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MEMORANDUM

TO: Shield of Truth Network
FROM: Charles I. Artz, Esq.
DATE: October 22, 2021
RE: **CONSTITUTIONAL AND LEGAL CHALLENGES**
VACCINE MANDATES/MASK MANDATES/CDC ORDERS

SUCCESSFUL CHALLENGES

In Dahl v. Western Michigan University Board of Trustees, ___ F.Supp.3d ___ (W.D. Mich. 2021) (2021 WL 3891620), the federal court issued a Temporary Restraining Order against the University to stop the Rona Vax mandate against athletes. If the athlete refused the vaccine, even on a religious exemption, the athlete would be kicked off the intercollegiate athletic team. Key holdings:

1. Free Exercise of Faith clause under the First Amendment requires **strict scrutiny**.
2. Denial of religious exemption was First Amendment **Free Exercise of Religion violation**.
3. Laws that discriminate against faith are invalid unless:
 - Compelling state interest, and
 - Narrowly tailored to meet compelling state interest
 - Testing/Mask alternatives existed
 - Transmission of health risk to other players not proven.
4. Klaasan allowed only *rational review* of vax mandate per 1905 Jacobson; however, **denial of First Amendment Free Exercise of Religion requires strict scrutiny!**

- Fulton v. City of Philadelphia, 141 S.Ct. 1868 (U.S. 2021)
- Law is not generally applicable if it invites the government to consider the particular reasons for a person's conduct.
- Substantial burden on individual's Free Exercise of Religion.

In Dahl v. Western Michigan University, ___ F.4th ___ (6th Cir. 2021) (2021 WL 4618519), the University required student athletes to be vaccinated against COVID-19. Medical and religious exemptions were determined on a discretionary basis. All 16 plaintiffs were denied exemptions. They sued in federal court. The District Court granted an injunction against the mandate. The University appealed. The Sixth Circuit U.S. Court of Appeals upheld the injunction, allowing student athletes to avoid vaccination and still participate in the sports for which they were recruited to play. The U.S. Court of Appeal's important legal holdings include the following:

1. The First Amendment, through the Fourteenth Amendment, prevents a state from prohibiting the free exercise of religion. **Indirect coercion or penalties on the free exercise of religion**, not just outright prohibitions, triggers strict scrutiny under the Free Exercise Clause.
2. A policy that **forces a person to choose between observing religious beliefs** and receiving a generally available government benefit for which the person is otherwise qualified burdens free exercise rights.
3. **A party may mount a free exercise challenge even where it does not have a constitutional right to the benefit it alleges is being improperly denied or impaired.** The U.S. Supreme Court has stated, "It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege, as opposed to a right."
4. The University's failure to grant religious exemptions to plaintiffs burdened their free exercise rights. The University put plaintiffs to the choice: get vaccinated or stop fully participating in intercollegiate sports. The University did not dispute that taking the vaccine would violate plaintiffs' sincerely held Christian beliefs. Yet refusing the vaccine prevents plaintiffs from participating in college sports, as they are otherwise qualified (and likely were recruited) to do. **By conditioning the privilege of playing sports on plaintiffs' willingness to abandon their**

sincere religious beliefs, the University burdened their free exercise rights.

5. Plaintiffs' unique ability to play sports framed the analysis with respect to the coercion or penalty aspect of a free exercise claim. The Free Exercise Clause protects against indirect coercion or penalties on the free exercise of religion.
6. **The vaccine mandate penalizes a student otherwise qualified for intercollegiate sports by withholding the benefit of playing on the team should she refuse to violate her sincerely held religious beliefs.**
7. A policy that provides a mechanism for **individualized exemptions is not generally applicable**. It is not neutral. If it were neutral and generally applicable, it could withstand scrutiny. That's what happened in the Klassen v. Indiana University case, 7 F.4th 592 (7th Cir. 2021) (Indiana provided a non-discretionary religious exemption to every student who requested it, which made its vaccine mandate neutral and generally applicable, avoiding violation).
8. Because the **University denied the student athletes' religious exemption, and ignored others' requests, they violated the athletes' free exercise constitutional rights.**
9. Enforcement of the University's policy **deprived the students of their First Amendment free exercise rights, which constituted irreparable harm, warranting the injunction.**

In Dr. A. et al. v. Hochul, et al., 2021 WL 4189533 (N.D. NY 2021), the federal court in New York granted the plaintiffs' Motion for a TRO against the NY Governor, DOH Commissioner and NY Attorney General and prohibited Defendants from "enforcing, threatening to enforce, attempting to enforce, or otherwise requiring compliance with the vaccine mandate." The Plaintiffs in this case are 17 medical professionals employed in the State of New York who allege that their sincere religious beliefs compel them to refuse the COVID-19 vaccines that are currently available and further alleged the "'vaccination mandate' violates the First and Fourteenth Amendments, the Supremacy Clause, and the Equal Protection Clause of the U.S. Constitution."

