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Vaccine Q&A

Pacific Justice Institute

DEFENDING FAITH & FREEDOM

Questions and Answers on the Covid-19 Vaccine

Pacific Justice Institute

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Question: Can my employer order me to be vaccinated against Covid (also referred to as COVID-19, novel coronavirus or SARS-CoV-2) and can they threaten to fire me if I do not comply?

Answer: First, no one can force you to take the Covid vaccine, because it has not been approved by the Food and Drug Administration (FDA). The vaccine is currently being administered under the Emergency Use Authorization (EUA) because the vaccines were not studied for a sufficient time to ensure there are no long-term side effects. There are a number of authorities and resources you can cite that show you cannot be forced to take a vaccine. Consider the following four examples:

1. The EUA itself, 21 U.S. Code § 360bbb–3, requires “. . . Individuals to whom the product is administered are informed— of the option to accept or refuse administration of the product, of the consequences, if any, of refusing administration of the product . . .”¹
2. Each person who is about to receive a Covid vaccine is given a fact sheet, which states in part: “WHAT IF I DECIDE NOT TO GET THE (insert drug company name) COVID-19 VACCINE? It is your choice to receive or not receive the (insert drug company name) COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care.”²
3. In the 2004 case of *Doe v. Rumsfeld*,³ plaintiffs challenged the government's Anthrax Vaccination Immunization Program (AVIP), because anthrax vaccine adsorbed (AVA) had never been approved by the FDA as a safe and effective drug for protection against inhalation anthrax. Yet the government was forcing military personnel to take the vaccine. The United States District Court for the District of Columbia issued an injunction

¹ See, 21 U.S. Code § 360bbb–3 - Authorization for medical products for use in emergencies. Subsection (e)(1)(A)(ii)

² See, <https://www.cdc.gov/vaccines/covid-19/eua/index.html>.

³ *Doe v. Rumsfeld*, 341 F. Supp. 2d 1, 2004 U.S. Dist. LEXIS 21668.

prohibiting the use of AVA on the basis that the vaccine is either a drug unapproved for its intended use or an investigational new drug, and thus requires informed consent.

4. In August 2020, Amanda Cohn, MD, the Executive Secretary of The Centers for Disease Control Advisory Committee on Immunization Practices (CDC-ACIP) stated: "I just wanted to add that, just wanted to remind everybody, that under an Emergency Use Authorization, an EUA, vaccines are not allowed to be mandatory. So, early in this vaccination phase, individuals will have to be consented and they won't be able to be mandated."⁴

However, that promise to the public has not been kept. On May 28, 2021, in an update of its Covid guidance, the U.S. Equal Employment Opportunity Commission (EEOC) said employers could require all workers physically entering a workplace to be vaccinated against the coronavirus but that federal law may require the employer to provide reasonable accommodations for employees who aren't vaccinated because of a disability or religious belief.⁵

It is interesting that in Senate testimony on May 11, 2021, Dr. Anthony Fauci and Peter Marks, Director of the Food and Drug Administration's Center for Biologics Evaluation, were asked how many of their employees have taken the vaccine. Their response was that they thought a little more than half, up to 60%, but they were not sure because they are not allowed to ask their employees if they got the vaccination.⁶

Therefore, if you work for Dr. Fauci at the National Institute of Allergy and Infectious Diseases, you do not have to take the vaccine, and you cannot be asked if you are vaccinated. If you serve in the armed forces, your commanding officer cannot order you to take the vaccine in accordance with *Doe v. Rumsfeld*. But if you work for ANY private employer, you can be mandated to take the vaccine or face the possibility of losing your job.

NOTE: The above reference to our military personnel is used only to demonstrate how outrageous it is that any private employer can require their employees to be vaccinated. We at PJI fully support our troops, including their right to decline a vaccine that is not approved by the FDA.

⁴See, <https://www.youtube.com/watch?v=p0zCEiGohJs&list=PLvrp9iOILTQb6D9e1YZWpbUvzfptNMKx2&inde>

⁵ "What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws", U.S. Equal Employment Opportunity Commission (EEOC), Section K Vaccinations.

