HB 10 / SB 7 Religious Exemption Protection Act – Testimony

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Religious liberty and matters of conscience are bedrocks to our American system of government. Our Founders recognized that no system of government could hope to sustain order if people were to lack virtue. And a government that would deny its citizens a liberty of conscience would thereby destroy their ability to hold to virtues necessary for the common good.

So, how is a religious exemption to vaccines part of this system of virtue and conscience? Many would say that government has a right to compel citizens toward a medical intervention such as vaccination.

But the real question should be, how far can government go to determine itself what is of religious conviction, or conscience, and what is not? How should government perceive the boundaries it should or should not cross concerning policy that may conflict with someone’s deeply held religious beliefs? And further, who gets to determine the legitimacy of those beliefs? Government?

James Madison spoke of matters of conscience and religion not merely as toleration but as fundamental, natural rights. Early colonial charters and state constitutions spoke of it as a right. And in the Virginia Declaration of Rights, Madison wrote, “all men are entitled to the full and free exercise of [religion] according to the dictates of conscience.”

Madison furthers this idea in his Memorial and Remonstrance stating, “The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate…”

This is important because institutionalized religion does not always get it right. For example, consider this headline, “Vatican Says COVID Vaccine Made From Cell Lines of Aborted Babies 'Morally Acceptable,' Some Bishops Disagree.” Well, that is a fairly large discrepancy in how the church views moral concerns over the COVID vaccine. This is a perfect example of why Madison believed that these moral decisions “must be left to the conviction and conscience of every man.”

In a well known 2004 article called “Vaccines and the Right of Conscience” by Edward Furton also referenced by the NIH, he says, “Most people tend to think of conscience as a mental faculty, but for Aquinas conscience is the act of arriving at a correct moral conclusion about

what is to be done and John Paul II says the same thing.”\(^3\) Quoting from a document of the Vatican Council, he continues, “Man has the right to act in conscience and in freedom so as personally to make moral decisions...He must not be forced to act contrary to his conscience. Nor must he be prevented from acting according to his conscience, especially in religious matters.”\(^4\)

Lynn Wardle, a respected constitutional law professor at BYU remarked about the First Amendment, “The language ‘free exercise’ makes clear that the clause protects religiously motivated conduct as well as belief.”\(^5\) That is to say that a freedom to exercise one’s religion or rights of conscience reaches beyond simply our belief, but also to our actions. Conscience itself is quite literally the moral interpretation of our beliefs and convictions that then lead to actions. Therefore, a government coerced action must not then violate the dictates of our conscience. For conscience to remain inviolate, our actions must align with our belief system. This is the essence of religious practice. As the Bible says quite clearly in James 2:26, “…faith without works is dead.”

So, with that in mind, how might receiving a vaccine conflict with my religious beliefs and why should an exemption be granted in light of a right of conscience?

For one, I do believe that bodily autonomy has much to do with it. I believe that God formed me and knew me from the beginning. 1 Corinthians 6:19 says that my body is a temple of the Holy Spirit. There are those in the Christian faith that would say I have a duty to the safety and care of others and should therefore take a vaccine that would purported to serve towards that end. But that would be similar to making the argument that since God commands us to take care of the poor, that we should expend all of our wealth and resources doing so. Of course, God makes no such command, but instead, requires of us to be good stewards of what we have been given.\(^6\) Again, this is a great example of why Madison believed that every man must be left to his own convictions and conscience.

I have a duty to honor God through my body and though I am not perfect by any means, I take caution with my health so that I might serve God to the best of my abilities. It would seem reasonable to think that full control and autonomy over my own body is the most basic of human rights and religious liberty. This is where the sentiment “my body, my choice” actually applies.

Secondly, I am the father of three young boys. I love them with all of my heart and the burden to care for them as their parent is one that I take as not only a duty to my children, but a duty to God Almighty. They are not just my sons. They are His. And in that regard, I am but a steward

\(^4\) Ibid., 56.
\(^5\) Ibid., 56.
of these little people that has a design and destiny written on their hearts by our Heavenly Father.

Their well-being including any and all medical treatment is my God-given responsibility. And I believe that I will give an account to God as to how I managed through those responsibilities. Back to Edward Furton’s article, he says, “The rights of parents in the care and education of their children should take precedence over any duty owed to the state. Under the principle of subsidiarity [a Catholic doctrine], decisions about the moral good should be left under the care of those who have the most immediate responsibility and not be usurped by higher authorities. Thus the decisions of the parents have priority over those made by the state.”

There is no shortage of commentary and precedent to show that parental rights, especially in light of religious liberty and rights of conscience, supersede any supposed duty of the state, even in terms of vaccination.

Lastly, let’s talk about aborted fetal tissue used in the research, development, and production of vaccines. It is not conjecture, conspiracy, or misinformation that aborted fetal tissue is used in some way shape or form in the development of many, if not most vaccines. In fact, MMR, Hepatitis A, and Varicella vaccines are all produced using aborted fetal tissue. 100% of them. There is no, what is considered to be “ethical alternative” available on the market. And by the way, current Tennessee law mandates all of these vaccines for children in this state, including children enrolled in public schools. Tennessee law does allow for a religious exemption to these vaccines. Of course, that exemption is removed during an epidemic or the threat of an epidemic, and that is why I support the Religious Exemption Protection Act.

Regarding vaccines manufactured for COVID-19, HEK-293 was used in the testing phase of the Pfizer vaccine used here in Tennessee. HEK-293 is a cell line that originated from the kidney tissue of an aborted baby in 1973. This is a documented fact posted in a report titled “A prefusion SARS-CoV-2 spike RNA vaccine is highly immunogenic and prevents lung infection in non-human primates.” That report is hosted at BioRxiv.org. It is worth acknowledging that aborted fetal tissue is not used in the ongoing production of the Pfizer vaccine.

