, 2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2831678/>.

between the MMR vaccine¹⁶ and autism.^{17,18} The study was unable to be corroborated by other scientists and was ultimately retracted twelve years later.¹⁹ The fraudulent study had been funded by lawyers with a financial interest due to representing parents involved in litigation against vaccine companies.²⁰ However, there have been many other examples of purposefully refusing vaccines, such as Supreme Court of the United States (“SCOTUS”) cases *Jacobson v. Massachusetts*²¹ in 1905 or *Zucht v. King* in 1922.²² Challenging vaccine programs and mandates remain prevalent in the 21st century,²³ but some states consider refusal to vaccinate children as medical neglect.²⁴ Surprisingly, the issue of vaccination remains a state issue with almost all states containing some form of religious exemption.²⁵

b. Blood Transfusions

Blood transfusions²⁶ are another form of treatment that often has religious exemptions used to go against medical direction. The first successful human blood transfusions were done by Jean-Baptiste Denis and Richard Lower in different countries in 1667

¹⁶ *Autism Spectrum Disorder (ASD), What is ASD?*, CTRS. FOR DISEASE CONTROL & PREVENTION (Mar. 28, 2019), <https://www.cdc.gov/vaccines/vpd/mmr/public/index.html>.

¹⁷ *Vaccines and Preventable Diseases, Vaccines: The Basics*, CTRS. FOR DISEASE CONTROL & PREVENTION (Aug. 27, 2019), <https://www.cdc.gov/ncbddd/autism/facts.html>.

¹⁸ Eggertson, *supra* note 15.

¹⁹ *Id.*; Susan Mayor, *Authors Reject Interpretation Linking Autism and MMR Vaccine*, 328 *BMJ* 602, 602 (2004), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC381161/>.

²⁰ T.S. Sathyanarayana Rao & Chittaranjan Andrade, *The MMR Vaccine and Autism: Sensation, Refutation, Retraction, and Fraud*, 53 *Indian J. Psychiatry* 95, 95-96 (2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3136032/>.

²¹ *Jacobson v. Massachusetts*, 197 U.S. 11 (1905).

²² *Zucht v. King*, 260 U.S. 174 (1922).

²³ *Phillips v. City of N.Y.*, 775 F.3d 538 (2d Cir. 2015); *Watkins-El v. Dep't of Educ.*, No. 16-CV-2256, 2016 U.S. Dist. LEXIS 139860 (E.D.N.Y. Oct. 6, 2016).

²⁴ Efthimios Parasidis & Douglas J. Opel, *Parental Refusal of Childhood Vaccines and Medical Neglect Laws*, 107 *AM. J. PUB. HEALTH* 68, 68-71 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5308147/>.

²⁵ *Immunizations Policy Issues Overview*, NAT'L CONF. OF STATE LEGISLATURES (May 22, 2019), <http://www.ncsl.org/research/health/immunizations-policy-issues-overview.aspx>.

²⁶ *Tests & Procedures, Blood Transfusion*, MAYO CLINIC (Aug. 1, 2017), <https://www.mayoclinic.org/tests-procedures/blood-transfusion/about/pac-20385168>.

were they transfused blood from lambs to humans.²⁷ However, transfusion of animal blood to humans was not received well and banned within ten years.²⁸ There would not be a human blood transfusion until 1795 with the first successful transfusion to treat an illness being until 1818.²⁹ Blood transfusion results began to be done more often with the results published culminating in the discovery of the blood groups in 1900, which led to the suggestion and subsequent success of cross matching blood groups for safety.³⁰ The field rapidly developed over the century leading to blood transfusions now being one of the most common medical procedures.³¹

However, blood transfusions are a controversial topic for certain religious groups such as Jehovah's Witnesses being the most well-known religion to refuse them.³² The basis for Jehovah's Witnesses to refuse transfusions is in the application of a textualist approach to the readings found in the bible based on viewing blood as nourishment that must not be consumed.³³ The interpretation is coupled with the basis that intravenous blood is similar to parenteral nutrition.³⁴ Also, blood transfusions are readily refused even though transfused blood is highly controlled and tested to ensure the safety for those receiving transfusions³⁵ and potentially lifesaving for certain situations.³⁶ The exception to this are typically in the cases of life-saving measures for minors where courts find the

²⁷ *Highlights of Transfusion Medicine History*, AM. ASS'N OF BLOOD BANKS (2020), <http://www.aabb.org/tm/Pages/highlights.aspx>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Improving Blood Safety: NHBLI Research Program Expands Transfusion Focus to Include Infants, Children*, NIH NAT'L HEART, LUNG, & BLOOD INST. (July 11, 2019), <https://www.nhlbi.nih.gov/news/2019/improving-blood-safety-nhlbi-research-program-expands-transfusion-focus-include-infants>.

³² S. Woolley, *Children of Jehovah's Witnesses and Adolescent Jehovah's Witnesses: What Are Their Rights?*, 90 ARCHIVES OF DISEASE IN CHILDHOOD 715, 715-19 (2005), <https://adc.bmj.com/content/90/7/715>; Olivier Garraud, *Jehovah's Witnesses and Blood Transfusion Refusal: What Next?*, 12 (SUPPL 1) BLOOD TRANSFUSION S402, S402-03 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3934228/>.

³³ Ursula C. Brewster et al., *When a Patient Refuses Life-Saving Care: Issues Raised When Treating a Jehovah's Witness*, 58 AM. J. OF KIDNEY DISEASES 647, 647-43 (2011), [https://www.ajkd.org/article/S0272-6386\(11\)01066-3/fulltext](https://www.ajkd.org/article/S0272-6386(11)01066-3/fulltext).

³⁴ *Id.*

³⁵ *Blood Transfusion*, NIH NAT'L HEART, LUNG, & BLOOD INST., <https://www.nhlbi.nih.gov/health-topics/blood-transfusion>.

³⁶ Woolley, *supra* note 32.

interests of the child and state outweigh the parents interest in both parental rights and religious rights.³⁷ Surprisingly, a different approach has been recently taken by some states seemingly to chip away at protections favoring treatment for minors.³⁸

c. Reproductive Health

Reproductive health is another treatment area that often have religious exemptions used to go against medical direction. However, sometimes the health care providers are refusing to perform the treatment citing religion for the reason, namely abortions. Reproductive health discussions typically encompass three particular areas: (1) abortions; (2) contraceptive care; and (3) providing access to care.

Typically, religious exemptions prohibiting contraceptives come in the form of choosing to not fund them based on a hospital being a religious hospital or through insurance from a religious provider. Minors often seeking contraceptives, such as birth control, can go to planned parenthood and receive free birth control without needing parent approval. This is on a state-by-state case, but due to the minor seeking the care, parents potentially will never know. The protections afforded to providing these minors comes primarily through the SCOTUS case *Carey v. Population Services International* in 1977.³⁹ The Court held that it was unconstitutional to infringe upon the privacy rights of minors or to intrude on an individual's decision.⁴⁰

The debate on whether an employer must provide insurance that covers birth control remains contentious and ongoing.⁴¹ Expansion of coverage was seen under the Obama administration and the Affordable Care Act ("ACA"), but the Trump administration has provided a new policy supporting religious exemptions.⁴² However, there were a few specific allowances of religious exemptions under the ACA during the Obama administration after

³⁷ *In re McCauley*, 565 N.E.2d 411 (Mass. 1991).

³⁸ *Glenn H. v. Hoskins*, 419 P.3d 567 (Ariz. App. 1st Div. 2018).

³⁹ *Carey v. Population Servs. Int'l*, 431 U.S. 678 (1977).

⁴⁰ *Id.* at 681.

⁴¹ Alison Kodjak, *Trump Guts Requirement That Employer Health Plans Pay for Birth Control*, NPR (Oct. 6, 2017), <https://www.npr.org/sections/health-shots/2017/10/06/555970210/trump-ends-requirement-that-employer-health-plans-pay-for-birth-control>.

⁴² *Id.*

the SCOTUS ruling in *Burwell v. Hobby Lobby Stores, Inc.*⁴³ *Hobby Lobby* held that the HHS contraceptive mandate, requiring “owners of closely held corporations with sincere religious beliefs about contraception [...] to provide health insurance coverage for certain contraception,⁴⁴was unlawful.⁴⁵

Medical professionals being able to refuse performing various treatments, namely abortion, is another highly contentious area. The main mechanism for allowing these religious exemptions comes in the form of state and federal medical conscience clause legislation.⁴⁶ Originally, the conscience clause allowed for religious exemptions to military service dating back to the Civil War.⁴⁷ *Roe v. Wade*⁴⁸ was the driving force that caused the expansion of conscience clause to the medical profession.⁴⁹ *Roe v. Wade* legalized abortions across the U.S.⁵⁰ Abortion has remained a contentious issue in the country with being revisited by cases redefining the boundaries of what is a legal abortion ranging from *Planned Parenthood v. Casey*⁵¹ to the recent fetal heartbeat laws.⁵²

2. Legal Analysis:

The main origin of most of today’s religious exemptions came in the wake of Congress passing the Child Abuse Prevention & Treatment Act in 1974.⁵³ The Act was designed to address child neglect, but did not specify how to handle religious exemptions thereby leaving the decision to the Health and Human Services

⁴³ *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

⁴⁴ *Id.* at 682.

⁴⁵ *Id.* at 736.

⁴⁶ Claire Marshall, *The Spread of Conscience Clause Legislation*, ABA (Jan. 1, 2013), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/2013_vol_39/january_2013_no_2_religious_freedom/the_spread_of_conscience_clause_legislation/.

