CHILDHOOD IMMUNIZATIONS: PARALYSIS ON PARENTAL RIGHTS, DEMAND ON TAXPAYER DOLLARS

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Introduction

The rise in the incidence of Autism Spectrum Disorder (ASD)\(^1\) is one of the most serious public health issues in recent years.\(^2\) The current statistics suggests that roughly one child out of every 150 has autism or an autistic-like disorder, compared to earlier estimates placing the rate at four or five children out of every 10,000.\(^3\)

Autism is a condition that typically reveals itself within the first 0-4 years of life.\(^4\) The wide continuum of associated cognitive and neurobehavioral disorders have three core-defining features: impairments in socialization, impairments in verbal and nonverbal communication, and restricted and repetitive patterns of behaviors.\(^5\) Socialization impairments consist of a lack of awareness of surroundings, lack of eye contact, and lack of interaction with others.\(^6\) With regard to verbal and nonverbal communication, there is delay and deviance to the extreme that speech is absent in about 50 percent of cases.\(^7\) The restricted and repetitive patterns are exhibited by stereotyped motor behaviors such as hand flapping, body rocking, insistence on sameness, and resistance to change.\(^8\) Because of these factors it is often difficult to confirm diagnosis until the latter half of a child’s toddler years; at the point when lack of communication is more obvious and distinct social interaction typically occurs.\(^9\) Many individuals with Autism exhibit mental

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\(^1\) Autism is widely referred to as Autism Spectrum Disorder, ASD, or Kanner’s Syndrome. Dr. Leo Kanner was a known pioneer in the discovery of autism, Yale Child Study Center, Autism/PDD, Yale School of Medicine 2009, http://www.med.yale.edu/childstdy/autism/autism.html, last updated May 6, 2008 (last visited March 6, 2009).


\(^3\) Id.

\(^4\) This is based on a one on one conversation with Pediatric Neurologist Dr. Michael Katz at Westchester Medical Center in New York (1997).


\(^6\) See generally, Geraldine Dawson et al., Early Social Attention Impairments in Autism: Social Orienting, Joint Attention, and Attention to Distress, 40(2) DEVELOPMENTAL PSYCHOLOGY 271 (2004).

\(^7\) Yale Child Study Center, supra note 1.

\(^8\) Id.

\(^9\) Dr. Michael Katz, supra note 4.
retardation on the basis of their full-scale (or averaged) IQ score; however, unlike most people with primary mental retardation, those with autism often have marked scatter in their development, so that some aspects of the IQ, particularly nonverbal skills, may be within or above the normal range.10

Autism encompasses a wide range of neurological (nervous system) dysfunctions whose etiology is unknown such as Asperger’s syndrome11 and Pervasive Developmental Disorder (PDD).12 Disorders of this type often follow the onset of conditions such as Acute Demyelinating Encephalomyelitis (ADEM)13 and Guillain-Barré Syndrome (GBS)14 which vaccines such as

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10 Yale Child Study Center, supra note 1.
11 Dr. Hans Asperger discovered a condition similar to autism, however, cognitive and communicative development are within the normal or near-normal range in the first years of life, and verbal skills are usually an area of relative strength. Idiosyncratic interests are common and may take the form of an unusual and/or highly circumscribed interest (e.g., in train schedules, snakes, the weather, deep-fry cookers, or telegraph pole insulators, http://www.med.yale.edu/chldstdy/autism/aspergers.html, last updated May 6, 2008 (last visited March 6, 2009).
12 Pervasive Developmental Disorder, Not Otherwise Specified (PDD-NOS) is a condition in which some - but not all - features of autism or another explicitly identified Pervasive Developmental Disorder are identified. It is often incorrectly referred to as simply "PDD", which is a class of conditions to which autism belongs. PDD is NOT itself a diagnosis, while PDD-NOS IS a diagnosis. PDD-NOS; also referred to as "atypical personality development," "atypical PDD," or "atypical autism" is included in DSM-IV to encompass cases where there is marked impairment of social interaction, communication, and/or stereotyped behavior patterns or interest, but when full features for autism or another explicitly defined PDD are not met. While deficits in peer relations and unusual sensitivities are typically noted, social skills are less impaired than in classical autism. Yale Child Study Center, Pervasive Developmental Disorder - Not Otherwise Specified (PDD-NOS), Yale School of Medicine 2009, http://www.med.yale.edu/chldstdy/autism/pddnos.html , last updated May 6, 2008 (last visited March 6, 2009).
13 ADEM is an acute demyelinating encephalomyelitis (a generic term for a group of diseases, of unknown cause, in which there is extensive loss of the myelin in the central nervous system, as in multiple sclerosis) disorder of the central nervous system in which focal demyelination (Loss of myelin with preservation of the axons or fiber tracts) is present throughout the brain and spinal cord. This process is common to post infectious, postexanthem, and postvaccinal encephalomyelitis (inflammation of the brain and spinal cord). The eMedicine Clinical Knowledge Base 2009, http://www.imedicine.com.famuproxy.fcla.edu/dictionary.asp (last visited March 15, 2009).
14 GBS, Guillain-Barré syndrome is a disorder in which the body's immune system attacks part of the peripheral nervous system. The first symptoms of this disorder include varying degrees of weakness or tingling sensations in the legs. In many instances the weakness and abnormal sensations spread to the arms and upper body. These symptoms can increase in intensity until certain muscles cannot be used at all and, when severe, the patient is almost totally paralyzed. In these cases the disorder is life threatening - potentially interfering with breathing and, at times, with blood pressure or heart rate - and is considered a medical emergency. Such a patient is often put on a respirator to assist with breathing and is watched closely for problems such as an abnormal heart beat, infections, blood clots, and high or low blood pressure. Most patients, however, recover from even the most severe cases of Guillain-Barré syndrome, although some continue to have a certain degree of weakness. National Institute of Neurological Disorders, http://www.ninds.nih.gov/disorders/gbs/detail_gbs.htm#129333139 (last visited April 6, 2009).
Measles Mumps Rubella (MMR)\textsuperscript{15} are known to induce.\textsuperscript{16} Autism, ADEM, and GBS are oftentimes misdiagnosed for other ailments.\textsuperscript{17} As a result, establishing a causal connection between an Autism Spectrum Disorder and a child’s receipt of a vaccination is a daunting task unless there is video recorded evidence of a child’s developmental regression subsequent to inoculation or meticulous medical documentation evidencing the conditions that result.

