UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

VICTOR M. BOOTH, *individually and as next of friend of L.B., a minor child, et al.*, Plaintiffs, and **JOSHUA A. MAZER**, *individually and on behalf of his minor child*, Plaintiff v. **MURIEL BOWSER**, *in her official capacity as Mayor of the District of Columbia*, *et al.*, Defendants.	Case Nos. 21-cv-01857 (TNM) and 21-cv-01782 (TNM)

MEMORANDUM ORDER

Before the Court are the District of Columbia's motions to dismiss the remaining counts in these cases. In an earlier Opinion, the Court granted Plaintiffs' motions for a preliminary injunction and denied the District's motions to dismiss as to several counts. The Court now addresses the remaining counts and grants the District's motions to dismiss them. The Court incorporates here the factual background and relevant legal standards detailed in its Memorandum Opinion. *See* Mem. Op. at 2–7, ECF No. 47 (*Booth* docket).[1]

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[1] The Court finds that Plaintiffs have standing for each of their remaining claims. As discussed in its Memorandum Opinion, Plaintiffs' children might get vaccinated imminently. *See* Mem. Op. at 8–12 (*Booth* Parents); *id.* at 14–16 (Mazer). Vaccination would harm Plaintiffs' rights to: (1) parent; (2) direct medical care; (3) receive notification before their children's vaccination; and (4) practice their religion. These harms would be caused by the MCA because the MCA

A.

Consider first Plaintiffs' claims that the MCA deprives them of their constitutionally protected right to raise their children as they see fit. *See Booth* Compl. ¶¶ 398–410, ECF No. 31; *Mazer* Compl. ¶¶ 87–93, ECF No. 24; *id.* ¶¶ 102–08.[2] Plaintiffs argue this includes the right to make medical decisions for their children. They rely on *Troxel v. Granville*, 530 U.S. 57 (2000), to argue that the Supreme Court has long recognized "the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Id.* at 66; *see Mazer* Compl. ¶ 88; *Booth* Pls.' Reply at 40–41, ECF No. 39.[3]

Plaintiffs claim too much. The MCA does not order the District—or anyone else—to vaccinate Plaintiffs' children. The children must decide to get vaccinated. True, the MCA *facilitates* children's vaccination. But it does not command it. And although a state cannot actively intervene in a parent-child relationship, there is no constitutional requirement that the District *foster* that relationship.

Anspach v. Philadelphia, 503 F.3d 256 (3d Cir. 2007), illustrates this principle. The City of Philadelphia provided emergency contraception to Melissa, a minor, without notifying her

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allows minors to get vaccinated without parental permission. Granting the relief Plaintiffs seek would enjoin the MCA and declare it unconstitutional, so Plaintiffs show redressability. Plaintiffs make a stronger showing of standing on some claims than others, but the Court is mindful that Plaintiffs' standing burden at the Rule 12 stage is low. *See Cal. Cattlemen's Ass'n v. U.S. Fish & Wildlife Serv.*, 369 F. Supp. 3d 141, 145 (D.D.C. 2019) (explaining that Plaintiffs must actually prove their standing at summary judgment).

[2] Mazer brings separate counts for a deprivation of his fundamental right to parent, *Mazer* Compl. ¶¶ 87–93, and a substantive due process violation of his right to participate in the medical decisions of his child, *id.* ¶¶ 102–08. In both counts, he suggests the MCA deprives him of his right to direct J.D.'s medical care. Because the counts are substantially similar, the Court addresses them together.

[3] All page numbers refer to the pagination generated by the Court's CM/ECF filing system.

parents. *Id.* at 258. Melissa's parents alleged that the City had violated her right to bodily integrity and parental guidance and their constitutional right to family privacy. *Id.* The Third Circuit acknowledged that "the Supreme Court has long recognized that the right of parents to care for and guide their children is a protected fundamental liberty interest." *Id.* at 261. But the court explained that "the parental liberty interest is not absolute" and "must be balanced with the child's right to privacy, which is also protected under the Due Process Clause." *Id.*

Plaintiffs argue *Anspach* should not persuade here because contraception involves a constitutional right to privacy, but there is no corresponding constitutional right to receive a vaccine. *See* Mazer Pl.'s Opp'n. at 35, ECF No. 30. True enough. But the Third Circuit also noted that the liberty interest the Anspachs asserted went beyond what the Constitution required:

> The type of "interference" that the Anspachs assert would impose a *constitutional* obligation on state actors to contact parents of a minor or to encourage minors to contact their parents. Either requirement would undermine the minor's right to privacy and exceed the scope of the familial liberty interest protected under the Constitution. Courts have recognized the parental liberty interest only where the behavior of the state actor compelled interference in the parent-child relationship. These cases involve coercion that is absent from the allegations in Plaintiffs' Complaint.

Id. at 262.

