

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 HOUSE CONCURRENT
4 RESOLUTION 1012

By: West (Kevin)

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6
7 AS INTRODUCED

8 A Concurrent Resolution urging Congress to repeal the
9 National Childhood Vaccine Injury Act; and directing
10 distribution.

11
12 WHEREAS, on October 1, 1988, the National Childhood Vaccine
13 Injury Act (NCVIA) became effective; and

14 WHEREAS, the NCVIA was Congress' attempt to strike a balance
15 between protecting vaccine manufacturers and administrators from
16 financial liability for vaccine injuries, while creating a cost-
17 effective no-fault arbitration process to compensate those who
18 suffer from vaccine side effects; and

19 WHEREAS, the NCVIA was drafted after the costs of defending DPT
20 vaccine injury lawsuits caused two of the three American DPT vaccine
21 manufacturers to halt production of the vaccine in 1984; and

22 WHEREAS, those who believe that vaccines have caused harm to
23 themselves or their children must petition the Vaccine Injury
24 Compensation Program (VICP); and

1 WHEREAS, the VICP is funded not by vaccine manufacturers but by
2 a 75-cent excise tax placed on each disease component dose of every
3 vaccine administered, which is paid by vaccine consumers at the time
4 of purchase; and

5 WHEREAS, on November 14, 1986, President Ronald Reagan signed
6 the NCVIA into law after expressing concern for its "substantial
7 deficiencies" and stated that its "unprecedented arrangement" of
8 being administered by the federal judiciary rather than the
9 executive branch was a "poor choice to ensure a well-managed and
10 effective program"; and

11 WHEREAS, this arrangement is inconsistent with the
12 constitutional requirement for separation of powers among the
13 branches of the federal government; and

14 WHEREAS, the U.S. Department of Justice, which is tasked with
15 defending VICP claims, had urged a veto of the NCVIA prior to its
16 signing; and

17 WHEREAS, the NCVIA was passed with the intent to allow parents
18 of injured children to accept an award as payment in full, or reject
19 the payment and file a lawsuit against the vaccine manufacturer; and

20 WHEREAS, on February 22, 2011, the U.S. Supreme Court ruled 6-
21 to-2 in *Bruesewitz v. Wyeth* that NCVIA claimants were not permitted
22 to reject a VCIP award and file suit against vaccine manufacturers,
23 with Justice Antonin Scalia writing in the majority decision that
24 the NCVIA "preempts all design-defect claims against vaccine

1 manufacturers brought by plaintiffs who seek compensation for injury
2 or death caused by vaccine side effects"; and

3 WHEREAS, Justices Sonia Sotomayor and Ruth Bader Ginsburg
4 dissented in the *Bruesewitz* ruling, stating that by preempting all
5 design defect lawsuits by vaccine victims, the high court was
6 imposing "its own bare policy preference over the considered
7 judgment of Congress"; and

8 WHEREAS, the Vaccine Injury Table is a list of covered vaccines,
9 associated injuries, and time periods of first symptoms to appear;
10 and

11 WHEREAS, when claiming injuries sustained from vaccines that are
12 not listed on the Table, which comprise 98% of all claims, the
13 claimant must prove to the special master that the vaccine caused
14 the injury, which requires retaining an expert witness willing to
15 subject themselves to public scrutiny; and

16 WHEREAS, the \$250,000 cap on the VICP payout for death as a
17 result of vaccination has not changed since 1986 despite having an
18 inflation-adjusted value over \$560,000 today; and

19 WHEREAS, VICP-covered vaccines are those which are recommended
20 for routine administration to children or pregnant women by the
21 federal Centers for Disease Control and Prevention (CDC),
22 irrespective of whether the vaccines were never safety tested for,
23 or approved for use in, children or pregnant women; and

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1 WHEREAS, newly-licensed vaccines that fall within a category of
2 vaccines already covered by the VCIP are automatically added to the
3 VICP-covered vaccine list and granted immunity from consumer
4 litigation; and

5 WHEREAS, all other newly-licensed vaccines become VICP-covered
6 upon the CDC's recommendation for routine administration to children
7 or pregnant women; and

8 WHEREAS, the Advisory Committee on Immunization Practices
9 (ACIP), which develops the recommended vaccine schedule for children
10 is located within the CDC organization itself; and

11 WHEREAS, the vaccine safety program, called the Immunization
12 Safety Office (ISO), is located within the CDC organization itself;
13 and

14 WHEREAS, in December, 2009, Merck announced that Julie
15 Gerberding, the former director of the CDC, was named president of
16 Mercks's vaccine division 11 months after her resignation from the
17 CDC, a move which transitioned her from a federal employee annual
18 salary of \$202,200 to a total compensation package worth
19 multimillions; and

20 WHEREAS, the conflicting nature of the CDC's role in both
21 recommending childhood and prenatal vaccines while simultaneously
22 overseeing vaccine safety, combined with the absence of any
23 prohibition on CDC employees assuming executive private sector
24 pharmaceutical positions in vaccines, the biologic products the CDC