In light of recent settlements and Federal Claims Court decisions conflicting on the causal connection between Autism and childhood vaccinations, requiring parents to immunize their children prior to attendance of public school based on state mandated childhood vaccinations should be considered a violation of the 5\textsuperscript{th} and 14\textsuperscript{th} amendment right to life, liberty, and the pursuit of happiness. As with any area which pertains to individual liberties, states should not be allowed to provide lesser protections of such liberties than the United States Constitution permits.

New legislation should be proposed to make immunizations optional, absent evidence of a life threatening outbreak; especially during early childhood development. This article intends to illustrate the problem of mandatory vaccinations. In addition it will suggest a legislative

\textsuperscript{15} Measles virus causes rash, cough, runny nose, eye irritation, and fever. It can lead to ear infection, pneumonia, seizures (jerking and staring), brain damage, and death. Mumps virus causes fever, headache, and swollen glands. It can lead to deafness, meningitis (infection of the brain and spinal cord covering), painful swelling of the testicles or ovaries, and, rarely, death. Rubella virus causes rash, mild fever, and arthritis (mostly in women). If a woman gets rubella while she is pregnant, she could have a miscarriage or her baby could be born with serious birth defects, available at http://www.cdc.gov/vaccines/pubs/vis/downloads/vis-mmr.pdf (last visited April 6, 2009).

\textsuperscript{16} See generally, The eMedicine Clinical Knowledge Base 2009, available at http://www.imedicine.com.famuproxy.fcla.edu/dictionary.asp (last visited March 15, 2009), stating that GBS and ADEM are members of a group of diseases, of unknown cause, in which there is extensive loss of the myelin in the central nervous system (as in multiple sclerosis) related to autoimmune dysfunction, surgical complication, some vaccines, Hodgkin disease, and some types of drug reactions.

\textsuperscript{17} Marc Tardieu and Yann Mikaeloff 8(5) EUROPEAN PAEDIATRIC NEUROLOGY SOCIETY 239 (September 2004), available at http://www.sciencedirect.com/science?_ob (last visited April 6, 2009).
solution to the “heavy lifting”\(^{18}\) that petitioners must bear in attempting to gain compensation for vaccine injuries that are not currently given a presumption of causation (such as Autism) under the inadequacy of the National Childhood Vaccine Injury Act.\(^{19}\) As a prerequisite to understand the benefits of a federal law which makes mandated childhood immunizations unconstitutional, the history of vaccines in the United States and how vaccine manufacturers were impacted by civil litigation is provided in part I of the following article, along with discussion on the controversial link between Autism and vaccines. Part II discusses the impact of current state legislation on families with vaccine injured children and the impact of current state legislation on tax dollars in the United States. Additionally, part II points out the flaws in the current legislation and the jurisprudential procedure used to assess merits of injury cases. Finally, Part III discusses the many jurisdictions that currently have legislation in place similar to what is being proposed and the legislative intent behind such statutes as well as the opposing view and its accompanying rationale. This article concludes by proposing a statutory solution to the problems allegedly caused by immunizations in the United States. The solution is a statutory scheme that dramatically decreases the likelihood of vaccine injury related litigation, increases the pool of tax dollars available for further research into the definitive link between Autism and childhood vaccinations, and furthers the expectation of life, liberty, and pursuit of happiness afforded to every American under the 5\(^{th}\) and 14\(^{th}\) amendments to the Constitution of the United States.

**History of Vaccines**

Vaccination is the medical process by which an agent similar to a particular disease or virus being prevented is deliberately introduced into a non-exposed individual, causing the body

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\(^{18}\) Hodges v. Sec’y of Dep’t of Health & Human Svs., 9 F.3d 958, 961 (Fed. Cir. 1993). The Special Master coined the term “heavy lifting” when he referred to the enormous burden on a plaintiff when the alleged injury incurred is an off table claim where the presumption of causation is absent and must be proven in addition to all other elements.

\(^{19}\) 42 U.S.C.A. §300AA-11.
to produce antibodies against the underlying illness, creating immunity by artificial means and protecting the individual against the underlying disease without actual exposure to it.\textsuperscript{20} Congress has long recognized the importance of vaccines against life-threatening diseases as one of the greatest public health achievements in history, passing some of the first vaccine-related legislation at the beginning of the nineteenth century.\textsuperscript{21} During the first half of the century and then with increasing rapidity following World War II, vaccines transformed the public health landscape by controlling diseases such as smallpox, polio, diphtheria, tuberculosis, pertussis, measles, mumps, and rubella that had once been responsible for the majority of illness and death in infants and children.\textsuperscript{22}

Moreover, the Supreme Court also recognized the importance of vaccines, holding in 1905 that states have authority under their health and safety police powers to require mandatory vaccinations.\textsuperscript{23} This can be seen in \textit{Jacobson v. Massachusetts}, the state legislature ordered that all the inhabitants of the city who had not been successfully vaccinated be vaccinated or revaccinated," and those not in compliance would be prosecuted and incur the penalty of $5 provided by the statute.\textsuperscript{24} Subsequently, Jacobson was proceeded against by a criminal complaint because he was provided with the means of free vaccination, over twenty-one years of age, and not under guardianship, yet refused and neglected to comply with the requirement.\textsuperscript{25}

\begin{footnotes}
\item[21] Gordon Shemin, 58 AM. U. L. REV. 459, 5 (2008), citing Peter Barton Hutt, Richard A. Merrill & Lewis A. Grossman, \textit{FOOD AND DRUG LAW: CASES AND MATERIALS} 876-77 (3d ed. 2007). The federal legislation, passed in 1813, was aimed to encourage vaccination and combat impure vaccines by giving the President authority to appoint a Vaccine Agent to “preserve the genuine vaccine matter.” \textit{Id.} at 876 (quoting 2 Stat. 806 (1813)). Congress later repealed the legislation, though, on the idea that it was “better to commit the subject altogether to the local authorities.” \textit{Id.} at 877 (quoting 3 Stat. 677 (1822)).
\item[24] \textit{Id.} at 358.
\item[25] \textit{Id.} at 359.
\end{footnotes}
pleaded not guilty and claimed the mandatory vaccination to be a violation of his liberty because he had witnessed injurious results from vaccination of his son, as well as others.\textsuperscript{26} After appeal to the highest court in Massachusetts, the U.S. Supreme Court held that Jacobson’s pleas were immaterial, and affirmed, reasoning that the vaccination program had a real and substantial relation to the protection of the public health and safety.\textsuperscript{27} Today all fifty states including the District of Columbia mandate childhood immunizations\textsuperscript{28} and death rates from diseases preventable with vaccinations remain at all-time lows.\textsuperscript{29}