- Free Exercise Win.
- Judge issued Temporary Restraining Order ("TRO") blocking NY mandatory vaccination of health care workers.
- New regulation *excludes any religious exemption*.
- Vaccine mandate suspended/Department of Health **barred from enforcing any requirement that employers deny religious exemptions**

from COVID-19 vaccination or that they revoke any exemptions employer has already granted before the vaccine mandate issued.

- DOH is barred from interfering in any way with the granting of religious exemptions from COVID-19 vaccination going forward.
- DOH is barred from taking any action, disciplinary or otherwise, against the licensure, certification, residency, admitting privileges or other professional status or qualification of any physicians/providers on account of their seeking or having obtained a religious exemption from mandatory COVID-19 vaccination.

The federal court issued a preliminary injunction on October 12, 2021 in Dr. A v. Hochul, ___ F.Supp.3d ___ (N.D.N.Y. 2021) (2021 WL 4734404). The court held as follows:

1. The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires.
2. Title VII prohibits discrimination and employment on the basis of religion. Title VII does not demand mere neutrality with regard to religious practices. Rather, it gives them favorable treatment.
3. It was undisputed at this stage of the case that COVID-19 vaccines that are currently available violate plaintiffs' sincere religious beliefs because they all employ fetal cell lines derived from procured abortion in testing, development or production. The New York State Bureau Director of Immunization conceded in her court declaration that fetal cell lines are widely used in pharmaceutical development and were used in the testing and production of current COVID-19 vaccines.
4. The vaccine mandate is not a neutral law. The amended vaccination mandate to eliminate religious exemption is the kind of "religious gerrymander" that triggers heightened scrutiny.
5. The vaccine mandate fails under the strict scrutiny analysis. The omission of a religious exemption is not narrowly tailored to address any public health concern.
6. Defendants failed to explain why the "reasonable accommodation" that must be extended to a medically exempt health care worker under the law could not be similarly extended to a health care worker with a sincere religious objection.
7. Defendants failed to explain why they chose to depart from similar health care vaccination mandates issued in other

jurisdictions that include the kind of religious exemption sought in this case.

8. The government failed to demonstrate that alternative measures imposing lesser burdens on religious liberty would fail to achieve the government's interests.
9. The balance of hardship clearly favors plaintiffs. Defendants acknowledge that medical exemptions exist requiring covered entities to make "a reasonable accommodation." **Defendants failed to show that granting the same benefit to religious practitioners would impose any more harm**, especially when plaintiffs have been on the frontlines of stopping COVID for the past 18 months while **donning PPE** and exercising other proper protocols in effectively slowing the spread of the disease.
10. The government's imposition of a vaccine mandate conflicts with plaintiffs' and other individuals' **federally protected right to seek religious accommodation from their individual employers**.
11. **The vaccine mandate conflicts with longstanding federal protections for religious beliefs in violation of the Free Exercise Clause under the First Amendment**. They will suffer **irreparable harm** in the absence of injunctive relief.
12. The U.S. Supreme Court and other U.S. Courts of Appeal have both cautioned that courts should not rely on the 1905 Jacobson decision to grant special deference to the executive when the exercise of emergency powers infringes on constitutional rights.
13. A hypothetical worker who objected on religious grounds to vaccination against influenza – a respiratory disease broadly similar to COVID-19 – **could be reasonably accommodated with a surgical mask**.

In We The Patriots USA v. Hochul, No. 21-2179 (2nd Cir. 2021), Second Circuit U.S. Court of Appeals prohibited enforcement of New York's regulation requiring vaccination of specified health care workers. Key points:

- USCA cited U.S. Supreme Court decision in Roman Catholic Diocese of Brooklyn v. Cuomo, 141 S.Ct. 63, 66 (U.S. 2020).
- **State of New York is barred from enforcing the vaccine mandate against persons claiming religious exemptions, citing Dr. A v. Hochul**.
- Additional argument scheduled October 14, 2021.

