**Introduction**

Due to the rise in popularity of anti-vax conspiracy theories in recent years, we have seen a return of dangerous childhood illnesses such as measles that have brought parents into conflict with school districts in state court lawsuits about mandatory vaccination requirements, and because the covid-19 pandemic and the race for a vaccine is already creating controversy, protests, and conspiracy theories,[[1]](#footnote-1) it is important to take a look at whether states and the government can force people to get vaccines.

1. **Federal Authority to Protect Public Health**

Although the U.S. government does have the authority to protect the public health of the country as a whole, it can only do this through its enumerated powers, such as quarantining foreigners with diseases and infections;[[2]](#footnote-2) taxing and spending powers to make people more or less likely to do things that are bad for their health (like smoking);[[3]](#footnote-3) or regulating trade and travel between states. It is surprising that the Constitution does not require the federal government to ensure the public health; however, Justice Rhenquist stated,

[The Due Process Clause] is phrased as a limitation on the State's power to act, not as a guarantee of certain minimal levels of safety and security. It forbids the State itself to deprive individuals of life, liberty, or property without “due process of law,” but its language cannot fairly be extended to impose an affirmative obligation on the State to ensure that those interests do not come to harm through other means.[[4]](#footnote-4)

Thus, there is nothing in the Constitution that requires the federal government to protect the public health. However, one could argue that the current global pandemic, which is impacting every state in the country, is clearly of national concern and even conservatives would agree it justifies a strong federal intervention, as long as the government acted through its powers as enumerated in the Constitution.

However, if the politicians in Washington do not take action to motivate or require comprehensive nation-wide covid-19 vaccinations, the states will have to take responsibility for mandating vaccinations.

1. **State Authority to Protect Public Health**

In fact, most public health authority is given to the states in the 10th amendment of the Constitution,[[5]](#footnote-5) as their “police powers,” and there is a lot of legal precedent to support state law and policy action to protect public health. The power of states to require vaccination is often justified by situations of extreme danger, described as “an epidemic threatening the safety of all,” and couched in conditions requiring the protection of the general public.[[6]](#footnote-6)

1. **Public Health Trumps Individual Liberty**

In *Jacobson v. Massachusetts*, a popular example in public health law, the Supreme Court did say that mandatory vaccination is an infringement on the liberty interest of the individual but argued:

[I]n every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand.[[7]](#footnote-7)

The Court emphasized that it is the existence of this kind of “great dangers,” that allows a state to suppress the rights of the individual in favor of the safety of the public. Yet the Court recognized that states might abuse this and said this power might be exercised

in reference to particular persons in such an arbitrary, unreasonable manner, or might go so far beyond what was reasonably required for the safety of the public, as to authorize or compel the courts to interfere for the protection of such persons.[[8]](#footnote-8)

This last part highlights recent differences in how different races are faring in terms of illnesses and infections during the covid-19 pandemic, and also recalls a dark history of the mistreatment of African Americans in medical research.[[9]](#footnote-9)

1. **Potential Exceptions**

People from marginalized groups with this kind of negative historical view of medical treatment, poor covid-19 results in their groups,[[10]](#footnote-10) and a memories of having been terribly harmed by medical studies, could successfully object against mandatory vaccination of these groups if the required version of the vaccine is either too soon or does not have enough evidence to prove it is safe. However, as the legal precedent described in previous sections makes clear, courts will tend to find most regulations meant to apply to the public to keep *everyone* safe as “reasonable,” and within the powers of the states.