Two principles from *Anspach* counsel against finding for Plaintiffs. *First*, requiring state actors to notify parents before providing a medical procedure sought by a minor would "exceed the scope of the familial liberty interest." *Id.* That is what Plaintiffs seek because their position boils down to a Constitutional *requirement* that the District have a law banning medical procedures on minors without parental consent. But no case cited by Plaintiffs suggests that the District *must* enact a parental consent law. In fact, caselaw suggests the opposite. *See also id.* at 266 ("The real problem alleged by Plaintiffs is not that the state actors *interfered* with the

Anspachs as parents; rather, it is that the state actors did not *assist* the Anspachs as parents or affirmatively *foster* the parent/child relationship. . . . [Plaintiffs] ignore that the Constitution does not require the Government to assist the holder of a constitutional right in the exercise of that right.") (cleaned up); *see also Harris v. McRae*, 448 U.S. 297, 317–18 (1980) ("Although the liberty protected by the Due Process Clause affords protection against unwarranted government interference with freedom of choice in the context of certain personal decisions, it does not confer an entitlement to such funds as may be necessary to realize all the advantages of that freedom. To hold otherwise would mark a drastic change in our understanding of the Constitution.").

Second, *Anspach* says that courts find a violation of the parental liberty interest in directing the affairs of their children only when "the behavior of the state actor *compelled* interference in the parent-child relationship." *Anspach*, 503 F.3d at 262 (emphasis added); *see also id.* at 264 ("[I]t is clear that Plaintiffs cannot maintain a due process violation when the conduct complained of was devoid of any form of constraint or compulsion."). Plaintiffs respond that the District is coercing their children into getting vaccines. But even if that is true, that coercion does not stem from the MCA. Without the MCA, the District would still have an incentive to persuade children and adults alike to get vaccinated.

Plaintiffs cite an array of cases to rebut *Anspach*. But all these cases are distinguishable. In each, the state's conduct was invasive. The MCA, on the other hand, is permissive, not prescriptive. Thus, none of these cases supports Plaintiffs' claim. *See, e.g.*, *Troxel,* 530 U.S. at 60, 67 (finding that a law "unconstitutionally interferes with the fundamental right of parents to rear their children" where a state court "can disregard and *overturn any decision* by a fit custodial parent concerning visitation . . . based solely on the judge's determination of the child's

best interests.") (emphasis added); *Parham v. J. R.*, 442 U.S. 584, 603–604 (1979) (upholding a Georgia law that allowed parents to commit their children to a state mental health hospital because parents "can and must" make these decisions, but confining its finding to the "voluntary commitment setting"); *Dubbs v. Head Start, Inc.*, 336 F.3d 1194, 1197, 1207 (10th Cir. 2003) ("*intrusive physical examinations*" were searches under the Fourth Amendment unless performed with parental consent) (emphasis added).

Plaintiffs' right-to-parent and right-to-direct-medical-care claims thus fail.

B.

Consider next Plaintiffs' Religious Freedom Restoration Act (RFRA) claim. *See Booth* Compl. ¶¶ 381–89; *Mazer* Compl. ¶¶ 116–22. RFRA allows individuals to petition a court for relief from infringement on their religious practice even when the burdens stem from neutral laws. *See Capitol Hill Baptist Church v. Bowser*, 496 F. Supp. 3d 284, 293 (D.D.C. 2020). RFRA protects "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(A); *id.* § 2000bb-2(4). To trigger RFRA, a plaintiff must show that the government "substantially burden[s]" his religious practice. *Id.* § 2000bb-1(a). If the plaintiff makes this showing, then the government must show that the burden on the plaintiff furthers a compelling governmental interest using the least restrictive means. *See id.* § 2000bb-1(b).

Plaintiffs argue that the MCA substantially burdens their religion because it overrides their "religiously motivated decisions." *Booth* Compl. ¶ 322; *see also Mazer* Compl. ¶ 121. The District "coerc[es] children to violate the religious beliefs of their parents," say Plaintiffs, because the MCA "permits children" to get vaccines without their parents' consent. *Mazer* Pl.'s Opp'n at 42; *see also Booth* Pls.' Reply at 34 (arguing the MCA exerts "substantial pressure on

the Plaintiffs and their children to modify their behavior and to violate their beliefs") (cleaned up).

But as the Court's analysis of *Anspach* shows, the MCA compels no one to get vaccinated. It is permissive, not prescriptive. To state a RFRA claim, Plaintiffs must show that the challenged law "forces them to engage in conduct that their religion forbids or that it prevents them from engaging in conduct their religion requires." *Henderson v. Kennedy*, 253 F.3d 12, 16 (D.C. Cir. 2001); *see also Mahoney v. Doe*, 642 F.3d 1112, 1121 (D.C. Cir. 2011) (same). The MCA neither forces Plaintiffs to engage in any conduct nor prevents them from engaging in any conduct. Plaintiffs can still claim religious exemptions, so their religious belief can "still be exercised." *See Capitol Hill Baptist*, 496 F. Supp. 3d at 295.