What’s more, the economic advantages of vaccines are indisputable. As of 2007 the Wall Street profit estimates for vaccine manufacturers were substantially surpassed even beyond expectations of company officials, despite the ailing economy.\textsuperscript{30} For 2009, Vaccine Manufacturers such as Merck and GlaxoSmithKline anticipate slower growth due to the economy but expect vaccines to again be a stabilizing force amongst their many products.\textsuperscript{31} The well known Wall Street global financial services firm Lehman Brothers predicts that the $13 billion global vaccine business will grow 18\% a year to $30 billion by 2011.\textsuperscript{32} It is therefore no surprise that the profitability and health benefits of these modern medical breakthroughs add fuel to the constant struggle between governmental interest and individual rights.\textsuperscript{33}

\textsuperscript{26} Id. at 365.
\textsuperscript{27} Id. at 363.
\textsuperscript{29} Donald G. McNeil, Jr., Sharp Drop Seen in Deaths From Ills Fought by Vaccine, N.Y. Times, Nov. 14, 2007, at A18.
\textsuperscript{33} See generally Berkrot, supra note 33 and Linda A. Johnson, supra note 34. See also Robert Langreth, supra note 35.
A resulting endorsement of the profitability is that the government recommends children receive nine to eleven different vaccines, some of which require as many as 4 doses, which means there is a greater chance of experiencing an adverse reaction.\textsuperscript{34} Unfortunately, the risk of a reaction is nearly impossible to avoid and the severity of the reaction is nearly impossible to predict.\textsuperscript{35}

During the early 80’s when awareness of these unpredictable vaccine side effects entered the public consciousness, many families of injured vaccine recipients sought legal relief through the civil tort system.\textsuperscript{36} Between 1980 and 1986 individuals brought damages claims of over three billion dollars\textsuperscript{37} against vaccine manufacturers. Although some claims were successful, many claims went uncompensated due to the difficult nature of vaccine litigation in the civil tort system.\textsuperscript{38} As legal costs and the inability to obtain product liability insurance made producing vaccines unprofitable due to increases in vaccine litigation, vaccine manufacturers left the market and the national vaccine supply began to fall to low levels.\textsuperscript{39}

Consequently, in response to the shortage of available vaccines caused by civil suits against manufacturers for alleged vaccine related injuries, the potential decline in the number of immunized children, and the pleas of the uncompensated victims of vaccine injuries, Congress enacted the 1986 National Childhood Vaccine Injury Compensation Act.\textsuperscript{40} The stated intention

\begin{flushleft}
\textsuperscript{36} Id. at 6345.
\textsuperscript{38} 1986 U.S.C.C.A.N. 6344, 6347.
\textsuperscript{39} Id.
\textsuperscript{40} Id. at 6344.
\end{flushleft}
was to facilitate reasonable compensation to injured vaccinees and to ensure the continued supply of vaccines by shielding vaccine manufacturers from unlimited civil liability.\textsuperscript{41} The Act contained no indication of a causal connection between Autism and vaccine injuries. It had to be proven by a preponderance of the evidence standard through causation in fact.

As stated by Congress, the two pronged purpose of the Vaccine Act was to facilitate reasonable compensation to injured vaccinees and to ensure the continued supply of vaccines by shielding vaccine manufacturers from unlimited civil liability.\textsuperscript{42} Under section 16(a)(2) of the Act, no petition may be filed for compensation under the Program for injury after the expiration of 36 months after the date of the occurrence of the first symptom or manifestation of onset of the significant aggravation of such injury.

Part A of the system established a 'no-fault' compensation program under which awards can be made to vaccine-injured persons quickly, easily, and with certainty and generosity.\textsuperscript{43} Part B of the system dealt with the additional remedies that are available to vaccine-injured persons should they elect to reject a judgment and award made under the compensation program and to take action directly against a vaccine manufacturer.\textsuperscript{44} If the injury didn’t fall under the Vaccine Table, a petitioner might try his claim via the second compensation avenue by bringing an “off-table” claim, also referred to as a causation-in-fact claim, and might prevail if he proved by a preponderance of the evidence that the vaccine actually caused his injury.\textsuperscript{45} There was no presumption of causation under part B so recovery via the off-table avenue was more difficult to establish than the on-table method.\textsuperscript{46} For this reason, establishing a causal connection between

\textsuperscript{41}\textsuperscript{42}\textsuperscript{43}\textsuperscript{44}\textsuperscript{45}\textsuperscript{46}
an Autism Spectrum Disorder and a child’s receipt of a vaccination remains to be a daunting task under the current statutory provisions.

Besides the fore mentioned congressional legislation, news, and, scientific studies which influenced the vaccine-autism debate, a 1998 British study, led by Scientist Andrew Wakefield, published in the Lancet suggested a connection between the Measles Mumps Rubella (MMR) vaccine and Autism. The alleged connection was due to the mercury based thimerosal which was used as a preservative in most vaccines. Being that either a singular high dosage or continuous low dosage exposure to mercury is known to be toxic, it is not surprising that the mercury based preservative was believed to likewise cause neurological dysfunction. However, before the study was adequately evaluated by the scientific community, the lay press in both the United Kingdom and the United States picked up on the article and the authors of the article eventually retracted the assertion of a link between the MMR vaccine and Autism. Regardless, the public’s confidence in the MMR vaccine remained shaken.

