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Mandating Health: Comparing Different State Approaches to the Distribution of the HPV Vaccine

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I. Introduction

The American Cancer Society estimates that in 2008, over 11,000 women will develop cervical cancer and roughly 4,000 will die from the disease.[1] About 70 percent of cervical cancer cases result from human papilloma virus (HPV) types 16 and 18.[2] In 2006, the Food and Drug Administration (FDA) approved the first HPV vaccine, Gardasil, which prevents not only cancer-causing HPV, but also HPV types 6 and 11, which cause genital warts.[3] The Center for Disease Control and Prevention (CDC) estimated that 6.2 million people contract a genital form of HPV each year, infecting over half of all sexually active men and women at some point in their lives.[4]

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While drug companies test the HPV vaccine to determine if it can provide protection for men, in the meantime, legislatures must determine what to do with a single-sex, sexually-related vaccine.[5] States face the decision of whether to mandate a vaccine for a sexually transmitted infection or not to require citizens to receive a vaccine that prevents cancer.[6]

This article analyzes and compares the different legislative approaches to Gardasil by examining traditional vaccination methodologies and exploring how state approaches expand upon and violate those methodologies.[7] The second part of this article examines the legal basis for mandatory vaccinations and the arguments against compulsory immunizations.[8] The third part of this article analyzes how Virginia, New Hampshire, and Texas have responded to Gardasil and determines how each state approaches the legal arguments for vaccination.[9] Finally, this article identifies one approach as being the most effective and responsible method of distributing Gardasil to a state's population.[10]

II. Background

A. Different State Approaches to the HPV Vaccine

States generally take one of three different approaches to vaccinating schoolgirls with Gardasil.[11] The first approach, taken by Texas, neither provides nor requires HPV immunization, leaving all vaccination decisions to parents.[12] The second approach, exemplified by Virginia, requires schoolgirls to receive the vaccination, but allows parents to opt-out of the vaccination for any reason.[13] New Hampshire introduced the final approach by not requiring vaccination, but providing the vaccine to all girls in the state free of cost.[14]

i. Texas

Texas exemplifies a conservative approach to Gardasil by not mandating, recommending, or arranging for the distribution of the vaccine.[15] The Governor of Texas signed an executive order, directing the state Department of Health and Human Services to adopt the required vaccination of 11-12-year-old girls.[16] In response, the state legislature immediately passed an amendment overruling the executive order, breaking from traditional immunization legislation by requiring parents to opt-in for their children to receive the vaccination, rather than requiring them to opt-out of mandatory vaccination.[17]

ii. New Hampshire

Taking the middle ground between Texas and Virginia, New Hampshire side-stepped the issue of mandating a controversial vaccine when the state Department of Health and Human Services (HHS) announced that it would distribute Gardasil free of cost.[18] New Hampshire has a comprehensive state immunization program to provide children with vaccinations for numerous diseases, including HPV, free of cost.[19] Because the inclusion of the HPV vaccine did not change the overall budget for the immunization program, the New Hampshire legislature had no role in approving the distribution of Gardasil.[20] Since the initial dispersal of Gardasil in January 2007, more than 14,000 doses have been administered in the state.[21]

iii. Virginia

Virginia introduced a new approach to vaccination by mandating the vaccination of schoolgirls, but allowing parents to forego the vaccine for any reason.[22] Beginning in October 2008, Virginia will require schoolgirls entering the sixth grade to receive a HPV vaccine.[23] The addition of this vaccine required the state legislature to amend the state vaccination plan, which currently allows families to opt-out of vaccinations if the vaccination would be medically detrimental to a child, or if families' strong religious beliefs prohibit the administration of a vaccine.[24] Traditionally, if a family

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claims a medical exemption, the school board must receive a statement from a physician or nurse practitioner verifying the reason for the exemption.[25] When Virginia begins to require the use of the HPV vaccine in October, parents and guardians will have the right to refuse that vaccination for their child on any grounds because HPV is not communicable in a school setting.[26]

B. The Legal Basis for Mandating Vaccines and Quarantine

States' authority to mandate vaccination originates in their police power, as vaccinations protect public health and public safety.[27] Airborne diseases, like smallpox once presented a serious health and logistical problem to cities and states when quarantine was the only option for combating the spread of the disease.[28] Using state police power, states could require widespread vaccination and quarantine.[29] The Supreme Court has defined "police power" as everything essential to public safety, health, and morals that the state has legitimate authority to remedy.[30]

In *Jacobson v. Massachusetts*, the Supreme Court held that states have a fundamental interest in preventing the spread of communicable diseases, and, as such, have the police power to mandate vaccinations and require

Implementing a National Mandatory Vaccination Campaign among Pre-teen Adolescent Females

*Eduardo Pezo, MPH**

For a mandatory vaccination program to succeed, the partnership between the private and public sectors needs to work well so the clients as well as the providers become educated. Education is a vital part of any comprehensive vaccination program, particularly for something as new to the public as Gardasil. Acceptance among gynecologists and physicians is generally high, depending on factors such as a patient's gender, age, and sexual history, as well as efficacy of the vaccine.[1] A review of a research study regarding HPV and HPV vaccine acceptability also indicates that health care providers and professional health organizations play a large part in a parent's decision to vaccinate his or her child.[2] Parents are more likely to follow the recommendations and information put forth by health care providers, and health care providers are more apt to follow a professional health organization's endorsement of a vaccine.[3] Thus, health care providers will likely play a pivotal role in relaying information about HPV and HPV immunization in order to ensure the targeted population is vaccinated.

Surveys have shown that when the HPV vaccine is presented under the umbrella of sexually transmitted disease-protection, females are less likely to be inoculated.[4] Researchers at the University of Pennsylvania observed that the way in which the vaccine is represented by the media influences opinion toward vaccination among females. They surveyed 635 adults over the age of 18, about half of whom were females, assigning each to read one of three paragraphs about the vaccine (each emphasizing a different perspective):

a) The vaccine protects against cervical cancer.

b) The vaccine protects against cervical cancer and sexually transmitted infections.

c) The vaccine protects against cervical cancer, sexually transmitted infections and may or may not lead to increased sexual promiscuity among those vaccinated.[5]

More than half had heard of HPV, but 80 percent expressed that they had never spoken to a health-care provider about the virus. When females read that the vaccine protects only against cervical cancer, 63 percent explained they were "very likely" or "somewhat likely" to get vaccinated, compared with 43 percent of those who read the vaccine protects against cervical cancer and a sexually transmitted infection.[6] Doctor Susan Towns, head of the Department of Adolescent Medicine at the Children's Hospital in Westmead, Maine, explains that, "This is confronting because it's associated with sexual activity, which most parents aren't thinking of in their 11- and 12-year-olds. It's a hard one because you don't want to be framing it as though you're giving permission for early sex."[7] One possible effective way to approach the mandatory HPV vaccination campaign is to respect religious and cultural sensitivities and differences by promoting it to be an anti-cancer vaccine rather than as a STD-related vaccine.

Campaigns mandating the new vaccine holds great promise for millions of females. Not only can the HPV vaccination greatly reduce deaths and morbidity attributable to cervical cancer, but it also has the potential to reduce the economic, emotional, and psychological burdens that women may experience from the diagnosis through the progression of this chronic disease. The key to the success of this new vaccine will be in how policymakers, health care providers, community leaders, media, educators, parents, females, and the general public respond to ensure that all those who can benefit from this new technology have access to it and understand its value for society. The elimination of cervical cancer could be the first major medical and global health accomplishment of the 21st century. The HPV vaccine can save lives and improve the quality of life, both nationally and worldwide.

