

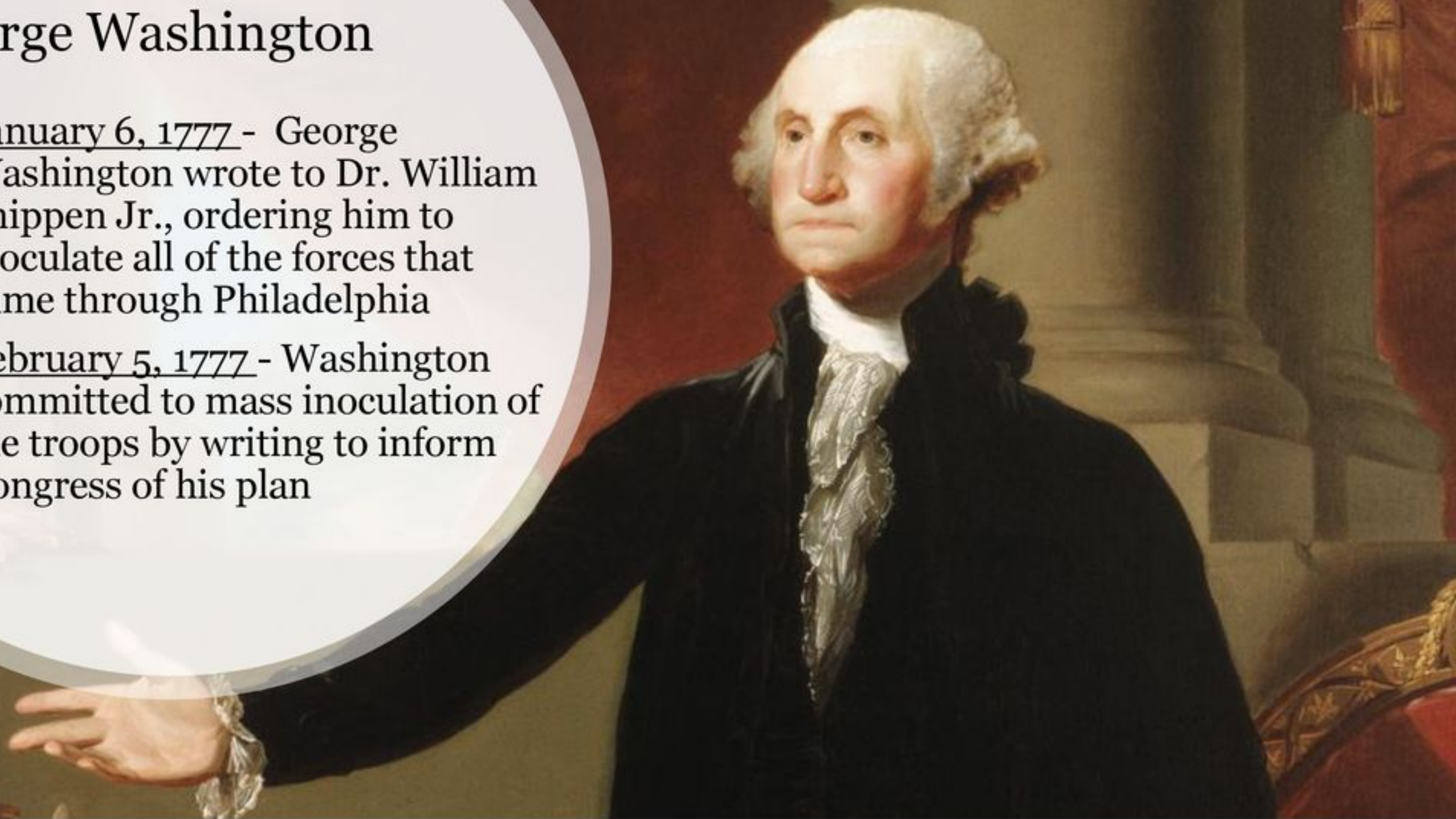
Vaccine Mandates

Mandates vs. Requirements

- Vaccine mandate: a law that places an unconditional requirement on citizens to be vaccinated. Failure to follow the law will result in civil or criminal penalties. Such mandates would be similar to laws that require citizens to pay taxes, register for selective services, etc.
- A vaccine requirement: a law, statute, policy, etc., that places a conditional requirement on citizens, students, employees, etc., to be vaccinated if they are to access some non-constitutionally protected good, e.g., eating at a restaurant, going to school, etc.

