

Constitutional Arguments Against NJ ACR157

Alan Phillips, J.D., February 16, 2011
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ACR157[1] would require applicants for a religious exemption to immunizations to provide a “written statement . . . explaining how the administration of the vaccine conflicts with the bona fide religious tenets or practices...” Currently, applicants need only provide a signed, written statement stating that the proposed law interferes with the free exercise of the pupil’s religious rights.

The bill is aimed at reducing the number of religious exemptions by preventing disingenuous religious exemption claims, which are likely to occur given that NJ does not have a philosophical exemption. However, having worked with exemption and waiver issues for a period of years with clients around the country, I can say from experience that this new provision would result in the rejection of some legitimate religious exemption claims as well, since most applicants will not seek counseling on the proper way to present those claims, and inevitably, some will unwittingly present claims in a manner that allows them to be rejected based on legal technicalities despite having the requisite religious objections.

Meanwhile, this bill raises some Constitutional concerns. These should be raised with state legislators, for if there is sufficient doubt about the Constitutionality of a bill, it should die a quick death, regardless of how many constituents are in favor of it.

1. The bill’s current phrase, “religious tenets or practices” may be unconstitutional, as it does not allow for personal religious beliefs. Federal courts have held that limiting the exemption to a “recognized religious organization . . . violates both the establishment and free exercise clauses of the First Amendment to the United States Constitution,” Sherr and Levy vs. Northport East-Northport Union Free School District, 672 F. Supp. 81, 99 (E.D.N.Y., 1987), and that “it is sufficient if the belief ‘occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God.’” Mason v. General Brown Cent. School Dist., 851 F.2d 47 (2nd Cir. 1988) (quoting United States v. Seeger, 380 U.S. 163, 166, 85 S.Ct. 850, 854). Many people with qualifying religious objections may not have a tenet or practice that is violated—only a belief—so, as currently worded, the bill is arguably unconstitutional.
2. This bill risks excessive entanglement of government and religion in violation of the First Amendment. Under the Lemon test,[2] government action must have a secular purpose, must not have the primary effect of either advancing or inhibiting religion, and must not result in an “excessive government entanglement” with religion. Giving local authorities responsibility for assessing the appropriateness of religious beliefs risks frequent and unchecked violation of one or more of these prongs. Concern about excessive entanglement is probably why many states’ laws don’t allow the state to scrutinize the applicants’ beliefs.
3. Giving local authorities responsibility for assessing the appropriateness of religious exemption claims invites broad inconsistency with regard to the standard(s) and application of those standard(s). This could lead to equal protection violations under the 14th Amendment.

Unfortunately, the Constitution does not prevent the state from scrutinizing religious exemptions, but even if the wording is changed to account for the concern in 1 above, this bill clearly raises delicate issues that the state should avoid by not passing ACR157.

[1] http://www.njleg.state.nj.us/2010/Bills/ACR/157_11.PDF

[2] Lemon v. Kurtzman, 403 U.S. 602 (1971)