1 J.C. Raley, K.A. Followwill, G.D. Zimet, et al., *Gynecologists Attitudes Regarding Human Papilloma Virus Vaccination: A Survey of Fellows of the American College of Obstetricians and Gynecologists*. Infectious Diseases in Obstetrics & Gynecology 12(3–4):127–133. Sept–Dec. 2004, *available at* http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?db=pubmed&cmd=Retrieve&dopt=Abstract&list_uids=15763912&query_hl=15&itool=pubmed_DocSum (last visited Mar. 22,2008).

2 *Id.*

3 J.M. Riedesel, S.L. Rosenthal, G.D. Zimet, et al., Attitudes About Human Papillomavirus Vaccine Among Family Physicians. Journal of Adolescent Health 18(6):391–8, December 2005, *available at* http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=pubmed&dopt=Abstract&list_uids=16338604&query_hl=19 (last visited Mar. 22, 2008).

4 Jeanna Bryner, *Survey: Most Women Don't Know Virus Causes Cervical Cancer,* Foxnews.com - Science, *available at* http://www.foxnews.com/story/0,2933,229090,00.html (last visited Mar. 22, 2008).

5 *Id.*

6 *Id.*

7 Jacqueline Maley, *Cancer Vaccine For Girls Before Sex Life Starts,* July 16, 2005, *available at* http://www.smh.com.au/articles/2005/07/15/1121429359320.html (last visited Mar. 22, 2008).

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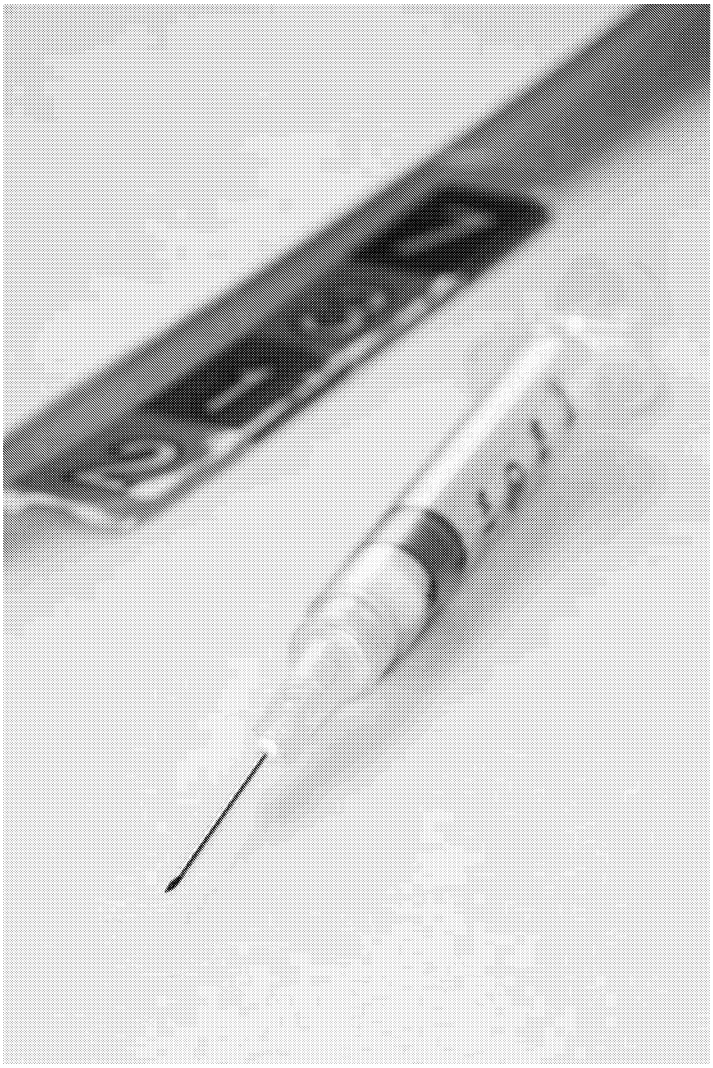

quarantine when vaccinations are not used.[31] Jacobson argued that required vaccinations were "unreasonable, arbitrary, and oppressive," and thus violate an individual's right to care for one's own body and health.[32] However, the Court rejected Jacobson's argument and mandated that states have the power to enact laws for the common good and welfare of their citizens, especially when the laws relate to health.[33]

C. The Balancing Test Between State Interest and Parental Control

Gardasil presents a unique situation because it protects against a sexually transmitted disease, which may conflict with traditional sexual education and religion.[34] The Supreme Court has consistently defended parents' right to determine the upbringing of their children without state interference.[35] In *Meyer v. Nebraska*, the Court ruled that a state government must respect the right of parents to determine the upbringing of a child.[36] In that case, the Court determined that Nebraska's ban on teaching children foreign languages was unconstitutional and had no reasonable relation to a legitimate state interest.[37] The Supreme Court used *Meyer* to clarify that under the Constitutional promise of "liberty," individuals have the right to establish a home and bring up children without undue interference from the state.[38]

In *Pierce v. Society of Sisters*, the Supreme Court extended its ruling in *Meyer* by overturning an Oregon law requiring compulsory public education for children between the ages of eight and sixteen.[39] The Court stated that although the state has an interest in educating children, Oregon could not require the standardization of upbringing because parents have the right and duty to prepare their children for society.[40]

In *Wisconsin v. Yoder*, the Supreme Court held that the Amish do not need to send their children to school after the eighth grade, in accordance with their religious beliefs.[41] The Court reasoned that because the First Amendment guarantees the freedom to practice religion, forcing Amish children to attend schools against their religious beliefs violated that fundamental freedom.[42] Additionally, the Court held that parents have the obligation to prepare their children for the future, which Amish parents do through education based on religious beliefs and practices.[43]

D. Equal Protection and Medical Treatment for Women

In addition to determining whether the state police power extends to mandating the distribution of Gardasil, a court must examine the validity of the vaccine as a single-sex medical treatment. The Supreme Court has ruled on the validity of single-sex medical coverage in past cases.[44] In *Geduldig v. Aiello*, the Supreme Court held that a failure to take into consideration differences between men and women does not necessarily constitute sexual discrimination.[45] In *Geduldig*, a California disability insurance plan failed to cover disabilities attributable to pregnancy, a condition that only affects women.[46] The Supreme Court held that the failure to provide coverage was not gender discrimination because there was no risk from which men were protected and women were not.[47]

III. Analysis

A. By Neither Changing Precedent Nor Ignoring Women's Health, New Hampshire's Approach to Gardasil Presents the Most Effective Public Health Measure

New Hampshire's approach to distributing Gardasil serves as the best model for the distribution of the vaccine.[48] Since New Hampshire provides the vaccination free of cost, but does not require anyone to receive the vaccine, this approach neither erodes the principles of mandatory vaccination nor ignores the value of the vaccine as an important medical advancement.[49] New Hampshire recognizes the difference between HPV vaccines and other immunizations by providing the inoculation, but not requiring it.[50] New Hampshire does have required vaccinations, but by leaving Gardasil off of that list, New Hampshire has recognized the fundamental differences between HPV and other diseases.