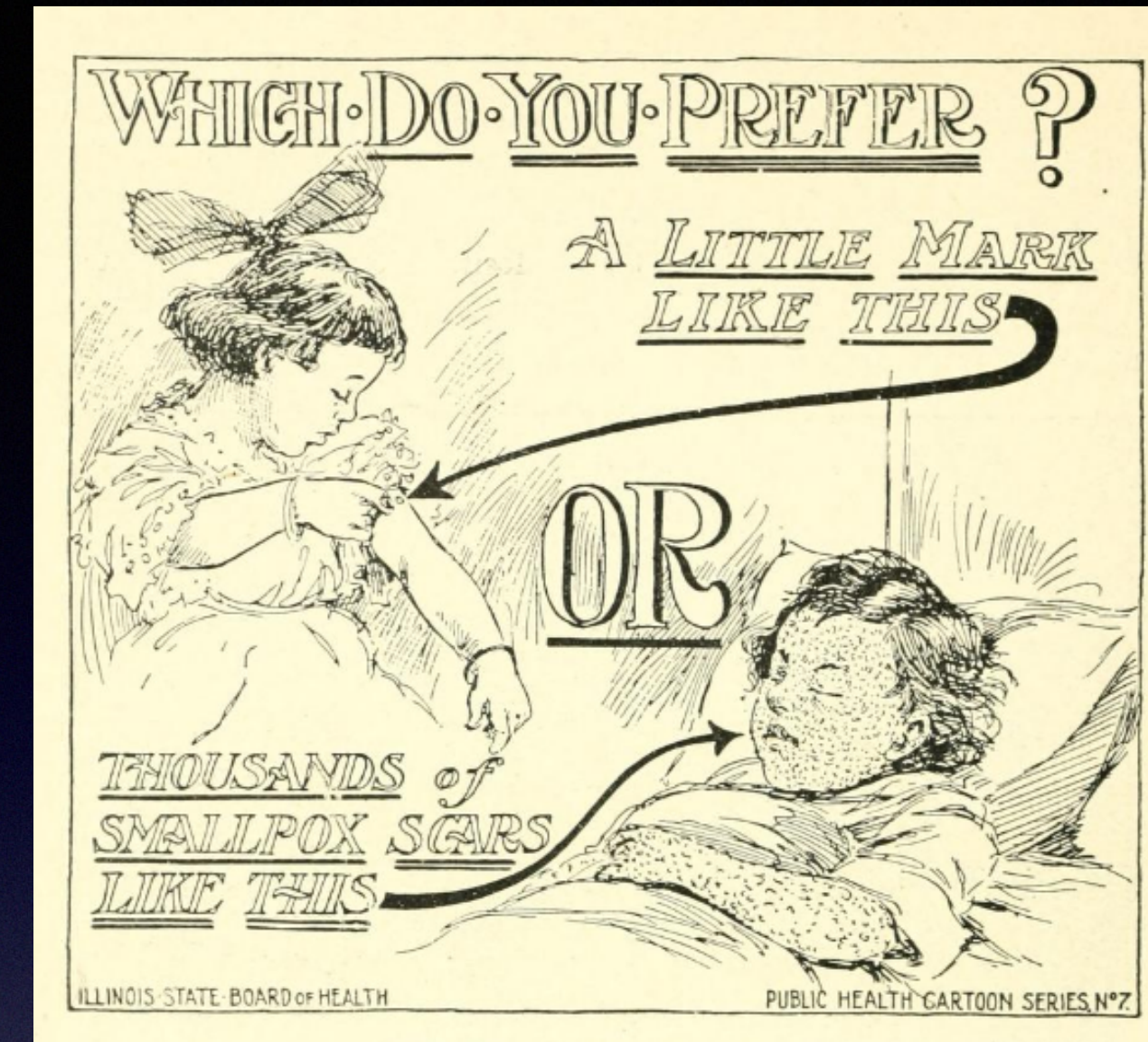
George Washington

- January 6, 1777 - George Washington wrote to Dr. William Shippen Jr., ordering him to inoculate all of the forces that came through Philadelphia
- February 5, 1777 - Washington committed to mass inoculation of the troops by writing to inform Congress of his plan