⁶ Fact Check-Fauci, Marks did not say 40% to 50% of CDC and FDA employees are 'refusing the COVID-19 vaccine', By Reuters Fact Check, May 20, 2021.

UPDATE: On June 12, 2021, the United States District Court in the Southern District of Texas ruled that the EUA’s protection against mandated vaccines does not apply to private employers.⁷ Plaintiffs announced they were going to appeal.

Question: What if taking the vaccination violates a sincerely held religious belief of mine?

Answer: Title VII of the Civil Rights Act of 1964 prohibits two categories of employment practices. It is unlawful for an employer:

“(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.”⁸

There is a process involved when asserting your rights under Title VII. The process begins when you communicate to your employer that you are unable to be vaccinated for Covid because of a sincerely held religious belief, practice, or observance. Once an employer is on notice that an employee’s sincerely held religious belief, practice, or observance prevents the employee from getting a Covid vaccine, the employer must provide a reasonable accommodation unless it would pose an undue hardship.

The employer should ordinarily assume that an employee’s request for religious accommodation is based on a sincerely held religious belief, practice, or observance. However, if an employer is aware of facts that provide an objective basis for questioning either the religious nature or the sincerity of a particular belief, practice, or observance, the employer would be justified in requesting additional supporting information.

An employer should thoroughly consider all possible reasonable accommodations, including telework and reassignment. The EEOC and US Department of Labor, Occupational Safety and Health Administration, provide resources to assist employers in creating accommodations for employees.

⁷ *Jennifer Bridges, et al v. Houston Methodist Hospital, et al*, Civil Action H-21-1774, Decided June 12, 2021.

⁸ 42 U.S.C. § 2000e–2(a).

However, employers are not required to make accommodations if such accommodations will create an “undue hardship” for the employer, having more than minimal cost or burden on the employer.⁹ However, the courts have stated that to have an undue hardship, “an employer must either provide factual evidence that co-workers of an accommodated employee will be significantly imposed upon, or that a material disruption of the work routine will occur. Mere hypothetical scenarios of what could happen... if an employee is granted an accommodation are wholly insufficient.”¹⁰

Ultimately, if an employee cannot be accommodated, employers should determine if any other rights apply under the EEO laws or other federal, state, and local authorities before taking adverse employment action against an unvaccinated employee.¹¹

If your employer is not complying with the above procedure, or if you disagree with their findings related to accommodations, contact the Pacific Justice Institute to discuss your legal rights.

Question: What if I have a disability covered under the Americans with Disabilities Act (ADA) that prevents me from taking the vaccine?

Answer: Under the ADA, an employer may require all employees to meet a qualification standard that is job-related and consistent with business necessity, such as a safety-related standard requiring Covid vaccination. However, if a particular employee cannot meet such a safety-related qualification standard because of a disability, the employer may not require compliance for that employee unless it can demonstrate that the individual would pose a “direct threat” to the health or safety of the employee or others in the workplace.

In the case of Covid, that would include evaluation of things such as the current level of community spread, whether the employee works alone or with others, works inside or outside; the available ventilation; the frequency and duration of direct interaction the employee typically will have with other employees and/or non-employees; the number of partially or fully vaccinated individuals already in the workplace; whether other employees are wearing masks or undergoing routine screening testing; and the space available for social distancing.

If it is determined that an employee with a disability who is not vaccinated would pose a direct threat to self or others, the employer must consider a reasonable accommodation to reduce or eliminate that threat, such as requiring the employee to wear a mask, work a staggered shift,

⁹ EEOC, sections K 12 and K 6.

¹⁰ *Heller v. EBB Auto Co.*, 8 F.3d 1433, 1440 (9th Cir. 1993); *Tooley v. Martin-Marietta Corp.*, 648 F.2d 1239, 1241 (9th Cir. 1981); *Burns v. Southern Pacific Transp. Co.*, 583 F.2d 403, 406-07 (9th Cir. 1978).

¹¹ EEOC, K 12.

making changes in the work environment (such as improving ventilation systems or limiting contact with other employees and non-employees), permitting telework if feasible, or reassigning the employee to a vacant position in a different workspace.