In Sambrano v. United Airlines, 2021 WL 4760645 (N.D. Tex. 2021), the federal court imposed a Temporary Restraining Order against United Airlines' mandatory vaccination policy to protect employees from being compelled from taking a vaccination in violation of their religious beliefs or medical restrictions.

In Zywicki v. George Mason University, No. 1:21-CW-00894 (E.D. Va. 2021), a law professor who had a prior infection and naturally acquired immunity sued the University's vaccine mandate because he faced an elevated risk of adverse effects from the vaccine.

- The federal court documents indicate this is consistent with understandings of immunology generally, which recognized that vaccinating a person who was recently or concurrently infected with any virus can reactivate or exacerbate a harmful inflammatory response to the virus, and that it is not a theoretical concern.
- Professor Zywicki possessed natural acquired immunity that makes the vaccine medically unnecessary.
- Less than two weeks later, George Mason University settled the case by granting the physician a medical exemption and confirmed no disciplinary would be pursued against the law professor.
- This case stands for the proposition that **any person with a prior covid-19 infection has naturally acquired immunity and can obtain a medical exemption.**

In Friend v. City of Gainesville, No. 01-2021-CA-2412 (Alachua County, Florida 2021), the Eighth Judicial Circuit **granted** plaintiff's Petition for Emergency Injunctive Relief, **preventing vaccine mandates for city employees.** Moreover, in its response letter dated September 28, 2021, the City of Gainesville advised the Florida Department of Health that the City of Gainesville **rescinded its prior employee vaccine mandate.**

Key arguments asserted included:

1. Obesity/diabetes/fitness/natural immunity ignored.
2. State law vaccine passport prohibition violated.
3. Right to privacy violations.
 - Personal autonomy.
 - Coercion avoidance.
 - Unviability of person.
 - Bodily integrity per Cruzan.

FREEDOM OF SPEECH/FIRST AMENDMENT PROTECTION – BEST QUOTE THUS FAR

In Cphoon v. Konrath, ___ F.Supp.3d ___ (E.D. Wisconsin 2021) (2021 WL 4356069), a Wisconsin teenager's Instagram posts about her hospitalization with COVID-19-like symptoms were protected speech. The court held the sheriff and patrol sergeant violated the student's

First Amendment rights by ordering her to remove them or risk arrest or jail. The court's tremendous holdings include the following:

1. The SARS-CoV-2 virus and COVID-19 have had a tremendous impact on American society. But, as this case makes it clear, that **impact has its limits and, more specifically, does not extend to overriding the protections of the First Amendment!**
2. The loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury.
3. **Labeling censorship as societally beneficial does not render it lawful.** If it did, nearly all censorship would evade First Amendment scrutiny.
4. The defendant's preference to keep county residents ignorant as to the possibility of COVID-19 in their community **did not give them authority to hunt down and eradicate inconvenient Instagram posts!**
5. **Speech is protected against censorship or punishment** unless it is likely to produce a clear and present danger of a serious substantive evil that rises far above the public inconvenience, annoyance or unrest. The Instagram posts did not meet any of those categorical exceptions to the First Amendment, so this court **will not balance the social utility of curtailing it against its government-assigned value!**
6. The student got terrible treatment at the hospital and posted negative statements on the Instagram posts. The Department of Health referred the matter to the sheriff. The sheriff came to the house and threatened the parents and the student. "If the post doesn't come down, the sheriff is directing me to issue disorderly conduct citations, if not start taking people to jail!"
7. This established all elements of a First Amendment retaliation claim. She is now free to post whatever she wants about the COVID-19 pandemic.

LOSERS WITH RAY OF HOPE

In Wade v. University of Connecticut Board of Trustees, ___ F.Supp.3d ___ (D.Conn. 2021) (2021 WL 3616035), the court framed the issue as follows:

The plaintiffs raise important constitutional questions. Why and when should the government have the right to condition **access to public education** on a student's **sacrifice of his or her right**

against unwanted medical treatment in the form of a highly invasive injection of a yet to be fully approved vaccine?

Key holdings:

1. Vax mandate triggers unwanted medical treatment rights per Cruzan.
2. UConn allowed medical and religious exemptions.
3. Two plaintiffs received exemptions -- rendering claims *moot*.
4. One plaintiff failed to request exemption -- no standing. The court held if UConn delays or denies exemption requests, plaintiff does have standing per Klaasen.
5. 504 non-medical exemptions were granted.
6. *Medical exemptions were allowed per physician written statement identifying medical contraindication to Vax.*
7. Loser, but availability of medical and religious exemptions defeats standing. Implication is mandate requires medical and religious exemptions to meet constitutional principles.

