



State of Connecticut
GENERAL ASSEMBLY
STATE CAPITOL
HARTFORD, CONNECTICUT 06106-1591

April 10, 2019

Attorney General William Tong
Office of the Attorney General
55 Elm Street
Hartford, CT 06106

Dear Attorney General Tong:

We, the undersigned State Legislators, write today in response to Representative Ritter's March 29, 2019 letter to your office, in which he requests your opinion regarding any potential state or constitutional impediments to the elimination of the religious exemption to the mandatory immunization of Connecticut schoolchildren. It is our firm belief that the elimination of the religious exemption would violate the First and Fourteenth Amendments of the United States Constitution, at least five provisions of Connecticut's Constitution, and at least three Connecticut General Statutes.

The First Amendment of the U.S. Constitution forbids Congress from making any law "respecting an establishment of religion, or prohibiting the free exercise thereof . . ." This amendment, of course, is binding on the states as well. The elimination of the religious exemption would have the effect of giving preference to some religious beliefs over others, and prohibiting children from freely exercising their religious beliefs. One is not able to "freely exercise" his or her religion if that exercise results in the loss of the right to a free public education.

Similarly, Article First, Section Three of the Connecticut Constitution provides that The exercise and enjoyment of religious profession and worship, without discrimination, shall forever be free to all persons in the state; provided, that the right hereby declared and established, shall not be so construed as to excuse acts of licentiousness, or to justify practices inconsistent with the peace and safety of the state.

A parent's use of the religious exemption is not a practice "inconsistent with the peace and safety of the state," as Representative Ritter might suggest. Connecticut currently has one of the

highest vaccination rates in the country at 98.2 percent¹, far greater than the 75-86 percent required to achieve herd immunity for mumps, the 80-86 percent required for polio, and the 83-94 percent required for measles.² For the 2017-18 school year, only 1.8 percent of the state's 83,508 public and private school students used a religious exemption (see footnote 1). The use of the religious exemption in Connecticut, therefore, poses absolutely no threat to public health or safety. The elimination of the religious exemption would be, in our opinion, an unconstitutional infringement by the state on the religious freedom of its citizens. Parents would be forced to choose between violating their sincerely held religious beliefs and gaining access to a free public education.

The Fourteenth Amendment of the U.S. Constitution clearly and unequivocally states that “[n]o State shall ... deny to any person within its jurisdiction the equal protection of the laws.” The Connecticut Constitution contains an analogous provision at Article First, Sec. 20, which provides that “[n]o person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil or political rights because of religion, race, color, ancestry, national origin, sex or physical or mental disability.” (Emphasis added.) Likewise, Article First, Sec. 1 mandates that “[a]ll men when they form a social compact, are equal in rights; and no man or set of men are entitled to exclusive public emoluments or privileges from the community.” By denying access to a public education and its related programming and activities on the basis of religious belief, certain groups of people are provided with more rights and privileges than others, in violation of the equal protection clauses of the U.S. and Connecticut Constitutions.

These equal protection violations would not be grounded merely in unequal treatment, however; they would be borne out of an unequal application of the law. The right to a free public education is guaranteed by our Constitution at Article Eighth, Sec. 1 which mandates, “There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation.” Implicit in this provision is the right of every child to access a free public education, a right made explicit in Article Eighth, Sec. 4: “The fund, called the SCHOOL FUND, shall remain a perpetual fund, the interest of which shall be inviolably appropriated to the support and encouragement of the public schools throughout the state, and for the equal benefit of all the people thereof.” (Bold emphasis added; capitalization in original.)

The right to a free public education for every child is also codified at Conn. Gen. Stat. § 10-15c, which provides that “[t]he public schools shall be open to all children five years of age and over . . . without discrimination on account of race, color, sex, gender identity or expression, religion, national origin or sexual orientation.” (Emphasis added.) Representative Ritter's proposed legislation would empower school districts to refuse children access to public schools on the basis of their religious belief against receiving certain or all immunizations, in direct conflict with § 10-15c.

¹ <https://www.courant.com/news/connecticut/hc-news-vaccines-measles-20190128-v6gbaefl2bbpjfs6urqliijf2y-story.html>

² <https://www.pbs.org/wgbh/nova/article/herd-immunity/>

Conn. Gen. Stat. § 46a-64 also makes it illegal to deny anyone “full and equal accommodations in any place of public accommodation” on the basis of “creed,” or “to discriminate, segregate or separate on account of . . . creed.” Schools are places of public accommodation. Notably, the legislature opted for the broader term “creed” instead of “religion” in § 46a-64 so as to provide protection for sincerely held beliefs beyond those included only in organized religions. Additionally, Conn. Gen. Stat. § 46a-58(a) broadly proclaims that “[i]t shall be a discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States, on account of religion, national origin, alienage, color, race, sex, gender identity or expression, sexual orientation, blindness, mental disability, physical disability or status as a veteran.”

