

Dear Committee Members,

Thank you for your attentiveness and excellent questions during today's hearing on HB 1811. Below are notes based on the testimony I gave during the hearing. Also, following up on a topic that was discussed several times, below are links to the package inserts for many vaccines currently in use.

Best,

Risa Evans,  
Contoocook

### **Links to Package Inserts**

RSV:

[Abrysvo](#)

[Nirsevimab \(Also known as Beyfortus\)](#)

HepB:

[Engerix B](#)

[RecombivaxHB](#)

Rotavirus:

[Rotateq](#)

DTap:

[Infanrix](#)

MMR:

[MMRII](#)

Hib:

[ActHib](#)

Pneumococcal Conjugate:

[Prevnar 13](#)

HPV:

[Gardasil 9](#)

Inactivated polio:

[Pentacel](#)

Influenza:

[FLUAD Quadrivalent](#)

Chickenpox:

[Varivax](#)

TDaP:

[Boostrix](#)

Meningococcal:

[MENVEO](#)

## Testimony

NH's current vaccine mandate exists in an extraordinary legal context: namely, one in which vaccine manufacturers for the most part can't be sued in court when their products injure people; they are *shielded* from liability. Under the 1986 National Childhood Vaccine Injury Act, except under exceedingly limited circumstances, if your child is injured by a vaccine, you cannot pursue a tort remedy in court, even if your child was injured because the manufacturer made an unsafe product.

So, NH's vaccine mandate creates a guaranteed, captive market for liability-free products. I'm not aware of any other context where we require people to use a liability-free medical product, and I think we can all agree this is for very good reasons, both practical and moral.

In other contexts, the threat of tort lawsuits spurs manufacturers to monitor safety and make safer products. As the U.S. Supreme Court has written, "The specter of damage actions may provide manufacturers with added dynamic incentives to continue to keep abreast of all possible injuries stemming from their products so as to forestall such actions through production improvement." *Bates v. Dow Agrosciences LLC*, 455 U.S. 431, 451 (2005) (cleaned up).

But not so in the vaccine context, where tort lawsuits are virtually impossible to bring because of the federal liability shield. Instead, the liability shield eliminates accountability and drastically reduces incentives for safety.

Here's what Justice Sotomayor had to say about this situation in her thoughtful dissent in the *Bruesewitz v. Wyeth* case (her full opinion is well worth reading):

Vaccines exist in "a regulatory vacuum in which no one--neither the FDA nor any other federal agency, nor state and federal juries--ensures that vaccine manufacturers adequately take account of scientific and technological advancements. This concern is especially acute with respect to vaccines that have already been released and marketed to the public. Manufacturers, given the lack of robust competition in the vaccine market, will often have little or no incentive to improve the designs of vaccines that are already generating significant profit margins" *Bruesewitz v. Wyeth LLC*, 562 U.S. 223 (2010) (Sotomayor, J., dissenting).

Yet, despite this regulatory vacuum, NH's mandate of liability-free vaccines targets the most vulnerable people in the population: babies and young children. In contrast to the rest of the legal system, which recognizes children as deserving MORE rather than less legal protection than adults, in the vaccine context, children are thrown to the wolves.

NH's mandate of liability free vaccines imposes lots of risk, with limited and uncertain remedy. While the federal Vaccine Injury Compensation Program provides some compensation to some individuals injured by vaccines, the program is riddled with problems, and does absolutely nothing to remedy the regulatory vacuum we've just been discussing.

I think it's for good reason that mandates of liability-free vaccines increasingly undermine public trust. I urge you to support this bill. Or if you're not comfortable doing that, consider a bill that would prohibit any vaccine mandate from being enforced in NH unless the vaccine manufacturer stands behind its product by waiving the federal liability shield and submitting to NH tort law. Otherwise, no market.