



HOUSE OF REPRESENTATIVES

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Senator Rafferty, distinguished member of the education committee, I'm Gary Drinkwater Representing district 27, and I'm here today for the third time to ask you to restore civil rights. Children have been stripped of their civil rights by the state for three years, seven months, seven days and counting. By passing LD 798 along party lines, this committee granted special rights to select groups while deliberately excluding religious groups from those same protections.

While serving on this committee in the 129th, I argued that LD 798 was an attack on religious freedom.

In the 130th I asked this committee to obtain a legal opinion. In the 131st, I presented an

argument that denying religious exemptions violates the Free Exercise Clause of the First Amendment, as applied through the 14th amendment.

Mr. chair, on February 21, 2025, the chief executive, Governor Mills, in response to President Trumps question on “will Maine comply with title 9” stated, “we’re going to follow the law.”

Mr. Chair, here’s the law, Maine’s human rights act, title 5 chapter 5, 4601, Right to freedom from discrimination in education, *the opportunity for an individual at an educational institution to participate in all educational, counseling and vocational guidance programs, without discrimination because religion is recognized and declared to be a civil right.*

Title 5 chapter 337, subchapter 5-B, Unlawful educational discrimination, *it is unlawful educational discrimination in violation of this act,*

on the basis of religion, to exclude a person from participation in, deny a person the benefits of, or subject a person to, discrimination in any academic, extracurricular, research, occupational training or other program or activity.
I have attached a copy of the law for your review.

I would also reference, An Act To Protect Religious Freedom, and An Act to Enact the Preservation of Religious Freedom Act, passed in the 126th and the 127th.

Every Maine parent whose child has been expelled from public school for asserting a religious objection should file a complaint with the Maine Human Rights Commission.

It's been reported that over 7,000 kids have been removed from Maine public schools-and that number doesn't include the families who moved out of state.

Senator Rafferty, has this committee sought a legal opinion on whether denying Maine children a public education violates the Maine Human Rights Act? Has this committee sought legal advice on whether denying Maine children a public education violates their federal civil rights?

On April 6, 2023, republican members of this committee along with myself asked the attorney general for legal advice on **Plyler v Doe**, we are writing to request your legal opinion of the decision reached in the Supreme Court case of **Plyler v Doe**, a state may not deny access to a basic public education to any child residing in the state, whether present in the United States legally or otherwise. We believe the state of Maine's repeal of religious and philosophical exemptions from vaccinations for schoolchildren illegally denies them access to a basic public education.

On April 14, 2023, the attorney general answered our question, **the legislature's repeal of non-medical exemptions to those vaccination requirements was rationally related to the goals of increasing overall school vaccination rates and protecting students who are unable to be vaccinated for medical reasons.**

Interestingly, the attorney general used the word rationally-a term that, as a quick Google search on levels of scrutiny shows, carries specific legal significance. I found that the courts apply 3 levels of scrutiny:

- 1 Rational basis review,
- 2 Intermediate scrutiny,
- 3 Strict scrutiny.

According to Wikipedia, **In U. S. Constitutional law, when a law infringes upon a fundamental constitutional right, the court may apply the**

strict scrutiny standard. Strict scrutiny holds the challenged law as presumptively invalid unless the government can demonstrate that the law or regulation is necessary to achieve a compelling state interest. In Does v Mills (Maine 2021) when a law is not neutral or generally applicable, it is subject to strict scrutiny and will pass constitutional muster only if it is narrowly tailored to achieve a compelling governmental interest.

Attorney general Frey should have used strict scrutiny instead of the lowest level of scrutiny. Our system of appointing constitutional officers requires the attorney general's loyalty to the majority party, not the constitution.

Bosarge v Edney, (August 2023) the federal court found that **Mississippi affords a discretionary medical exemption process by statute, it must also afford a religious accommodation**

process. The court ruled that **Mississippi's compulsory vaccination law is unconstitutional as applied to plaintiffs, who have sincerely held religious beliefs.** The winning attorney, Aaron Siri will be testifying today.