Jacobson vs. Massachusetts

- <https://www.law.cornell.edu/supremecourt/text/197/11>

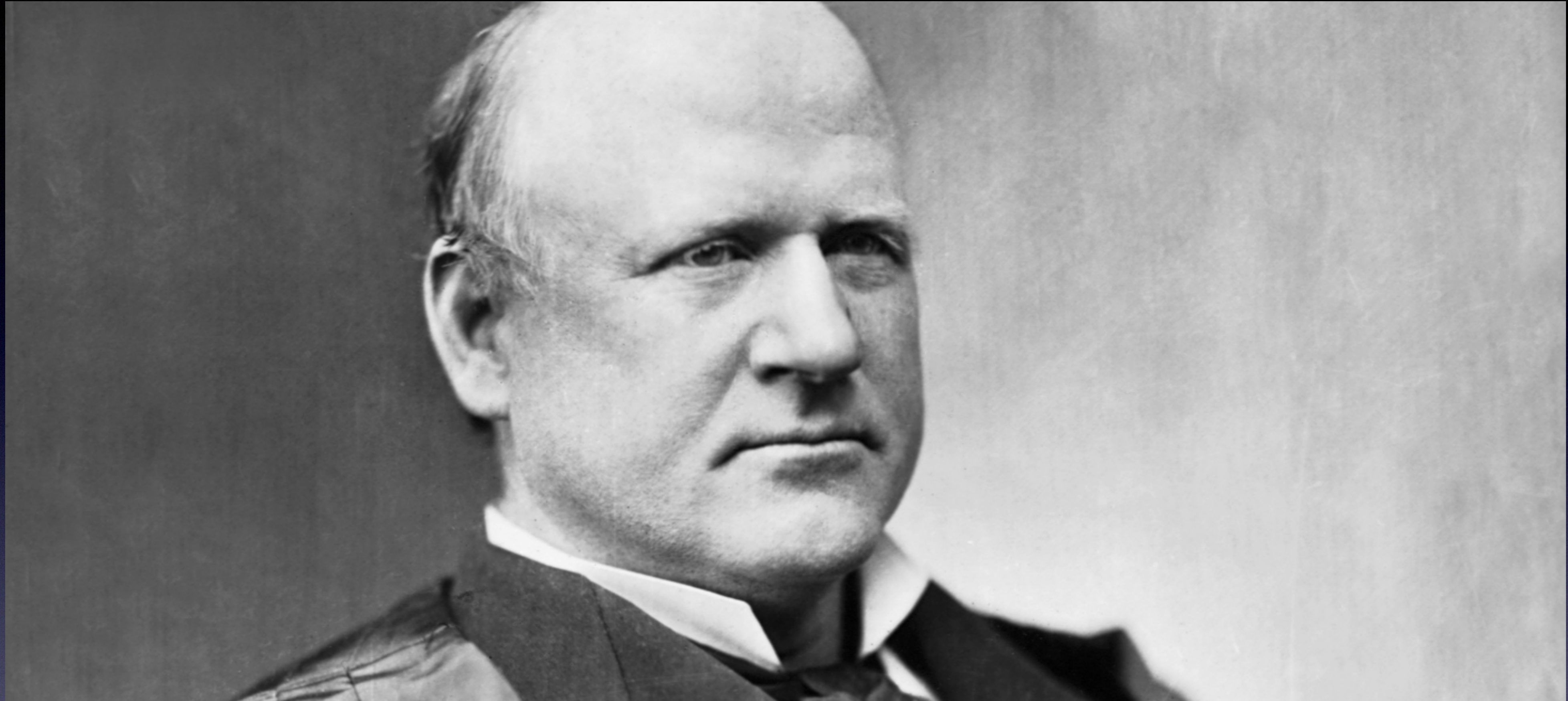


- The Revised Laws of that commonwealth, chap. 75, § 137, provide that 'the board of health of a city or town, if, in its opinion, it is necessary for the public health or safety, shall require and enforce the vaccination and revaccination of all the inhabitants thereof, and shall provide them with the means of free vaccination. Whoever, being over twenty-one years of age and not under guardianship, refuses or neglects to comply with such requirement shall forfeit \$5.'
- Proceeding under the above statutes, the board of health of the city of Cambridge, Massachusetts, on the 27th day of February, 1902, adopted the following regulation: 'Whereas, smallpox has been prevalent to some extent in the city of Cambridge, and still continues to increase; and whereas, it is necessary for the speedy extermination of the disease that all persons not protected by vaccination should be vaccinated; and whereas, in the opinion of the board, the public health and safety require the vaccination or revaccination of all the inhabitants of Cambridge; be it ordered, that all the inhabitants habitants of the city who have not been successfully vaccinated since March 1st, 1897, be vaccinated or revaccinated.'