The Moderna vaccine also used HEK-293 in the testing phase of development. This is documented by the New England Journal of Medicine in a preliminary report titled “An mRNA Vaccine against SARS-CoV-2.”

7 Furton, Vaccines: 56.
9 Ibid.
AstroZenica uses the HEK-293 cell line in the continued production of its vaccine. The vaccine is currently approved in the UK and in India and set to be available in the US possibly in April.\textsuperscript{12}

Johnson & Johnson used a proprietary cell line called PER.C6, owned by a company named Janssen, a subsidiary of Johnson & Johnson. PER.C6 was developed from the retinal cells of an 18-week-old baby aborted in 1985.\textsuperscript{13} The use of PER.C6 is documented directly on jnj.com in an article titled “Johnson & Johnson Announces a Lead Vaccine Candidate for COVID-19; Landmark New Partnership with U.S. Department of Health & Human Services; and Commitment to Supply One Billion Vaccines Worldwide for Emergency Pandemic Use.”\textsuperscript{14}

GlaxoSmithKline (GSK) also used HEK-293 in the development of its vaccine. This is documented at BioRxiv.org in a report titled “Immunogenicity of novel mRNA COVID-19 vaccine MRT5500 in mice and non-human primates.”\textsuperscript{15}

The North Dakota Department of Health put out a paper available on their website notifying citizens that both the Pfizer and Moderna vaccines were developed using fetal cell lines, but do not use these cell lines in ongoing production of the vaccine. Interestingly, the paper states that “Any vaccine that relies on these historic cell lines will not require new abortions.”\textsuperscript{16} In other words, don’t worry. The development of these vaccines only required previous abortions. Well, that should clear your conscience.

In the same paper published in North Dakota, the Department of Health stresses that the “vaccines were found to be \textit{ethically uncontroversial} by the pro-life policy organization the Charlotte Lozier Institute. But in the statement made by the Institute in May of 2020, they said, “The use of cells from electively aborted fetuses for vaccine production makes these five COVID-19 vaccine programs potentially controversial and could reduce willingness of some to use the vaccine...Thus, use of such cells for vaccine production raises problems of conscience for anyone who might be offered that vaccine and is aware of its lineage.”\textsuperscript{17}

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\item Berchelmann, M.D., Catholic Answer.
\item Ibid.
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All things considered, there can be no doubt that government policies requiring vaccinations present issues concerning religious beliefs and rights of conscience.

So, how should the State of Tennessee assert its interest in protecting the health and safety of everyone with these competing individual interests? Most certainly, that is the question on the mind of many state legislators. But the more appropriate question is, what are the appropriate and constitutionally enumerated limitations of government. What does the Constitution of the State of Tennessee allow the state government do?

In an opinion issued in July of 2020, Tennessee Attorney General, Herbert Slatery, invoked the 1905 US Supreme Court Case, Jacobson v Massachusetts, stating “A governmental mandate that requires the general population to wear face coverings in public due to the health emergency caused by COVID-19 satisfies this two-prong Jacobson test.” Mr. Slatery makes the argument that a law passed by the full legislature of a state is precedent for upholding an executive order made by the Governor of another state.

What many fail to realize is that the Jacobson Court upheld a law, not an executive order during an emergency. But the point to make about the court opinion in Jacobson is also why they upheld the law. And the “why” has everything to do with the Massachusetts Constitution. Their state constitution adopted in 1780 states in the Preamble that, “The body politic is formed by a voluntary association of individuals: it is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good.” As such, the judges held in their option that, “The good and welfare of the Commonwealth, of which the legislature is primarily the judge, is the basis on which the police power rests in Massachusetts.”

In Jacobson, the Supreme Court did not uphold some federally held right of a state to mandate a vaccine. The Court upheld a state’s authority to pass a law in accordance with its own state constitution. That is an incredibly important distinction. With that in mind, let’s take a look at the Constitution of the State of Tennessee.

Our state constitution is not a social compact organized for the common good like Massachusetts. But, it is one of the strongest examples of the defense of individual liberties in the entire United States. And it has provided for a strong and free Tennessee now for 225 years.

Article I, Section 3 says, “That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience.” It goes on to say, “...that no human authority can, in any case whatever, control or interfere with the rights of conscience.”

19 See Preamble, Massachusetts Constitution, paragraph 2.
21 Art. I, § 3, the Constitution of the State of Tennessee (1870).
Interestingly, you will find the exact same statement in Article I, Section 3 of the Pennsylvania Constitution written by none other than Benjamin Franklin. What is the purpose of such a strong statement? You will find the answer in the Preamble to the Pennsylvania Constitution.

“We, the people of the Commonwealth of Pennsylvania, grateful to Almighty God for the blessings of civil and religious liberty, and humbly invoking His guidance, do ordain and establish this Constitution.”

Some constitutions were written to promote the common welfare. And some were written to preserve and secure liberty. Tennesseans wisely chose the latter.

The General Assembly of the State of Tennessee has been charged by the constitution of this state to first, secure liberty. I would respectfully remind every elected member of the General Assembly of the oath they have sworn per Article X, Section 2 of the Tennessee Constitution to “not…consent to any act or thing, whatever, that shall have a tendency to lessen or abridge their [the people’s] rights and privileges, as declared by the Constitution of this state.”

We the people of the state of Tennessee ask you to secure these rights and privileges today and pass this bill.

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