In *Masterpiece Cakeshop v Colorado Civil Rights Commission* (2018), **a law is not neutral if it singles out religion or religious practices.**

Currently in federal court (Portland Maine) *Fox v Maken*, on August 16, 2023, the judge denied the state request for summary judgement. I have attached for your review the judge's decision.

The judge in *Fox v Maken* on page 4 quotes ***Does v Mills*, (2021) A law is not neutral if it "singles out religion or religious practices and is not generally applicable if it treats any comparable secular activity more favorably than religious exercise."** LD 798 failed this test.

Page 6, section 6355 permits an unvaccinated student to attend school with a written statement by a physician, nurse practitioner, or physician's assistant that a vaccination may be medically inadvisable. This potentially allows a large swath of unvaccinated students to attend school.

Section 6355's 90-day grace, is an additional example, the commissioner conceded that, although a new student would be given 90 days to obtain vaccination before being excluded from school, a religious family that moved into town and needed 90 days to find alternative schooling for their child would not be afforded the same 90-day grace period. The commissioner conceded that new students on day one does not present any different risk in that classroom compared to unvaccinated students who claim religious exemptions.

Page 7, Maine continues to permit multiple non-religious exemptions, including a 90-day grace period for non-religious students, medical exemption, and the IEP sunset provision, all of which arguably undermine its student's health and safety interest while restricting religious exemptions that may pose comparable risks.

Page 8, section 6355 does not require teachers who share the same classrooms and other school facilities as students to be vaccinated at all.

Page 9, Plaintiffs allege that Defendants have violated their right to free exercise of religion, which is a fundamental right, unquestionably the free exercise of religion is a fundamental constitutional right. Accordingly, the court must apply strict scrutiny. We apply strict scrutiny under the equal protection clause

where the challenged action interferes with a fundamental right.

For the reasons delineated above with respect to plaintiffs' free exercise claim, the court finds it plausible that section 6355 does not survive strict scrutiny and therefore declines to dismiss the equal protection claim.

Recent United States Supreme court decisions have examined cases in which a policy allegedly violates the First Amendment free exercise clause on similar grounds. In *Fulton V city of Philadelphia*, (2021), the Supreme Court, in a unanimous decision, held that the creation of a formal mechanism for granting exceptions renders a policy not generally applicable when that mechanism is unavailable to religious adherents.

Parents in Maine whose children have been expelled from public school over a religious

objection should file a complaint with the Department of Justice, Civil rights division.

In summary, August 16th, 2023, the court denied the state's motion to dismiss and ruled that **Fox v. Makin** shall proceed.

The court found that Maines vaccination law is not neutral.

The state of Maine is denying the plaintiffs' claim for a religious exemption.

Maine law creates a mechanism for parents to seek a medical exemption, but no mechanism for a religious exemption.

The supreme court ruled in a 9-0 decision; *Fulton v Philadelphia* (2021) that granting exceptions must apply to religious families.

On December 4, 2024, we all took this oath, I do swear that I will faithfully discharge, to the best of my abilities, the duties incumbent on me as a

representative in the 132nd legislator of the state of Maine, according to the constitution and laws of this state.

Mr. Chair, some of your members will claim that Maine people spoke on June 2021 (referendum on LD 798) these are serious constitutional issues, Maine people didn't realize that constitutional rights were being violated. Now that you know, I ask you, do the right thing and return a unanimous out to pass.

Restore the civil rights of all the healthcare workers, and children.

Title 5: ADMINISTRATIVE PROCEDURES AND SERVICES

Part 12: HUMAN RIGHTS

Chapter 337: HUMAN RIGHTS ACT

Subchapter 5-B: EDUCATIONAL OPPORTUNITY

§4602. Unlawful educational discrimination

1. Unlawful educational discrimination. It is unlawful educational discrimination in violation of this Act, on the basis of sex, sexual orientation or gender identity, physical or mental disability, ancestry, national origin, race, color or religion, to:

A. Exclude a person from participation in, deny a person the benefits of, or subject a person to, discrimination in any academic, extracurricular, research, occupational training or other program or activity; [PL 1985, c. 797, §1 (AMD).]

B. Deny a person equal opportunity in athletic programs; [PL 1983, c. 578, §3 (NEW).]

C. Apply any rule concerning the actual or potential familial status or marital status of a person or to exclude any person from any program or activity because of pregnancy or related conditions or because of sex or sexual orientation or gender identity; [PL 2021, c. 366, §19 (AMD).]