⁴⁷ *Id.*

⁴⁸ *Roe v. Wade*, 410 U.S. 113 (1973).

⁴⁹ Marshall, *supra* note 46.

⁵⁰ *Roe*, 410 U.S. at 116.

⁵¹ *Planned Parenthood of S.E. Penn. v. Casey*, 505 U.S. 833 (1992).

⁵² K.K. Rebecca Lai, *Abortion Bans: 9 States Have Passed Bills to Limit the Procedure This Year*, N.Y. TIMES (MAY 29, 2019), <https://www.nytimes.com/interactive/2019/us/abortion-laws-states.html>.

⁵³ *Religious Exemptions to Child Neglect*, NAT’L DIST. ATT’YS ASS’N (Feb. 2015), <https://ndaa.org/wp-content/uploads/2-11-2015-Religious-Exemptions-to-Child-Neglect.pdf>.

“HHS”).⁵⁴ “[HHS] mandated that the states adopt religious exemptions to child neglect before they could receive federal funding for state child-protection programs.”⁵⁵ This mandate was later reversed, but only a “few states have repealed these religious exemption laws.” As a result, religious exemptions permeated most of the country even if the decision of the parents (or caretaker) would otherwise constitute child neglect. However, there has been specific areas where religious exemptions are more commonly used as well as contentious. These areas will be explored in greater detail.

a. Vaccinations

Vaccination cases that are brought in modern day are often focused on public safety concerns relying on precedent reaching back over a century to *Jacobson v. Massachusetts* in 1905.⁵⁶ *Jacobson* centers around a time where infectious diseases were the leading cause of death. The Centers for Disease Control (“CDC”) would not be founded until almost forty years later in 1946⁵⁷ nor the U.S. Department of Health and Human Services (“HHS”) until 1953,⁵⁸ which left most public health programs solely in the purvey of states or local communities.⁵⁹

In *Jacobson*, Defendant was a pastor who had witnessed his son allegedly suffering adverse effects from a vaccination administered by national law when his family was living in Sweden.⁶⁰ Defendant moved to Massachusetts and was opposed to mandatory vaccination programs being implemented by the state to combat smallpox.⁶¹ Defendant was fined for not complying with the mandatory vaccination, which Defendant argued was an unreasonable invasion of his liberty.⁶² The Supreme Court held that

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Wendy K. Mariner et al., *Jacobson v. Massachusetts: It's Not Your Great-Great-Grandfather's Public Health Law*, 95 AM. J. PUB. HEALTH 581, 581-90 (2005), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1449224/>.

⁵⁷ *About CDC 24-7, History*, CTRS. FOR DISEASE CONTROL & PREVENTION (Dec. 4, 2018), <https://www.cdc.gov/about/history/index.html>.

⁵⁸ *Health and Human Services, FED. REG.*, <https://www.federalregister.gov/agencies/health-and-human-services-department>.

⁵⁹ Mariner, *supra* note 56.

⁶⁰ *See generally* MICHAEL WILRICH, *POX: AN AMERICAN HISTORY* (Penguin Books 2012).

⁶¹ *Id.*

⁶² *Jacobson v. Massachusetts*, 197 U.S. 11, 22 (1905).

the vaccination program was constitutional based upon having a “real and substantial relation to the protection of the public health and safety.”

The rationale for the *Jacobson* ruling centered around “the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint.”⁶³ The Court highlighted,

The fact that the belief is not universal is not controlling, for there is scarcely any belief that is accepted by everyone. The possibility that the belief may be wrong, and that science may yet show it to be wrong, is not conclusive; for the legislature has the right to pass laws which, according to the common belief of the people, are adapted to prevent the spread of contagious diseases.⁶⁴

The Court further elaborated that,

We are unwilling to hold it to be an element in the liberty secured by the Constitution of the United States that one person, or a minority of persons, residing in any community and enjoying the benefits of its local government, should have the power thus to dominate the majority when supported in their action by the authority of the State.⁶⁵

Jacobson drew on the rationale from *Viemeister v. White*.⁶⁶ *Viemeister* had been decided the year before holding children could be barred from school for failing to comply with required vaccinations, namely smallpox.⁶⁷ *Jacobson* seemingly upheld and bolstered the ruling in *Viemeister* despite not hearing the case. However, both *Jacobson* and *Viemeister* holdings would be reaffirmed in 1922 with *Zucht v. King*.⁶⁸ *Zucht* held that ordinances

⁶³ *Id.* at 26.

⁶⁴ *Id.* at 35.

⁶⁵ *Id.* at 38.

⁶⁶ *Viemeister v. White*, 72 N.E. 97 (N.Y. 1904).

⁶⁷ *Id.*

⁶⁸ *Zucht v. King*, 260 U.S. 174 (1922).

requiring children and other persons to require presenting certification of vaccination to attend places of education to be valid.⁶⁹

These three cases support the premise that the police power of the state for public health safety is absolute without violating the Constitution. However, the outcome of these cases suggest that an individual may be ostracized from participating in society in order to promote compliance without forcing someone to comply directly. This type of underhanded forced compliance is most commonly discussed in the context of *South Dakota v. Dole*⁷⁰ where federal highway funding was withheld to force states to comply with the proposed national drinking age. *Dole* rationale focused on an aspect of general welfare to uphold constitutionality.⁷¹ General welfare and public safety (health safety) seems to be well established as a mechanism for overriding any Constitutional protections, which would therefore include the First Amendment and its religious exemptions.

b. Blood Transfusions

Blood transfusions are medical treatments with effects limited to an individual.⁷² As a result, the overriding notion of public safety and welfare are not implicated when trying to support imposing the treatments, which has led to greater differences in case law. Similarly, the blood ban, banning blood transfusions, was not implemented by Jehovah's Witnesses Society until 1945.⁷³ There has been a litany of cases for civil liberties violations brought by Jehovah Witnesses that have gone before SCOTUS.⁷⁴ However, there appears to be a lack of cases dealing with religious exemptions

⁶⁹ *Id.* at 175.

⁷⁰ *South Dakota v. Dole*, 483 U.S. 203 (1987).

⁷¹ *Id.* at 205.

⁷² Contrasted with vaccinations, which impart the ability to synthesize mass quantities for administration to many people.

⁷³ See N. Kiran Chand et al., Management of patients who refuse blood transfusion, 2014 INDIAN J. ANAESTHESIA 58(5) 658, 658 (Oct. 2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4260316/>.

⁷⁴ *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Minersville Sch. Dist. v. Gobitis*, 310 U.S. 586 (1940) *overruled by Barnette*, 319 U.S. at 624; *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942); *Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150 (2002).

for medical treatments going before SCOTUS. This suggests that this issue has been left solely to be decided on a state-by-state basis.

*In re McCauley*⁷⁵ was a 1991 case brought before the Supreme Court of Massachusetts on the issue of religious exemptions. Parents were refusing a blood transfusion for their child, a minor, on the basis of their religion.⁷⁶ A trial court held an emergency hearing, which authorized the administration of blood products as well as any other reasonably necessary care.⁷⁷ The case was appealed to the appellate court, despite the treatment having been given, and then appealed to the state supreme court.⁷⁸ The state supreme court affirmed the trial court's ruling in favor of administering blood products in the course of treatment for the minor.⁷⁹

McCauley drew support from a previous case decided by the Massachusetts Supreme Court, *Custody of a Minor*.^{80, 81} The Court held "there are three interests involved: (1) the "natural rights" of parents; (2) the interests of the child; and (3) the interests of the State."⁸² "Courts have recognized that the relationship between parents and their children is constitutionally protected, and, therefore, that the private realm of family life must be protected from unwarranted State interference."⁸³ "The right to the free exercise of religion, including the interests of parents in the religious upbringing of their children is, of course, a fundamental right protected by the Constitution."⁸⁴ The Court held that the interests of the minor and the State outweighed both the parental and religious rights of the parents.⁸⁵ The determination was based upon using a variety of factors looking at the various rights with the conclusion being that receiving blood products was the minor's "only real chance at recovery" and the State was trying to protect "the child's welfare and in preservation of her life apply."⁸⁶ The Court

⁷⁵ *In re McCauley*, 565 N.E.2d at 411.

⁷⁶ *Id.* at 412.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Custody of a Minor*, 379 N.E.2d 1053 (Mass. 1978).

⁸¹ *In re McCauley*, 565 N.E.2d at 413.

⁸² *Id.* (citing to *Custody of a Minor*, 379 N.E.2d at 1053).

⁸³ *Id.* at 413.

⁸⁴ *Id.* (citing *Wisconsin v. Yoder*, 406 U.S. 205, 214 (1972)).

⁸⁵ *Id.* at 414.

⁸⁶ *Id.*

noted that they had no doubt in parents being sincere in both their religious beliefs and love of their child.⁸⁷

McCauley echoes the predominant view throughout states that protecting a minor's life will trump religious exemptions being claimed by the parents. However, there are cases that support the opposite view as recently as 2018 in *Glenn H. v. Hoskins*.⁸⁸ The facts of the case are similar to that of *McCauley* whereas there was a minor needing a blood transfusion with parents not consenting on religious grounds.⁸⁹ The Court noted that the hospital in *Hoskins* went through an emergency telephone line to get court authorization for medical treatments as opposed to creating a cause of action through filing a complaint.⁹⁰ The Court held there was a lack of jurisdiction for the hot line and thus the orders authorizing treatment void.⁹¹ *Hoskins* seemingly cuts against general welfare concerns or the public policy considerations mentioned for vaccinations. However, there was a component of *Hoskins* that involved failing to inform the nonconsenting family of pursuing legal actions through the hot line.⁹² This failure by the hospital to inform the family potentially influenced the decision of the Court.

c. Reproductive Health

Reproductive health is arguably the most contentious area for religious exemptions and is constantly being subjected to ever changing legislature and judicial rulings. The intersection of religion and reproductive health is a shifting legal landscape that often follows shifts in political elections.⁹³ The focus of this discussion will be centered around religious exemptions that developed in the wake of *Roe v. Wade*.⁹⁴

Roe v. Wade was the seminal case that laid the groundwork for several religious exemptions. The case is highly contentious as some view the case as one of the clearest examples of judicial activism,

⁸⁷ *In re McCauley*, 565 N.E.2d at 414.

