

# A NEW WEAPON IN THE ANTI-VACCINE ARSENAL

## CLAIMING THE UNVACCINATED AS A PROTECTED CLASS



- In its 1905 *Jacobson v. Massachusetts* decision, the Supreme Court recognized the inherent tension between protecting individual rights and ensuring the health, safety and welfare of the community and its citizens, upholding a Massachusetts law requiring vaccination for smallpox. The court held that “the state has the right to interfere with individual liberty and immunize citizens if it determines that there is a valid public health reason to do so.”
- Federal and state civil rights laws, such as the Americans with Disabilities Act and Title VII of the Civil Rights Act of 1964, prohibit discrimination against protected classes, or specific groups of individuals with common characteristics such as race, color, disability, national origin, religion, veteran status, citizenship and sex.
- Under existing laws, employers may not impose vaccination requirements that have a disparate impact on, or exclude, employees based on their membership in a protected class. Thus, they must accommodate employees who, due to disability or a sincerely held religious belief, practice or observance, choose not to get vaccinated against COVID-19, unless this accommodation would pose an undue hardship on the employer’s business operations.
- In May 2021, Montana passed HB 702, a law prohibiting an individual or governmental entity from denying state or local services, goods, access to facilities, etc., on the basis of vaccination status. This includes enrollment in public schools.
- State efforts to classify unvaccinated individuals as a protected class, like Montana’s, and tie vaccination status to one’s innate identity would undermine current and future efforts to encourage vaccination as well as broader public health emergency response.

[A New Weapon in the Anti-Vaccine Arsenal: Claiming the Unvaccinated as a Protected Class](#) (2022), authored by Valerie Gutmann Koch, explores the public health threat posed by anti-vaccine advocates’ efforts to classify individuals as a protected class. It was presented during the [2022 Texas Vaccine Policy Symposium](#) at Rice University’s Baker Institute for Public Policy on October 14, 2022.

For more information on vaccines, visit the Vaccines Cause Adults page at: [bakerinstitute.org/vaccines-cause-adults](https://bakerinstitute.org/vaccines-cause-adults).

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**VACCINES  
CAUSE  
ADULTS**