True, the District encourages everyone living here to get vaccinated. Some of its actions might qualify as coercive. For example, the *Booth* Parents claim that the District bombards residents with a vaccine "marketing campaign" of "billboards, posters, fliers, printed ads, online ads, websites with links, emails, Twitter, and other forms of mass media." *Booth* Compl. ¶¶ 76, 78. The District promises incentives to vaccinated individuals "such as gift cards, ear buds, and chances to win iPads, $25,000 scholarships, and other prizes." *Id.* ¶ 81 (cleaned up).

And it imposes penalties on the unvaccinated. For example, unvaccinated students like L.B. must quarantine for ten days after exposure to someone with COVID-19. *Id.* ¶ 189. Not so for his vaccinated classmates. *Id.* ¶¶ 176, 190–91. Or consider that Kipp Academy does not allow unvaccinated children to play sports. *Id.* ¶ 192. To a young child like L.B. whose life is intertwined with baseball, that policy likely feels coercive. So too for J.D. Even though she does not live in the District, she needs various vaccines to join summer camp, to secure a summer job, and to attend the college of her choice. *See Mazer* Compl. ¶¶ 68, 71.

But even if these actions are coercive, none of the Plaintiffs challenge them. They challenge only the MCA. The MCA might provide an outlet through which children can escape coercion. It might even be a part of a coercive scheme. But it coerces no one by itself. Thus, Plaintiffs' RFRA claims fail.

C.

The Court next considers Mazer's Free Exercise claim. *See Mazer* Compl. ¶¶ 109–115. Citing *Wisconsin v. Yoder*, 406 U.S. 205 (1972), Mazer argues that he has a right to direct J.D.'s religious upbringing. He states his religious beliefs prevent him from vaccinating J.D. and that until she reaches the age of majority, his religious beliefs must dictate her conduct. *Id.* ¶ 114.

The District responds that the right-to-parent claim dictates the outcome on this claim. According to the District, Mazer invokes a so-called hybrid right because he is combining a right-to-parent-claim with a Free Exercise Clause claim. *See Mazer* Defs.' Mot. to Dism. at 42, ECF No. 28. And that hybrid right can succeed only when both the right to parent *and* the Free Exercise Clause are implicated. *See id.* Because the right-to-parent claim fails, the District says, the hybrid right also fails. Mazer disagrees. He concedes that the right at issue is a hybrid right but argues he should succeed on a Free Exercise Clause claim alone. *See* Mazer Pl.'s Reply at 41, ECF No. 25.

Take these arguments one at a time. *First*, hybrid rights "require[] independently viable [right-to-parent] and free exercise claims." *Archdiocese of Wash. v. Wash. Metro. Area Transit Auth.*, 897 F.3d 314, 331 (D.C. Cir. 2018. As the Court has explained, Mazer does not have a viable right-to-parent claim. So his hybrid rights argument fails.

Second, a close reading of Mazer's Complaint reveals that he never made an independent Free Exercise claim. He relies on *Yoder*, which rejected rational basis review when "the interests

of parenthood *are combined with* a free exercise claim." 406 U.S. at 233 (emphasis added). All his contentions are about his objection to giving J.D. the vaccine because doing so is against his religious beliefs.

Mazer argues in his opposition to the District's motion that the law is neither neutral nor generally applicable. *Mazer* Pl.'s Opp'n at 41. Fair enough. In its prior opinion, the Court found the *Booth* Parents were likely to succeed on this claim. *See* Mem. Op. at 36. But Mazer never made that argument in his Complaint. And "[i]t is axiomatic that a complaint may not be amended by the briefs in opposition to a motion to dismiss." *Arbitraje Casa de Cambio, S.A. de C.V. v. U.S. Postal Serv.*, 297 F. Supp. 2d 165, 170 (D.D.C. 2003) (cleaned up).

Mazer's Free Exercise claim fails.

D.

The Court turns finally to Mazer's procedural due process claim. *See Mazer* Compl. ¶¶ 94–101. Mazer objects that the MCA provides no due process before stripping him of his rights to make medical decisions for J.D. *Id.* ¶ 99. This, standing alone, is not enough to make out a procedural due process claim. Procedural due process hinges on a deprivation of a substantive due process right. *See Roberts v. United States*, 741 F.3d 152, 161 (D.C. Cir. 2014) (holding that procedural due process requires a plaintiff to show the government deprived a plaintiff of "a liberty or property interest to which she had a legitimate claim of entitlement") (cleaned up).

The MCA does not deprive Mazer of any substantive due process right. The only candidates are his right-to-parent and right-to-direct-medical-care claims. Both fail. Thus, so does his procedural due process claim.

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For all these reasons, it is hereby

ORDERED that Defendant's [28] Motion to Dismiss in *Mazer* is GRANTED as to Counts II–VI; and it is further

ORDERED that Defendant's [36] Motion to Dismiss in *Booth* is GRANTED as to the *Booth* Parents' Second Cause of Action and Fourth Cause of Action.

SO ORDERED.

Dated: March 24, 2022

TREVOR N. McFADDEN, U.S.D.J.