

Bullock Says He Can Force Mandatory Vaccinations. Is He Right?

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Montana’s Republican legislators are have been going on the record for more than a month, [opposing mandatory vaccines](#). While vaccines are still an unrealized hope for the medical community, the protests against their anticipated imposition upon Montana residents have seemed premature. After all, no one is suggesting that vaccines would be mandatory. Right?

That debate was settled on Wednesday when Governor Bullock imposed masks as a

mandatory requirement to conduct business or gather in public places within Montana and iterated in the *first few minutes* of his press conference that **mandatory vaccinations were indeed within his jurisdictional power.**

Bullock said (at approximately the six-minute mark), “Epidemics of dangerous diseases have long been a threat to America throughout our country’s long history. As a result, even since in the earliest days of this nation, the United States Supreme Court and the **Montana Supreme Court clearly have recognized state’s authority** and duty to fight outbreaks of disease and impose quarantines, **mandatory vaccination orders**, and other public health measures to prevent the spread of contagious.

https://www.facebook.com/watch/live/?v=986002511851574&ref=watch_permalink

Bullock then used the history of Montana Supreme Court decisions in regard to mandatory vaccination orders to support his call for mandatory masking, which he calls a “modest imposition.” But it remains; **Bullock believes the state is within its power to mandate vaccines.**

Here are some Frequently Asked Questions:

QUESTION: IS BULLOCK RIGHT? CAN THE STATE IMPOSE VACCINES?

The answer to this question is a complicated yes, **for dogs**, according to court precedent (**please note**: court precedent is not law).

The Montana Supreme Court, which is one of the most liberal in the entire nation, has invoked a principle known as *salus populi est supma lex*. The maxim means, “The welfare of the people is the supreme law.” It is not, as one would imagine, a favorite slogan of civil libertarians.

Unfortunately, the Montana court’s appeal to this principle means that the state is perceived to have the authority to do whatever it feels necessary is in the best interest of Montanans. The problem with this, from the perspective of liberty, is that what is the best interest of Montanans is then interpreted to be decided outside of due process. The question that should be asked is “*Who gets to determine what is for the best welfare of the people?*”

The Montana Supreme Court has often decided, in the realm of public health, that executors of state power – rather than legislators – get to decide such matters.

There is one test case in this regard as it pertains to vaccines. There was an outbreak of rabies in 1951. Health officials mandated that pets be locked up **and vaccinated**, although whether or not they had the authority to do so was questionable. Could they require pets on private property be tended to in a particular way? When police shot a woman’s dog for breaching this order and were subsequently sued for violating her property rights, the court ruled that the authorities had such a power in light of a public emergency “[regardless of any statutory or constitutional provisions whatever.](#)”

In other words, the court basically ruled that the constitution didn’t matter if it was an issue related to public health, a disheartening reality for citizens who appreciate the rule of law.

The 1918 Spanish Flu pandemic, which provoked mandatory quarantines in Montana, never sparked a single court challenge, so it offers little clarity in regard to today’s controversy. Other Montana Supreme Court cases in 1922 and 1960 affirmed the health board’s unilateral prerogative in violating bodily autonomy by mandating quarantines, but do not speak specifically of vaccines.

HAVE MANDATORY VACCINES FOR HUMANS EVER BEEN UPHELD BY THE MONTANA SUPREME COURT?

The answer to this question is *no*.

However, the courts have interpreted state law to provide blanket power to the government to do that which they feel is for the purpose of “disease and the promotion of public health.” This is, to say the least, vague. Nonetheless, its vagueness will tend to tip the balance toward public safety rather than personal liberty.

There is a glimmer of hope in *Bacus vs Lake City* (1960) which – while maintaining the power of health boards – ruled that there must be, “unascertainable *limits* within which to act.” This implies that the power of health boards to violate bodily autonomy is not absolute. They went on the rule that health boards may not violate the constitutional liberties of citizens or restrict due process (a rejection of court precedent set in 1951).

HAVE MANDATORY VACCINES FOR HUMANS BEEN UPHELD BY COURTS OUTSIDE MONTANA?

