SF3439 Opposition and Testimony

Regarding Removal of Appearance-Based Vaccine Refusal Rights
Minnesota Legislature

Chair and Members of the Committee,

Thank you for the opportunity to submit testimony.

I respectfully oppose the removal of appearance-based vaccine refusal rights for Minnesota families found in SF3439. My position is grounded in informed consent principles, constitutional balance, and preservation of public trust.

I. Federal Authority vs. Minnesota Constitutional Protections

It is often noted that in **Jacobson v. Massachusetts**, the U.S. Supreme Court upheld a local smallpox vaccination requirement. However, several important distinctions should be recognized:

1. **Jacobson involved a narrow, temporary municipal fine during an active smallpox outbreak**, not a broad, ongoing condition tied to educational participation.
2. The Court emphasized that public health measures must not be arbitrary, unreasonable, or oppressive.
3. The case predates modern tiers of constitutional scrutiny and modern substantive due process jurisprudence.

Minnesota is not limited to the federal constitutional floor. The Minnesota Constitution provides independent protections, including:

- **Article I, Section 2 – Inherent Rights**, recognizing that government is instituted for the security and benefit of the people.
- **Article I, Section 7 – Due Process**, protecting liberty interests under state law.
- **Article I, Section 16 – Freedom of Conscience**, which may be implicated where deeply held moral or religious objections are involved.

The Minnesota Supreme Court has, in certain contexts, interpreted state constitutional protections more broadly than their federal counterparts. That distinction matters. A policy that may survive federal review is not automatically insulated from state constitutional scrutiny.

Removing refusal rights entirely — particularly without narrow tailoring — increases the likelihood of legal challenge under Minnesota's own constitutional framework.

II. Informed Consent as a Foundational Doctrine

In **Schloendorff v. Society of New York Hospital**, Justice Cardozo articulated the principle that every person has the right to determine what shall be done with their own body. While that case involved an adult patient, the doctrine of informed consent has since become a bedrock of American medical ethics.

Shifting from encouragement to compulsion — particularly as a condition of educational participation — represents a significant recalibration of the relationship between families and the state.

III. Scope and Educational Context

Unlike the narrow outbreak-specific context of Jacobson, the present proposal would apply broadly and prospectively. Conditioning educational participation across settings — including non-classroom-based homeschooling — expands state authority beyond regulation of congregate environments.

My family chooses to homeschool. However, this is not a request for special treatment. We oppose removal of refusal rights for all Minnesota families. At the same time, separating homeschool families in the law could send an unintended signal about equity and inclusion. Minnesota families deserve consistent protections regardless of educational setting.

If the policy applies uniformly across all settings without regard to transmission context, it may be viewed as broader than necessary to accomplish the public health objective. Under both federal and Minnesota constitutional analysis, narrow tailoring strengthens durability.

IV. Public Trust and Long-Term Stability

Public health depends on voluntary cooperation supported by institutional trust. Policies perceived as inflexible or dismissive of family concerns risk unintended consequences:

- Increased polarization
- Litigation

- Withdrawal from traditional educational systems
- Erosion of confidence in public institutions

Trust is an asset. Once diminished, it is difficult to restore.

V. Conclusion

The distinction between federal baseline authority and Minnesota's independent constitutional protections is significant. The distinction between a narrow outbreak response and a broad ongoing condition on educational participation is significant. And the distinction between encouragement and compulsion is significant.

I respectfully urge the legislature to consider whether eliminating refusal rights is the most narrowly tailored and constitutionally durable approach to achieving public health objectives.

Minnesota can pursue strong vaccination policy while preserving informed consent, civil liberties, and public trust.

Thank you for your thoughtful consideration.

Respectfully submitted,

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