D. Deny a person admission to the institution or program or to fail to provide equal access to and information about an institution or program through recruitment; or [PL 2021, c. 366, §19 (AMD).]

E. Deny a person financial assistance availability and opportunity. [PL 2021, c. 366, §19 (AMD).]

[PL 2021, c. 366, §19 (AMD).]

2. Unlawful educational discrimination on the basis of physical or mental disability.

[PL 2021, c. 366, §19 (RP).]

3. Unlawful educational discrimination on the basis of national origin or race.

[PL 2021, c. 366, §19 (RP).]

4. Unlawful education discrimination on the basis of sexual orientation.

[PL 2021, c. 366, §19 (RP).]

5. Application. Nothing in this section:

A. Requires an educational institution to provide separate athletic or other extracurricular programs to serve a person with a physical or mental disability; [PL 2021, c. 366, §19 (NEW).]

B. May be construed to affect the rights of a person with a physical or mental disability to special education programs under state or federal law; [PL 2021, c. 366, §19 (NEW).]

Title 5: ADMINISTRATIVE PROCEDURES AND SERVICES

Part 12: HUMAN RIGHTS

Chapter 337: HUMAN RIGHTS ACT

Subchapter 5-B: EDUCATIONAL OPPORTUNITY

§4601. Right to freedom from discrimination in education

The opportunity for an individual at an educational institution to participate in all educational, counseling and vocational guidance programs, all apprenticeship and on-the-job training programs and all extracurricular activities without discrimination because of sex, sexual orientation or gender identity, a physical or mental disability, ancestry, national origin, race, color or religion is recognized and declared to be a civil right. [PL 2021, c. 366, §18 (AMD) .]

SECTION HISTORY

PL 1983, c. 578, §3 (NEW). PL 1987, c. 478, §3 (AMD). PL 1989, c. 725, §1 (AMD). PL 1991, c. 99, §27 (AMD). PL 1991, c. 100, §1 (AMD). PL 1991, c. 824, §A4 (RPR). PL 2005, c. 10, §20 (AMD). PL 2021, c. 366, §18 (AMD).

The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public.

If you need legal advice, please consult a qualified attorney.

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C. Requires a religious corporation, association or society that does not receive public funding to comply with this section as it relates to sexual orientation or gender identity; or [PL 2021, c. 366, §19 (NEW) .]

D. Requires an educational institution to participate in or endorse any religious beliefs or practices; to the extent that an educational institution permits religious expression, it cannot discriminate between religions in so doing. [PL 2021, c. 366, §19 (NEW) .]

[PL 2021, c. 366, §19 (NEW) .]

SECTION HISTORY

PL 1983, c. 578, §3 (NEW). PL 1985, c. 797, §1 (AMD). PL 1987, c. 478, §4 (AMD). PL 1989, c. 725, §2 (AMD). PL 1991, c. 99, §28 (AMD). PL 1991, c. 100, §2 (AMD). PL 2005, c. 10, §21 (AMD). PL 2005, c. 662, §A1 (AMD). PL 2021, c. 366, §19 (AMD) .

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Immunization Requirements for Schools: Considerations for Special Populations

Dear Champions of Education,

The Maine Department of Education has created this guide for schools to support them in receiving new Mainers through immigration and how to handle immunization records for these new students. Under federal law, children, regardless of their citizenship or residency status, are entitled to a public education. School administrative units (SAUs) may not prohibit nor discourage children from enrolling in schools because they or their parents are undocumented immigrants. This guide is intended for school administrators and staff to assist families as they enter our country and our state seeking an education for their children. Above all, we seek to treat all families with respect and gently assist them in finding resources and provide support throughout the process.

When collecting documentation pertinent to enrollment from families who have immigrated to the U.S., schools are not permitted to inquire as to the family's immigration status (i.e., documented or undocumented). Per the Plyler v Doe Supreme Court decision, "a State may not deny access to a basic public education to any child residing in the State, whether present in the United States legally or otherwise." However, families may opt to disclose that they have immigrated to the U.S., and the Department collects data on the enrollment of students who are immigrants for the purposes of allocating federal funding to support them.