The answer is yes. And perhaps this is to what Bullock refers when he says that courts have upheld mandatory vaccinations, if not referring to that of dogs (although it was not by the Supreme Court of the United States or the Montana courts). In this case, stemming from an outbreak of smallpox in 1902, the health board in Cambridge, MA required mandatory vaccinations and [a lower court convicted a man for refusing to receive it](#). This case is largely heralded by those lobbying against religious exemptions for mandatory vaccines.

WHO GETS TO DETERMINE IF SOMETHING IS ‘REQUIRED’ FOR PUBLIC HEALTH IN MONTANA?

In the 1951 ruling known as *Ruona* (above), the court ruled, “[a]ny rule made by the board of health which has a reasonable and direct relation to a threat to the public health is a proper exercise of the police power, and further, that the determination as to the means of meeting a threatening situation [is] **vested in the board of health, and not in the courts.**”

As reported in [a previous FAQ article from Montana Gazette](#), health boards get to make such determinations according to Montana law. Health boards are comprised of county commissioners and those appointed by county commissioners, **the vast majority of whom do not have medical degrees or experience in healthcare.**

It is likely that Montana’s top-heavy power structure enjoys health boards being relatively uneducated in medicine because they are far more likely to do what they are instructed by the governor’s office. Certainly, most citizens who have found themselves appointed to health

boards who have no medical experience are less likely to buck the instructions handed them by the governor's office.

It would seem, from everything we see in state law, that health boards appointed by county commissioners – and not the state governor – can make these decisions.

Currently, Governor Bullock is issuing directives to local health boards. They should be aware that they – and not the governor – have the say for what is to be 'required' for public health within their county. From press reports, **it seems that most county health boards are under the assumption they work at the behest of the governor and are to follow his orders; this does *not* seem to be an accurate reflection of state legal precedent.**

WHY IS MONTANA LAW SO VULNERABLE TO MANDATORY VACCINES?

Without a doubt, Montana might be the most vulnerable to mandatory vaccine possibilities of all 50 states. While this has not been challenged directly in the courts, everything in state law and legal precedent seems to permit mandatory vaccinations (short of intervention from a higher court).

But the answer as to why Montana's law is written with so much power designated to government bureaucrats is because of how Montana was formed and the evolution of its legal authorities.

Before Montana became a state, the territorial legislature met in Bannack (then the territorial capitol). The set of laws the territorial legislature adopted and refined are sometimes known as [*the Bannack Statutes*](#). That set of laws was later adopted by the territorial legislature and then handed off ultimately became state law 1889 known as the Revised Codes of Montana (R.C.M.)

As Gary Marbut of MSSA explains, "In 1947, there was a general overhaul of the more voluminous R.C.M. and it then became known as the Montana Code Annotated (M.C.A.) That body of law continued to grow with every session of the Legislature. It is now a set of books with thin pages and small print that occupies about ten feet of shelf space."

He continues, "Despite the substantial growth of our Montana laws, there is still a lot of legal and policy residue in the M.C.A. from the old Bannack Statutes of Montana's territorial days. That includes a lot of blanket authority for local officials to deal with health emergencies."

Historically, the 1800s saw cholera, typhoid, tuberculosis, infection diseases in the mining camps, with no hospitals or pharmacies. Given the state of Montana's fragile population in the distant territory, it implemented what most would today perceive to be draconian policies to deal

with public health. Most of these policies were first installed long before territorial residents were assured the protections and liberties of state citizenship prior to statehood.

Given that Bullock has rediscovered state statutes that were written 140 years ago during a much more primitive time, it may be time for Montana's legislature to revamp state law in regard to public health to assure more respect for civil liberties now that the state has a thriving and efficient healthcare infrastructure.

IS THERE A COVID-19 VACCINE?

No, there is not a known, effective vaccine for COVID-19. Different reports surface daily suggesting progress in this area, but no human trials exist that demonstrate such a vaccine exists or can be safely administered to the populace. So far, such a vaccine is yet forthcoming. Whatever vaccine could be – in theory – forced upon Montana's population doesn't yet exist (at least not with the approval of the Food and Drug Administration).