In Klaasen v. Indiana University, 7 F.4th 592 (7th Cir. 2021), the Seventh Circuit upheld denial of injunction of vax mandate.

1. Freedom from unwanted medical treatment per Cruzan requires **only rational review, not strict scrutiny**.
2. Abortion/homosexuality/LGBTQ/everything else = fundamental right.
 - Freedom from unwanted medical treatment was fundamental right in Cruzan (U.S. 1990).
 - Jacobson v. Massachusetts, 25 S.Ct. 358 (U.S. 1905) suggests mandatory vax triggers only basic right, not fundamental right; rational review, not strict scrutiny.
 - Silver lining -- **medical exemptions and religious exemptions allowed by Indiana University**.
 - Probably explains why U.S. Supreme Court did not take the case.
3. A student may request an exemption for religious reasons; provide proof from a physician of an **allergy to the vaccine or one of its component parts; provide proof from a physician of active pregnancy or breastfeeding, receiving a hematopoietic**

or solid organ transplant, receiving treatment with Rituximab within the past 3-6 months, or COVID-specific monoclonal antibodies in the past 90 days.

In Children’s Health Defense v. Rutgers State University of New Jersey, 2021 WL 4398743 (D.N.J. 2021), plaintiffs sued Rutgers seeking a declaration that the portion of Rutgers’ COVID-19 mandatory vaccine policy (requiring students to be vaccinated prior to returning to campus) is unlawful.

1. Plaintiffs have constitutionally guaranteed **right to informed consent** and to **refuse unwanted medical treatment**.
2. Federal court denied the injunction and held as follows:
 - Although plaintiffs have **rights to informed consent and to refuse unwanted medical treatment, those rights are not absolute**.
 - The legislature, not the courts, should determine what modes of protection would likely be effective against the vaccine.
 - The severity and number of cases and deaths during the COVID-19 pandemic create a real and substantial relation between the policy and the need to protect public health.
 - There is no penalty or sanction expressed for students’ failure to submit evidence of a COVID-immunization – which is a lie because they can’t return to campus.
 - The policy creates **medical and religious exemptions**.
 - Those who do not wish to be vaccinated may go elsewhere and seek other educational opportunities – absurd/heinous.
 - It is hard to see a greater problem with medical conditions that help all students remain safe when learning – defies reality that vaccine is neither safe nor effective.

HOSPITAL EMPLOYMENT LOSERS

In Beckerich v. St. Elizabeth Medical Center, ___ F.Supp.3d ___ (E.D. Kentucky 2021) (2021 WL 4398027), the issue is whether a private employer can modify its employment conditions to require employees to be vaccinated in response to “an unprecedented global pandemic.” The federal court denied the injunction. The policy requires hospital employees to get vaccinated or submit a request for a **medical exemption or exemption for sincerely held religious beliefs**. Failure to comply with the mandatory vaccine without an accepted exemption may result in termination. The court denied the injunction and held as follows:

1. The Constitution does not apply to private parties. The Constitution does not apply to private employers. Under the State Action Doctrine, a person cannot sue for violation of constitutional rights if the employer is a private party and not the

federal or state government or a State Actor pursuant to the “State Action Doctrine.” The amount of federal funding a hospital receives does not create a State Actor.

2. Under the Americans with Disability Act and Title VII of the federal Civil Rights Act, private employers are required to **offer medical and religious accommodations to its mandatory vaccination policy.**
3. Some reactions to vaccines can be severe enough to rise to the level of a disability under the ADA.
4. Under the ADA analysis, a hospital granted 4 requests or deferments for 174 employees. Another 34 were denied. Thus, 75% of employees who have requested a medical accommodation were granted or deferred.
5. The Title VII Religious Discrimination analysis requires the plaintiff to show:
 - A sincere religious belief in conflict with the vaccine requirement;
 - The defendants were informed of the conflict by filling out a religious exemption form; and
 - The plaintiff was discharged or disciplined for failing to comply with the requirement.
6. A total of 11 out of 40 plaintiffs have been **granted religious exemptions to the vaccine requirement and thus will not be required to obtain the vaccine.** **No plaintiff has been denied a religious exemption.** Therefore, there is no evidence of religious discrimination under Title VII.
7. **Lost employment is not irreparable harm.** It can be compensated in money damages.
8. No plaintiff is being imprisoned or vaccinated against his or her will. Instead, the plaintiffs are choosing whether to comply with the condition of employment or to deal with the potential consequences of that choice.
9. The court appeared to **elevate the nebulous “greater good” above individual liberties,** again citing the 1905 Jacobson case.
10. If an employee believes his or her individual liberties are more important than legally permissible conditions on his or her employment, that employee can and should choose to exercise another individual liberty, no less significant – **the right to seek**