Representative Ritter could, of course, propose an amendment that eliminates the religious exemption but also contains the language, “notwithstanding Sec. 10-15c,” “notwithstanding Sec. 46a-64,” “notwithstanding Sec. 46a-58(a),” or simply “notwithstanding any other provision of the General Statutes to the contrary.” Doing so would create an exception to Secs. 10-15c, 46a-64, and 46a-58(a) so that discrimination on the basis of religious belief would still be illegal in schools, but with the exception of those beliefs that oppose immunization. This is a dangerous and slippery slope. Regardless, what he cannot do is craft a law with the language, “notwithstanding any provision of the Connecticut Constitution to the contrary.” As you know, this kind of action is reserved solely for the Constitutional amendment process. We hope you will join us in formally placing Mr. Ritter on notice that his proposed legislation would be violative of the U.S. and Connecticut Constitutions. Having received such notice, no legislator can, in good conscience and in keeping with his oath of office, vote in favor of such a bill.

Finally, we would like to point out that the case of *Jacobson v Commonwealth of Massachusetts*, 197 US 11 (1905), oft-cited in support of a state’s right to impose mandatory vaccination requirements on its citizens, is not instructive here. The Court there was not dealing with the issue of the state holding hostage the right to a public education by means of mandatory vaccination. Furthermore, “*Jacobson* did not address the free exercise of religion because, at the time it was decided, the Free Exercise Clause of the First Amendment had not yet been held to bind the states.” *Phillips v City of New York*, 775 F3d 538, 543 (2d Cir. 2015). *Jacobson* also did not address whether a mandatory vaccination law could violate the Equal Protection Clause of the U.S. Constitution, as again no such claim was before the Court. What the Court in *Jacobson* did do, however, was leave us with these words of caution and prudence:

Before closing this opinion we deem it appropriate, in order to prevent misapprehension as to our views, to observe—perhaps to repeat a thought already sufficiently expressed, namely—that the police power of a state, whether exercised directly by the legislature, or by a local body acting under its authority, may be exerted in such circumstances, or by regulations so arbitrary and oppressive in particular cases, as to justify the interference of the courts to prevent wrong and oppression. Extreme cases can be readily suggested.

Id. at 38. Representative Ritter is indeed proposing an “extreme case” of governmental infringement on the constitutional rights of its citizens.

We hope you will join us in our firm conviction that Connecticut should never be a state that favors certain religious beliefs to the exclusion of others. Such action is, in fact, the very definition of discrimination. We implore you to hold fast to your promise to make the protection of civil rights a priority of the Attorney General’s Office. This legislation would directly oppose that noble objective. We would welcome the opportunity to discuss this issue with you further in a private meeting. Please have your office reach out to us to arrange this.

Thank you for careful consideration of this critical moment in our state’s history.

Sincerely,



State Representative Jack Hennessy
127th Assembly District



State Representative Anne Dauphinais
44th Assembly District



State Representative Vincent Candelora
86th Assembly District



State Representative Timothy Ackert
8th Assembly District



State Representative Craig Fishbein
90th Assembly District



State Representative Irene Haines
34th Assembly District



State Representative Noreen Kokoruda
101st Assembly District



State Representative Mike France
42nd Assembly District



State Representative Gale Mastrofrancesco
80th Assembly District



State Senator John Kissel
7th Assembly District



State Representative Cara Pavalock-D'Amato
77th Assembly District



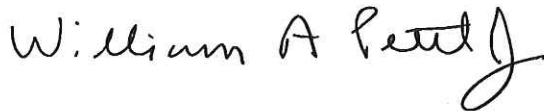
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141st Assembly District



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66th Assembly District



State Representative Lezlye Zupkus
89th Assembly District



State Representative William Petit Jr.
22nd Assembly District



State Representative Kurt Vail
52nd Assembly District



State Representative Tami Zawistowski
61st Assembly District



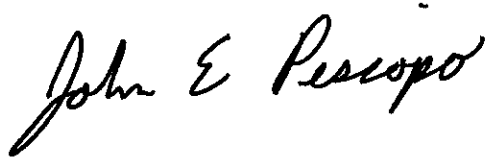
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47th Assembly District



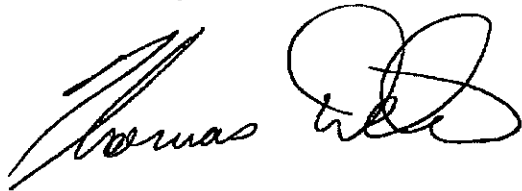
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14th Assembly District



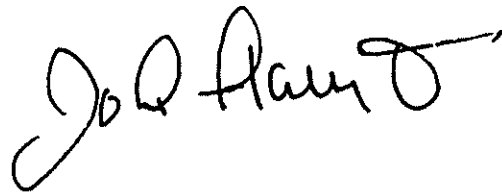
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114th Assembly District



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81st Assembly District



State Representative Ben McGorty
122nd Assembly District



State Representative John Hampton
16th Assembly District