**Conclusion**

Although there is clear legal precedent for the states to mandate vaccination when necessary to protect the public health, and all 50 states require vaccinations in one form or another, there are also a number of reasons in each state that people can cite to get out of vaccine requirements for themselves or for their children. Sometimes people can get exceptions for sincere religious beliefs, but some states allow people to object to vaccines for non-religious reasons just called moral reasons or personal beliefs. Therefore, if state rules are the only thing requiring covid-19 vaccinations, there will be very different rates of vaccinations from state to state and region to region all over the U.S., which will make it very difficult to get to the needed level of herd immunity. [[11]](#footnote-11)

1. One of the most prominent conspiracy theories in May 2020 unifies conspiracy theories about the purported dangers of childhood vaccinations with an assertion that the covid-19 pandemic is a plot to increase vaccination rates. Numerous social media sites have removed the film from their platforms for spreading “harmful and misleading health information.” Katie Shepherd, *Who is Judy Mikovits in ‘Plandemic,’ the Coronavirus Conspiracy Video Just Banned From Social Media?* Wash. Post (May 8, 2020), https://www.washingtonpost.com/nation/2020/05/08/plandemic-judy-mikovits-coronavirus/ [↑](#footnote-ref-1)
2. Mandatory quarantine for immigrants with potential symptoms of illness was a common feature of immigration through Ellis Island in the late 19th and early 20th centuries. More recently, a national quarantine was the subject of some public interest and controversy during the 2014 Ebola outbreak in the United States when then-President Barack Obama rejected calls to quarantine public health workers returning from volunteering in Ebola-affected countries in West Africa. *See,* Juliet Eilperin, Brady Dennis & Joel Achenbach, *Obama Assails Ebola Quarantines, Saying They Are Based on Fear, Not Facts*, Wash. Post (Oct. 18, 2014), https://www.washingtonpost.com/national/health-science/amber-vinson-dallas-nurse-leaving-hospital-after-ebola-cure/2014/10/28/d37e7fae-5e95-11e4-8b9e-2ccdac31a031\_story.html [↑](#footnote-ref-2)
3. Lawrence O. Gostin, *Public Health Theory and Practice in the Constitutional Design,* 11 Health Matrix, 265, 275 (2001), https://scholarlycommons.law.case.edu/healthmatrix/vol11/iss2/4 [↑](#footnote-ref-3)
4. DeShaney v. Winnebago County Dep’t of Soc. Serv., 489 U.S. 189, 195-96 (1989). [↑](#footnote-ref-4)
5. U.S. Const. amend. X. [↑](#footnote-ref-5)
6. Jacobson v. Commonwealth of Massachusetts*,* 197 U.S. 11 (1905). In a deadly smallpox epidemic, the court upheld a Massachusetts law requiring all residents to receive the vaccine, even though such a requirement was an infringement on an individual’s liberty. [↑](#footnote-ref-6)
7. *Id.* [↑](#footnote-ref-7)
8. *Id.* [↑](#footnote-ref-8)
9. There is deep suspicion of medical research among communities of color as a result of studies such as the *Tuskegee Study of Untreated Syphilis in the Negro Male*, in which researchers recruited African-American syphilis patients, but did not inform them they had the disease or provide them treatment in order to study the natural progression of the disease. [↑](#footnote-ref-9)
10. ## APM Research Lab Staff, *The Color of Coronavirus: Covid-19 Deaths by Race and Ethnicity in the U.S.* (May 8, 2020), <https://www.apmresearchlab.org/covid/deaths-by-race>. “The latest available COVID-19 mortality rate for Black Americans is 2.3 times higher than the rate for Asians and Latinos, and 2.6 times higher than the rate for Whites.”

    [↑](#footnote-ref-10)
11. U.S. Dept. of Health & Human Services, Centers for Disease Control & Prevention & the World Health Organization, “Herd Immunity Thresholds for Selected Vaccine-Preventable Diseases,” *History and Epidemiology of Global Smallpox Eradication*, Smallpox: Disease, Prevention, and Intervention (Aug. 25, 2014) at 17, https://stacks.cdc.gov/view/cdc/27929. The threshold for many of the other diseases requiring mandatory vaccination hovers around and above 80%: *e.g*. the percentage of a population that must be vaccinated to halt the spread of Diphtheria is 85%; Pertussis requires that 92-94%; polio, rubella, and smallpox require vaccination of 80-86% of the population. [↑](#footnote-ref-11)