⁸⁸ *Hoskins*, 419 P.3d at 567.

⁸⁹ *Id.* at 569.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ Nancy Northup, *Election Perspective from Nancy Northup*, CTR. FOR REPROD. RTS. (Nov. 3, 2010), <https://reproductiverights.org/press-room/election-perspective-from-nancy-northup>.

⁹⁴ *Roe*, 410 U.S. at 113.

since the effect was to strike down numerous federal and state laws throughout the countries.⁹⁵ *Roe* dealt with a mother seeking an abortion for her pregnancy due to already having two children.⁹⁶ The mother lived in Texas where abortions were illegal except to save the mother's life.⁹⁷ The case would not be resolved timely enough leading to the child being born and put up for adoption.⁹⁸ The Court held that Texas law unconstitutional for "abortion was within the scope of the personal liberty guaranteed by the Due Process Clause."⁹⁹ "We, therefore, conclude that the right of personal privacy includes the abortion decision, but that this right is not unqualified and must be considered against important state interests in regulation."¹⁰⁰ However, this notion of 'not unqualified' allowed for abortion laws to return and the abortion debate to continue. Regardless, this case opened the door for a multitude of religious exemptions to be claimed as abortions were now legal to some degree.

The most notable religious exemption that has developed was the rise of conscience clauses being enacted immediately after the decision in *Roe v. Wade*.¹⁰¹ Simplified, the conscience clauses seek to provide protection for health care professionals that seek to not perform procedures that go against their religion or conscience.¹⁰² The response to conscience clauses have been mixed, but notable support has come from Justice Harry Blackmun, the author of the majority opinion in *Roe v. Wade*,¹⁰³ in his opinion in *Doe v. Bolton*.¹⁰⁴

⁹⁵ LINDA GREENHOUSE, *BECOMING JUSTICE BLACKMUN: HARRY BLACKMUN'S SUPREME COURT JOURNEY* 135-36 (New York: Times Books 2005).

⁹⁶ *Roe*, 410 U.S. at 137-38.

⁹⁷ *Id.*

⁹⁸ Mary Rourke & Emily Alpert Reyes, *Norma McCorvey, Once-Anonymous Plaintiff in Landmark Roe vs. Wade Abortion Case, Dies at 69*, L.A. TIMES (Feb. 18, 2017), <https://www.latimes.com/local/obituaries/la-me-norma-mccorvey-snap-story.html>.

⁹⁹ *Roe*, 410 U.S. at 116.

¹⁰⁰ *Roe*, 410 U.S. at 154.

¹⁰¹ Douglas Nejaime & Reva Siegel, *Conscience Wars: Complicity-Based Conscience Claims in Religion and Politics*, 124 YALE L.J. 2516 (2015).

¹⁰² Nancy Berlinger, *Conscience Clauses, Health Care Providers, and Parents*, HASTINGS CTR. (2008), <https://www.thehastingscenter.org/briefingbook/conscience-clauses-health-care-providers-and-parents/>.

¹⁰³ *Roe*, 410 U.S. at 154.

¹⁰⁴ *Doe v. Bolton*, 410 U.S. 179 (1973).

Doe v. Bolton involved evaluating the constitutionality of the Georgia's recently enacted criminal abortion law.¹⁰⁵ *Doe* was an impoverished citizen of Georgia who was nine-weeks pregnant with an inability to care for her three current living children. Two of the children had been placed in foster homes, and the third was placed for adoption. Georgia's law prohibited abortion except for three situations: (1) pregnancy endangers the life of the mother; (2) the fetus is likely to suffer a serious, irreversible mental or physical defect; and (3) the pregnancy resulted from rape.¹⁰⁶ *Doe* did not have the means to care for the child if born, thus sought an abortion. The Court held that the accreditation provision for hospitals and approval by a hospital's abortion committee being subject to confirmation by two independent physicians violate the Fourteenth Amendment.¹⁰⁷ As a result, *Doe v. Bolton* is often considered the companion case to *Roe v. Wade*, whereas both resulted in most laws being overturned to the point of fetal viability.

However, the majority opinion in *Doe*, also written by Justice Blackmun, provided substantial support and framework for the constitutionality of conscience clauses. Justice Blackmun described that,

Under § 26-1202 (e), the hospital is free not to admit a patient for an abortion. It is even free not to have an abortion committee. Further, a physician or any other employee has the right to refrain, for moral or religious reasons, from participating in the abortion procedure. These provisions obviously are in the statute in order to afford appropriate protection to the individual and to the denominational hospital. Section 26-1202 (e) affords adequate protection to the hospital, and little more is provided by the committee prescribed by § 26-1202 (b)(5).¹⁰⁸

This part of the opinion acknowledges not only a need for health care provider's rights for moral and religious reason, but that of the hospitals. Furthermore, these protections have been extended to

¹⁰⁵ *Id.* at 181.

¹⁰⁶ *Id.* at 202.

¹⁰⁷ *Id.* at 201.

¹⁰⁸ *Id.* at 197-98.

parents to provide grounds for prohibiting various medical procedures for their children, minors.¹⁰⁹

3. Understanding Aspects of Health Care and Costs

Before evaluating the specific costs of the aforementioned areas of health care, there are downstream affects that need to be considered as well. This is attributed to exposure hospital settings and resistance that has developed to treatments.

Health care costs are only truly known after care has been administered and varying between any individual person. However, through looking at past population data and associated costs, projections for the expected cost of various medical conditions is known.¹¹⁰ Typically, the type of preventative care advocated by health care professionals is cheaper than waiting to treat the condition that would otherwise arise.¹¹¹ Note, there are specific situations where prevention might not be cheaper “[f]or example, screening costs will exceed the savings from avoided treatment in cases in which only a very small fraction of the population would have become ill in the absence of preventive measures.”¹¹² However, the reality of the situation is that resources, especially health care resources, are limited and need to be allocated appropriately.¹¹³

Furthermore, certain health care treatments can lead to the development of more costly problems downstream. The most notable example of this is antibiotic resistance. Antibiotic resistance developments when medication is overly prescribed. This could be a lack of proper assessment by medical professionals or the fact that the prescription is the only treatment available. A common scenario is the common cold,¹¹⁴ which people go to the doctor for and seek

¹⁰⁹ Nancy Berlinger, *Conscience Clauses, Health Care Providers, and Parents*, HASTINGS CTR. (2008), <https://www.thehastingscenter.org/briefingbook/conscience-clauses-health-care-providers-and-parents/>.

¹¹⁰ For an example of such data analysis, see generally Mohammad Amin Morid et al., *Supervised Learning Methods for Predicting Healthcare Costs: Systematic Literature Review and Empirical Evaluation*, 2017 AMIA ANN. SYMP. PROC. 1312, 1312-21 (Apr. 16, 2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5977561/>.

¹¹¹ Joshua T. Cohen et al., *Does Preventative Care Save Money? Health Economics and the Presidential Candidates*, 358 NEW ENG. J. OF MED. 661, 661-63 (2008), <https://www.nejm.org/doi/full/10.1056/NEJMp0708558>.

¹¹² *Id.*

¹¹³ *Ethics, Allocating Limited Health Care Resources*, AMA, <https://www.ama-assn.org/delivering-care/ethics/allocating-limited-health-care-resources>.

¹¹⁴ *Diseases and Conditions, Common Cold*, MAYO CLINIC (Apr. 20, 2019), <https://www.mayoclinic.org/diseases-conditions/common-cold/symptoms-causes/syc-20351605> (“The common cold is a viral infection of your nose and throat

antibiotics to treat. Antibiotics only treat bacterial infections and not viral infections, which is what the common cold is.¹¹⁵ There are antivirals available that could be prescribed, but these are rarely available over the counter nor regularly prescribed by general practitioners.¹¹⁶ People have tons of bacteria inside and outside, and providing an antibiotic effects the environment in which they live. As a result, the bacteria that develops a resistance to the antibiotic will now have a more favorable environment to live and reproduce,¹¹⁷ thereby outcompeting the other bacteria. The way to reverse this is through “antibiotic holidays,” but is better in theory and hard to implement globally.¹¹⁸ Costs for antibiotic resistance are estimated to have more than doubled since 2002 placing the amount at over \$2 billion annually.¹¹⁹ However, some speculate the

(upper respiratory tract). It's usually harmless, although it might not feel that way. Many types of viruses can cause a common cold.”)

¹¹⁵ There are antivirals available that could be prescribed, but these are highly regulated. The need to highly regulate these is because there is only a few exist and are needed for more serious conditions such as human immunodeficiency virus (“HIV”). Not just viruses can develop resistant, but bacteria as well. However, there are only a few antivirals compared to the plethora of antibiotics. To prevent resistance to the limited antivirals, the antivirals are heavily regulated. The common cold is readily resolved by the human body and intervention is not needed, while HIV has a lethal prognosis if the infection takes root.

