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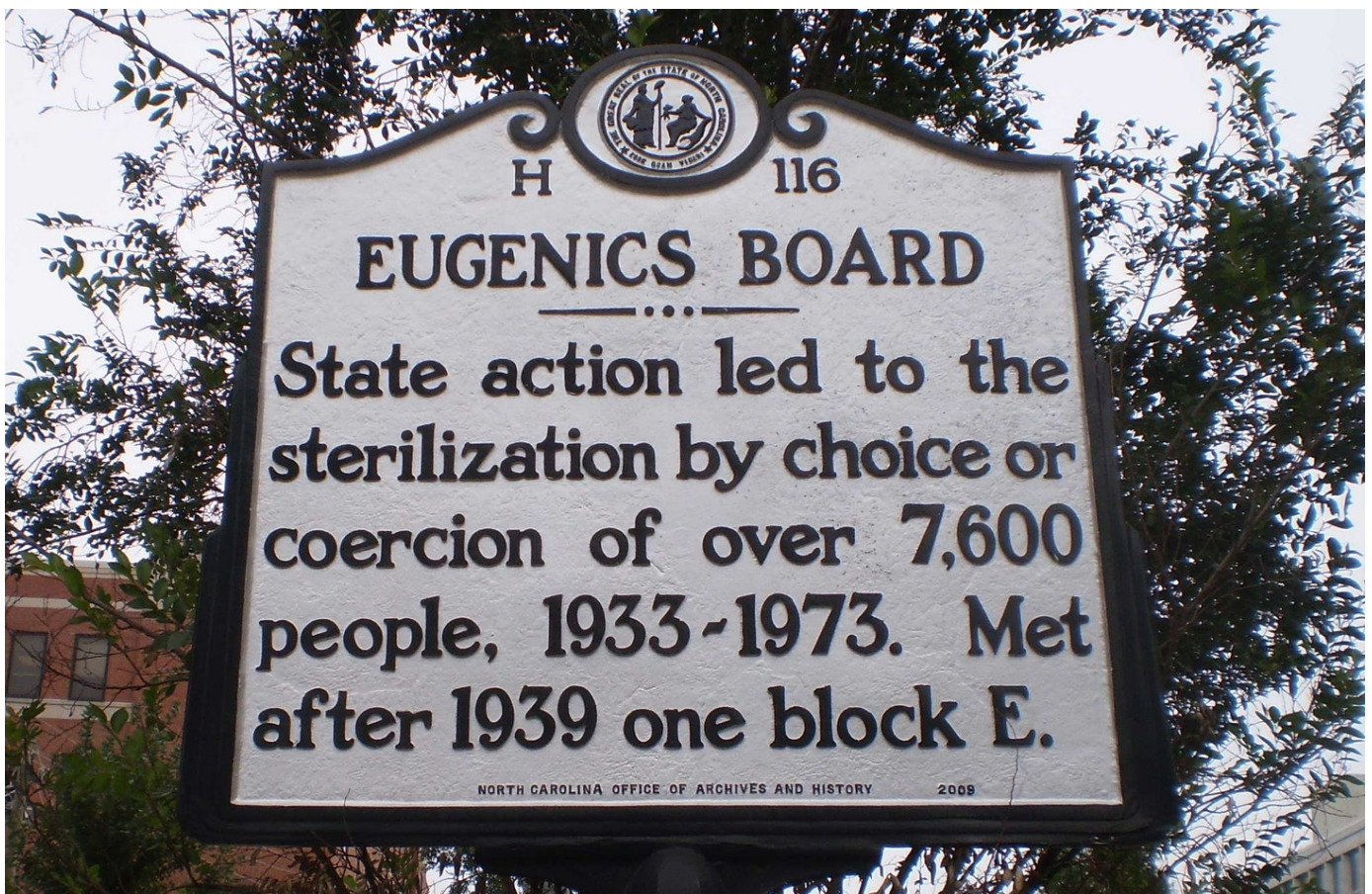
Judicial Precedents and Vaccine Mandates

The 1905 Supreme Court Case of *Jacobson v. Massachusetts* is often cited to justify vaccine mandates and other Covid emergency measures. But what did that original case actually determine?



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The 1905 *Jacobson v. Massachusetts* Supreme Court ruling is often cited by proponents as the basis for compulsory vaccine mandates and other emergency pandemic public health measures. But *Jacobson* was a narrow ruling at the time and the precedent it set should be construed as modest.

Justice Harlan's decision in this case over one hundred years ago upheld the State's, not Federal government's, power to impose a **nominal fine**—\$5, the equivalent of \$155 today adjusted for inflation—on a person who refused to be vaccinated against smallpox during

an outbreak in Boston. Keep in mind that the mortality rate for smallpox at that time was 31%, compared to a much smaller mortality rate for Covid:

AGE	FEMALE		MALE	
	No Underlying Conditions	One or Greater Underlying Conditions	No Underlying Conditions	One or Greater Underlying Conditions
0-9	99.99996	99.9639	99.99996	99.9603
10-19	99.99996	99.9639	99.99996	99.9603
20-29	99.9998	99.9466	99.9997	99.9037
30-39	99.9991	99.8636	99.9986	99.79
40-49	99.998	99.8153	99.9965	99.6943
50-59	99.9888	99.3647	99.9815	99.2135
60-69	99.9562	98.7605	99.8895	97.9992
70-79	99.8251	97.6094	99.5245	95.6517
80+	98.9087	92.8152	96.3318	79.9154

"Predicted COVID-19 Fatality Rates Based on Age, Sex, Comorbidities, and Health System Capacity, Stockholm University", June 2020

Even though the smallpox threat was far deadlier, the State's action was clearly less punitive and coercive than the current vaccine mandates. A \$155 fine is clearly not the same as the threat of losing one's job or being excluded from attending school. But this is not the first time the *Jacobson* precedent has been misapplied by the Court in acts of expansive overreach.

The most notorious example was the 1927 case of *Buck v. Bell*. Here, justice Oliver Wendall Holmes Jr., writing for the Court's majority, upheld Virginia's eugenic law permitting **involuntary sterilization** for people with "congenital feeble-mindedness," a rather loose diagnostic category even by the standards of the day. In practice, as is now well documented, this resulted in the eugenic sterilization of socially undesirable groups, with the poor and people of color disproportionately represented.

In the written ruling for *Buck v. Bell*, Justice Holmes recast *Jacobson's* limited holding: "The principle that sustains compulsory vaccination" from *Jacobson* "is broad enough to cover cutting the Fallopian tubes." Then came the infamous line, articulated by the Supreme Court's majority: "Three generations of imbeciles are enough." While the State laws that this ruling upheld have been reversed, this egregious Supreme Court decision has never been overturned by the Court.

Our jurisprudence has evolved and developed enormously since 1905, including tiered levels of scrutiny, and legal doctrines related to bodily autonomy and informed consent. Now is a good time for the Court to articulate the limits of the *Jacobson* precedent to avoid another disastrous decision like *Buck v. Bell*.



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