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On Behalf Of:
Committee: Senate Committee On Health Care
Measure: SB1530

Oregon is currently institutionalizing—making temporary into permanent—authorities that the state first claimed only for dire emergency. Governor Brown has abused boards, schools and agencies to extend her power, thus making it necessary for the legislature to set clear limits.

It is incontrovertible law that rights can only be restricted by legal proceedings. The state seeks to institutionalize fishing expeditions in search of guilt among suspects, disease amongst the healthy. A person—with one of their most valuable possessions, their health—offers no probable cause for the state's new powers.

I know Governor Brown says that the 1905 case *Jacobsen v. Massachusetts* has given her extraordinary powers overlooked by all previous administrations. If you read their opinion, they said they were not qualified to overrule a medical opinion, especially if that opinion was give by a local, trusted, and presumably elected health department. But they cautioned that their acquiescence not be misconstrued:

"Before closing this opinion we deem it appropriate, in order to prevent misapprehension as to our views, to observe perhaps to repeat a thought already sufficiently expressed, namely that the police power of a State, whether exercised by the legislature, or by a local body acting under its authority, may be exerted in such circumstances or by regulations so arbitrary and oppressive in particular cases as to justify the interference of the courts to prevent wrong and oppression."

The plaintiff, *Jacobsen*, had argued that the preamble to the Constitution secured his right to bodily integrity. The Court excluded the preamble because it conferred no specific rights, saying their decision must be controlled by the specific rights enumerated within the Constitution.

Thereby, the Court ruled in 1905 that if the Constitution did not mention ownership of your immune system, such a right did not exist. Oddly, the Court did claim a state police power with such authority, even though this medical "police power" appears nowhere in the Constitution!

The Court's concern that their ruling could lead to "wrong and oppression" was certainly realized by 1927 when *Jacobsen v. Massachusetts* was used in deciding *Buck v. Bell* and the state's now consecrated power was used to usher in an era of forced sterilization. The earlier court must have cringed when Justice Holmes infamously ruled that:

"The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes. Three generations of Imbeciles are enough."

As a tip to OHA, should they look for further expansions of their new authorities, this case has never been overruled; it's more that civil society moved on, emphasizing individual rights over the state's interest. Ironically, when the 1905 Court opened this door to state police power, they seemed to have just the opposite in mind. They said that "The power to decide for all must rest somewhere," and they did not want to supplant a local medical opinion with their own broader legal one.

Which brings us back to the question of who holds power over bodily integrity. If the Constitution reserved all rights it didn't enumerate to either the states or the people, which one do you think they would assign bodily integrity to: the State or the people who confer to the State limited authority over them by informed consent?

Today that power "to decide for all" is being wielded by mistrusted power brokers in the bowels of captured agencies and leveraged legislatures. This abuse is the quintessential case of the adage that power corrupts, and absolute power corrupts absolutely.

The Governor's abuse of temporary, emergency power has made the passage of SB1516 necessary.