Students and their families may immigrate under several different statuses. Most families entering Maine are doing so as either refugees or asylum seekers. Refugees are granted permission to enter the U.S. while they reside outside the U.S., on the basis of humanitarian need due to "persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion..." (8 U.S.C. § 1101(a)(42)(A)). Asylum-seeking families are granted permission to enter the U.S. upon reaching a U.S. border and declaring asylum; they then must apply for asylum, granting them permission to remain in the U.S. within one year of entering the U.S.

Step one: Check to see if the student qualifies under McKinney-Vento

Some students who have recently entered the country may qualify for protections and services under the McKinney-Vento Act due to housing instability. Some families may be temporarily sharing housing with another family, living in hotels, or substandard housing

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

**AMANDA BOSARGE, individually and on
behalf of their minor children, et al.,**

Plaintiffs,

-against-
**DANIEL P. EDNEY, in his official capacity as
the State Health Officer, et al.,**

Defendants.

Civil Action No. 1:22-cv-00233-
HSO-BWR

**ORDER GRANTING PLAINTIFFS’
MOTION FOR SUMMARY JUDGMENT
AND PERMANENT INJUNCTION**

The Court finds that there are no genuine issues of material fact and Plaintiffs are entitled to judgment as a matter of law. Because Mississippi affords a discretionary medical exemption process by statute, it must similarly afford a religious accommodation process. *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021). For these reasons, and those set forth in the Court’s preliminary injunction order (Dkt. 77), Miss. Code § 41-23-37 (“Compulsory Vaccination Law”) is DECLARED unconstitutional as applied to Plaintiffs, who have sincerely held religious beliefs about vaccination.

The relief herein is limited to the enjoined parties: Daniel P. Edney, in his official capacity as the State Health Officer; Ashley Blackman, in her official capacity as Principal of East Central Lower Elementary School; Allison Merit, in her official capacity as Principal of North Bay Elementary School; and Dr. Ashley Allred, in her official capacity as Principal of Vancleave Upper

Elementary School; and their officers, agents, servants, and employees, and anyone acting in active concert or participation with them (the “Enjoined Parties”).

Plaintiffs have further demonstrated that the requirements for a permanent injunction are met, namely, that Plaintiffs have succeeded on the merits, that they will suffer irreparable harm unless the injunction issues, that threatened injury to them outweighs that to the state, and that the injunction is not adverse to the public interest. *Louisiana v. Biden*, 55 F.4th 1017, 1022 (5th Cir. 2022) (standard); *Amoco Prod. Co. v. Vill. of Gambell, Ark.*, 480 U.S. 531, 546 n.12, 107 S. Ct. 1396, 94 L. Ed. 2d 542 (1987) (standard); *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (loss of First Amendment freedoms for any period of time constitute irreparable harm); *Navy Seals 1-26 v. Biden*, 27 F.4th 336, 348 (5th Cir. 2022) (same); *Louisiana*, 55 F.4th 1017, 1035 (no public interest in perpetuation of unlawful policy).

The Enjoined Parties are PERMANENTLY ENJOINED as follows:

1. Effective from the date of this order, the Enjoined Parties shall be enjoined from enforcing the Compulsory Vaccination Law unless they provide an option for requesting a religious exemption. The Court finds that the current process offered and developed by Dr. Edney (Dkt. 82-1) satisfies this requirement.

2. Thereafter, while this permanent injunction remains in effect, a person may seek a religious exemption to the Compulsory Vaccination Law by requesting a religious exemption pursuant to the process developed by the Mississippi State Department of Health.

3. The Court retains jurisdiction to enforce this permanent injunction.

4. Defendant Edney, without waiving his positions as stated in his Notice of Compliance with Preliminary Injunction Order (Dkt. 82), and the Attorney General have advised that they will

not be filing an opposition to Plaintiffs' Motion for Summary Judgment and Permanent Injunction (Dkt. 83).

This is a final order pursuant to Fed. R. Civ. Proc. 54.

SO ORDERED AND ADJUDGED, this the 29th day of August, 2023.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE

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