Following the British article, a press release about Mercury in Thimerosal from the National Vaccine Information Center in July of 1999 press pointed out that, "the cumulative effects of ingesting mercury can cause brain damage." During this same month, the American Academy of Pediatrics and the Centers for Disease Control and Prevention alerted the public

48 The Lancet is the world's leading general medical journal and specialty journals in Oncology, Neurology and Infectious Diseases.
49 MMR, supra note 15.
51 Mercury exposure at high levels can harm the brain, heart, kidneys, lungs, and immune system of people of all ages. It has been demonstrated that high levels of methyl mercury in the bloodstream of unborn babies and young children may harm the developing nervous system, making the child less able to think and learn. http://www.epa.gov/hg/about.htm (last visited April 6, 2009).
52 MMR, supra note 15.
53 Id.
54 Id.
about the possible health effects associated with thimerosal-containing vaccines.\textsuperscript{56} These health-related organizations strongly recommended that thimerosal be removed from vaccines as soon as possible.\textsuperscript{57} Under the directive of the FDA Modernization Act of 1997\textsuperscript{58}, the Food and Drug Administration also determined that infants who received several thimerosal-containing vaccines may have been receiving mercury exposure over and above the recommended federal guidelines.\textsuperscript{59}

Currently, the United States Government claims there is no link between Autism and vaccines despite the fact that after the United Kingdom study was published, the various federal public health agencies coincidentally recommended that the preservative thimerosal be phased out of vaccines as a precaution.\textsuperscript{60} Although much of the evidence supporting a link is criticized, and the qualifications of some experts called into question, the perception that vaccines are responsible in some way for causing autism remains very much alive.\textsuperscript{61}

Although this perception is widely challenged, its undertones are implicit in the legislation which currently exists in a minority of states. In a minority of states the legislature allows for optional vaccination which suggests that requiring parents to immunize their children prior to attendance of public school based on state mandated childhood vaccinations may be considered a violation of the 5\textsuperscript{th} and 14\textsuperscript{th} amendment right to life, liberty, and the pursuit of happiness. Oddly enough though medical literature does support that vaccinations are a known cause of ADEM (which is associated with Autism), the government, refuses to admit that vaccines are therefore related to the diagnosis of disorders on the autism spectrum (if nothing

\textsuperscript{56} Id.  
\textsuperscript{57} Id.  
\textsuperscript{59} http://www.thimerosal-news.com/ (last visited April 6, 2009).  
\textsuperscript{60} Florida Institute of Technology, Survey Confirms Parents' Fears, Confusion Over Autism, Vaccine Weekly October 22, 2008, See also, http://www.cdc.gov/vaccinesafety/concerns/thimerosal.htm (last visited march 2, 2008).  
\textsuperscript{61} Rick Weiss, \textit{supra} note 42.
else they are aggravating factors to the subsequent condition, which is the minimum standard required for compensation under the Act’s table method).

Yet, within the last several years there are cases and settlements concluding in the alternative that although the government remains facially adamant regarding the lack of an overall causal connection between autism and vaccines the Government unofficially acknowledges that a causal connection exists which cannot be ignored based on a preponderance of evidence.

For example, In *Lodge v. Secretary of HHS*⁶², The Special Master acknowledged that ADEM⁶³ had been tied to natural measles, mumps, and rubella infections, as well as to measles, mumps, and rubella vaccines.⁶⁴ The 22 year old Petitioner was in excellent health, was neurologically intact, had no illnesses of note, and was athletically inclined.⁶⁵ While enrolled as a nursing student she received a required booster MMR vaccination, from which she immediately complained of various ailments.⁶⁶ The court concluded that the symptoms complained of in the petition and testimony were neurological in nature and more likely than not, caused, in fact, by an adverse reaction to the MMR received, compensable under the Vaccine Program.⁶⁷

It is perplexing to note that both the medical community and the court acknowledged the fact that ADEM is a disorder common to postvaccinal inflammation of the brain and spinal cord (encephalomyelitis)⁶⁸, that the MMR vaccine is known to cause such a disorder, and that ADEM has been diagnosed in many, but not all, children who suffer from Autism (both ADEM and Autism are disorders that are neurological in nature). Yet, because ADEM happens to have a

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⁶² United States Department of Health and Human Services is the agency allegedly responsible for the injuries resulting from vaccinations in conjunction with the vaccine manufacturers.
⁶³ ADEM, supra note 13.
⁶⁵ Id. at 1.
⁶⁶ Id.
⁶⁷ Id. at 9.
⁶⁸ ADEM, supra note 13.
more distinctive set of symptoms than Autism, if an individual’s Autism diagnosis is not accompanied by a diagnosis of ADEM, the court concludes there is less than a 50 percent and a feather possibility of a causal connection. As a result, under current legislation (The Act) children whose immune systems manage to combat the onset of ADEM yet subsequently still develop Autism lose the benefit of the causation presumption despite the obvious. The obvious is that there is a causal connection between ADEM and MMR, there is a causal connection between ADEM and Autism, and therefore more likely than not there is a causal connection between Autism and MMR, whether or not each vacinee is officially determined to have suffered from both of the underlying conditions. Certainly if the type of injury outlined in Lodge is capable of occurring in a 22 year old it is more likely than not a potential threat to the neurological development of young children.

The decision in the *Tufo v. Secretary of HHS*,\(^69\) case is indicative of this. Here, the court acknowledged that the natural measles virus infection is well recognized for causing prolonged abnormalities in immune responses including decreased natural killer cell activity and increased susceptibility to secondary infections, so that immunization with the attenuated live measles virus vaccine may produce similar abnormalities in immune responses.\(^70\) The Petitioner in this case received his first MMR at the age of 18 months.\(^71\) He received his second MMR at the age of 13 and 18 days later, he was unable to move his legs. He was evaluated at Eglin Air Force Base Hospital Emergency Room and then transferred to Sacred Heart Hospital that same day with a history of not having had a bowel movement for five to six days, and having had mild cold-like symptoms all week.\(^72\) The Petitioner was at Sacred Heart Hospital for 3 weeks where

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\(^{70}\) *Id.*

\(^{71}\) *Id.* at 1.

\(^{72}\) *Id.*
he improved slowly with temperature spikes to 103°. On physical examination, there was no obvious source of infection and his chest x-ray was clear, but 17 days after the initial onset of paralysis, a thoracic spine MRI showed markedly abnormal appearance with mild to moderate to severe atrophic changes such as cranial paralysis and central lesions. Although HHS’ medical expert considered the MMR highly unlikely to be the cause of Petitioner’s GBS and ADEM in this case the expert himself admittedly recognized the incidence of GBS following measles as “too high to be a chance occurrence,” and the frequency of measles-associated encephalomyelitis (ADEM) as “far exceeding that of measles-associated AIDP” (also known as GBS). Hence, the court concluded that the MMR vaccine had caused Petitioner’s ADEM because the medically accepted theory that the measles virus can cause ADEM established an appropriate biologically plausible temporal association between the condition (ADEM) and a live attenuated measles vaccine.