New Hampshire stays within the strictures of Supreme Court decisions by reserving parents' ability to make fundamental decisions about the upbringing of their children.[51] HPV differs from the other diseases prevented by vaccination because it requires intimate contact for contraction, making it distinctly different from the smallpox discussed in *Jacobson*.[52] Giving a child a vaccine to prevent a sexually-transmitted disease might be construed as condoning the child's sexual behavior, which may be related to religious beliefs states are precluded from infringing upon.[53] In *Wisconsin v. Yoder*, the Court decided that religious beliefs trumped state interest in education.[54] Like education, public health remains a state concern, but in the situation with HPV vaccines, religion and the issue of sexuality cannot be separated from health, creating a balancing test states must address.[55] By allowing parents to choose to vaccinate their daughters without forcing such a

decision, New Hampshire respects both the rights of families and the health of women.[56]

B. Public Health Police Power: Gardasil Fails the *Jacobson* Test

The *Jacobson* Court relied on the fact that smallpox is an airborne disease and to prevent the contraction of smallpox, the state needed to either vaccinate prior to infection or isolate the disease.[57] The smallpox vaccine could be given to every member of society through state planning, allowing the state to reduce the threat of a widespread smallpox outbreak until the threat ceased to exist.[58] HPV differs from smallpox as it requires intimate contact, raising the question of whether *Jacobson* would apply to HPV vaccinations.[59]

Whether a court would find that a state has inherent police power to protect against the spread of a sexually transmitted disease remains unclear. In *Jacobson*, the Court relied upon the principle of self-defense to hold that "a community has the right to protect itself against an epidemic of disease which threatens the safety of its members."[60] Because cervical cancer threatens the health of members of society and is spread through human contact, HPV seems similar to the smallpox discussed in *Jacobson*.[61] However, an analysis based on *Jacobson* would most likely not recognize the police power of the state to require an HPV vaccine.[62] Unlike smallpox, HPV does not pose a traditional health risk: quarantine could not prevent against the spread of the disease because once a person contracts the disease, they can never be rid of it and over 50 percent of the population is infected.[63]

Jacobson also addressed the idea that strict quarantine and immunization would eradicate smallpox.[64] Neither Merck nor the CDC has expressed a belief that the strands of HPV targeted by Gardasil will cease to exist.[65] However, if all women were vaccinated, incidents of cervical cancer would decrease by 70 percent; since men are asymptomatic for the strands that cause cervical cancer, no method of prevention exists besides strict abstinence.[66]

Some states have held that vaccination laws can only be upheld when a disease is present or threatening in a community.[67] Due to the pervasive nature of HPV and the estimates that most adult Americans have some form of HPV, the disease satisfies the requirement of presence in a community.[68] However, HPV would probably fail to threaten a community because it cannot be deemed dangerous on an everyday level, such as polio or smallpox.[69] In states requiring that a disease threaten a community in order for vaccination laws to apply, the HPV vaccine laws would probably not receive enforcement.[70]

C. Equal Protection Claims Do Not Apply to Gardasil

The varying responses to the HPV vaccine also raise the issue of equal protection, as addressed by the Supreme Court in *Geduldig v. Aiello*.[71] Like the post-pregnancy treatments discussed in *Geduldig*, the HPV vaccine currently offers benefits only to women.[72] In *Geduldig*, the Supreme Court specifically noted that men did not receive any treatments that women could not receive, just as in the case of HPV, men do not receive attention that women do not receive as well.[73] The Court recognized that existence of medical treatment does not equate with a right to that treatment, meaning that failure to receive medical care does not equal discrimination.[74] Following this reasoning, any argument that a vaccine preventing against a disease that occurs only in women, but is not mandated for women, does not win an equal protection argument.[75]

If Merck or another pharmaceutical company discovers that Gardasil or other HPV vaccines can prevent against HPV and subsequently penile cancer in men, states that have refused to require or offer vaccinations will be precluded from later offering the vaccine.[76] If a state were to change a policy because the vaccine could prevent diseases in men, undoubtedly questions of equal protection would be raised.[77] While a state government could argue that requiring a vaccination for an entire population is fundamentally more equal than requiring it for a subset, it would appear that the government is worried more about the health of men than of women.[78] Nonetheless, a state government could again point to the decision in *Geduldig* and argue that at no point did the government require medical care for treatment that it did not require for women.[79]

D. Just as Parents Have the Right to Determine the Education and Religion of Their Children, So Too Should They Have Discretion Over Non-Necessary Medical Treatment

As parents have the right under *Yoder* to determine how to educate their child, it should follow that parents also have a right to determine which non-necessary medical treatment their child ought to receive.[80] In the case of Gardasil, vaccination and education are entwined, as girls who receive the vaccination are told that they are protected against a sexually transmitted disease, raising the issue of education and religion as discussed in *Yoder*.[81] Abstinence until marriage has a long-standing history in religion, as family education did for the Amish, and in both situations, religious principles clash with legitimate state interests.[82] Like in *Yoder*, where the Amish were deemed to have a legitimate religious interest that overrode a state law, other groups could

> Most state legislatures allow parents to opt out of vaccinating their child on the basis of religion or some philosophical belief so long as parents understand that their child cannot attend school during any kind of epidemic.

claim to have a legitimate religious interest in boycotting a vaccine that could be deemed to promote sexual behavior.[83] Unlike the polio vaccine, which prevents the contraction of all polio, the HPV vaccine only protects against certain strains of the disease, meaning that girls must continue to learn about and understand the dangers of engaging in behaviors that lead to the contraction of the disease.[84]

Similarly, in *Meyer*, the Court held that parents have a fundamental right to determine the upbringing of their own offspring.[85] Which vaccination a child receives could fall under *Meyer* because, like education and language, non-necessary medical procedures can involve fundamental and religious beliefs.[86] Even parents, who do not want their daughter to receive Gardasil for religious reasons believing that it might encourage loose morality, might not want to object to all vaccinations, as a religious exemption might otherwise call for.[87] A decision that involves morality relates directly to the parental duty of raising a child and is protected primarily under the *Meyer* and *Pierce* decisions.[88] In this situation, Texas, Virginia, and New Hampshire's approaches would all respect the parents' desire to refuse the Gardasil vaccination.[89]

Most state legislatures allow parents to opt out of vaccinating their child on the basis of religion or some philosophical belief so long as parents understand that their child cannot attend school during any kind of epidemic.[90] By doing this, states follow the dictates of *Yoder*, *Pierce*, and *Meyer* that reserve for the parents the right to determine the upbringing of their own child.[91] Legislation has been proposed in West Virginia to require an HPV vaccination for all schoolgirls entering the sixth grade, and as the state lacks a religious exemption to vaccinations, such legislation could inspire a court case addressing the right of the parent to determine non-necessary medical care.[92]

E. Texas Fails to Provide Protection Against Cervical Cancer

When Governor Rick Perry announced that he would mandate the inoculation of all school-aged girls in the state of Texas, the conservative state legislature viewed the immunization as unnecessary, effectively ignoring the health of women in favor of following a conservative agenda.[93] The Texas legislature adopted a policy of distributing information at the time of adolescent inoculation so that parents could decide whether or not to vaccinate their daughters.[94]

Some interest groups argue that Texas's failure to mandate the Gardasil vaccine does not matter, as the vaccine will still be available to those who desire it.[95] In Texas, Virginia, and New Hampshire, young girls and their parents have the option of vaccinating against HPV. Should their parents choose to inoculate, girls in Texas would receive the same vaccine as girls in New Hampshire and Virginia do.[96] However, with nine million uninsured children in the United States, it is naive to assume that all children receive the same medical treatment and inoculations, even within a single state.[97]

Texas does not outlaw the distribution of the vaccine and requires the distribution of information regarding vaccination to parents at the time of other vaccinations.[98] Additionally, on July 16, 2007, all 55 immunization projects in the country adopted the distribution of Gardasil, including centers in Texas.[99] This adoption means that all girls who are uninsured, on Medicaid, of Native American descent, or enrolled in the State Children Health Insurance Program (SCHIP) will receive the vaccine.[100] While the state will still not require the vaccination, many girls will receive it regardless, as states receiving federal money for the Vaccines for Children (VFC) program are required to implement the vaccine.[101]

Despite this step towards preventing cervical cancer throughout the state of Texas, VFC neither vaccinates all eligible children nor assists children with private insurance to receive the immunizations.[102] Even though parents will have the right to determine whether or not to vaccinate their child, those receiving the incentive of a free and recommended vaccination from VFC will face a different decision than those simply offered information.[103] Schoolgirls who cannot receive vaccines through the VFC program will lose out in this situation because, unlike the girls in the VFC program whose parents will have to opt-out of the vaccine, girls with private insurance will need their parents to opt-in to receive the vaccination.[104] The largest group of women who will fail to receive the vaccine will be adults without private insurance as few uninsured women will pay the $360 for the three shot plan.[105]