Similar to the requirements under Title VII for sincerely held religious beliefs, employers are not required to make accommodations that impose “undue hardship” on the employer. However, the standard for undue hardship is different under the ADA, as it requires a “significant difficulty or expense.”

Also, under the ADA, it is unlawful for an employer to disclose that an employee is receiving a reasonable accommodation or to retaliate against an employee for requesting an accommodation.¹²

Question: What if I have a medical condition that prevents me from taking the vaccine?

Answer: The CDC makes very few exceptions medical conditions, as follows:

1. People who have weakened immune systems- People with HIV and those with weakened immune systems due to other illnesses or medication might be at increased risk for severe Covid. They may receive a Covid vaccine. However, they should be aware of the limited safety data:
 - A. Information about the safety of Covid vaccines for people who have weakened immune systems in this group is not yet available
 - B. People living with HIV were included in clinical trials, though safety data specific to this group are not yet available at this time
 - C. People with weakened immune systems should also be aware of the potential for reduced immune responses to the vaccine, as well as the need to continue following current guidance to protect themselves against Covid.
2. People who have autoimmune conditions- People with autoimmune conditions may receive a Covid vaccine. However, they should be aware that no data are currently available on the safety of Covid vaccines for people with autoimmune conditions.
3. People who have previously had Guillain-Barre syndrome (GBS)- With few exceptions, the independent Advisory Committee on Immunization Practices (ACIP) general best practice guidelines for immunization do not include a history of GBS as a precaution to vaccination with other vaccines.

¹² EEOC, K 5, K 6.

4. People who have previously had Bell's palsy- Cases of Bell's palsy were reported following vaccination in participants in the Covid vaccine clinical trials. However, the FDA does not consider these to be more than the rate expected in the general population. They have not concluded these cases were caused by vaccination.¹³

The general rule is that if you have a medical condition that your doctor will certify should exclude you from vaccination, present that documentation to your employer if they are mandating vaccination. If you feel the employer is responding in an unreasonable manner, contact the Pacific Justice Institute to discuss your legal rights.

Question: What if I am allergic to the vaccine or its components?

Answer: The Centers for Disease Control and Prevention (CDC) begins with the following definitions:

- An allergic reaction is considered severe when a person needs to be treated with epinephrine or EpiPen or if the person must go to the hospital. Experts refer to severe allergic reactions as anaphylaxis.
- An immediate allergic reaction happens within 4 hours after getting vaccinated and could include symptoms such as hives, swelling, and wheezing (respiratory distress).

If You Are Allergic to an Ingredient in a Covid Vaccine-

If you have had a severe allergic reaction or an immediate allergic reaction—even if it was not severe—to any ingredient in an mRNA Covid vaccine, you should not get either of the currently available mRNA Covid vaccines (Pfizer-BioNTech and Moderna).

If you have had a severe allergic reaction or an immediate allergic reaction to any ingredient in Johnson & Johnson's Janssen (J&J / Janssen) Covid vaccine, you should not get the J&J / Janssen vaccine.

If You Are Allergic to Other Types of Vaccines

If you have had an immediate allergic reaction—even if it was not severe—to a vaccine or injectable therapy for another disease, ask your doctor if you should get a Covid vaccine.

¹³ COVID-19 Vaccines for People with Underlying Medical Conditions, Centers for Disease Control and Prevention (CDC), updated May 14, 2021.

If You Have Allergies Not Related to Vaccines

CDC recommends that people get vaccinated even if they have a history of severe allergic reactions not related to vaccines or injectable medications—such as food, pet, venom, environmental, or latex allergies. People with a history of allergies to oral medications or a family history of severe allergic reactions may also get vaccinated.¹⁴

If you have any of the allergies described by the CDC, provide that documentation to your employer if they are mandating vaccination. If you feel the employer is responding in an unreasonable manner, contact the Pacific Justice Institute to discuss your legal rights.

Question: What if I am pregnant?