Just as in Lodge the court acknowledged that the MMR vaccine is known to cause such disorders as ADEM and in this instance also GBS. Similar to ADEM, GBS is found in many Autistic children and therefore has the same characteristics of ADEM being more

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73 MMR, supra note 15.
74 GBS, supra note 14.
75 ADEM, supra note 13.
76 GBS, supra note 14.
78 Id.
79 MMR, supra note 15.
80 ADEM, supra note 13.
81 Id.
82 AIDP, supra note 77, at 7.
83 MMR, supra note 15.
84 ADEM, supra note 13.
85 GBS, supra note 14.
86 ADEM, supra note 13.
87 GBS, supra note 14.
88 ADEM, supra note 13.
distinctively identifiable than Autism and being medically accepted as a derivative of MMR\textsuperscript{89} vaccinations. Despite these facts, there is a continuing trend in which the vaccine court officially refuses to acknowledge the appropriate biologically plausible temporal association between the measles vaccine and Autism.

Furthermore, in the recently unsealed court case of \textit{Banks vs. Secretary of HHS}, the Court found that the toddler would not have suffered from Pervasive Developmental Disorder (a form of Autism) but for the administration of the MMR\textsuperscript{90} vaccine...a proximate sequence of cause and effect leading inexorably from vaccination to Pervasive Developmental Disorder.\textsuperscript{91} The fifteenth month old Petitioner received his first MMR\textsuperscript{92} vaccination during a routine checkup and experienced a seizure 16 days later, for which he was taken to the Emergency Room.\textsuperscript{93} The toddler appeared to be afebrile, irritable, vomited three times, resulting in the treating doctor characterizing the toddler’s condition as “new onset seizure”, and admitting him to the hospital for observation.\textsuperscript{94} The following day, an MRI scan was taken of the toddler’s brain, which was interpreted as “most consistent with a demyelinating process of immune etiology such as may be seen with ADEM\textsuperscript{95} or perhaps post-vaccination.”\textsuperscript{96} The toddler then underwent a full neurological examination, which concluded that the toddler suffered from “mild gross motor developmental delay” and noted that the toddler’s MRI more likely reflected hypomyelination than a demyelinating process like ADEM.\textsuperscript{97} The third neurological exam performed 10 months after the onset of the illness revealed global developmental delays (similar to Pervasive

\textsuperscript{89} MMR, \textit{supra} note 15.
\textsuperscript{90} \textit{Id.}
\textsuperscript{91} \textit{Banks vs. Secretary of HHS}, 27 (Fed. Cl. Spec. Master. July 20, 2007).
\textsuperscript{92} MMR, \textit{supra} note 15.
\textsuperscript{93} \textit{Id.} at 4.
\textsuperscript{94} \textit{Id.}
\textsuperscript{95} ADEM, \textit{supra} note 13.
\textsuperscript{96} \textit{Banks vs. Secretary of HHS}, 27 (Fed. Cl. Spec. Master. July 20, 2007).
\textsuperscript{97} \textit{Id.} at 5.
Developmental Disorder). Some cognitive progress was observed, including speaking up to ten words, better comprehension, following simple directions, and identifying individual body parts and motor skills improved such as the toddler assisting with dressing and drinking from a cup, but social difficulty continued such as variable eye contact, excessive biting, and lack of imaginary play. Furthermore, the toddler’s speech development was delayed and he walked with a “somewhat toddling gait”, described as “somewhat puppet-like” in appearance. Only after two and a half years, in a “Speech and Language Evaluation” report, were there clear signs of unequivocal improvement: Despite a severe language delay, some of the toddler’s linguistic, social and cognitive elements for further development seemed emergent. The final diagnosis was developmental delay secondary to an episode of acute demyelinating encephalomyelitis (ADEM) that he had at 18 months of age after the vaccine.

The court concluded that the MMR vaccine can cause ADEM, and that the MMR vaccine received by the toddler did in fact cause him to develop ADEM. Ironically, in the Banks case, the Respondent (Dept. of Health and Human Services) conceded during briefing that the Petitioner suffered from Pervasive Developmental Disorder, the Respondent’s expert, Dr. MacDonald characterized the Petitioner’s condition as autism and later conflated the two (Autism and Pervasive Developmental Disorder) as of one or of like kind, yet neither of the two

\[98 \text{ Id.}\]
\[99 \text{ Id.}\]
\[100 \text{ Id.}\]
\[101 \text{ Id.}\]
\[102 \text{ MMR, supra note 15.}\]
\[103 \text{ ADEM, supra note 13.}\]
\[104 \text{ MMR, supra note 15.}\]
\[105 \text{ MMR, supra note 15.}\]
\[106 \text{ Id.}\]
\[107 \text{ PDD, supra note 12.}\]
acknowledged a correlation between the ADEM and Pervasive Developmental Disorder stemming from the MMR vaccine.\textsuperscript{108}

The Special Master in \textit{Banks} commented that the cases between 1994 and 2001 support a medically plausible temporal association between Vaccines and ADEM.\textsuperscript{109} The ruling in \textit{Banks} provides the bridge between ADEM and Autism through PDD, which ultimately demonstrates the reasonable belief that Vaccines can cause Autism and therefore should not be mandatory, especially in young children. Interestingly the cases relied on by the Special Master fell within the time period that the vaccines still contained mercury which the health agencies and government conveniently opted to phase out as precaution. Just as the precaution led to removal of thimerosal from vaccines, so should precaution lead to optional vaccination in young children, absent evidence of a health epidemic.

As recent as November of 2007, the Secretary of Health and Human Services conceded under a settlement agreement (once again out of court) that vaccines aggravated an underlying mitochondrial (mitochondrial PPD) disorder in a young girl, which ultimately led to a diagnosis of Autism.\textsuperscript{110} The Plaintiff was healthy and developing normally until her 18-month well-baby visit, when she received vaccinations against nine different diseases all at once (two of which contained thimerosal) and spiraled downward into a cascade of illnesses and setbacks that, within months, presented as symptoms of autism (ie: no response to verbal direction; loss of language skills; no eye contact; loss of "relatedness;" insomnia; incessant screaming; arching; and "watching the florescent lights repeatedly during examination.").\textsuperscript{111} Seven months after

\textsuperscript{111} \textit{Id.}
vaccination, the patient was diagnosed with "regressive encephalopathy (brain disease) with features consistent with Autistic Spectrum Disorder."\textsuperscript{112}