¹¹⁶ *Influenza (Flu), Treatment*, CTRS. FOR DISEASE CONTROL & PREVENTION (April 22, 2019), <https://www.cdc.gov/flu/treatment/whatyoushould.htm>; *Seasonal Influenza, Prevention and Control, Antiviral treatment*, EUR. CTR. FOR DISEASE PREVENTION & CONTROL, <https://www.ecdc.europa.eu/en/seasonal-influenza/prevention-and-control/antivirals/faq>.

¹¹⁷ This is referred to as binary fission. *Binary Fission and Other Forms of Reproduction in Bacteria*, CORNELL COLL. OF AGRIC. & LIFE SCIS. (2021), <https://micro.cornell.edu/research/epulopiscium/binary-fission-and-other-forms-reproduction-bacteria> (“Most bacteria rely on binary fission for propagation. Conceptually this is a simple process; a cell just needs to grow to twice its starting size and then split in two. But, to remain viable and competitive, a bacterium must divide at the right time, in the right place, and must provide each offspring with a complete copy of its essential genetic material.”).

¹¹⁸ *Antibiotic Holiday Needs to Be A Long One to Combat Resistance*, YALENEWS (January 8, 2011), <https://news.yale.edu/2011/01/08/antibiotic-holiday-needs-be-long-one-combat-resistance>.

¹¹⁹ Kenneth E. Thorpe et al., *Antibiotic-Resistant Infection Treatment Costs Have Doubled Since 2002, Now Exceeding \$2 Billion Annually*, 37 CULTURE OF HEALTH, THE ACA & MORE 1 (March 21, 2018), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2017.1153>.

costs to approach \$3 billion annually in the U.S. for just five common bacterial infections.¹²⁰

If a patient ends up in the hospitals, there is a great chance for contracting another infection that is the result from being at the hospital.¹²¹ “On any given day, about one in 31 hospital patients has at least one health care associated infection.”¹²² “Annually, approximately 2 million patients suffer with health care associated infections (HAIs) in the USA, and nearly 90,000 are estimated to die.”¹²³ “The overall direct cost of HAIs to hospitals ranges from US \$28 billion to 45 billion.”¹²⁴

a. Vaccinations

The MMR vaccine is often the most contentious vaccine in today’s society. The cost of the vaccine ranges from \$106.99 per dose.¹²⁵ This vaccine (in the two-dose format) is 97% effective against measles, 88% effective against mumps, and 97% effective against rubella.¹²⁶ If a child has to be hospitalized with one of these diseases the costs are \$4,032 - \$46,060, \$11,196 - \$46,060, and \$4,886 - \$46,060, respectively.¹²⁷ Similarly, tetanus shot is \$74.99¹²⁸

¹²⁰ Poojan Shrestha et al., *Enumerating the Economic Cost of Antimicrobial Resistance Per Antibiotic Consumed to Inform the Evaluation of Interventions Affecting Their Use*, 7 *ANTIMICROBIAL RESISTANCE & INFECTION CONTROL* (2018), <https://aricjournal.biomedcentral.com/articles/10.1186/s13756-018-0384-3>.

¹²¹ *Healthcare-associated Infections*, CTRS. FOR DISEASE CONTROL & PREVENTION (Oct. 5, 2018), <https://www.cdc.gov/hai/data/index.html>.

¹²² *Id.*

¹²³ Patricia W. Stone, *Economic Burden of Healthcare-Associated Infections: An American Perspective*, 9 *EXPERT REV. OF PHARMACOECONOMICS & OUTCOMES RSCH.* 417, 417-22 (Feb. 24, 2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2827870/>.

¹²⁴ *Id.*

¹²⁵ *Price Menu*, WALGREENS (2021), <https://www.walgreens.com/topic/healthcare-clinic/price-menu.jsp>. Note, this is for children above 7, which is common. People need booster shots at various stages or for schools that evaluate blood titer levels (measurement of immunity). If blood titer levels fall, either a booster is needed or readministration of the vaccine.) Note, this is a dynamic website subject to change as well as prices subject to change. Typically, MMR vaccination is free for infants or covered by insurance.

¹²⁶ *Vaccines by Disease, Rubella*, CTRS. FOR DISEASE CONTROL & PREVENTION (Mar. 28, 2019), <https://www.cdc.gov/vaccines/vpd/mmr/public/index.html>.

¹²⁷ *Vaccines for Children Program (VFC), VFC Publications: Supplement*, CTRS. FOR DISEASE CONTROL & PREVENTION (Apr. 23, 2014), <https://www.cdc.gov/vaccines/programs/vfc/pubs/methods/index.html#table2>.

¹²⁸ WALGREENS, *supra* note 125.

with there being a 100% of hospitalization if contracted and the estimated cost being \$102,584.¹²⁹

However, religious exemptions for vaccinations are only one aspect of costs associated with not getting vaccinations, but they can influence the choices in the future. Vaccinations are not just isolated to children for childhood diseases, but are used for adults as well. Similarly, vaccinations are used for viruses and not just limited to bacterial infections. The most common disease a vaccine can prevent in adults is the flu virus, which can also infect child. A CDC report analyzed the benefits of immunizations (vaccinations) during the vaccine for children program era in the US between 1994 to 2013.¹³⁰ Note, VFC mentioned below stands for vaccines for children:

To summarize the impact of the U.S. immunization program on the health of all children (both VFC-eligible and not VFC-eligible) who were born during the 20 years since VFC began, CDC used information on immunization coverage from the National Immunization Survey (NIS) and a previously published cost-benefit model to estimate illnesses, hospitalizations, and premature deaths prevented and costs saved by routine childhood vaccination during 1994–2013. Coverage for many childhood vaccine series was near or above 90% for much of the period. Modeling estimated that, among children born during 1994–2013, vaccination will prevent an estimated 322 million illnesses, 21 million hospitalizations, and 732,000 deaths over the course of their lifetimes, at a net savings of \$295 billion in direct costs and \$1.38 trillion in total societal costs.¹³¹

The actual impact of any preventative care is always unknown given the inherent nature of prevention. However, even if only a fraction of the estimated lives saved, or net savings of direct

¹²⁹ CTRS. FOR DISEASE CONTROL & PREVENTION, *supra* note 127.

¹³⁰ Cynthia G. Whitney et al., *Benefits from Immunization During the Vaccines for Children Program Era – United States, 1994-2013*, 63 MORBIDITY & MORTALITY WKLY. REP. 352, 352-55 (Apr. 25, 2014), <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6316a4.htm>.

¹³¹ *Id.*

costs and societal costs are actualized, then vaccinating children is a clear benefit to society.

b. Blood Transfusions

Blood transfusions are needed to prevent severe anemia. Anemia is when you do not have enough healthy red blood cells to transport oxygen to supply oxygen from the lungs to the rest of the body.¹³² Oxygen drives the most efficient, and subsequently the predominant means for the body's cells to generate energy. Furthermore, red blood cells also help remove waste from cells, namely carbon dioxide generated by energy production. The result of severe anemia is death. A study looking at Jehovah's Witnesses refusing blood transfusions and receiving surgeries looked at surgery outcomes.¹³³ Before any given procedure, the safe amount of red blood cells was around 8.1-10 g/dL resulting in a mortality chance of 0%.¹³⁴ If red blood cell levels fell (anemic) to 6.1-8 g/dL, the mortality rate drops to 33% for the operation.¹³⁵ If the levels fell to 6 g/dL, then the mortality rate was 61.5%.¹³⁶ Furthermore, anemia also effects wound healing.¹³⁷

The cost of refusing treatment can be death, which is the highest price anyone can pay. However, there are other costs that are rather hard to quantify but are numerous. The main associated costs to consider are the following: (1) longer stays in hospitals from reduced healing;¹³⁸ (2) nosocomial infections from the longer hospital stays; (3) delay of needed lifesaving procedures; and (4) "unnecessary opportunity costs for others."¹³⁹ Some research places the cost of intensive daily care that can result in the above

¹³² *Diseases and Conditions, Anemia*, MAYO CLINIC (Aug. 16, 2019), <https://www.mayoclinic.org/diseases-conditions/anemia/symptoms-causes/syc-20351360>.

¹³³ D. John Doyle, *Risks of Avoiding Necessary Blood Transfusions*, ADVOCS. FOR JEHOVAH'S WITNESS REFORM ON BLOOD (2017), <http://ajwrb.org/physicians/risks-of-avoiding-necessary-blood-transfusions>.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ C. Heughan et al., *The Effect of Anemia on Wound Healing*, 179 ANNALS OF SURGERY 163, 163-67 (Feb. 1974), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1355771/>.

¹³⁸ *Id.*

¹³⁹ Raanan Gillon, *Refusal of Potentially Life-Saving Blood Transfusions by Jehovah's Witnesses: Should Doctors Explain That Not All JW's Think It's Religiously Required?*, 26 J. OF MED. ETHICS 299, 299-301 (2000), <https://jme.bmj.com/content/26/5/299>.

mentioned scenarios at \$5,000-\$10,000 a day.¹⁴⁰ This is all contrasted against the rather low cost (at least in the world of medical treatments) of a unit of blood being \$200.¹⁴¹

c. **Reproductive Health**

The costs associated with reproductive health are incredibly broad. However, in the simplistic context, denial of birth control leads to pregnancy. Birth control costs per annum for birth control is \$0 to \$800 (potential cost for initial doctor visit of \$20 to \$200) and condom use three times a week is \$200.¹⁴² A single use of Plan B pill has a cost of \$25 to \$50.¹⁴³ The cost of raising a child to the age of eighteen was estimated to be \$233,610 in 2015.¹⁴⁴ For the sake of completeness, the cost of an abortion ranges from \$350 to \$950.¹⁴⁵ However, the debate on the morals of abortion can be avoided by focusing on the preventative nature of pregnancy through birth control and education.¹⁴⁶

Similarly, the failure to use protection in the form of physical barriers, such as condoms, or education on sexually transmitted diseases (STDs) adds is another cost to consider. The annual cost of HIV treatment was \$23,000 in 2010.¹⁴⁷ Annual costs to treat genital herpes nationally were estimated to be \$1.6 billion in 1996 when adjusted for inflation.¹⁴⁸ There are many other diseases that are both acquired for a lifetime or can be treated and resolved but are

¹⁴⁰ Brewster et al., *supra* note 33.