other employment. That is twisted because every healthcare system is poised to impose a vaccine mandate.

In Harsman v. Cincinnati Children's Hospital Medical Center, 2021 WL 4504245 (S.D. Ohio 2021), plaintiff sued five of the major health care systems in the Cincinnati area, which announced vaccine mandates for all of their employees. They sought an injunction to stop the vaccine mandate. The court denied the injunction and held as follows:

1. **Employees who qualify for a medical or religious exemption are not required to get a COVID-19 vaccine.**
2. Hundreds of religious exemptions have already been granted.
3. The private hospital is not a state actor. That means they have **zero chance of winning the constitutional arguments.**
4. Losing a job is not irreparable harm.
5. There is more harm to the public if employees are not vaccinated. The public's interest in combatting COVID-19, **at an infinitesimally small risk to plaintiff's health or liberty,** compels denial of the injunction. Actual liberty for all of us cannot exist where individual liberties override potential injury done to others. Incredible!

PUBLIC SCHOOL MASK MANDATE – DOH ORDER

In Geerlings v. Tredyffrin/Easttown School District, 2021 WL 4399672 (E.D. Pa. 2021), plaintiffs sued on behalf of their children to prevent the School District from implementing the PA Secretary of Health's Order requiring schools to impose face masks on students. Plaintiffs contend the DOH school mask Order violates their constitutional right to practice their religious beliefs; violates the federal FDCA because masks are medical devices that are not approved by the FDA; and the DOH lacked authority to issue the Order.

One plaintiff believed people are made in the image of God and it therefore dishonors God to cover faces. Corinthians instructs that face coverings dishonor God, **but the plaintiff did not name a specific Book or Verse!** Another plaintiff's son experienced headaches on the days he wore a mask. Another plaintiff testifying to Jesus believes God intervened in his life to save him from certain trauma and that masks are a mockery of the gift of life because they cover what makes us human and show a lack of gratitude to the Creator. They did not ask for medical or disability exemptions from the mask mandate from the School District. The court denied the injunction and held as follows:

1. Good news: **Federal law takes precedence** and the School District's obligation to **protect students' legitimate constitutional rights to practice their religion cannot be set aside by an Order from the PA Secretary of Health.** Therefore, schools must grant religious exemptions from the

PADOH mask order! The court cited recent U.S. Supreme Court decisions in Tandon and Cuomo, which stopped New York and California restrictions on indoor gathering because the state exempted secular activities but not comparable religious ones.

2. The court found the individual's **religious beliefs were not sincerely held!**
3. The objection to wearing masks because the plaintiff believed people are made in the image of God and it dishonors God to cover faces is not a sincere tenet of the plaintiff's religion! She provided no details. She didn't cite a verse or the precise book. The court specifically asked is it 1st or 2nd Corinthians and what verse? **The plaintiff did not know her Bible! And failed to show the Judge anything in the Word.**
4. The Judge wanted to see some evidence such as practicing communion or eating unleavened bread on Passover.
5. The second plaintiff said it was immoral to harm the body and masks harm the body. The court found that a concern that something that may do more harm than good is a medical belief, not a religious one. Also, her son testified he voluntarily wore a mask at a private squash club which undermined her position that masking violates her family's religion.
6. The next plaintiff testified he opposes wearing masks because he believes it is immoral to harm people and masks harm people. He has no church affiliation and does not subscribe to the Bible. The court held his world view based on independent research **has no functional equivalent in the Ten Commandments, the New Testament Gospels or anything.** It was just a personal understanding of right and wrong. A personal moral code, although commendable, is not afforded protection under the Free Exercise Clause.
7. The fourth person testified his body is a gift from the Creator and, therefore, to cover that gift creates a mockery. He alleged he has a sincere religious practice of not covering his face, but he lets his son wear a football helmet and wrestling head gear. Once again, **the witness provided no scriptural source for his belief that masks disrespect God.** An abstract belief that life is a gift from God cannot by itself make everything that one does to appreciate life part of a religion.
8. The federal judge "punted" on the DOH authority issue because that is a function of state law, not federal law. That issue will be

decided in Corman v. Beam, No. 294 MD 2021 (Pa. Cmwlth. – filed September 3, 2021).