Answer: The CDC states that you MAY get the vaccine if you are pregnant, however, “key considerations you can discuss with your healthcare provider include:

- How likely you are to being exposed to the virus that causes COVID-19
- Risks of COVID-19 to you and the potential risks to your fetus or infant
- What is known about COVID-19 vaccines
- How well they work to develop protection in the body
- Known side effects of vaccination
- Limited, but growing, information on the safety of COVID-19 vaccination during pregnancy
- How vaccination might pass antibodies to the fetus. Recent reports have shown that people who have received COVID-19 mRNA vaccines during pregnancy (mostly during their third trimester) have passed antibodies to their fetuses, which could help protect them after birth.”¹⁵

Question: What if I am breastfeeding?

Answer: The CDC states “Clinical trials for the COVID-19 vaccines currently authorized for use under an Emergency Use Authorization in the United States did not include people who are

¹⁴ COVID-19 Vaccines for People with Allergies, Centers for Disease Control and Prevention (CDC), updated May 25, 2021.

¹⁵ COVID-19 Vaccines While Pregnant or Breastfeeding, Centers for Disease Control and Prevention (CDC), updated June 9, 2021. NOTE: The CDC, a top federal government medical agency, uses politically correct language that does not acknowledge the biological difference between men and women.

breastfeeding. Because the vaccines have not been studied on lactating people, there are no data available on the:

- Safety of COVID-19 vaccines in lactating people
- Effects of vaccination on the breastfed baby
- Effects on milk production or excretion¹⁶

Question: What if I do not want to take the vaccine because I am concerned about side effects or future health issues?

Answer: At this time, there is no allowance for persons who are declining the vaccine for health concerns. The Pacific Justice Institute will monitor current and future legal actions and revise this information as necessary. You can view information on adverse effects from Covid vaccines under the question “Is there a legal basis to challenge a vaccine mandate? Is there any prior case law?” starting on page 11.

Question: I recently tested positive for Covid. Should I get the vaccine?

Answer: The CDC says no, people with Covid who have symptoms should wait to be vaccinated until they have recovered from their illness. You should isolate yourself for at least 10 days since symptoms first appeared and at least 24 hours with no fever without fever-reducing medication and other symptoms of Covid are improving.

If you test positive for Covid but have no symptoms, you should still not get the vaccine until 10 days have passed since the date you had your positive test.

Question: I already had Covid and recovered, so I have antibodies to fight off future exposures. Do I still have to get a vaccine?

Answer: The CDC says yes, because experts do not yet know how long you are protected from getting sick again after recovering from Covid. Even if you have already recovered from Covid, it is possible—although rare—that you could be infected with the virus that causes Covid again.

¹⁶ COVID-19 Vaccines While Pregnant or Breastfeeding, Centers for Disease Control and Prevention (CDC), updated June 9, 2021. NOTE: The CDC, a top federal government medical agency, uses politically correct language that does not acknowledge the biological difference between men and women.

However, a recent study conducted by Washington University School of Medicine in St. Louis and published May 24, 2021, in the journal Nature, found that even a mild case of coronavirus could leave people with lifelong protection against the virus.¹⁷

Additionally, in a study in the United Kingdom published April 9, 2021, “the authors suggest that infection and the development of an antibody response provides protection similar to or even better than currently used SARS-CoV-2 vaccines.”¹⁸

A study conducted by the Cleveland Clinic was released June 8, 2021, finding that “individuals with previous SARS-CoV-2 infection do not get additional benefits from vaccination.”¹⁹

The CDC updated its guidance²⁰ regarding this issue on March 17, 2021, stating in part:

Development of Antibodies and Immunity- Natural infection

Nearly all immunocompetent persons develop an adaptive immune response following SARS-CoV-2 infection... Our understanding of the immune response to SARS-CoV-2 is incomplete but rapidly advancing. In humans, the humoral response includes antibodies directed against S and N proteins. Antibodies – including IgM, IgG, and IgA – against S and its subunits can be detected within 1-3 weeks after infection. IgM and IgG antibodies can arise nearly simultaneously...