¹⁴¹ *Id.*

¹⁴² *How Much Does it Cost it get an Abortion?*, PLANNED PARENTHOOD (Apr. 8, 2011), <https://www.plannedparenthood.org/learn/teens/ask-experts/how-much-does-it-cost-to-get-an-abortion>.

¹⁴³ *What's the Plan B Morning-After Pill?*, PLANNED PARENTHOOD (2020), <https://www.plannedparenthood.org/learn/morning-after-pill-emergency-contraception/whats-plan-b-morning-after-pill>.

¹⁴⁴ Mark Lino, *The Cost of Raising a Child*, U.S. DEP'T OF AGRIC. (Feb. 18, 2020), <https://www.usda.gov/media/blog/2017/01/13/cost-raising-child>.

¹⁴⁵ PLANNED PARENTHOOD, *supra* note 142.

¹⁴⁶ Susannah Snider, *The Cost of Birth Control*, U.S. NEWS (May 2, 2019), <https://money.usnews.com/money/personal-finance/family-finance/articles/the-cost-of-birth-control>.

¹⁴⁷ *HIV, HIV Cost-Effectiveness*, CTRS. FOR DISEASE CONTROL & PREVENTION (Oct. 31, 2019), <https://www.cdc.gov/hiv/programresources/guidance/costeffectiveness/index.html>.

¹⁴⁸ Thomas D. Szucs et al., *The Estimated Economic Burden of Genital Herpes in the United States. An Analysis Using Two Costing Approaches*, 1 BMC INFECTIOUS DISEASES 1 (2001), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC35281/>; Ian Webster, *CPI Inflation Calculator*, OFF. DATA FOUND. / ALIOTH (2020), <https://www.in2013dollars.com/us/inflation/1996?amount=984000000>.

not listed here. For a more comprehensive analysis, see the Owusu-Edusei K Jr. et al. article discussing the U.S.'s direct costs for sexually transmitted diseases in 2008.¹⁴⁹ Furthermore, costs are further complicated with STDs potentially having complications and requiring hospitalizations, which can lead to nosocomial infections.

Note, there are other types of reproductive and what is mentioned above should not be viewed as a comprehensive list. Also, contraceptives can be obtained by other measures despite parents that try to claim a religious basis for preventing use by their children. The focal point on religious exemptions and cost typically surrounds not providing access to birth control through employer insurance or abortions. These costs are rather speculative, so the focus for cost data was left to raising a child or costs associated with unprotected sex compared to the cost of using contraceptives.

4. Case Study: Coronavirus Pandemic (COVID-19)¹⁵⁰

a. Preface

COVID-19 has provided the opportunity to evaluate people's decision making and responses to those decisions on a national level. The pandemic has permeated all aspects of life in the U.S. and has affected every U.S. citizen in some way, such as closure of schools, telework or closure of jobs, depleted grocery stores and other supplies, social distancing, shelter in place, and lock down orders.

b. Background

The virus first emerged in Wuhan, China in early December.¹⁵¹ However, various reports coupled with China's

¹⁴⁹ Owusu-Edusei K Jr. et al., *The Estimated Direct Medical Cost of Selected Sexually Transmitted Infections in the United States, 2008.*, 40 SEXUALLY TRANSMITTED DISEASE 197, 197-201 (2013), <https://www.ncbi.nlm.nih.gov/pubmed/23403600>.

¹⁵⁰ For posterity's sake, the background and description of the virus are discussed as this section was written in the midst of the emerging pandemic crisis (March 2020). Some of the references, data, or information was based upon how things were unfolding and what was known at the time. As time passes with more research and analysis done, some of the information might become outdated.

¹⁵¹ *Coronavirus Disease 2019 (COVID-19), Situation Summary*, CTRS. FOR DISEASE CONTROL & PREVENTION (Mar. 18, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html>.

unreliableness in reporting outbreak situations¹⁵² suggest the emergence was November and potentially even earlier.¹⁵³ Despite the well-known situation that developed in China throughout December and January, the world was slow to respond to the rapidly emerging threat the virus posed.¹⁵⁴ The virus reached pandemic classification by the World Health Organization (WHO) on March 11, 2020.¹⁵⁵ “A pandemic is a global outbreak of disease. Pandemics happen when a new virus emerges to infect people and can spread between people sustainably. Because there is little to no pre-existing immunity against the new virus, it spreads worldwide.”¹⁵⁶

The pandemic was facilitated by a high rate of person-to-person spread through respiratory droplets either from close contact or contact with a contaminated surface,¹⁵⁷ and a short incubation period coupled with a latent period.¹⁵⁸ The latent period is when a virus becomes infectious. A complication of COVID-19 was a latent period coupled with asymptomatic carriers or mild symptoms. This meant the virus could go undetected by people and spread to others. This was further exacerbated by coinciding with the peak to late flu season.¹⁵⁹ The symptoms between COVID-19 and the Flu are similar with both causing “fever, cough, body aches, fatigue; sometimes vomiting and diarrhea.”¹⁶⁰ People sometimes continue to travel and work when they have the flu. Similarly, March marks

¹⁵² David Stanway, *The Shadow of SARS: China Learned the Hard Way How to Handle an Epidemic*, REUTERS (Jan. 22, 2020), <https://www.reuters.com/article/us-china-health-sars/the-shadow-of-sars-china-learned-the-hard-way-how-to-handle-an-epidemic-idUSKBN1ZL12B>.

¹⁵³ Simon Chandler, *Coronavirus ‘Patient Zero’ May Have Started Pandemic in November or Earlier*, CCN, <https://www.ccn.com/coronavirus-patient-zero-may-have-started-pandemic-in-november-or-earlier/>.

¹⁵⁴ CTRS. FOR DISEASE CONTROL & PREVENTION, *supra* note 151.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Coronavirus Disease 2019 (COVID-19), How It Spreads*, CTRS. FOR DISEASE CONTROL & PREVENTION (Mar. 4, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html>

¹⁵⁸ Centers for Disease Control and Prevention <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.

¹⁵⁹ *Influenza (Flu), When is Flu Season*, CTRS. FOR DISEASE CONTROL & PREVENTION (July 12, 2018), <https://www.cdc.gov/flu/about/season/flu-season.htm>.

¹⁶⁰ Lisa Lockerd Maragakis, *Coronavirus Disease 2019 vs. The Flu*, JOHNS HOPKINS MED. (2020), <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/coronavirus-disease-2019-vs-the-flu>.

the start of spring break season and trips for many scores especially undergraduate and graduate students that like to travel to party.¹⁶¹

The virus was largely regarded as not being a major deal at first with President Trump characterizing alarm over the virus a hoax.¹⁶² Despite this viewpoint, travel bans were implemented. People were against the travel ban for China. Vice-presidential candidate Joe Biden characterized it as hysteria, xenophobia, and fear mongering.¹⁶³ Knowledge and understanding of viruses is severely lacking across the board in those responsible for decisions to implement safety measures. Furthermore, people worrying about liability and bottom lines further complicated trying to curtail the spread of the virus.¹⁶⁴ However, there has been numerous policies implemented in an effort to slow the spread of the virus particularly in the form of social distancing or canceling and closing areas of large gatherings.¹⁶⁵

¹⁶¹ Jason Lemon, *Florida Senator Says 'Get Off the Beach' After the State's Governor Refuses to Shut Them Down Amid Coronavirus*, NEWSWEEK (Mar. 19, 2020), <https://www.newsweek.com/florida-senator-says-get-off-beach-after-states-governor-refuses-shut-them-down-amid-1493232>. Note, the idea for many schools to have a two-week period of online classes was a noble venture especially in the context of spring break (particularly undergraduate and graduate programs) because multiple students were still going to travel home or on their vacations. However, people were extending vacations and stays at home, which would have greatly defeated the purpose of what is an essentially two-week quarantine from online classes. The only logical choice at this point

¹⁶² Kayla Epstein, *Trump, Who Previously Called Alarm Over the Coronavirus 'A Hoax' and Compared it to the Flu, Now Says He's 'Always Viewed it as Very Serious'*, BUS. INSIDER (Mar. 17, 2020), <https://www.businessinsider.com/trump-he-took-coronavirus-seriously-after-calling-it-a-hoax-2020-3>.

¹⁶³ Tom Pappert, *FLASHBACK: Biden Called Trump's Chinese Coronavirus Travel Ban 'Xenophobia'*, NAT'L FILE (Mar. 12, 2020), <https://nationalfile.com/flashback-biden-opposed-trumps-chinese-coronavirus-travel-ban-as-xenophobia/>.

¹⁶⁴ For example, closing colleges and forcing people home would have taken potentially untouched populations and put them into potential contact with people infected through airports, trains, and other transit systems. These people would now be potentially infected and travel back to a multitude of different communities including rural communities. However, as noted in *supra* note 161, in the context of higher education this was the only viable potential considering people's lack of understanding or carefree, self-interest attitudes. Similarly, some classes are overly packed with students in a confined area.