CDC AUTHORITY IS EXTREMELY LIMITED AND HAS NO BINDING EFFECT OR FORCE OF LAW

The U.S. Supreme Court and other federal courts have significantly limited CDC’s self-imposed albeit unconstitutional dictates. The U.S. Supreme Court on August 26, 2021 struck down a CDC Order (imposing a moratorium on evictions with threat of significant fines and criminal penalties) and held:

CDC’s regulatory authority is limited to inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be so infected or contaminated as to be sources of dangerous infection to human beings.

* * * * *

CDC regulations under this authority have generally been limited to quarantining infected individuals and prohibiting the import or sale of animals known to transmit disease

* * * * *

CDC’s Order exceeded its statutory authority. The government’s interpretation of the CDC statute would give the CDC a **breathtaking amount of authority.**

* * * * *

Our system does not permit agencies to act unlawfully even in pursuit of desirable ends.

Alabama Association of Realtors v. Department of Health and Human Services, ___ S.Ct. ___ (U.S. 2021) (2021 WL 3783142) (emphasis added). Accordingly, absent the seven categories quoted above, CDC’s statements with respect to COVID-19 treatment by physicians has absolutely no force and effect of law. Injunctions against other unconstitutional CDC Orders were imposed in Tiger Lily, LLC v. U.S. Department of Housing and Urban Development, ___ F.4th ___ (6th Cir. 2021) (2021 WL 3121373); and Florida v. Becerra, 2021 WL 2514139 (M.D. Fla. 2021). Accordingly, any CDC guidance is just that, and cannot establish the standard of care applicable to physicians in the Commonwealth of Pennsylvania.

HEINOUS LOSERS

In Harris v. University of Massachusetts Lowell/Boston, 2021 WL 3848012 (D.Mass. 2021), the UMass campuses imposed vax mandates. Absolutely despicable and heinous holdings include the following:

1. University official denied religious exemption because he determined it did not violate the tenants of the student’s faith!
2. Freedom from an unwanted vax is not a fundamental right per Klaasen and Jacobson.

3. Mandatory vax (plus masks plus distance) created a compelling state interest to stop the spread of the Coronavirus because it protects the vaccinated and others.
 - Literal insanity -- there is no evidence the vaccine establishes immunity/never intended/Israeli study.
4. No deprivation of rights because student can participate in education online.
5. *The objection was not religious because the church leaders did not object to the vaccines (Catholic Church)!*
6. First Amendment liberty to avoid vaccination does not allow person to expose other people to disease.
7. More insanity -- valid only if vax actually immunized.
8. 7,000 deaths per VAERS per expert testimony -- no causation between vaccine and death!
 - Judge Denise Casper appointed by Barack Obama.

In Garfield v. Middle Tennessee State University, No. 3:21-CV-00613 (M.D. Tenn. 2021), University nursing school imposed mandatory vax. Failure to be vaccinated would result in inability to participate in clinical rotations and could not progress in the program. Proof of vaccination is required to proceed.

Critical Holding:

1. Inability to progress with classmates is not irreparable harm.
2. Interruptions or delays in educational programs are not irreparable harm.

In Dr. T v. Alexander-Scott. 2021 WL 4476784 (D. Rhode Island 2021), the Rhode Island Department of Health published an emergency regulation requiring all health care workers, except those meeting a very narrow medical exception, to be vaccinated. Plaintiffs sued, arguing it does not allow a religious exemption. The court denied the injunction and held as follows:

1. The mandatory vaccination laws are a valid exercise of the state's police powers and such laws have withstood constitutional challenges, citing Jacobson.