The Federal Claims Court Division of Vaccine Injury Compensation (The Division) concluded that the facts of the case met the statutory criteria for demonstrating that the vaccinations the Child received on July 19, 2000, significantly aggravated an underlying mitochondrial disorder,\textsuperscript{113} which predisposed her to deficits in cellular energy metabolism, and manifested as a regressive encephalopathy\textsuperscript{114} with features of autism spectrum disorder.\textsuperscript{115} The Division subsequently recommended that compensation be awarded to petitioners in accordance with The Vaccine Injury Act.\textsuperscript{116} Particularly, the Division recommended compensation under the theory that the Child either sustained, or had a significantly aggravated illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by a vaccine referenced by The Act or sustained; or had a significantly aggravated illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine referred to in The Act.\textsuperscript{117}

\textsuperscript{112} Id.
\textsuperscript{113} Mitochondria are components of cells that are involved in metabolism and enzyme production. They consists of a group of diverse hereditary disorders caused by genetic mutation of mitochondrial DNA, The mitochondrial respiratory chain consists of five multi-subunit protein complexes that produce the majority of energy driving cellular reactions. Dysfunction of the respiratory chain leads to decreased energy production and to an increase in the production of toxic reactive oxygen species (Sporadic Myopathy & Fatigue syndromes). In addition, damaged mitochondria release apoptotic factors, which act as signals to induce cell death. http://www.britannica.com/EBchecked/topic/377311/metabolic-disease/250624/Mitochondrial-disorders#ref=ref873893.
\textsuperscript{114} Encephalopathy is a medical term for a disease or disorder of the brain. It usually means a slowing down of brain function. Regression happens when a person loses skills that they used to have like walking or talking or even being social. Regressive encephalopathy means there is a disease or disorder in the brain that makes a person lose skills they once had. http://www.cdc.gov/ncbddd/autism/mitochondrial_faqs.htm#encephalopathy.
\textsuperscript{115} United States Court of Federal Claims Office of Special Masters, Division of Vaccine Injury Compensation, Department of Health and Human Services (DVIC) November 9, 2007.
\textsuperscript{116} Id.
\textsuperscript{117} 42 U.S.C. § 300AA-11(C)(1)(C)(II).
Notwithstanding this concession, the Government proceeded with three official Vaccine Test Cases in early 2009 conveniently finding no causal connection between Autism and Vaccines.\textsuperscript{118}

Just as the Government continues to deny the causal connection between Autism and vaccines despite the obvious, so do most states continue to require mandatory vaccinations in order for children to attend public school despite the fact that many of the illnesses are not life threatening. Most private schools also have the same requirement. The federal government provides compensation to state programs to fund these immunizations and allows each state to determine what immunizations to mandate no matter how inconsistent or illogical the administrative procedure may be.

Contrary to these mandates, the 5th amendment of the United States Constitution states that "no person shall be deprived of life, liberty, or the pursuit of happiness without due process of law."\textsuperscript{119} Just as an individual has a right to marry, receive an education k-12 etc, children have a right to be born (life) and develop (liberty) into productive members of society (pursuit of happiness).

It is a known fact that the 14\textsuperscript{th} amendment of the United States incorporates the first 10 amendments to the constitution making them applicable to the individual states, and any state law that conflicts with a federal law is preempted by the Supremacy Clause.\textsuperscript{120} Yet, under the rational basis standard a state law will be upheld which does not substantially interfere with an individual’s liberty provided it is rationally related to a legitimate governmental interest. Presently compulsory vaccination is not viewed as a substantial interference with individual

\textsuperscript{119} U.S. CONST AMEND V.
\textsuperscript{120} U.S. CONST ART VI.
liberties and is justified as a State right under the 10th amendment Police Powers. To the contrary however, the most basic fundamental rights (life, liberty, pursuit of happiness) of individuals (especially children) are impeded when the opportunity to be all that they can be is stripped from them before their potential is reached (and in the case of children, before the potential is discovered).

Moreover, the rationale that mandates childhood immunizations is flawed because currently 20 of 50 states allow non religious “personal belief exemptions (known as philosophical exemptions based on moral or personal grounds) for parents who oppose.\textsuperscript{121}

Some of the least strenuous philosophical exemption laws are in Arizona, California, and Louisiana. These statutes do not differentiate between “religious” or “philosophical” objections to vaccination. Arizona's statute merely requires that a parent provide “a signed statement ... stating that the parent or guardian has received information about immunizations, understands the risks and benefits of immunizations and the potential risks of non-immunization and that due to personal beliefs, does not consent to the immunization of the pupil.” California only requires the parent to file a letter stating that the immunization is “contrary to his or her beliefs.” Louisiana allows the parent or student to obtain the exemption by mere “written dissent.”\textsuperscript{122}

Beyond the basic requirement for a letter of a signed letter of dissent, some states take the exemption process a step further. For example:

Minneapolis's vaccination statute, which allows for an exemption for “conscientiously held beliefs,” requires that any statement be notarized. Texas's philosophical exemption statute also grants an exemption for “reasons of conscience,” but the objection must be made on an affidavit form provided by the Texas Department of Health. This requires the parent to make the extra step of requesting that the form be sent to them or picking it up personally. Utah's statute requires that their personal belief exemption be signed by a parent or guardian, and the signature must be witnessed by the local health officer.\textsuperscript{123}

Finally, there are states such as Arkansas which demonstrate their preference for immunization

\textsuperscript{121} Jason L. Schwartz, 107 MICH. L. REV. First Impressions 100.\textsuperscript{122} Sean Coletti, 36 CONN. L. REV. 1341, 1385-1390 (Summer 2004) (Colorado, Idaho, Maine, Michigan, New Mexico, North Dakota, Oklahoma, Vermont, Washington, and Wisconsin have similar statutes to the Arizona and California laws, only requiring a written statement of objection).\textsuperscript{123} Id.
through the implementation of intricate steps, yet still provide the philosophical exemption as an option:

Arkansas’ law requires a parent to (1) complete an annual application process, (2) obtain a notarization of the exemption, (3) complete the educational component that includes information on the risks and benefits of vaccination, (4) sign an informed consent statement of refusal to vaccinate based on the Arkansas Department of Health’s own refusal-to-vaccinate form, and (5) provide a signed statement of understanding. The statement of understanding states that, at the discretion of the Department of Health, the non-immunized child can be removed from school during an outbreak if they are not fully vaccinated, and cannot return to school until the outbreak has been resolved and the Department approves of the return to school.124