F. Virginia Reinvents Public Health Policy by Allowing a New Exemption

Allowing parents to opt-out of the administration of the HPV vaccine allows Virginia to remain within the framework of the *Meyer*, *Yoder*, and *Pierce* decisions, in that the parents have the primary position of determining non-necessary medical treatment for their children.[106] As in those cases where parents have the power to determine how to raise their child, the issue of a non-necessary vaccination against a sexually transmitted disease can be seen simply as an issue in rearing a child, and not a medical decision.[107] Virginia addressed this issue by distinguishing the HPV vaccine from other vaccines through changing the exemption rules.[108]

Virginia's immunization law requiring Gardasil, but providing parents with a simple method of refusing the vaccination, presents a radical change for immunization statutes.[109] By traditionally requiring an affidavit of waiver of recommended treatment, legislatures have ensured widespread vaccination.[110] The amended statute removes the physician's role in recommending medical treatment for minors, leaving decisions in the hands of parents, who, according to previous court cases, have the primary role in determining the upbringing of their children.[111]

Despite the Court's reluctance to limit parents' discretion, there remains a role for the state in decisions to immunize children.[112] In numerous Virginia cases regarding child abuse or determining custody, the issue of whether or not a child has received his or her immunizations and is up-to-date with the immunization schedule serves as a factor in the outcome of the case.[113] While not the most compelling proof of child abuse, the failure to immunize a child can be viewed as neglect, as in the case of *Welch v. Commonwealth.*[114] In *Welch*, a mother argued that she did not purposefully murder her child, but rather the child died from neglect because she failed to provide proper medical care.[115] *Welch* shows that failure to immunize a child can have legal ramifications, which will be weakened when the state implements varying levels of importance for vaccines because both the defense and prosecution will have to become familiar with a more complicated immunization scheme.[116]

By changing the state statute to allow for a new parental waiver of a vaccine recommended by the CDC, the state of Virginia set a dangerous precedent for the future of required immunization in the state.[117] Parents could make a logical argument that just as an HPV vaccine is not strictly necessary, neither is a vaccine for antiquated and rare diseases like polio and measles.[118] Essentially, the approach to vaccinations adopted by the new Virginia policy has never been the appropriate role of vaccinations.[119] Rather than weakening the entire vaccination program by allowing an opt-out to a "mandatory" vaccine for any reason, Virginia and states adopting Virginia's plan, like South Dakota and Washington, ought to think of a new procedure through which to vaccinate adolescent girls.[120] Mandatory vaccinations ought to remain for diseases that pose a serious health threat through which the state can exercise its police power.

IV. Policy Recommendations

A. Changing Public Health Tradition and Failing to Encourage the Prevention of Cancer are Questionable Public Policies

Many arguments remain for not requiring a vaccination of a non-airborne communicable disease. Since the introduction of vaccinations, people have had reservations about receiving immunizations.[121] Claims range from the argument that vaccines violate the Fourteenth Amendment and interfere with a parent's right to determine the upbringing of her own child, to the current belief that vaccinations cause autism.[122] However, the CDC has largely ruled out the argument that vaccinations cause autism, choosing to cite to the numerous research studies conducted to show the lack of a correlation between immunization and autism, rather than citing to the few showing a tenuous connection.[123]

The reason that the HPV vaccine ought to be freely offered to citizens lies in the fundamental reason for vaccinations: the more people who receive vaccinations, the more protected the community becomes from infection.[124] Studies have suggested that there is a significant difference in the rate of infection when only one percent of the population abstains from vaccinations versus when four percent of the population abstains of vaccinations.[125] By offering vaccinations to school-age children at the time they receive other vaccinations, the rate of children exempted from vaccinations remains at about one percent.[126] Evidence points to the fact that more people receive vaccinations when immunizations are required than when they are simply recommended. However, Virginia's policy of requiring a vaccination but allowing an opt-out for any reason could fail to serve as an effective means of vaccination because it threatens all vaccination by calling attention to exemptions.[127]

V. Conclusion

The invention of Gardasil presents an opportunity for the country to prevent needless deaths from cervical cancer. If every girl were to receive vaccinations before engaging in sexual activity, the incidence of cervical cancer would decrease significantly. New Hampshire has dealt with the threat of cervical cancer most effectively by not reinventing public health laws and recognizing the hope offered by the HPV vaccine. However, the vaccination of nine-, 10-, and 11-year-old girls for a sexually transmitted disease remains understandably contentious. Nonetheless, the states are attempting to successfully confront the advancement in medical technology.

1 *See* Am. Cancer Soc'y, What are the Key Statistics About Cervical Cancer, http://www.cancer.org/docroot/CRI/content/CRI_2_4_1X_What_are_the_key_statistics_for_cervical_cancer_8.asp (last visited June 24, 2007) [hereinafter *Key Statistics*] (stating that cervical cancer was once one of the deadliest forms of cancer among American women, occurring mainly in women between the ages of 35 and 55).

2 Merck, Gardasil, http://www.gardasil.com/ (last visited June 24, 2007) (writing that Gardasil protects against the strains of HPV that cause 70 percent of cervical cancer, the strains of HPV that cause 90 percent of genital warts).

3 *See* Ctr. for Biologics Evaluation and Research, FDA, Product Approval Information - Licensing Action, *available at* http://www.fda.gov/cber/products/hpvmer060806qa.htm [hereinafter *FDA Product Approval Information*] (discussing the FDA's approval for Gardasil because studies have shown Gardasil to be nearly 100 percent effective in preventing types of cervical cancer and has been deemed safe through various testing procedures).

4 *See id.* (stating that Gardasil is nearly 100 percent effective against the HPV types at which it is directed and the vaccine has limited adverse reactions).

5 *See* Davis Tuller, *New Vaccine for Cervical Cancer Could Prove Useful to Men Too*, N.Y. Times, Jan. 30, 2007 at F5 (explaining that Merck is currently researching whether HPV vaccines would work for men, specifically regarding the prevention of anal cancer).

6 *See* Gardiner Harris, *Panel Unanimously Recommends Cervical Cancer Vaccine for Girls 11 and Up*, N.Y. Times, June 30, 2006, at A12 (reporting the approval of the vaccine and giving an overview of the arguments against widespread distribution of the vaccine).

7 *See infra* Part II (examining current state policies regarding required vaccinations as part of school attendance).

8 *See infra* Part II (exploring the basis for modern vaccination and quarantine legislation).

9 *See infra* Part III (arguing that the approach taken by Texas to distributing literature about the HPV vaccine without requiring it or providing it free of charge offers a disservice to women).