- 1902: Cambridge, Mass. Board of Health ordered its citizens to get either vaccinated or revaccinated to stop a smallpox outbreak.
- Henning Jacobson, a pastor who had suffered severe side effects when being forcibly vaccinated against the disease in his native Sweden, refused to be inoculated on this occasion and was fined \$5.
- Believing that his rights had been violated, Jacobson fought the case as a matter of principle and took it all the way to the Supreme Court.

14th Amendment

- All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



SCOTUS voted 7-2 against Jacobson
Justice Henry Marshall Harlan

But the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others. This court has more than once recognized it as a fundamental principle that 'persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health, and prosperity of the state; of the perfect right of the legislature to do which no question ever was, or upon acknowledged general principles ever can be, made, so far as natural persons are concerned.'

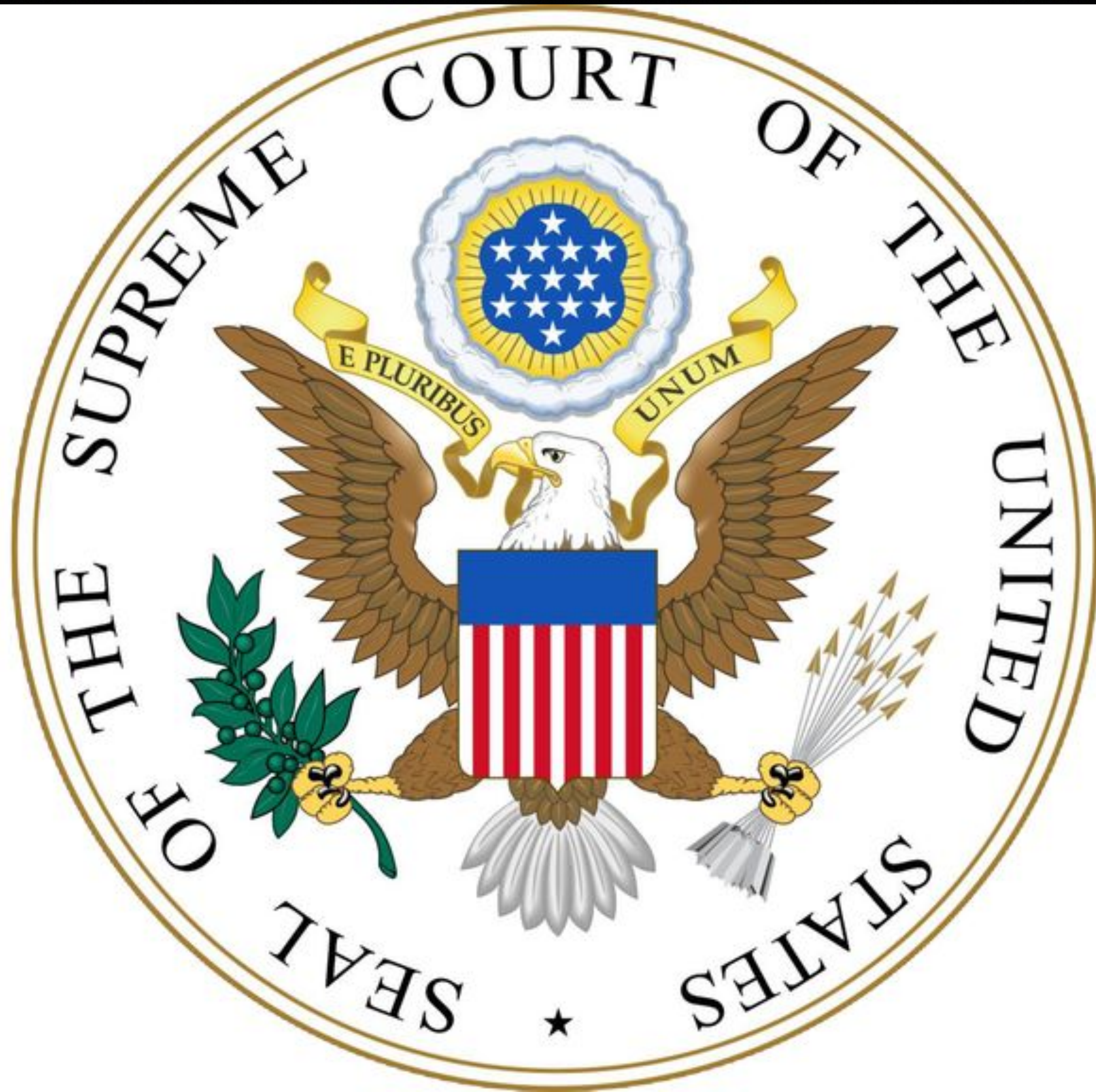
'The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order, and morals of the community. Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's own will. It is only freedom from restraint under conditions essential to the equal enjoyment of the same right by others. It is, then, liberty regulated by law.'