The underlying reason for allowing this exemption in many states is that the diseases that vaccines help prevent are exceedingly rare in the United States today. Many of the vaccines included in school-entry requirements--polio, measles-mumps-rubella, and diphtheria-pertussis-tetanus--are often viewed by parents (and younger physicians) as preventing historical diseases rather than contemporary health threats and are not even life threatening.125

Still in all, the Federal Government continues to allow each state to mandate immunizations and to determine in its own way what immunizations to require.126 Although this is declared to be a State 10th amendment right to police for the sake of health and safety, the Federal Government is very much involved in many aspects of immunization regulations. For example, the Federal Government funds programs to give each state assistance with the cost of these immunizations, the Federal Government passed legislation such as The Act to help shield the vaccine manufacturers from lawsuits alleging injuries, the Federal Government taxes the vaccines to maintain a pool of funds from which to compensate families proving injuries, and via

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124 Id.
125 Schwartz, supra note 121 at 102.
126 See generally, Jason L. Schwartz, 107 MICH. L. REV. First Impressions 100.
the Department of Health and Human Services, the Federal Government created and manages the pool of funds from which taxpayer dollars are drawn for these purposes.

As a result, even in states where parents are given the right to opt out of immunizations by philosophical exemption the taxpayers in the 20 “philosophical exemption” states are contributing tax dollars to supplement the additional economic burden placed upon all citizens. This additional economic burden is caused by the refusal of the remaining states to give parents more discretion over the constitutional rights of their children, therefore lessening the likelihood of lawsuits. There is a high probability that if a parent is given the option to refuse immunization for his child; and he ultimately decides to immunize, the ability to prevail against the government or the vaccine manufacturers in a civil suit for injury is more difficult. Furthermore, implementation of mandatory philosophical exemptions substantially diminishes the need for ineffective statutes such as The Act which fail to properly redress the injuries of so many whose diagnosis falls outside of predetermined guidelines. For if one is properly warned of risks and given the right to refuse preventative treatment, one cannot then blame another for ultimately deciding to go forward with treatment on one’s own accord or for injury resulting from lack of preventative treatment. In other words, if parents have a right to refuse immunizations on behalf of their children and these rights along with the risks that are inherent are properly communicated to the parents, there is no longer a substantial risk of large settlements that might bankrupt vaccine manufacturers and burden taxpayers. Remedies sought under these circumstances would be much less frequent than the current 4900 cases pending in Federal Claims court on the issue of Autism causation alone.
Although temporal association between Autism and vaccines is deemed to be insufficient to establish cause in fact under the Act\textsuperscript{127}, for public policy reasons, it should be enough to implement legislation for optional vaccination of children, absent evidence of an ensuing epidemic. In two of the three cases where the court conceded to the causal connection between neurological disorders and vaccines, the petitioners were 14 years old and 22 years old.\textsuperscript{128} If such devastation occurs at near fully developmental stages it is only logical that more critical damage is done in young children. Concessions by the government such as Lodge\textsuperscript{129}, Tufo\textsuperscript{130}, and Banks\textsuperscript{131} formulate a pattern which inadvertently establishes the presumption of cause in fact for “off table claims”. Just as the government health officials erred on the side of caution in removing thimerosal from vaccines in the late 1990’s, so should the Government err on the side of caution in allowing more parental discretion in immunizing young children.

The justification for overriding the 5\textsuperscript{th} amendment right to life, liberty, and pursuit of happiness, through application of the 14\textsuperscript{th} is each state’s 10\textsuperscript{th} amendment police power over health and safety of its citizens.\textsuperscript{132} States can claim that although the individual child’s fundamental right to life, liberty, and the pursuit of happiness is in jeopardy or is infringed it is with just cause since the FDA claims the immunizations are completely safe and precautions are necessary against infectious disease.

With regard to the fundamental rights of children in general, Justice Rehnquist concluded in \textit{Schall v. Martin} that the state’s parens patriae interest in protecting a child may supersede the

\begin{itemize}
\item \textsuperscript{129} Lodge v. Secretary of HHS, 1994 WL 34609, Westlaw, 9 (Fed. Cl. Spec. Master Jan. 25, 1994).
\item \textsuperscript{131} Banks vs. Secretary of HHS, 19 (Fed. Cl. Spec. Master July 20, 2007).
\item \textsuperscript{132} U.S. CONST. AMEND X.
\end{itemize}
juvenile's liberty interest under appropriate circumstances. In this case a New York Family Court Act authorizing pretrial detention of accused juvenile delinquents was challenged under a habeas corpus action for violation of due process rights. The Supreme Court determined the statute was constitutional because there was a “serious risk” that a juvenile “may before his court appearance date commit another act which if committed by an adult would constitute a crime”.

This rationale reinforces the emphasis that is placed upon the State’s power to police its citizens under health and safety and casts doubt upon the ability to successfully establish a violation of due process where vaccines are mandated by the states on a rational basis. This rationale however assumes that there are no fundamental liberties being diminished by the state without a rational basis.

More particularly, in *Jacobson v. Massachusetts*, the court held that a mandatory vaccination law did not violate an individual’s 14th amendment right to liberty when the law was a legitimate exercise of the state's police power to protect the public health and safety of its citizens. In *Jacobson*, a citizen challenged a Massachusetts compulsory smallpox vaccination requirement on the grounds that mandatory vaccination was in violation of 14th amendment due process, privileges and immunities, and equal protection rights. The vaccination requirement was found to be constitutional under the rationale that it was necessary to protect the

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135 *Id.* at 257.
137 Jacobson’s fundamental right to privacy.
138 Jacobson erroneously viewed his protections under the Bill of rights which were applicable to the federal government under the privileges and immunities clause to be likewise applicable to the states. See The Slaughterhouse cases 83 U.S. 36, 74 (1873) (Holding that the fundamental rights protected against federal abuse under the first 10 amendments are not privileges and immunities of national citizenship within the meaning of the 14th amendment and the guarantees of the bill of rights are protected from state action only by the Due Process and Equal Protection Clauses of the 14th amendment).
139 Jacobson viewed the compulsory vaccination law as discriminatory in its application because those individuals who were able to provide medical documentation that they were not fit for vaccination were excluded from the requirement.
public health and safety of its citizens, and since Local boards of health determined when
mandatory vaccinations were needed the requirement was not unreasonable or arbitrarily
imposed.\textsuperscript{140}

Under the assumption that the vaccine in question is proven to not to cause such injuries
as alleged by Jacobson, the Supreme Court generally deems state regulation of immunization
proper.\textsuperscript{141} However, where such immunizations potentially cause a substantial deterioration in
one’s quality of life in exchange for the opportunity to receive an education, one might conclude
that the liberty and pursuit of happiness given by the U.S. Constitution are not truly guaranteed.
After all, the right to an education subsequent to immunization serves little purpose if the one to
be educated suffers irreparable neurological damage resulting from the required immunization.