How long anti-SARS-CoV-2 antibodies persist after infection remains unknown, although IgG antibodies, including IgG against the S and N proteins, persist for at least several months in most persons . . . Taken together, the above findings in humans and non-human primates suggest SARS-CoV-2 infection and development of antibody can result in some level of protection against SARS-CoV-2 reinfection. The durability of this immunity has yet to be determined. While life-long immunity has not been observed with endemic seasonal coronaviruses, studies of persons infected with the novel SARS-CoV-1 and Middle East Respiratory Syndrome (MERS-CoV) coronaviruses demonstrated measurable antibody for 18 – 24 months following infection, and neutralizing antibody was present for 34 months in a small study of MERS-infected patients. (Internal footnote citations removed)

A fact sheet by the organization America’s Frontline Doctors states:

“You do not need to be vaccinated if you have already contracted COVID-19. Typically people who catch an illness develop natural, life-long immunity and there is no reason

¹⁷ Immunity to the Coronavirus May Persist for Years, Scientists Find, The New York Times, May 26, 2021.

¹⁸ “Correlates of protection from SARS-CoV-2 infection,” by Florian Krammer, The Lancet, April 9, 2021.

¹⁹ “No point vaccinating those who’ve had COVID-19: Findings of Cleveland Clinic study,” by Dr. Sanchari Sinha Dutta, Ph.D., News-Medical.Net, June 8, 2021.

²⁰ <https://www.cdc.gov/coronavirus/2019-ncov/lab/resources/antibody-tests-guidelines.html>.

to think SARS-CoV-2 is different in this regard. Persons who already had COVID were excluded from the initial trials (which is strange given that now recommend it to people who already had the illness.) There is evidence the Covid vaccine might actually be more dangerous for persons who have already had the illness in that they seem to develop an exaggerated reaction to the vaccine.”²¹

Also, Senator (and physician) Rand Paul has spoken extensively that it is his opinion that those who recover from Covid likely have antibodies sufficient to prevent further occurrences. As for the vaccines themselves, there is an increasing likelihood that boosters will be needed.²²

As in many of these issues, there is no case law to guide us going forward. But if you have already had Covid and recovered, and your employer is mandating a vaccination, contact the Pacific Justice Institute to discuss your legal rights.

Question: Is there a difference between my employer “strongly encouraging” me to get the vaccine versus mandating the vaccine?

Answer: We believe there is. As of April 21, 2021, US Department of Labor (DOL), Occupational Safety and Health Administration (OSHA) provided guidance as follows:

“If an employer requires its employees to be vaccinated, adverse reactions to the vaccines are considered “work-related” by OSHA. Employers who require COVID-19 vaccines must notify OSHA within 24 hours of an employee’s inpatient hospitalization (or within eight hours of an employee’s death) resulting from an adverse reaction.”

Sometime between April 21 and May 24, 2021, OSHA changed its reporting guidance to:

“DOL and OSHA, as well as other federal agencies, are working diligently to encourage COVID-19 vaccinations. OSHA does not wish to have any appearance of discouraging workers from receiving COVID-19 vaccination, and also does not wish to disincentivize employers’ vaccination efforts. As a result, OSHA will not enforce 29 CFR 1904’s recording requirements to require any employers to record worker side effects from COVID-19 vaccination through May 2022. We will reevaluate the agency’s position at that time to determine the best course of action moving forward.”

²¹ TEN MEDICAL FACTS REGARDING THE COVID-19 EXPERIMENTAL VACCINES, Dr. Shelley Cole, Medical Director AFLDS, dated April 12, 2021.

²² Moderna and Pfizer are already developing COVID-19 vaccine boosters. Do we need a third shot? By Jaimy Lee, Marketwatch.com, dated May 31, 2021.

Apparently, OSHA believed that adverse reactions to mandatory Covid vaccinations were eligible for Workers Compensation.

In looking at liability, the vaccine manufacturers and distributors have been given immunity. In addition, there is immunity from liability under the 2005 PREP act (Public Readiness and Emergency Preparedness Act) for "program planners" who facilitate or supervise an onsite vaccination program, but that applies to liability for facilitating the vaccination. But there is no immunity for an employer who mandates an employee take the vaccine.

As in much of the discussion in this area, there is no case law to rely on. However, we believe there may be liability for employers who mandate vaccination if their employees suffer adverse reactions or side effects.