1 oversees safety for, further combined with the removal of all
2 vaccine manufacturer financial liability, has served as a
3 disincentive for manufacturers to vigilantly strive for creating the
4 safest vaccines possible; and

5 WHEREAS, in 2002, Merck used unconventional methods to test the
6 safety of its HPV vaccine, Gardasil, which resulted in many trial
7 participant side effects being withheld from regulators; and

8 WHEREAS, in April, 2013, glass was detected in vials of Sanofi's
9 Haemophilus b conjugate vaccine, or ActHIB, but Sanofi failed to
10 issue a recall or alert parents of the health risks of injecting
11 glass into infants, despite the U.S. Food and Drug Administration's
12 warning that injecting glass could cause an adverse immune system
13 reaction; and

14 WHEREAS, in August, 2015, the CDC admitted that there is an
15 increased risk of toddler-aged children having febrile seizures with
16 the MMR and MMR-V vaccines, as well as there being an increased risk
17 of febrile seizures when the influenza vaccine is given with the
18 pneumococcal or DTaP vaccines, as is common practice with six-month
19 old infants; and

20 WHEREAS, in September, 2017, the CDC admitted that the risk of
21 spontaneous abortion (miscarriage) increases by 670% when pregnant
22 women receive the influenza vaccine during their first trimester;
23 and

24

1 WHEREAS, many Health Maintenance Organizations (HMO) and
2 Preferred Provider Organizations (PPOs) award large financial
3 incentives to physicians for achieving high patient vaccination
4 rates, or withhold vaccine reimbursement unless a patient is
5 vaccinated strictly in accordance with the CDC childhood schedule;
6 and

7 WHEREAS, in August, 2016, the American Academy of Pediatrics
8 endorsed the practice of dismissing parents from doctor offices if
9 they insist on following an alternative vaccination schedule or
10 decline to vaccinate their child; and

11 WHEREAS, pediatricians are now denying medical homes and all
12 medical care to patients whose caregivers do not consent to the
13 administration of biologic drugs in accordance to the CDC schedule
14 or not at all; and

15 WHEREAS, this threat of medical dismissal has created an
16 environment of implied authority and intimidation by pediatricians
17 who cannot, under the NCVIA and *Bruesewitz v. Wyeth*, be held liable
18 in a court of law in the event a child is harmed by vaccination; and

19 WHEREAS, under the Obama administration the VICP was found to
20 have flaws that "hinder its ability to satisfy both claimants and
21 vaccine manufacturers," despite the fact that vaccine manufacturers
22 are not financially or legally liable for VICP claims; and

23 WHEREAS, under the Obama administration the VICP was found to
24 have extensive delays in processing claims and a multibillion dollar

1 balance in the program's trust fund that was unspent, since the
2 trust fund is invested in U.S. Treasury securities; and

3 WHEREAS, in violation of the intention of the NCVIA, the VICP
4 trust fund is used to make payments into the general fund of the
5 U.S. Treasury, thereby allowing our government to profit from the
6 vaccine excise tax intended to compensate injured children; and

7 WHEREAS, the U.S. Treasury has a financial interest in expanding
8 the number of vaccines routinely administered to children and
9 pregnant women so that it may collect a portion of the 75-cent tax
10 on each vaccine administered; and

11 WHEREAS, the VICP has failed to be the expedited process
12 envisioned by its drafters, as the average case now takes 3.6 years
13 to resolve; and

14 WHEREAS, the VICP has failed to be the accessible no-fault
15 arbitration process envisioned by its drafters, as 66% of claims
16 have been dismissed without compensation and, in 2012, 90% of claims
17 were dismissed; and

18 WHEREAS, the VICP has failed to be a resource for families of
19 children injured due to the childhood vaccination schedule, as 64%
20 of all compensable claims from 2006 to 2015 were for adults
21 suffering shoulder injuries and nerve damage caused by the influenza
22 vaccine; and

23 WHEREAS, the VICP has failed to conduct outreach to the general
24 public, as most Americans, including lawyers, do not know of its

1 existence until the statute of limitations on a claim has run, and
2 only \$20,000 of its \$6.5 million annual budget was dedicated to
3 public outreach in 2014; and

4 WHEREAS, the VICP has failed to be the non-adversarial
5 environment envisioned by its drafters due to its refusal to update
6 the Injury Table in a timely and sensible manner, resulting in
7 battles of expert witnesses that are no different from litigating a
8 case in the judicial system; and

9 WHEREAS, in November, 2015, Barbara Loe Fisher, the co-creator
10 of the NCVIA on behalf of injured children, called for it to be
11 repealed.

12 NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES
13 OF THE 2ND SESSION OF THE 56TH OKLAHOMA LEGISLATURE, THE SENATE
14 CONCURRING THEREIN:

15 THAT the Oklahoma Legislature urges that Congress repeals the
16 National Childhood Vaccine Injury Act.

17 THAT a copy of this resolution be sent to the President of the
18 United States, to the presiding officers of each house of Congress,
19 and to the entire Oklahoma delegation.

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