In \textit{Saunders v. Secretary of HHS} the court denied a Vaccine Injury claim, reasoning that
if the injured party had suffered from ADEM\textsuperscript{142}, such injury would have been obvious upon
examination of the MRI, yet treating physicians failed to enter ADEM\textsuperscript{143} as a possible cause in
their medical diagnostic records.\textsuperscript{144} In this case the Petitioner at age six months, was brought to
his pediatrician with the report of a sudden onset of fever of up to 103°, vomiting, and
disorientation and was diagnosed to be suffering from “pharyngitis” (inflamed throat) and/or
“early otitis” (ear infection). The infant was given a prescription for an antibiotic and was also
administered several vaccinations: diphtheria tetanus (“DT”), hemophillus influenza (“HIB”),
and oral polio (“OPV”), during the visit.\textsuperscript{145} On the next day, the infant was again brought to his
pediatrician's office, this time with the complaints of fever and “purple hands, mouth, and feet.”

\textsuperscript{140} Jacobson v. Massachusetts, 197 U.S. 11, 110 (1905).
\textsuperscript{141} See generally, Jacobson v. Massachusetts, 197 U.S. 11(1905).
\textsuperscript{142} ADEM, supra note 13.
\textsuperscript{143} Id.
\textsuperscript{145} Id. at 2.
at which point, he was taken to the hospital and admitted. There he was found to have suffered from very serious condition, including intracranial hemorrhaging, (bleeding within the area confined by the skull). The infant was then transferred to another hospital, where, an emergency procedure known as a “ventriculostomy” was performed in order to release the excess fluid and excess pressure in his brain, saving his life. He remained hospitalized for two more weeks and emerged from hospitalization with severe neurologic deficits which include blindness and severe developmental delay, where the treating physicians never reached a definite conclusion as to the cause of the episode.

The holding in *Saunders* is indicative of the restraints that are erroneously put on the law. The statutory intent of the legislatures who enacted the Vaccine Injury Program was to facilitate compensation to injured parties with on table as well as off table claims. Implicit in this legislative intent is the discretion of the Special Master to apply sound reasoning, especially in off table claims where judicial discretion is most frequently exercised. Just as the Special Master in *Saunders* relied on stare decisis and 12 years of ruling on Vaccine Program cases to conclude that temporal causation does not establish causation in fact, so may the same 12 years of cases and stare decisis suggest under *Lodge* and *Tufo* that if both parties concede that vaccines cause the types of injuries alleged, there is at least a 50 percent and a feather chance that given three different vaccines to an already ill infant would undoubtedly create aggravating factors to the end resulting condition (which is a minimum standard under the table method), if not factually cause it. Such is the case in *Saunders* where both parties’ experts agreed that it is possible for a

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146 *Id.*
147 *Id.*
149 *Id.*
150 *Id.*
vaccination to produce an immune-inflammatory reaction that could damage the vaccinee’s nervous system.\textsuperscript{151}

Regardless of the indications supporting a factual and causal link between vaccines and autism, the federal government stands firm that it cannot interfere because of the State 10\textsuperscript{th} amendment police power. Yet as previously mentioned, the federal government has passed The Vaccine Legislation (The Act) to help shield the vaccine manufacturers from lawsuits alleging injuries and the federal government currently taxes the vaccines to maintain a pool of federally managed funds from which to compensate families proving injuries. According to Congress the purpose of the Vaccine Injury Program is to shield vaccine manufacturers from massive civil suits and to allow families affected to be “appropriately” compensated for injuries.\textsuperscript{152} As a result the 75 cent tax attached to each immunization is applied to the pool of funds managed by the federal government which is used to payout to injured families.\textsuperscript{153} The reasoning of congress in this decision is that since the general public benefits from everyone being immunized, the general public should share in the cost of compensating families for injuries.\textsuperscript{154} As previously mentioned this tax is being applied to all citizens including those residing in states where a philosophical exemption exists. Not only is this inequitable treatment for the several states which do not violate due process by mandating immunizations, but it substantially diminishes the potential funds available to conduct further research into alternative methods of inoculation.

Moreover, it is unreasonable to suggest that home schooling of children is a viable alternative to immunizing for the purpose of public school attendance. This raises additional due process issues because only those of a particular economic status are in a position to exercise

\textsuperscript{153} Id. at 6379.
such an option. Most private schools have requirements similar to the public schools, and with teenage pregnancy and teenage parenting as a commonplace occurrence, many children are in single family homes and even more are in single teenage parent environments. This makes the home school option illusory because most single parents struggle to obtain basic necessities on a 40 hour work schedule, so the ideas of paying for in home care of a school aged child, tutoring, or reducing work hours, are not financially sustainable. As a result, the option of refusing immunization in states where there is no philosophical exemption is not a viable option for many at all.

If the federal government has no evidence to suggest that there is a link between delayed develop of children (such as autism spectrum disorders) resulting from vaccine injuries, then one can only conclude that the primary purpose of the Act in actuality is to benefit the Vaccine Manufacturers and to insure that vaccine availability remains high regardless of the affects on individuals and families. One allusion to this is the congressional comment in the Act’s dicta where it states “for the very few families that are affected by these immunizations”.\textsuperscript{155} Perhaps this phrase within the legislation suggests that at a point when there are indications that injuries are impacting more than merely a few families, the time for additional action on the part of the federal government has come.

Requiring parents to immunize their children prior to attendance of public school based on state mandated childhood vaccinations should be considered a violation of the 5\textsuperscript{th} and 14\textsuperscript{th} amendment right to life, liberty, and the pursuit of happiness, and new legislation should be proposed to make immunizations optional especially during early childhood development, absent evidence of an outbreak. New legislation should be implemented which follows the statutory

construction of the several states such as Arizona, California, and Louisiana, which have already made provisions for parents to opt out of immunizing their children, or it should least to allow more parental discretion as to when and if vaccines are to be administered to children. As long as the risk of neurological injury from vaccination remains impossible to avoid and the severity of the injury impossible to predict, the mandatory requirement for school attendance will continue to be a violation of life, liberty, end pursuit of happiness.