MASSACHUSETTS FAMILY INSTITUTE

Dedicated to Strengthening the Family

Joint Committee on Public Health
24 Beacon Street
Room 130
Boston, MA 02133

July 26, 2023

Re: Testimony of Massachusetts Family Institute in Opposition to HB604, HB2151, SB1391, and SB1458.

Dear Members of the Committee,

Massachusetts Family Institute (MFI) is a nonpartisan public policy organization dedicated to strengthening families in Massachusetts. MFI champions the religious freedom and parental rights of families across the Commonwealth, and therefore we oppose any legislation that would erode those rights. We write today in opposition to HB604, HB2151, SB1391, and SB1458, bills which would eliminate or weaken the religious exemption to school vaccine requirements and severely undermine parental rights in Massachusetts. Specifically, we would like to expand on two points we made in oral testimony today: 1) The legal issues inherent in HB604 and SB1391; and 2) The fact that HB2151 and SB1458 would allow children of *any age* to get vaccinated *without parental knowledge or consent*. These are just two of the reasons that MFI urges this Committee to reject these bills.

1. The Legal Issues Inherent in HB604 and SB1391

HB604 and SB1391 would arguably violate families' rights to the free exercise of religion by eliminating the religious exemption to school vaccination requirements while leaving the medical exemption in place. Just two months ago, the First Circuit held that healthcare workers who had been fired for refusing to take the COVID-19 vaccine had stated a claim for a violation of their First Amendment right to the free exercise of religion.[1] A law that "treat[s] any comparable secular activity more favorably than religious exercise" is not generally applicable and is therefore subject to strict scrutiny under the Free Exercise Clause, a bar that extremely few laws can clear.[2] When medical exemptions and religious exemptions to vaccine mandates pose a comparable risk to public health, a state that *only* allows medical exemptions very likely violates the Free Exercise Clause.[3] Just like states couldn't allow liquor stores to stay open during COVID while they shuttered churches, they can't allow vaccine exemptions for secular reasons but not religious ones.[4]

Allowing only medical exemptions in Massachusetts and eliminating the religious exemption would invite costly litigation like the *Lowe* case in Maine. The Massachusetts

[1] *Lowe v. Mills*, 68 F.4th 706, 718 (1st Cir. 2023).
[2] *Id. at* 714 (citing *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021)).
[3] *See id.* at 714-15.
[4] *See id.*

Legislature can eliminate the religious exemption, but it cannot repeal the First Amendment. If the Commonwealth passes this legislation, it's likely that it would soon face a legal reckoning.

2. HB2151 and SB1458 Would Allow Children of *Any Age* to Get Vaccinated Without Parental Knowledge or Consent.

Before voting on HB2151 and SB1458, it is important to understand the devastating, far-reaching effects these bills would have on parents' rights to oversee their own children's medical treatment in the Commonwealth. Unfortunately, the bills' own sponsors either do not realize what their bills would do or are simply refusing to acknowledge their implications for parental rights. A careful analysis of the bills reveals that they will allow minors to consent to their own preventative medical care any time they believe they are at risk of contracting a "disease dangerous to the public health." There is no age limit in the statutory language. The result is that a minor of *any age* would be able receive a vaccination or other medical care *without parental knowledge or consent*.

These bills would amend certain lines of M.G.L. c. 112, § 12F. This statute currently reads, in relevant part,

> Any minor may give consent to his medical or dental care at the time such care is sought if […] he reasonably believes himself to be at risk of exposure due to sexual activity or to be suffering from or to have come in contact with any disease defined as dangerous to the public health pursuant to section six of chapter one hundred and eleven; provided, however, that such minor may only consent to care which relates to the diagnosis or treatment of such disease, or prevention of HIV if the minor is sexually active.

This law makes sense, because in emergency situations where a minor is *actively suffering from* or *has been exposed to* a disease dangerous to the public health[5] and may spread it to others, it may not be feasible to obtain parental consent in time to effectively treat that minor and stop the spread of the disease.

However, Sections 6 and 7 of HB2151 and SB1458 would amend this language to read as follows:

> Any minor may give consent to his medical or dental care at the time such care is sought if […] he reasonably believes himself to be at risk of exposure due to sexual activity or to be suffering from or to ~~have come in contact with~~ **be at risk of contracting** any disease defined as dangerous to the public health pursuant to section six of chapter one hundred and eleven; provided, however, that such minor may only consent to care which relates to the diagnosis**,** **prevention** or treatment of such disease, or prevention of HIV if the minor is sexually active.

The effect of these changes is to allow a minor of any age to consent to medical treatment not only when they are suffering from or have been exposed to a disease, but whenever they may *be at risk of contracting* such a disease and want *preventative* treatment. This eviscerates the "emergency

[5] 105 CMR 172.00 defines "disease dangerous to the public health" to include all diseases that children are required to be vaccinated against to attend school, COVID-19, and a number of other diseases.

situation" rationale of the current statute and destroys any notion of parental consent when it comes to medical treatment for children. It is hard to imagine a greater threat to the parental right to medical decision-making for a child.

Again, the radical changes that these bills would make to Massachusetts vaccination laws would put the Commonwealth in legal peril. Without a sufficient justification for allowing minors to obtain medical treatment without parental consent, the government's usurpation of parental decision-making would likely violate parents' fundamental rights to the care, custody, and control of their children under the 14th Amendment of the Constitution.[6] As the Supreme Court of the United States has said,

> "[O]ur constitutional system long ago rejected any notion that a child is 'the mere creature of the State' and, on the contrary, asserted that parents generally 'have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations.' Surely, this includes a 'high duty' to recognize symptoms of illness and to seek and follow medical advice […] Most children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment. **Parents can and must make those judgments.**"[7]

These bills would strip parents of the right to make these critical healthcare judgments for their children and would, in practice, transfer that power to school nurses and Department of Health bureaucrats. This would be a gross violation of fundamental parental rights.

Conclusion

HB604, HB2151, SB1391, and SB1458 have been presented as "common sense" measures to fix problems with the Commonwealth's student immunization infrastructure. Whatever problems these bills might solve, however, pale in comparison to the massive religious liberty and parental rights problems they would create. Reporting issues and other problems can be solved with legislation that does not demolish parental consent and eliminate religious exemptions. We therefore urge this Committee to reject these bills.

Very truly yours,

Samuel J. Whiting, Esq.
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Massachusetts Family Institute

[6] *See Troxel v. Granville*, 530 U.S. 57, 65 (2000) ("The liberty interest at issue in this case – the interest of parents in the care, custody, and control of their children – is perhaps the oldest of the fundamental liberty interests recognized by this Court.).

[7] *Parham v. J.R.*, 442 U.S. 584, 602-03 (1979) (internal citations omitted) (emphasis added).