10 *See infra* Parts III and IV (recommending that New Hampshire offers the

most appropriate response to the distribution of Gardasil for schoolgirls).
11 *See* Tex. Educ. Code Ann. § 38.001 (2007) (mandating certain vaccinations in order to attend school, but excluding HPV vaccination requiring the distribution of literature regarding the vaccination); Va. Code Ann. § 32.1-46 (2007) (requiring HPV vaccination for schoolgirls, but allowing parents to opt-out of the vaccination for any reason); Div. of Health and Human Serv., Immunization Program, N.H. , http://www.dhhs.nh.gov/DHHS/IMMUNIZATION/LIBRARY/Best+Practice/immunizations-info.htm (last visited June 24, 2007) [hereinafter *NH Immunization Program*] (including the HPV vaccine as one of the vaccinations included the state's in free vaccination program).
12 *See* Tex. Educ. Code Ann. § 38.001 (2007) (mandating vaccination against diptheria, rubeola, mumps, tetanus, and poliomyelitis prior to any person's admission to elementary or secondary school).
13 *See* Va. Code Ann. § 32.1-46 (2007) (noting that parents and guardians have the sole discretion over whether or not to vaccinate a child against HPV because the disease is not communicable in a school setting).
14 *See NH Immunization Program*, *supra* note 11 (including the HPV vaccine as one of the vaccinations included in New Hampshire's free vaccination program).
15 *See* Tex. Educ. Code Ann. § 38.001 (2007) (mandating that families receive unbiased, medically, and scientifically accurate, and peer reviewed educational materials about Gardasil at the appropriately scheduled time); *see also* Ralph Blumenthal, *Texas Legislators Block Shots for Girls Against Cancer Virus*, N.Y. Times, Apr. 26, 2007, at A16 (discussing the legislature's almost unanimous vote to overturn the executive order because of the "volatile" mix of under-age girls, cancer, and sex).
16 Exec. Order No. RP65, Office of the Governor (Feb. 2, 2007), *available at* http://www.governor.state.tx.us/divisions/press/exorders/rp65 (last visited June 24, 2007) (overturned by 2007 Tex. Sess. Law Serv. Ch. 94 (H.B. 1059)) (citing the 391 women who died in Texas of cervical cancer during 2006 and ordering the vaccination of girls up to the age of 18); Office of the Governor, Rick Perry, Text of Gov. Rick Perry's State-of-the-State Address, *available at* http://www.governor.state.tx.us/divisions/press/speeches/speech_020607 (last visited June 24, 2007) (arguing that the mandatory distribution of Gardasil would further conservative principles by protecting life by preventing needless deaths due to cervical cancer).
17 See Tex. Educ. Code. Ann. § 38.001 (2007) (mandating that children receive immunizations against diphtheria, rubella, rubella, mumps, tetanus, and poliomyelitis prior to attending elementary or secondary school in Texas, clearly not including HPV vaccinations in a mandate until at least 2011).
18 *See NH Immunization Program*, *supra* note 11 (attempting to reduce or eliminate all vaccine-preventable diseases by offering vaccinations to the roughly 342,000 children under the age of 19 in New Hampshire); *see also* Pam Belluck, *For One State, Soft Sell Eases Vaccine Fears*, N.Y. Times, May 12, 2007, at A1 (reporting that New Hampshire has donated 28 percent of its immunization budget of 4.9 million dollars on Gardasil).
19 *See* N.H. Rev. Stat. Ann. § 126-A:4 (LexisNexis 2008) (establishing the Department of Health and Human Services to protect and strengthen families, communities, and to develop the independence and self-sufficiency of the state); *NH Immunization Program*, *supra* note 11 (explaining that New Hampshire requires the vaccination against diphtheria, influenza, hepatitis B, measles, mumps, rubella, pertussis, polio, tetanus, and varicella before a child can attend school and day care).
20 *See NH Immunization Program*, *supra* note 11. (discussing the DHHS distribution scheme which allows the state DHHS to determine which vaccines will be provided for free without interference from the state legislature).
21 *See* Belluck, supra note 18 (reporting on the efficacy of the immunization program, including the HPV distribution, which provides vaccinations to much of the state's children free of charge, not only the poor or those lacking adequate insurance).
22 *See* Va. Code Ann. § 32.1-46 (2007) (mandating three doses of properly spaced HPV vaccine for females prior to entrance to the sixth grade).
23 *See id.* (stating that a parent can exempt his or her daughter from receiving the HPV vaccine without a religious or medical exemption after the parent reviews materials regarding the connection between HPV and cervical cancer).
24 *See id.* (stating that students can receive exemption from vaccination in the case of medical, religious, or philosophical reasons, and stipulating that an exemption from the HPV vaccine can occur for any reason approved by a parent).
25 *See id.* (ensuring the veracity of medical exemptions by requiring a statement from a physician or nurse practitioner licensed in Virginia stating that immunizing agents would detriment a child's health).
26 *See id.* (clarifying that unlike religious exemptions which can be overridden in the case of emergency or epidemic disease, HPV vaccine exemptions are not subject to such stipulations).
27 *See* Jacobson v. Commonwealth of Massachusetts, 197 U.S. 11, 25 (1905) (holding that a Massachusetts law requiring immunization against smallpox did not violate the Fourteenth Amendment because states have the police power to enact "health laws of every description").
28 *See generally* Katherine E. Strong, *Proving Causation Under the Vaccine Injury Act: A New Approach for a New Day*, 75 Geo. Wash. L. Rev. 426, 432 (2007) (stating that the success of vaccination as a general public health measure relies in large part on widespread vaccination).
29 *See Jacobson*, 197 U.S. at 25 (stating that the police power serves as the basis for vaccination and quarantine to protect state interests because widespread disease threatens the security of the state).
30 *See* Lawton v. Steele, 152 U.S. 133, 136 (holding that New York properly exercised its police power when controlling a public nuisance because it protected a public interest).
31 *See Jacobson*, 197 U.S. at 25-27 (holding that the state of Massachusetts has the police power to require vaccinations because the government must legislate for the common good, and liberty must be regulated by law).
32 *See id.* at 26 (lambasting the argument that vaccinations violate the integrity or liberty of the individual because the Constitution does not impart an absolute right to the individual to exist free of law and restraint).
33 *See id.* at 28-29 (explaining that the basis of the police power in relation to mandatory vaccinations and quarantine lies in the necessity of the regulations to protect "life, liberty, health, or property").
34 *See* Stephanie Saul & Andrew Pollack, *Furor on Rush to Require Cervical Cancer Vaccine*, N.Y. Times, Feb. 17, 2007, at A1 (explaining that Gardasil has received opposition from religious and socially conservative groups believing the vaccine would promote sexual activity and promiscuity).
35 *See, e.g.*, Wisconsin v. Yoder, 406 U.S. 205, 236 (1972) (holding that it violates freedom of religion to force an Amish parent to send a child to parochial school); Pierce v. Society of Sisters, 268 U.S. 510, 536 (1925) (giving parents the choice as to which school their child would attend); Meyer v. Nebraska, 262 U.S. 390, 403 (1923) (allowing parents to teach children any language they choose as part of a fundamental right to bring up a child).
36 *See Meyer*, 262 U.S. at 403 (holding that the state cannot interfere with the upbringing of a child except when there is a legitimate state interest in protecting the child, as in a situation of danger to the child's health).
37 *See id.* at 398-99 (stating that the law can be unfairly applied as it restricts the parental interests of immigrants more than of parents born within the country, and such discriminatory application cannot be within the state interests).
38 *See id.* at 399-400 (applying a broad definition of "liberty" in the Fourteenth Amendment to ensure that parents have the right to determine the education and upbringing of their children).
39 *See Pierce*, 268 U.S. at 534-35 (stating that the injury to a Catholic school by an Oregon law requiring children to attend public school was very real and parents have a right to determine the upbringing of their own children according to the tenants of their religious beliefs).
40 *See id.* (expounding upon *Meyers* by arguing that parents have the right to nurture and direct the destiny of their own children with minimal state interference).
41 *See Yoder*, 406 U.S. 205, 229, 236 (1972) (finding a lessened state interest in requiring high school education for the Amish than for other students because of the strict Amish religious requirements, and holding that forcing the Amish to attend school would interfere with the practice of religion).
42 *See* U.S. Const. Amend. I (forbidding the government from impinging on the free practice of religion); *see also Yoder*, 406 U.S. at 221 (stating that the state has a legitimate interest in the education of it citizens, but the exercise of religion outweighs that interest as the children would continue to receive education from their parents and community).