2. The court had to address the question of whether the regulation is preempted by Title VII religious discrimination laws. There is a strong presumption that state or local regulation of matters related to health and safety is not invalidated under the federal Constitution's supremacy clause.
3. **Nothing in the language of the regulation prevents any employer from providing a reasonable accommodation to an employee who seeks one in accord with their sincerely held religious beliefs.**

In Jane Does 1-6 v. Mills, 2021 WL 4783626 (D. Maine 2021), eight health care workers and one health care provider sued the Governor for a preliminary injunction. The Governor issued a regulation requiring *all employees of designated health care facilities to be vaccinated against COVID*. Plaintiffs contend the vaccine mandate violates the First Amendment and Title VII rights because it does not exempt from its requirements individuals whose sincerely held religious beliefs cause them to object to being vaccinated against COVID-19. Seven of the nine plaintiffs also contend their employers violated federal employment law (Title VII) by refusing to grant them religious exemption. Plaintiffs requested a preliminary injunction. The federal court denied the preliminary injunction and held as follows:

1. Plaintiffs object to receiving the COVID vaccine based on their stated belief that *“life is sacred from the moment of conception and that the development of the three COVID-19 vaccines employed or benefited from the cell lines of aborted fetuses.”* Moderna and Pfizer vaccines were objected because both are mRNA vaccines which have their origins in research on aborted fetal cell lines. Plaintiffs object to the J&J vaccine, asserting that aborted fetal cell lines were used in both its development and production. Use of fetal cell lines to develop vaccines runs counter to plaintiffs' sincerely held religious beliefs that cause them to oppose abortion.
2. The defendant did not challenge the sincerity of the plaintiffs' asserted religious beliefs. The court treated **those facts as established.**
3. The critical analysis in all of these cases is the **standard of constitutional review that applies: rational basis review or strict scrutiny review.**
4. Under rational basis review, a neutral, generally applicable regulatory law that compels activity forbidden by an individual's religion withstands a Free Exercise challenge if there is a rational basis for the regulation.

5. The 1905 U.S. Supreme Court decision in Jacobson **did not specifically address the scope of an individual's constitutional rights under the First Amendment's Free Exercise Clause in relation to mandatory vaccines.**
6. The court attempted to distinguish Dr. A v. Hochul because the New York regulation originally provided for a religious exemption, which was then removed. The Dr. A court called this "religious gerrymander." **Despite the fact that Maine law removed religious exemptions from all vaccine requirements (just like New York) does not demonstrate animus toward religion!**
7. A religious exemption would not address a risk associated with the vaccine mandate's central objective. Therefore, rational basis review applies.
8. The regulation **has not prevented plaintiffs from staying true to their professed religious beliefs!** *The vaccine mandate does not compel plaintiffs to be vaccinated for COVID-19 involuntarily, and, therefore, the plaintiffs have not been directly prevented from adhering to their religious beliefs!* [Lie from the pit of hell]
9. Adding the COVID-19 vaccine to the list of mandatory vaccinations for Maine's health care workers did not specifically target plaintiffs' religious beliefs for disparate and discriminatory treatment!
10. The court had to acknowledge that a religious accommodation was required under a military policy to allow a Sikh [*Sikhism - The word Sikh (pronounced "sickh") means 'disciple' or 'learner.' The Sikh religion was founded in Northern India in the fifteenth century by Guru Nanak Dev Ji and is distinct from Islam and Hinduism. Sikhism is monotheistic and stresses the equality of all men and women. Sikhs believe in three basic principles; meditating on the name of God (praying), earning a living by honest means as well as sharing the fruits of one's labor with others. Sikhism rejects caste and class systems and emphasizes service to humanity. Turbans are worn to cover their long hair and with respect to God. Sikhs have unshorn hair, beards and moustaches.*] student to enroll in the Army's Reserve Officers' Training Corp program and the student was allowed to **wear a turban, uncut hair and a beard.** *That means a non-Christian Sikh has religious rights regarding his hair and beard, but Christians have no rights to object to vaccines based on aborted*

fetal cells, which the court had to admit was true. A medical exemption is OK.

11. Vaccines stop the spread of COVID-19. Unvaccinated individuals are substantially more likely to both contract COVID and to suffer serious medical consequences. Most of the outbreaks are caused by health care workers bringing the virus into facilities.
12. High vaccination rates minimize the number of unvaccinated individuals in group settings (such as health care environments), which ultimately **facilitates population-level immunity and prevents outbreaks of these diseases both within the hospital settings and the general population.** Achieving high levels of vaccination needed to establish **population-level immunity** is crucial to protect the most vulnerable individuals including individuals with weakened immune systems. [*The judge believes vaccines create immunity!*]
13. On the next page, when citing support for the CDC statements and guidelines, the judge acknowledged that **infections occur among vaccinated people, but they tend to be mild.** [*Which is it? Does the vaccine create immunity or only mild infections?*]
14. The record demonstrates that PPE and regular testing are not sufficient to achieve man's compelling interest in stopping the spread of COVID-19!
15. **Daily PCR testing is insufficient!**
16. The use of PPE is not an equivalent alternative measure to stop the spread of COVID-19. **PPE does not eliminate the possibility of spreading COVID-19, especially in health care settings!** PPE, regular testing and symptom monitoring **have not been sufficient to prevent outbreaks of the Delta variant!**
17. The Title VII religious discrimination claims were dismissed because the individuals have to go through the State Human Relations Commission and EEOC procedures first.