¹⁶⁵ Lisa Lockerd Maragakis, *Coronavirus, Social Distancing and Self Quarantine*, JOHNS HOPKINS MED. (2020), <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/coronavirus-social-distancing-and-self-quarantine>.

As of March 20, 2020, the virus is found in every state in the U.S. as well as being found in most countries around the world.¹⁶⁶ COVID-19 is about ten times more lethal (1% mortality) than the seasonal flu.¹⁶⁷ However, the distribution of mortality is not uniform and is particularly focused on the elderly population and those that have some type of serious or chronic underlying medical condition (especially cardiac, diabetes, pulmonary, or immunocompromised).¹⁶⁸ As of March 20, 2020 at 11:45PM EST, the current amount of people infected with the virus was estimated to be 19,640, with 264 deaths, and 147 people having recovered.¹⁶⁹ Out of the 19,640 people, 19,165 people are considered to have a mild condition.¹⁷⁰ Note, there is the potential for other people to have been infected and are either asymptomatic, believe it to be another illness, died from, or have recovered that are not incorporated into the data from lack of testing or confirmation.

c. Impact on Religious Communities

Note, the situation is continuously evolving with new policies being implemented daily and the legal system has largely grinded to a halt. Most cases are currently being resolved electronically through either filing online, phone conferences, or video

¹⁶⁶ Jiachuan Wu & Nigel Chiwaya, *Coronavirus Map: The COVID-19 Virus is Spreading Across The World. Here's Where Cases Have Been Confirmed*, NBCNEWS (Mar. 20, 2020), <https://www.nbcnews.com/health/health-news/coronavirus-map-confirmed-cases-2020-n1120686>. Note, this articles and website was updated, and information reflected in this paper will not be accurately reflected on the website.

¹⁶⁷ Pien Huang, *How the Novel Coronavirus and The Flu Are Alike . . . And Different*, NPR (Mar. 20, 2020), <https://www.npr.org/sections/goatsandsoda/2020/03/20/815408287/how-the-novel-coronavirus-and-the-flu-are-alike-and-different>.

¹⁶⁸ Kenji Mizumoto & Gerardo Chowell, *Estimating Risk for Death from 2019 Novel Coronavirus Disease, China, January-February 2020*, CTR. FOR DISEASE CONTROL & PREVENTION (Mar. 13,2020), https://wwwnc.cdc.gov/eid/article/26/6/20-0233_article; *CDC COVID Data Tracker*, CTR. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html>; Tyler Sonnemaker & Andy Kiersz, *80% of US Coronavirus Deaths Have Been Among People 65 and Older, A New CDC Report Says – Here's What it Reveals About the US cases*, BUS. INSIDER (Mar. 18, 2020), <https://www.businessinsider.com/most-us-coronavirus-deaths-ages-65-older-cdc-report-2020-3>.

¹⁶⁹ *Coronavirus, Country*, WORLDOMETER (Mar. 20, 2020), <https://www.worldometers.info/coronavirus/country/us/> (The data reported will continue to rise and change. The data reported in this paper was based on March 20, 2020 at 11:45PM EST).

¹⁷⁰ *Id.*

conferences.¹⁷¹ However, most jury trials have entirely ceased.¹⁷² As a result, seeing any type of religious exemptions in the court system in response to the coronavirus are unlikely, but there is the potential for some cases to be litigated in the years to come to address violations. For the purposes of discussing religious exemptions, examples of how religious communities are responding to orders to cease religious gatherings will be evaluated.

New York has been heavily affected by the viral outbreak in the month of March 2020, particularly around the March 18, 2020 time frame, with numbers only expected to rise.¹⁷³ Despite being told to engage in social distancing and limitations placed on gathers, namely from Governor Andrew Cuomo, a Jewish wedding still went ahead on Tuesday March 17, 2020.¹⁷⁴ This took place two days after gatherings of over 50 or more were prohibited,¹⁷⁵ but three days before the mandatory lockdown.¹⁷⁶ There was over 200 people in attendance, but mixed reports describing a large gathering of people outside with only 48 people inside (in an effort to seemingly comply with government directives).¹⁷⁷ However, eventually there were complaints by people to the authorities, which resulted in the fire department showing up to encourage the event to comply with the

¹⁷¹ Melissa Chan, *It Will Have Effects for Months and Years.* *From Jury Duty to Trials, Coronavirus is Wreaking Havoc on Courts*, TIME (Mar. 16, 2020), <https://time.com/5803037/coronavirus-courts-jury-duty/>; Matt Reynolds, *How the Coronavirus is Upending the Criminal Justice System*, ABAJOURNAL (Mar. 19, 2020), <https://www.abajournal.com/web/article/pandemic-upends-criminal-justice-system>.

¹⁷² Chan, *supra* note 171; Reynolds, *supra* note 171.

¹⁷³ Shant Shahrigan et al., *New York City's Coronavirus Cases Double to 1,871 Confirmed Instances; Mayor Mulling Call to 'Shelter-in-Place' as Death Toll Reaches 11*, N.Y. DAILY NEWS (Mar. 18, 2020), <https://www.nydailynews.com/coronavirus/ny-coronavirus-nyc-de-blasio-cuomo-20200318-otppdnoapna6lco35dgyugitq-story.html>.

¹⁷⁴ Liam Stack & Nate Schweber, *Defying Virus Rules, Large Hasidic Jewish Weddings Held in Brooklyn*, N.Y. TIMES (Mar. 17, 2020), <https://www.nytimes.com/2020/03/17/nyregion/coronavirus-hasidic-weddings-brooklyn.html>.

¹⁷⁵ Jose A. Alvarado, *C.D.C. Gives New Guidelines, New York to Close Restaurants and Schools and Italian Deaths Rise*, N.Y. TIMES (Mar. 15, 2020), <https://www.nytimes.com/2020/03/15/world/coronavirus-live.html>.

¹⁷⁶ Bernadette Hogan et al., *Coronavirus in NY: Cuomo Orders Lockdown, Shuts Down Non-Essential Businesses*, N.Y. POST (Mar. 20, 2020), <https://nypost.com/2020/03/20/coronavirus-in-ny-cuomo-orders-lockdown-shuts-down-non-essential-businesses/>.

¹⁷⁷ Stack & Schweber, *supra* note 174.

government directives by ending.¹⁷⁸ The decision to carry out the weddings was characterized as coming from “extremist leaders.”¹⁷⁹ Some party goers were upset that they proceeded with the weddings, but this seemingly did not deter them from showing up.¹⁸⁰

Similarly, the Orthodox Jewish community was not the only religion to defy government (state level based issued by governors) policies to limit gatherings,¹⁸¹ but denominations of Christianity as well.¹⁸² There have been examples of churches still having services all throughout the country, such as New York, Florida, and Louisiana, going against policies that would prohibit the services.¹⁸³ Note, numerous policies, particularly with limiting gathering sizes, across the country by mid-March, with multiple states imposing mandatory lockdowns as of March 20, 2020.¹⁸⁴ A Louisiana pastor held a gathering on March 17, 2020 of about 300 people in direct violation of government (state level by governor) banning gatherings of more than 50 people.¹⁸⁵ However, there seems to only be a few hold outs in varying religions that seem to still defy imposed policies or try to skirt them with technicalities.¹⁸⁶

¹⁷⁸ *Id.*; *FDNY Disbands Crowd-Filled Jewish Wedding in Williamsburg*, COL LIVE (Mar. 17, 2020), <https://collive.com/fdny-disbands-crowd-filled-jewish-wedding-in-williamsburg/> (providing pictures of people proceeding with a wedding despite the pandemic).

¹⁷⁹ Stack & Schweber, *supra* note 174.

¹⁸⁰ *Id.*

¹⁸¹ Jeremy Sharon, *Police, Officials Discuss With Ultra-Orthodox Leaders on School Closures*, JERUSALEM POST (Mar. 16, 2020), <https://www.jpost.com/Israel-News/Ultra-Orthodox-schools-yeshivas-to-remain-open-with-smaller-classrooms-621144>. Additionally, there were clips shown on media reporting highlighting this extending to services and schooling in the U.S.

¹⁸² Elana Schor, *Many Pastors Follow Coronavirus Rules but Some Defy Them*, ASSOC. PRESS (Mar. 18, 2020), <https://abcnews.go.com/US/wireStory/pastors-follow-coronavirus-rules-defy-69669986>.

¹⁸³ *Id.*

¹⁸⁴ Jacob Gershman, *A Guide to State Coronavirus Lockdowns*, WALL ST. J. (Mar. 20, 2020), <https://www.wsj.com/articles/a-state-by-state-guide-to-coronavirus-lockdowns-11584749351>; Pilar Melendez, *This is What a Coronavirus Lockdown Means in Each State*, DAILY BEAST (Mar. 20, 2020), <https://www.thedailybeast.com/this-is-what-a-coronavirus-covid-19-lockdown-means-in-new-york-california-washington-and-other-states>.

¹⁸⁵ Daniel Burke, *A Louisiana Pastor Defies a State Order and Holds a Church Service With Hundreds of People*, CNN (Mar. 18, 2020), <https://www.cnn.com/2020/03/18/us/louisiana-pastor-coronavirus/index.html>.

¹⁸⁶ Schor, *supra* note 182; Stack & Schweber, *supra* note 174; Sharon, *supra* note 181. Additionally, there were clips shown on media reporting highlighting this extending to services and schooling in the U.S.

d. Consequences for People Breaking Policies

The religious communities seem to be complying with medical direction in this situation, especially with religious leaders being supportive. These aforementioned examples were mostly either resolved outright or had some form of compromise. However, there are numerous exemptions of individuals that failed to comply. These examples will be used to evaluate possible consequences for failure to take medical advice or put others at harm.