43 See *Yoder*, 406 U.S. at 222 (holding that parental interest and religion outweigh the interest of the state because most Amish children take over family farms from parents and must learn how to run such a venture, that serves as informal education).
44 *See* Geduldig v. Aiello, 417 U.S. 484, 496 (1974), *superseded by statute*, Pregnancy Discrimination Act of 1978, 42 U.S.C. § 2000e (k), (holding that exclusion of normal pregnancy related disabilities failed to violate equal protection because insurance protection remained equivalent for all participating employees).
45 *See Geduldig,* 417 U.S. at 493 (stating that the cost of covering pregnancy related disabilities would be "so extraordinarily expensive" as to make it impossible for California to maintain the disability benefit program).
46 *See id.* at 485 (holding that with respect to social welfare programs, so long as the line drawn between who shall benefit from the program and who shall not remains rationally supportable, courts should not interpose judgment).
47 *See id.* at 497 (stating that both men and women received the same coverage because the policy divided between pregnant women and everybody else).
48 *See NH Immunization Program*, *supra* note 11 (stating that the New Hampshire immunization program also promotes immunization initiatives for adults to insure lifelong protection against preventable diseases); *see also* Press Release, N.H. Dep't. of Health and Human Serv. , DHHS Announces New Hampshire Will Offer Free Vaccine to Children for HPV (Nov. 29, 2006) *available at* http://www.immunize.org/express/issue634. asp#n2 (last visited June 24, 2007) (recommending all parents consider vaccinating their daughters because the HPV vaccine represents a significant step towards protecting the lives and health of women).
49 *Compare NH Immunization Program*, *supra* note 11 (stating that children in the state of New Hampshire can receive all necessary vaccinations free of charge) *with* Tex. Educ. Code Ann. § 38.001 (2007) (stating that only parents have the right to decide whether to vaccinate a child against HPV) *and* Va. Code Ann. § 32.1-46 (2007) (detailing Virginia's approach to requiring an HPV vaccine, which requires administration of the vaccination except in the case of parental refusal).
50 *See* N.H. Rev. Stat. Ann. § 141-C:20-a (LexisNexis 2007) (listing the required vaccinations for attending school in New Hampshire in the absence of medical or religious exemptions).
51 *See Yoder*, 406 U.S. at 235 (holding that it violates freedom of religion to force an Amish parent to send a child to parochial school because the religion dictates that children learn from their parents after completion of the eighth grade); *Pierce* 268 U.S. at 533 (giving choice to parents as to which school their child can attend because parents have the right to determine the upbringing of their own child); *Meyer* 262 U.S. at 401 (allowing parents to teach children any language they choose because parents have a right to instill certain values and beliefs in their children, including knowledge of foreign languages because family members do not speak English).
52 *See Jacobson* 197 U.S. at 27-29 (claiming that smallpox presented a large threat to the community of Cambridge and required state action to contain the threat); CDC, HPV Vaccine-Questions and Answers, *available at* http://www.cdc.gov/vaccines/vpd-vac/hpv/vac-faqs.htm (last visited June 24, 2007) [hereinafter *CDC Questions and Answers*] (stating that sexual contact without sexual intercourse can lead to the spread of HPV).
53 *See* U.S. Const. Amend. I (denying the government the ability to establish or infringe on the free exercise of religion); *cf. Yoder*, 406 U.S. at 214 (holding that states must balance interest in education and the right of religious freedom).
54 *See Yoder*, 406 U.S. at 209 (holding that the Amish community that believed further education for their children would endanger their salvation had a right to educate their children outside of a traditional school system).
55 *See id.* at 214 (stating that religion and legitimate state interests require a delicate balancing test between infringing on the freedom of religion and legitimate state action).
56 *See* Belluck, *supra* note 18 (stating that the Secretary of Health and Human Services in New Hampshire pushed for the inclusion of HPV in the immunization scheme because of a desire to protect as many women as possible from cervical cancer).
57 *See Jacobson*, 197 U.S. at 38-39 (holding that the state does not have the police power to force a person to receive a vaccination when the vaccination would detriment the health of the individual).
58 *See generally* Strong, *supra* note 28, 432-33 (discussing the problems with vaccinating only in part, which can lead to new strains of disease resistant to treatment as well as widespread epidemics).
59 *See Jacobson*, 197 U.S. at 37-38 (theorizing that a different holding in this case would have lead to a tyranny by a minority of people who refused to receive vaccinations).
60 *See id.* at 28-29 (stating that so long as the vaccination scheme adopted by the State of Massachusetts failed to cause distress or inconvenience, it passed judicial scrutiny); *see generally* Wendy E. Parmet, *Informed Consent and Public Health: Are they Compatible When it Comes to Vaccines*, 8 J. Health Care L. & Pol'y 71, 71-72 (2005) (arguing that *Jacobson* places the public good above the rights of the individual, making it difficult for individuals to give informed consent when receiving vaccinations).
61 *See Jacobson*, 197 U.S. at 30-31 (discussing the health threat posed by smallpox as a matter for the state's police power).
62 *See id.* at 27 (stating that the board of health in Massachusetts only required smallpox immunizations when it became necessary for the public health and safety).
63 *See Key Statistics*, *supra* note 1 (explaining HPV can only be contracted through physical touching, meaning traditional quarantine would not work without preventing people with HPV from ever engaging in sexual contact).
64 *See Jacobson*, 197 U.S. at 35 (holding the state has the police power to enforce strict quarantine when confronted with a public health dilemma because the state has an obligation to protect its citizens); *see also* Public Health Service Act, 42 U.S.C. § 70 (2003) (giving the federal government the ability to quarantine people, animals, and plants suspected to be infected with a communicable disease).
65 *See* Tuller, *supra* note 5 (discussing the fact that men cannot currently prevent contraction of HPV except through abstinence because condoms do not prevent contraction and the vaccine has not been approved for men).
66 *See FDA Product Approval Information*, *supra* note 3 (stating 70 percent of cervical cancer cases are caused by sexual touching); CDC, HPV Vaccine-Questions and Answers, *available at* http://www.cdc. gov/vaccines/vpd-vac/hpv/vac-faqs.htm (last visited June 24, 2007) (explaining HPV is contracted by sexual touching, not necessarily sexual intercourse, so unlike other sexually

transmitted infections, condoms do not necessarily prevent the transmission of HPV from one sexual partner to another); *see also Lawrence v. Texas*, 539 U.S 558, 578-79 (2003) (holding that intimate sexual conduct is part of "liberty" as defined by the Constitution and, as such, abstinence could not be legislated).

67 See Lawbaugh v. Bd. of Educ., 52 N.E. 850, 850-51 (Ill. 1899) (holding that in the absence of a smallpox outbreak, lack of vaccination cannot be used to keep a student from school); Rhea v. Bd. of Educ., 171 N.W. 103, 105 (N.D. 1919) (holding that boards of education cannot legislate beyond their statutorily delegated authority); Adams v. Burdge, 70 N.W. 347, 351 (Wis. 1897) (holding that barring a child from school when there is no smallpox outbreak violates the child's right to education).

68 *See* CDC, Genital HPV Infection - CDC Fact Sheet, *available at* http://www. cdc.gov/std/HPV/STDFact-HPV. htm#common (last visited June 24, 2007) ("By age 50, at least 80 percent of women have acquired genital HPV.").

69 *See id.* (stating that people primarily contract HPV through genital contact).

70 *See* James G. Hodge, *School Vaccination Requirements: Legal and Social Perspectives*, 27 NCSL St. Leg. Rep. 3 (Aug. 2002), http://www.ncsl.org/programs/health/schoolvaccination.pdf (stating that courts in Illinois, Wisconsin, Utah, and North Dakota have state school vaccination laws when a disease "was present in or threatening a community").

71 *See* 417 U.S. 484, 488 (1974), *superseded by statute*, Pregnancy Discrimination Act of 1978, 42 U.S.C. § 2000e (k), (holding that a state disability insurance system that excluded from coverage certain disabilities resulting from pregnancy did not violate equal protection, which means that omission due to gender does not equal discrimination).

72 *See id.* at 490 (stating that men did not receive treatment women were precluded from receiving and vice versa; therefore, women were not discriminated against in the state disability scheme).

73 *See id.* (explaining that discrimination arises when one gender is denied a service granted to the other, and in the situation of post-pregnancy care, men did not receive that coverage).