But it is equally true that in every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand.

- An American citizen arriving at an American port on a vessel in which, during the voyage, there had been cases of yellow fever or Asiatic cholera, he, although apparently free from disease himself, may yet, in some circumstances, be held in quarantine against his will on board of such vessel or in a quarantine station, until it be ascertained by inspection, conducted with due diligence, that the danger of the spread of the disease among the community at large has disappeared.
- The liberty secured by the 14th Amendment, this court has said, consists, in part, in the right of a person 'to live and work where he will' (*Allgeyer v. Louisiana*, 165 U. S. 578, 41 L. ed. 832, 17 Sup. Ct. Rep. 427); and yet he may be compelled, by force if need be, against his will and without regard to his personal wishes or his pecuniary interests, or even his religious or political convictions, to take his place in the ranks of the army of his country, and risk the chance of being shot down in its defense. It is not, therefore, true that the power of the public to guard itself against imminent danger depends in every case involving the control of one's body upon his willingness to submit to reasonable regulations established by the constituted authorities, under the sanction of the state, for the purpose of protecting the public collectively against such danger.

Standards for mandatory vaccines

- Necessity: a mandate cannot be exercised in “an arbitrary, unreasonable manner” or go “beyond what is reasonably required for the safety of the public.” The state must act only in the face of a demonstrable health threat.
- Reasonable means: Although government may act under conditions of necessity, its methods must be reasonably designed to prevent or reduce the threat. The methods adopted must have a “real or substantial relation” to protection of the public health and cannot be “a plain, palpable invasion of rights.”
- Proportionality: Even under conditions of necessity and with reasonable means, a public health regulation is unconstitutional if the human burden imposed is wholly disproportionate to the expected benefit.
- Harm avoidance: Those who pose a risk to the community can be required to submit to compulsory measures for the common good. The control measure itself, however, should not pose a health risk to its subject. Similarly, courts required safe and habitable environments for persons subject to isolation or quarantine on the grounds that public health powers are designed to promote well-being and not punish the individual



***Rosalyn Zucht,
W. A. King, et al.***

Argued October 20, 1922

Decided November 13, 1922

“School districts
could
constitutionally
exclude unvaccinated
students.”

First Amendment

- Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.