**Perspective: Tide may be turning toward religious exemptions from vaccine mandates**

*Courts seem increasingly reluctant to enforce government mandates when faced with religious objections.*

By Richard T. Foltin, Freedom Forum Fellow for religious freedom

Even as the Centers for Disease Control and Prevention (CDC) eases mask and distancing recommendations for people who are fully vaccinated, there remains an urgent need to increase the percentage of the population that has been vaccinated to stem further spread of the COVID-19 virus. Policymakers, business owners and schools are wrestling with whether and to what extent to mandate proof of vaccination to access services such as schooling and public transportation, as well as large gatherings like concerts and sporting events.

New Jersey’s Rutgers University, for example, has already announced that returning students will have to demonstrate that they have been vaccinated, with many other colleges and universities across the nation considering whether to move in that direction.

People resist vaccines for all kinds of reasons, from health concerns to lack of information or belief in conspiracy theories. One less common, but legally important, reason is religious belief.

Whatever path Rutgers and other universities may stake out, they are likely to follow the existing practices of most states, which provide religious exemptions to students attending public schools where vaccines are otherwise required.

**Evangelicals and Vaccination**: While 95% of evangelical Christian leaders have told the National Association of Evangelicals they would be open to getting a COVID-19 vaccine, more than a third of white evangelicals overall [say they’d be unlikely to do so](https://apnews.com/article/coronavirus-vaccine-skepticism-white-evangelicals-us-32898166bbb673ad87842af24c8daefb). Religious objections were one reason cited by some respondents.

Unlike private universities, public universities such as Rutgers are subject not only to general civil rights laws but also to the First Amendment’s prohibition on governmental abridgement of the free exercise of religion (the Free Exercise Clause).

**Private Employers and Religious Exemptions:** An employer may generally require that employees obtain vaccinations as part of legitimate health and safety requirements that are job-related and necessary to do business. To be sure, federal civil rights law requires employers to provide a reasonable accommodation of an employee’s religious practice, such as a religious objection to vaccination, but employers are relieved of this obligation if the accommodation would impose an undue burden. The courts have by and large been inclined (albeit not uniformly) to consider an employee’s refusal to be vaccinated an undue burden; the question arises, however, whether the Supreme Court’s shifting perspective on religious exemptions in other contexts (as discussed in this article) will make it more likely that an employee will be entitled to such an exemption with respect to a required vaccination.

Under the U.S. Supreme Court’s 1990 decision in Employment Division v. Smith, it appears that there is no constitutional requirement for the government, including the public schools that it operates, to provide religious exemptions when mandating vaccines to receive a public service, as long as the mandate applies to everyone.

In 21 states and at the federal level, additional religious freedom laws do make it possible to ask for exceptions to generally applicable government requirements. But it has long been thought that, even under this more protective standard, during a public health emergency, the urgent governmental interest in stemming a pandemic can make it harder to claim a religious exemption from vaccine requirements.

We are, however, on shifting terrain in this area. For better or for worse, recent cases suggest that the courts are moving toward expanded leeway for religious exemption claims when it comes to government mandates — even in the context of a public health emergency.

In February 2021, in the case of South Bay United Pentecostal Church v. Newsom, contrary to its reasoning in a similar case the prior year, a majority of the Supreme Court voted to stopCalifornia from enforcing its blanket ban on indoor religious ceremonies. In so doing, the court proved newly willing, over a strenuous dissent by the minority, to second guess public health judgments by local authorities, at least in terms of weighing public health against religious freedom concerns.

Where does that leave us on vaccinations? To date, there has not been any serious challenge to the ability of governments to offer religious exemptions, but neither has there been any clear-cut obligation of the government to recognize a free exercise exemption in the public health context. However, given the turnaround on the houses of worship cases, we may see a similar reluctance to enforce a vaccination mandate over religious objections.

**Faith Leaders Guide Communities:** Some religious leaders are sharing faith-supported reasons to get vaccinated, like the [Christians and the Vaccine project](https://www.nbcnews.com/news/us-news/divine-intervention-pastors-tapped-help-get-skeptical-churchgoers-vaccinated-n1264646). Islamic scholars advise that vaccinations can be considered halal, or permissible, and getting vaccinated [doesn’t break Muslims’ Ramadan fasts](https://www.latimes.com/california/story/2021-04-12/ramadan-and-vaccines-what-muslims-in-southern-california-need-to-know). Some Orthodox Jewish communities have organized vaccine drives and many participated in a [study on safe gathering practices](https://www.hopkinsmedicine.org/news/newsroom/news-releases/covid-19-story-tip-study-of-orthodox-jews-may-help-guide-covid-19-prevention-in-culturally-bonded-groups).

One thing seems certain: The law can only do so much in responding to the forces that have given rise to vaccine resistance. The more important work is likely to be done in the realm of education, persuasion and [messages of societal responsibility](https://www.freedomforum.org/2020/04/09/religious-communities-can-play-a-huge-role-in-fighting-the-pandemic-but-not-by-gathering-for-services/) from leaders of diverse faith and political backgrounds.

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