In Kentucky, a 53-year-old man was found to be positive with the virus. He checked himself out of the hospital against medical advice and refused to self-quarantine.¹⁸⁷ As a result, police are forcing him to quarantine through surrounding his house 24/7 for two-weeks.¹⁸⁸ Nelson County Judge / Executive Dean Watts, Judge of the county where the man lived, explained that this measure is permissible for the safety of the community.¹⁸⁹ After this measure was taken, the patient decided to start cooperating with the quarantine.¹⁹⁰

In other areas, such as California and Maryland, there are threats of arrests and fines for non-compliance.¹⁹¹ “We’re not playing around [. . .] The hope is that people understand the seriousness of this and will comply and we won’t have to use enforcement measures. But we’re more than willing to do that.”¹⁹²

e. COVID-19 Cost

The cost to treat COVID-19 is in flux at the moment due to supply issues and not having knowledge or understanding of the virus. There is a shortage of masks, testing kits, hospitals beds,

¹⁸⁷ Scottie Andrew, *A Coronavirus Patient Refused to Quarantine, So Deputies Are Surrounding His House to Force Him to*, CNN (Mar. 17, 2020), <https://www.cnn.com/2020/03/17/us/kentucky-refused-quarantine-coronavirus-trnd/index.html>.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ Alma Fausto et al., *Coronavirus Threat and Stay-at-Home Order: Police say They Want Compliance, Not Arrests*, O.C. REG. (Mar. 20, 2020), <https://www.oregister.com/2020/03/20/coronavirus-threat-and-stay-at-home-order-police-say-they-want-compliance-not-arrests/>; Lillian Reed, *We’re Not Playing Around: Maryland Law Enforcement Prepared to Arrest People who Defy Coronavirus Shutdown*, BALT. SUN (Mar. 19, 2020), <https://www.baltimoresun.com/coronavirus/bs-md-ci-large-gatherings-ban-20200316-20200317-5evcfv5bsnfvxoodrn63lhiyuu-story.html>.

¹⁹² Reed, *supra* note 191 (the statement was made by spokesman for the Mayor of Baltimore City).

medical staff, and other health care resources. Similarly, supplies being few drives up costs, which will decline as mass production ramps up in the coming weeks. This also applies to knowledge and understanding of the virus due to the novel nature. As more research is done, new approaches to testing and treatments will be developed that should help. However, some treatments to recover from the virus have been around \$35,000 for those uninsured.¹⁹³

The real cost of the virus has been to the US economy. Typically, these widespread tolls are hard to predict. However, due to the severity of measures taken to combat the pandemic in the U.S., there is hard data to look at. “The Dow has fallen 8,000 points in a month, or 27%. The plunge during the infamous month of October 1929? Just 20%.”¹⁹⁴ “The U.S. is in a recession that will see unemployment soar and cost trillions of dollars to solve.”¹⁹⁵ “Wall Street forecasts see the unemployment rate likely soaring past 10% in short order even though it most recently was at a 50-year low of 3.5%. Job loss estimates are well into in the millions, likely the fastest move the U.S. has ever seen.”¹⁹⁶ There has been varying emergency measures passed by state governments and federal governments. There have been bills signed by President Trump for a \$100 billion package and \$8.3 billion package.¹⁹⁷ However, there is a more comprehensive and massive stimulus package in the works for Congress that could reach up to \$1 trillion or potentially even more.¹⁹⁸

¹⁹³ Abigail Abrams, *Total Cost of Her COVID-19 Treatment: \$34,927.43*, TIME (Mar. 19, 2020), <https://time.com/5806312/coronavirus-treatment-cost/>.

¹⁹⁴ Brett Arends, *The Stock Market Trauma: What COVID-19 Means for Your 401(k)*, MARKETWATCH (Mar. 13, 2020), <https://www.marketwatch.com/story/the-stock-market-trauma-what-covid-19-means-for-your-401k-2020-03-13>; Graeme Wearden & Dominic Rushe, *Wall Street’s Worst Day Since Black Monday in 1987*, THE GUARDIAN (Mar. 16, 2020), <https://www.theguardian.com/business/live/2020/mar/16/recession-markets-tumble-fed-emergency-rate-cut-coronavirus-ftse-dow-iag-flutter-business-live?page=with:block-5e6fdb08f085c6327bc112e#block-5e6fdb08f085c6327bc112e>.

¹⁹⁵ Jeff Cox, *Gary Cohn Says the US is in a Recession That Will Cost ‘Trillions’ as Unemployment ‘Skyrockets,’* CNBC (Mar. 20, 2020), <https://www.cnbc.com/2020/03/20/gary-cohn-us-is-in-recession-that-will-take-trillions-to-solve.html>.

¹⁹⁶ *Id.*

¹⁹⁷ Andrew Taylor & Lisa Mascaro, *McConnell Unveils Economic Rescue Plan Amid Virus Shutdown*, AP NEWS (Mar. 21, 2020), <https://apnews.com/0373a78b0aacc49d1f6bd8901c8ccc67>.

¹⁹⁸ *Id.*

5. Discussion

The focal point of religious exceptions¹⁹⁹ is a balancing act between individual freedom and public safety. Blood transfusions and reproductive health²⁰⁰ mostly influence a single individual, while vaccinations and handling a viral outbreak have implications for many people if not millions or billions. Individual freedom, especially in the context of religion, is the foundation of the U.S. The founding of the U.S. stemmed from those fleeing religious persecution in England and the U.S. has since become a beacon for immigrants. The hallmark being the Statute of Liberty quote, “Give me your tired, your poor, Your huddled masses yearning to breathe free, The wretched refuse of your teeming shore. Send these, the homeless, tempest-tost to me, I lift my lamp beside the golden door!”²⁰¹

Freedom is the bedrock of this country, but at the end of the day, there is a finite number of resources. Some might view this as heartless, but it is simply the reality of the situation. People should have the freedom to use their own personally attained resources as they deem fit, even if viewed wasteful by others. However, wasting the various governmental agencies’ resources or imposing waste upon another is where the line should be drawn. The line should be drawn here as the action or issue is no longer affecting an individual person’s well-being nor freedom but imposing that individual person’s decision upon the well-being or freedom of another, perhaps upon many people.

The U.S. is a representative democracy, so decisions by the state and federal government should not be infringed upon by singular individuals. Note, this also provides an opportunity to strengthen state rights. State governments were designed to operate in the interests of the people living within borders of those states. However, recently this notion has been cast aside in favor of imposing viewpoints upon people uniformly through the federal government’s three branches.

If people do not like the rights imposed by one state, they could choose to live in another state. The choice to offer contraceptives,²⁰² birth control, or abortions is not an issue that has

¹⁹⁹ Note, not limited to just the ones included in this paper.

²⁰⁰ Note, STDs would be an exception.

²⁰¹ *Statue of Liberty*, NAT’L PARK SERV. (Aug. 21, 2019), <https://www.nps.gov/stli/learn/historyculture/colossus.htm>

²⁰² STDs are a potential exception to this generic statement. Also, birth control has been heavily contested for company’s providing it through insurance. This could be

national implications. If a state elects to have a greater birthrate, then they are choosing to have to deal with the consequences of that might be imposed through teen parents, single parent families, or unemployment. If people do not agree with abortions, then people have the freedom to live in a state that prohibits them. There is also the potential for people to seek the treatment options from other states that provide them. This would create an issue that would need to be addressed by states allowing a certain right or prohibiting a certain right whereas another state has the opposing position. Telling someone to move is seemingly easier than done (e.g. family ties or employment), but ultimately there is a cost-benefit analysis for any viewpoint or situation. If something truly matters to someone, then they will find a way to make it work.

This country is known for the American dream, which is rooted in hard work. Some things require more hard work than others, especially if for ideological points of views. Regardless of hard work or choosing another state for a particular lifestyle, there still needs to be a level of respect. Nationally speaking, respecting individual choices and viewpoints would go a long way to alleviating a lot of the current political deadlock. This type of respect might make the need for living in certain state for the rights afforded there a moot point entirely, but I can appreciate the point of view of community influence and the use of taxes.

On the other hand, there are health issues that have an impact upon other individuals whether it is direct or in the form of people misusing or squandering away precious health resources. Refusal of blood transfusions, in the context of religion, has an impact on the health care professionals. The physical impact includes tying up resources and increasing the length of hospital stays. In addition, by the time a procedure becomes necessary, they are often more prone to complications, take longer, or are more invasive.²⁰³ In these situations, resources that are often vital for the care of patients are being unnecessarily depleted. Without these

remedied by companies choosing to be or not be based out of a particular state. If consumers in other states do not agree with this, then they can show that through their dollar votes. Companies are accountable through consumers buying the products. Companies need money to stay in business.

²⁰³ Note, sometimes a physician will not perform a procedure for a Jehovah witness and opt for medical management because of a severe risk of death. This medical management can mean requiring treatment for years or even life, which could have been avoided with a simple blood transfusion.

resources, people that are coming to health system in good faith²⁰⁴ might have their treatment course delayed or not able to receive the proper treatment at all. There is also a psychological or emotional aspect that takes a toll on physicians²⁰⁵ through watching a patient die or having to manage a worse outcome that could have been easily prevented.

Similarly, vaccinations or other measures to prevent the transmission of readily communicable diseases poses an immense danger to the masses. The primary way is through infecting others. These infected people have to not just deal with the dangers of that illness or the cost, but other consequences such as being able to miss work without losing their job. Also, there are people that are immune compromised and are unable to receive vaccinations. These people rely on the principle of herd immunity²⁰⁶ to stay healthy. If these people get sick, then they could not just have a greater cost than others but a greater risk of death as well.