74 *See* Kim Shayo Buchanan, *Lawrence v. Geduldig: Regulating Women's Sexuality*, 56 Emory L.J. 1235, 1270 (2007) (arguing that pregnancy and biological differences between men and women should not be used to reduce the level of equal protection scrutiny).

75 *See Geduldig*, 417 U.S. at 496 (stating that the selection of the risks insured by the disability program were selected so as not to discriminate against any definable group or class).

76 *See* Tuller, *supra* note 5 (discussing the studies that are underway to discover whether Guardasil can also prevent anal cancer in men because anal cancer has been linked to the same strains of HPV as cervical cancer).

77 *See Geduldig*, 417 U.S. at 499-500 (Brennan, J., dissenting) (stating that individuals receive compensation for disabilities from cosmetic surgery but not pregnancy related illnesses).

78 *See id.* at 503 (Brennan, J., dissenting) (arguing that the majority decision in *Geduldig* "threatens to return" to a time when legislative classifications treated members of society differently solely because of sex).

79 *See id.* at 487 (stating that so long as men and women are offered the same medical treatment, there is no equal protection violation even if a gender specific treatment is not offered).

80 *See Yoder*, 406 U.S. at 210 (stating that Amish parents can better select the proper education for their children than a parochial school system after the eight grade because of the interrelationship between belief and lifestyle).

81 *See* Denise Grady, *A Vital Discussion, Clouded*, N.Y. Times, March 6, 2007, at F5 (comparing HPV infections to the common cold in its prevalence and arguing that even with vaccination, prevention efforts will be needed for combating the disease).

82 *See Yoder*, 406 U.S. at 209-210 (stating that the Amish carried the burden of showing that the state interest in education violated the religious principles of the Amish).

83 *See* James Colgrove, *The Ethics and Politics of Compulsory HPV Vaccination*, 355 New Eng. J. Med. 2389, 2389 (Dec. 7, 2006) http://content.nejm.org/cgi/reprint/355/23/2389.pdf (stating that religious conservatives have protested the availability of the HPV vaccine as undermining abstinence-based prevention messages).

84 *See FDA Product Approval Information*, *supra* note 3 (stating that Gardasil protects against only four strands of HPV, while over 100 different strands of the disease exist).

85 *See Meyer* 262 U.S. at 400 (holding that a parent has a liberty protected by the Fourteenth Amendment of the U.S. Constitution to freely choose to have his child schooled in a foreign language without government interference).

86 *See Yoder*, 406 U.S. at 211 (stating that religious beliefs can outweigh the importance of state interest when the state interest violates tenants of a religion); *Meyer*, 262 U.S. at 400 (stating that the fundamental right to family includes the right to educate a child outside of school as a parent or guardian deems suitable).

87 *See* Grady, *supra* note 81 (citing parents who believe Gardasil will increase promiscuity, and that the only protection a daughter needs is abstinence until marriage).

88 *See Meyer*, 262 U.S. at 499 (stating that each individual is imbued with the liberty to raise a child in the dictates of a chosen religion); Pierce v. Soc'y of Sisters, 268 U.S. 510, 532 (1925) (stating that parents have the right to choose the school where their child will receive appropriate mental and religious training).

89 *See* Tex. Educ. Code Ann. § 38.001 (2007) (failing to require the HPV vaccination within the state); 2007 Va. Acts 922 (requiring the HPV vaccination, but allowing parents to opt-out for any reason; *NH Immunization Program*, *supra* note 11 (including Gardasil as one of the state's free vaccinations available to all children within the state).

90 *See* National Conference of State Legislatures (NCSL), States with Religious and Philosophical Exemptions from Immunization School Requirements, http://www.ncsl.org/programs/ health/2004exchart.htm (last visited June 24, 2007) [hereinafter *NCSL Religious and Philosophical Exemptions*] (listing which states allow a religious and a philosophical exemption from vaccination). *See generally* Linda E. LeFever, *Religious Exemptions from School Immunization: A Sincere Belief or a Legal Loophole?*, 110 Penn. St. L. Rev. 1047, 1067 (2006) (arguing that religious exemptions should be repealed and all states ought to implement a philosophical exemption to vaccination to protect the equal protection rights of the non-religious).

91 *See Yoder*, 406 U.S. at 235 (holding freedom of religion can trump state interest when it comes to education); *Pierce*, 268 U.S. at 533 (stating that education