The First Circuit U.S. Court of Appeals upheld the decision in Does v. Mills, ___ F.4th ___ (1st Cir. 2021) (2021 WL 4860328). Key holdings:

1. The 6th Circuit's decision in Dahl v. Western Michigan University was distinguished because the Maine rule does not allow government official discretion to consider the merits of an individual's request for an exemption. [**That means absolutely**

refusing to allow an exemption is OK, but individualized exemptions are not OK!]

2. Dr. A v. Hochul was distinguished because New York *singled out religious believers through a “religious gerrymander,”* but Maine completely eliminated religious and philosophical exemptions to mandatory vaccination. **[So, if you completely eliminate religious exemptions, you are not singling out religious believers!]**

This case arguably creates a direct conflict with the 6th Circuit’s ruling in Dahl, which could trigger U.S. Supreme Court to take the case.

In Johnson v. Brown, 2021 WL 4846060 (D. Oregon 2021), the entire state imposed a COVID-19 vaccine mandate. Several physicians and individuals sued the Governor. The Court denied the request for a Temporary Restraining Order and held as follows:

1. **The right to refuse a vaccination is not a fundamental right.**
2. Plaintiffs failed to demonstrate that their preference not to receive an FDA-authorized vaccine is a fundamental right under the due process clause.
3. Jacobson is worshipped; Cruzan is ignored.

PRIVATE INSTITUTION LOSER

In Beck v. Williamson College of the Trades, No. CV-2021-007215 (Delaware County, PA 2021), the Court denied injunctive relief for a student seeking a religious exemption to the mandated injection. Lesser rights exist in private institutions. Key holdings:

1. The student could **not show a sincerely held religious belief given his acknowledgment that he had previously (within the past two years and prior to matriculating at the school) obtained vaccinations** with origins that he knew were similar to those of COVID-19 vaccines.
2. The student’s religious discrimination claim appeared to be **more global than religious, objection to unprecedented restrictions on human freedoms created by COVID-19 pandemic.**
3. Even if he had a sincerely held religious belief, the school had a **lawful, nondiscriminatory reason for its policy – to protect the health and safety of its students and staff during a global pandemic and better ensure the continued operations of the school.**

4. The school applied the policy in the same manner to all students regardless of the identity or faith of those who requested an exemption.
5. It was permissible for the school to require a statement of published doctrine from the student's religious group indicating that the vaccines violated the student's religious belief and a statement from a spiritual leader of a local place of worship indicating the student was a member of that faith.
6. The student failed to exhaust his administrative remedies before filing suit, i.e. filing with PHRC/EEOC.
7. First Amendment free exercise rights not in play with private institution.
8. PHRC: failed to exhaust administrative remedies/futility argument rejected.
9. Title II public accommodation access - balancing test favors school.
10. Balancing test overrides First Amendment free exercise rights!?

PRIVATE CORPORATION – TITLE VII LOSER

In Barrington v. United Airlines, 2021 WL 4840855 (D. Colo. 2021), United Airlines imposed a mandatory vaccine requirement. Plaintiff filed a religious exemption. *United approved the religious exemption request but informed her that she would be placed on leave of absence without pay.* She filed suit claiming violations of religious discrimination under Title VII of the federal Civil Rights Act. The Court denied the injunction and held as follows:

1. Sincerely held religious belief not challenged.
2. Reasonable accommodation (leave of absence/no money). Horrible.
3. Interactive process not necessary.
4. Exhaustion EEOC/PHRC:
 - ≠ Jurisdictional Bar Title VII
 - = Affirmative Defense (Kills Injunction)
5. Lost job = money ≠ irreparable harm.
6. Public interest – end pandemic through vax/decrease risk.
7. Actual injury cannot exist where individual liberties override potential injury done to others.