COVID-19 has clearly demonstrated the dangers that are posed to the U.S. because of limited resources. People have been impacted through restrictions to freedom and economic burden. This has highlighted the need for balancing state rights with those of the federal government because any type of effective safety measures, e.g., stay at home orders, would require widespread implementation to be effective. People readily travel for friends, family, education, or work to name a few. Clearwater Beach in Florida readily demonstrated this problem when hundreds of people were still gathering on beaches.²⁰⁷ Similarly, spring breakers and others were still able to travel out of state to party or vacation, such as the case with Florida.²⁰⁸ This behavior was in the wake of

²⁰⁴ Good faith in the form of people not trying to push their views upon the people providing the care. Also, health care professionals that do not wish to provide certain services should work in states' that align with their beliefs to insure there is no expectation of care for the condition a patient might come to the hospital for.

²⁰⁵ Physicians are used interchangeably with health care professionals. Overall, there is an underlying principle in the health field to help people. This often comes into conflict with doing home to forcing treatments upon people who do not want them. However, people seeking care would seemingly waive this right. If there is a population that stops seeking health care services as a result, then the health professionals would then reevaluate their own positions as they would no longer be helping people.

²⁰⁶ *The History of Vaccines, Herd Immunity*, HIST. OF VACCINES: THE COLL. OF PHYSICIANS OF PHILA. (2020), <https://www.historyofvaccines.org/content/herd-immunity-0>.

²⁰⁷ Lemon, *supra* note 161.

²⁰⁸ *Id.*

numerous other states imposing limitations on gatherings and limiting certain businesses. These people on spring break or vacation run the risk of getting infected in Florida or while traveling. When they return home potentially infected, they can unknowingly spread the virus and infect others. Similarly, these people could be asymptomatic carriers before even leaving their home state, or upon their return. Either way, the virus is being spread from needless interstate travel.

Others ignored their states' rules and still held gatherings, such as weddings, mass, or school. The blame cannot solely rest on the shoulders of the organizers though because people still must willingly attend the events (or in the case of parents sending their children to them) and in turn willingly chose to ignore their states rules and policies. Similarly, the Kentucky man demonstrated individuals were willing to go against recommendations to stay at the hospital or against orders to quarantine.

Alternatively, there is a lack of understanding of science across the nation, which leads people to make uninformed decisions. Additionally, this lack of understanding often leads to the spreading of incomplete or sometimes "fake news" because individuals often do not know which media sources are credible and informed on the issues. Similarly, political biases affect decision making. There was criticism for shutting the borders in the wake of the outbreak in China. The U.S. has become very polarized in recent years and now society is quick to take advantage of situations in order to push various agendas or to challenge decisions they disagree with in the courts in pursuit of their own interests. The courts used to be a non-partisan safeguard, but now often vote along ideological lines.²⁰⁹ Also, Congress is similarly polarized, which causes an impediment to legislation depending on what party has control of the House, Senate, or affiliation of the President. Arguably, Congress is often reactive, unless all three aspects are controlled by either Democrats or Republicans. Even in these situations, legislation is often challenged in select sympathetic courts or reversed when the opposing party takes complete control.

²⁰⁹ Note, the process to be appointed to SCOTUS is very political, which rests with Congress. Congress is highly polarized at the moment where most members vote uniformly along party lines. The best example is the impeachment proceedings of President Trump. The Democrat controlled Congress voted mostly in lock step resulting in impeachment articles whereas the Republican Senate voted mostly in lock step to acquit. Similar parallels are numerous in the decisions by the Supreme Court, but there are occasional deviations.

Leaders and policy makers should look to a more pragmatic approach. They should be interested in doing what is in the best interests of the nation through sustainable, viable, and effective programs or legislation. They should strive to not mindlessly follow party lines or pursue things for their own best interest and should instead do what is best for the nation as well as their constituents.

However, change appears to be on the horizon. Maine is an example of this with the discontinuation of vaccine exemptions in the beginning of March 2020 (shortly before the pandemonium of COVID-19 took hold).²¹⁰ The COVID-19 pandemic will hopefully serve as a catalyst for even more reform. Health care in the U.S. is strongly based on empirical data that is peer-reviewed and built upon past research. Enacting legislation based on this type of rationale is clear and justifiable. While this is a step in the right direction, the country should be mindful of blindly enacting legislation aimed at speculatively addressing a problem during a crisis or in response to the immediate aftermath of one. A clear example of such a speculative move would be in the form of the recently proposed changes to Constitutional Rights by the Department of Justice (DOJ).²¹¹ One proposed change is to allow people to be indefinitely detained during an emergency.²¹² Note, the article is convoluted as it discusses the judiciary already having the ability to do this to some degree on a judge by judge level.²¹³ This type of case by case exemptions seemingly upholds protections as the situation for each person being detained is considered instead of blanket rule without potentially any accountability.

Resources wasted on religious exemptions, especially monetary, could be used for numerous other measures. COVID-19 has demonstrated how severely lacking our medical infrastructure is and the potential challenges this can pose in the future. Medical infrastructure is not just limited to more hospitals or health care professionals, but also the things needed in those hospitals, such as

²¹⁰ Patty Wight, *Vaccine Exemptions Defeated in Maine, A New Law Dividing Parents is Upheld*, NPR (Mar. 3, 2020), <https://www.npr.org/sections/health-shots/2020/03/03/811284575/vaccine-requirements-are-on-the-ballot-in-maine-after-a-new-law-divided-parents>.

²¹¹ Peter Wade, *DOJ Wants to Suspend Certain Constitutional Rights During Coronavirus Emergency*, ROLLINGSTONE (Mar. 21, 2020), <https://www.rollingstone.com/politics/politics-news/doj-suspend-constitutional-rights-coronavirus-970935/>.

²¹² *Id.*

²¹³ *Id.*

medication, ventilators, and surgical equipment to name a few. Furthermore, the backbone of any type of drug, medication or equipment is research, which is done by scientists. Research funding should be encouraged by relaxing restrictions that do not put people at risk as well as encouraging more people to pursue research. However, research can be daunting, boring, and is full of dead ends. This is captured by the famous quote of Thomas Edison²¹⁴, “I didn't fail. I just found 2,000 ways not to make a lightbulb; I only needed to find one way to make it work.”

Also, it can be frustrating and costly for researchers when a large amount of time, energy, and resources is poured into a nonbiased, peer-reviewed, research project only to have uninformed individuals ignore the data or begin to spread false propaganda in order to further their own agendas. This can be seen with the countless studies that have demonstrated that there is no link between autism and the MMR vaccine. However, despite the overwhelming amount of evidence you will still find individuals, including law makers, who condemn the research and put forth inaccurate information in terms of vaccinations and autism. All this does is put unnecessary burden on our healthcare system and puts the general public at risk. Also, it is often children, elderly, and the acute or chronically ill individuals that are the ones who have suffer the consequences – which can be life threatening.

Overall, religious exemptions should largely be discontinued as detriments to society greatly outweigh those of the individuals. The ones in particular that should be discontinued are those refusing vaccinations and blood transfusion because the evidence of both the harm and the associated costs are clear. Denial of contraceptives, birth control, and abortions should be discouraged as well, but with keeping in mind the morality issue in mind (namely late term abortion). Furthermore, access to reproductive health facilitates safe sex practices as well as abortion provides for the ability to not have a child that would be unwanted²¹⁵ as well as prevents STDs. Also, current viability is considered to be 28 weeks,

²¹⁴ The author takes no position on Edison's business practices being ethical nor his interactions with the visionary Nikola Tesla.

²¹⁵ There is a plethora of reasons for a child to be unwanted and not necessarily because the parents (namely mother) would not love the child, but due to age, career/finances, marriage, or health conditions (of the mother or the baby genetically).

but can be as early as 20 weeks.²¹⁶ This means that debates around abortion are not as simple as people often try to make them out to be.

6. Conclusion

Religious exemptions for health care are imposing a clear cost on society and should be largely discontinued. The health care field is one where resources are finite. Spending time on a patient with a life-threatening condition from a preventable disease (STDs or diseases with a vaccine) or preventable complications (blood transfusion) takes time away from other patients, which could be the difference between life and death. Therefore, patients are potentially dying from an individual's willful disregard of medical direction.

There has never been a better time for legal reform than in the wake of a global pandemic. Some states, such as Maine, have already begun to address religious exemptions that have wide ranging impacts on others.

We live in an era where science and research has been growing exponentially yet despite the data and facts there are still those who want to oppose it at every turn because it does not follow their belief system. America is a place where people are not persecuted by the government for their beliefs and can practice freely, which is part of the bedrock of this great country and should be protected. However, if those beliefs begin to directly impact or significantly place the public in danger, then a line needs to be drawn in order to help protect the welfare of all citizens instead of a select few.

Let us not forget that there will always be individuals who try to take advantage of the system and push their agenda regardless of how it affects other. This can be seen with states like Florida welcoming vacationers or spring breakers during a pandemic. Therefore, certain safeguards, such as eliminating religious exceptions, should be put into place to protect our nation's citizens. The health of our nation's citizens should not be

²¹⁶ P. Lefevre et al., *Anthropology: Forensic Anthropology and Childhood*, SCIENCE DIRECT (2016), <https://www.sciencedirect.com/topics/medicine-and-dentistry/fetal-viability>. Note, self-sustained breathing becomes available around roughly 24 weeks when surfactant develops in the lungs, but there are synthetic compounds.

jeopardized by the ignorance of a few or those with ulterior motives, even if the motives are noble, such as religious freedom.