in a religious institution can replace state sponsored schools, should the parent so desire); *Meyer*, 262 U.S. at 401 (stating that the right of the parent can trump that of the state because of the fundamental rights of liberty).
92 *See* Kaisernetwork.org, Daily Women's Health Policy: *Colorado, Kansas, West Virginia Introduce Legislation on HPV Vaccines, Abortion* (Jan. 18, 2007), http://www. kaisernetwork.org/Daily_reports/rep_index.cfm?DR_ID=42315 (last visited June 24, 2007) (citing the introduction of legislation in West Virginia to require the HPV vaccine and stating West Virginia has the second highest cervical cancer rate in the country, only behind Washington, DC).
93 *See* Blumenthal, *supra* note 15 (quoting a Texas legislator who lambasted the vote by referring to the girls who will eventually die for failure to receive the vaccination).
94 *See* TEX. EDUC. CODE ANN. § 38.001 (2007) (mandating that at the time of adolescent immunizations, families receive information regarding an HPV vaccine).
95 *See* Focus on the Family, Focus on the Family Position Statement: Human Papilloma Virus Vaccines, http://www.family.org/socialissues / A000000357.cfm (last visited June 24, 2007) (stating that Focus on the Family supports the availability of HPV vaccines, but vehemently opposes making such vaccines mandatory as parents ought to be the primary decision maker regarding sexual education for their child).
96 *Compare NH Immunization Program*, *supra* note 11 (providing free Gardasil to girls in the state of New Hampshire) *with* TEX. EDUC. CODE ANN. § 38.001 (2007) (allowing the purchase of Gardasil in the state of Texas should parents chose to vaccinate their child) *and* VA. CODE ANN. § 32.1-46 (2007) (demanding Gardasil vaccines for schoolgirls unless otherwise indicated by parents).
97 *See* Children's Defense Fund, Who are the Uninsured, http://www. childrensdefense.org/site/PageServer?pagename =healthy_child_backinfo_whouninsured (last visited June 24, 2007) (discussing the breakdown of uninsured children, many of whom do not receive adequate health care); *see also* Texas Dep't of State Health Serv., Texas Immunzation Survey, *available at* http://www.dshs.state. tx.us /immunize/coverage/tis.shtm (last visited June 24, 2007) (providing statistics on Texas immunization levels, putting children who qualify for government immunizations at a much lower rate of immunization than children with private insurance coverage, and children of color at lower rates of immunization than whites, with only 67 percent of Hispanic children receiving mandatory vaccinations).
98 *See* Ector County Health Dep't, Texas Vaccines for Children Program, Texas Department of Health and Human Services, *available at* http://www. co.ector.tx.us/ health_dept/texas_vaccines_for_children_prog.htm (last visited June 24, 2007) (stating that the Texas immunization program was introduced by the CDC to improve the rate of immunization throughout the country).
99 *See* Lewis Krauskopf, *Merck Vaccines Adopted in Kids Immunization Plan*, REUTERS, July 19, 2007, *available at* http://www.reuters.com/article/ health-SP/idUSWNAS603820070716 (reporting that Gardasil has been adopted for distribution to eligible children throughout the country, even in states where the vaccine has not been mandated).
100 *See* Incorporation of Vaccines into the VFC Program, CDC, http:// www.cdc.gov/vaccines/programs/vfc /projects/faq-general.htm#inc (last visited June 24, 2007) (stating that all states receiving federal funds for the state vaccination program must provide the vaccinations recommended by the Advisory Committee on Immunization Practices).
101 *See id.* (explaining that even though Texas will not mandate the distribution of Gardasil, the state must provide vaccinations for girls eligible to receive them).
102 *See* Texas Dep't State Health Serv., News Release: *Texas Increases Immunizations 11% in National Survey*, Sept. 14, 2006, *available at* http:// www.dshs.state.tx.us/news/releases/20060914.shtm (stating that the entire immunization rate in the state of Texas in 2005 was 76.8 percent, ranking twenty-fourth in efficacy in the United States).
103 *See* TEX. EDUC. CODE ANN. § 38.001 (2007) (offering only information on HPV vaccinations to parents, and not a free vaccination).
104 *See* TEX. EDUC. CODE ANN. § 38.001 (2007) (mandating that parents choose the HPV vaccination for their child by requesting it, and not by opting out of an offered vaccine).
105 *See* Geo. Wash. Univ. Sch. Pub. Health and Health Serv. Rapid Public Health Policy Response Project, *HPV Vaccine, Should it be Recommended or Required?* 2, Jan. 2007, http://www.gwumc.edu/sphhs/about/rapidresponse/ download/HPV_Vaccine_Paper_(January_2007).pdf [hereinafter *Recommend or Require?*] (arguing that the HPV vaccine should be required because it would increase the immunization rate, and decrease the rate of HPV contraction and resulting deaths from cervical cancer).
106 *See Meyer*, 262 U.S. at 400 (stating that the natural duty of a parent involves imparting education suitable to the family's station in life); *Yoder*, 406 U.S. at 235 (emphasizing the longevity of Amish religious beliefs and traditions as related to the requirement for a particular type of education); *Pierce*, 268 U.S. at 534 (reiterating the power of the state in regulating all schools, teachers, and pupils in order to ensure nothing taught can endanger the public welfare).
107 *See Meyer*, 262 U.S. at 392 (holding that teaching a language is a fundamental part of child-rearing); *Yoder*, 406 U.S. at 210 (seeing education as an issue of religion central to raising a child); *Pierce*, 268 U.S. at 536 (holding the manner of education as an essential factor for parents to decide).
108 *See* VA. CODE ANN. § 32.1-46 (2007)(to become effective on Oct. 1, 2008) (mandating HPV vaccinations, but allowing an exemption for any reason).
109 *Compare* 2007 Va. CODE ANN. § 32.1-46 (stating that HPV vaccinations will be required as of Oct. 1, 2008) *with* R.I. GEN. LAWS § 16-38-2 (1956) (stating that a child can only be excused from receiving vaccinations for medical or religious reasons), S.C. CODE ANN. § 44-29-180 (1976) (mandating that a child can receive special exemption from immunization for 30 days, but thereafter must have either an authorized medical exception certificate or a state certificate of religious exemption), *and* S.D. Codified Laws § 13-28-7.1 (2006) (allowing the schools to exclude from attendance any unvaccinated child without a medical exemption, religious exemption, or a signed statement requesting the local health department to pay for unaffordable vaccinations for the child).
110 *See* Alicia Novak, *The Religious and Philosophical Exemptions to State-Compelled Vaccination: Constitutional and Other Challenges*, 7 U. PA. J. CONST. L. 1101, 1123 (2005) (discussing the need for documentation of valid exemptions and the dangers presented by allowing students to attend public schools when unvaccinated).
111 *See Yoder*, 406 U.S. at 211 (holding that parents have power to determine the religious upbringing of their child); *Pierce*, 268 U.S. at 534-35(allowing parents the freedom to determine how and where their children receive their education); *Meyer*, 262 U.S. at 403 (overturning a state law that violated the parents right to educate their child outside of school by hiring a foreign language teacher).
112 *See* Novak, *supra* note 110, at 1121-22 (discussing the danger in a school or public environment with unvaccinated people as a compelling interest for the state to intervene and erase exemptions).
113 *See* Abbitt v. Lynchberg Div. of Soc. Serv., No. 1202-06-3, 2006 Va. App. LEXIS 484 at *6 (Va. App. Oct. 31, 2006) (holding that a father's parental rights were properly terminated because he failed to keep physicians appointments, among other factors); Welch v. Commonwealth, No. 3152-03-4, 2005 Va. App. LEXIS 264, at *24-*25 (Va. App. July 12, 2005) (deciding that a mother who tried to prove that there was no evidence of premeditation, only negligence as she was unaware of proper medical care for a child failed to show she acted without criminal malice).
114 *See* 2005 Va. App. LEXIS 264, at *20 (arguing neglect rather than premeditation).
115 *See id.* at *25 (holding that there was proof that the defendant acted with criminal malice, but there was no evidence of premeditation).
116 *See* VA. CODE ANN. § 32.1-46 (2007) (to become effective on Oct. 1, 2008) (complicating immunization legislation by allowing exemption for any reason).
117 *See id.* (to become effective on Oct. 1, 2008) (noting the changed precedent through the inclusion of the HPV vaccine and specific exemption procedures only applicable to that vaccine).
118 *See Jacobson* 197 U.S. at 23-24 (stating that immunizations only work if everyone is immunized to prevent the resurgence of a disease); *see also* LeFever, *supra* note 90 at 1048 (discussing parents who hide behind the religious exemption to refuse to immunize their children, despite the lack of a real religious belief).
119 *See Jacobson*, 197 U.S. at 34-35 (stating that law requires that everyone be vaccinated in order to prevent a new outbreak in the community).

120 *See* Va. Code Ann. § 32.1-46 (allowing parents to opt-out of an HPV vaccinations without providing a religious or medical affidavit explaining the reason for the exemption).

121 *See, e.g.,* Itz v. Penwick, 493 S.W.2d. 506, 506 (Tex. 1973) (mandating that a father refusing to vaccinate his child for religious reasons must sign an affidavit to those reasons, or a child can rightfully be banned from attending school); State v. Drew, 192 A. 629, 630 (N.H. 1937) (holding that a father could not send his child to school without vaccinating him or providing a valid reason for the lack of vaccination); *City of* New Braunfels v. Waldschmidt, 207 S.W. 303, 304-05 (Tex. 1918) (stating that compulsory immunization does not violate the Constitution, or the Constitution of Texas, and that cities have lawful authority to enact their own immunization schemes); Bissell v. Davison, 32 A. 348, 348-49 (Conn. 1894) (holding that the legislature has the right under the police power to regulate who can attend a public school with regards to immunization and can keep pupils from attending who have not complied with local statute).

122 *See* Immunization Action Coalition, *MMR Vaccine Does Not Cause Autism Examine the Evidence!*, Aug. 2007, http://www.immunize.org/catg.d/p4026.pdf [hereinafter *Does MMR Cause Autism?*] (citing studies for and against the belief that the common and mandatory vaccination for measles, mumps, and rubella causes autism); Andrew Zoltan, *Jacobson Revisited: Mandatory Polio Vaccination as an Unconstitutional Condition*, 13 Geo. Mason L. Rev. 735, 752-58 (2005) (discussing the dangers of vaccinations as well as the constitutional violations and unreasonableness of continued vaccination).

123 *See Does MMR cause Autism?*, *supra* note 122 (citing 10 studies against a correlation between vaccination and autism, and only three supporting such a connection).

124 *See Recommend or Require?, supra* note 105, at 3 (arguing that vaccinations serve a public health service and any decrease in vaccinations would serve to increase infections).

125 *See* Colgrove, *supra* note 83, at 2389 (arguing that even though issues of religion and morality have dominated the discussion on HPV vaccines, the main conversation ought to be about how to protect women against contracting cervical cancer).

126 *See* Hodge, *supra* note 70, at 1 (arguing that vaccinating prior to the beginning of the school year provides the most consistent means of vaccination).

127 *See* Va. Code Ann. § 32.1-46 (encouraging HPV vaccines by saying the vaccinations are required, but also allowing a broad exemption for any reason).