Therefore, if your employer is pressuring you to get the vaccine, we recommend that you ask them if getting the vaccine is mandatory and get that in writing.

Question: Asking me if I have been vaccinated is asking for medical information. Isn't that a violation of HIPAA?

Answer: The Health Insurance Portability and Accountability Act of 1996, Pub.L. 104–191, commonly referred to as HIPAA, focuses on “protected health information” as maintained by the healthcare industry (including healthcare insurance providers) to prevent such information from being exploited via theft and fraud. HIPAA only applies to “covered entities” – healthcare providers, health plans, healthcare clearinghouses, and their business associates. It does not generally apply to employers, even if your employer is a hospital. HIPAA would not prevent the employer from directly asking employees about their vaccination status and/or requesting the employee to provide proof of vaccination.

Question: How effective are these vaccines?

Answer: They are less effective than many would have you think. According to Yale Medicine on June 23, 2021, the vaccines are NOT 100% effective, in fact the Johnson and Johnson vaccine is only 72% effective. The Pfizer vaccine purports to be 95% effective, but a CDC study in a real world environment showed 90%. The same for the Moderna vaccine, purported 94.1% effective, real world 90%, and for those above 65 years of age, 86.4%.²³

Many people who have been vaccinated have contracted Covid afterward. Nearly 4,000 fully vaccinated people in Massachusetts have tested positive for Covid, according to recent data

²³ “Comparing the COVID-19 Vaccines: How Are They Different?” by KATHY KATELLA, Yale Medicine, June 23, 2021.

from the state Department of Public Health.²⁴ Comedian Bill Maher had been vaccinated, but his entire show had to be shut down after he tested positive.²⁵ As of June 30, 2021, there is currently a Covid outbreak in Israel, and according to Professor Chezy Levy, the Director-General of the Health Ministry, 40%-50% of the new cases are vaccinated people.²⁶

Question: Is there an issue with heart inflammation after taking the vaccines?

Answer: On June 25, 2021, the FDA added a warning to the literature that accompanies Pfizer Inc. /BioNTech and Moderna COVID vaccine shots to indicate the rare risk of heart inflammation after its use. The fact sheets for healthcare providers have been revised to include a warning that reports of adverse events suggest increased risks of myocarditis and pericarditis. As of June 11, more than 1,200 cases of myocarditis or pericarditis have been reported to the U.S. Vaccine Adverse Event Reporting System (VAERS), many of these is males under the age of 30.²⁷

Question: Is there a legal basis to challenge a vaccine mandate? Is there any prior case law?

Answer: When attorneys look at an issue or a set of facts to determine whether there is a legal basis for a lawsuit, relevant statutes and prior case law are the best indicators of how a particular case will play out. However, the issues surrounding mandatory Covid vaccines are so new that there is no settled case law, and very few cases currently in progress in the courts.

Some who advocate for mandatory Covid vaccinations point to *Jacobson v. Commonwealth of Massachusetts*,²⁸ a 1905 decision regarding a mandatory smallpox vaccine. The Supreme Court held that government actions taken in the context of a public health crisis are subject to a more deferential review:

“In every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand.”

²⁴ “Almost 4,000 fully vaccinated people in Massachusetts have tested positive for COVID-19,” by David Aaro, Fox News, June 22, 2021.

²⁵ “Bill Maher tests positive for Covid, forcing HBO to table 'Real Time' taping, Variety, NBC News, May13,2021.

²⁶ “COVID-19 Outbreak in Israel, Fully Vaccinated Individuals Make Up 50% of Infected Adults,” by Steven Li, M.D., Vision Times, June 30, 2021.

²⁷ “FDA adds warning about rare heart inflammation to Pfizer, Moderna COVID shots,” Reuters, June25, 2021.

²⁸ 197 U.S. 11, 25 S. Ct. 358, 49 L. Ed. 643 (1905).

But there are significant differences in the circumstances surrounding *Jacobson* and our current circumstances regarding Covid. First of all, the state of Massachusetts imposed a five dollar fine for refusing to take the vaccine. In today's money that would be approximately \$140. This hardly equates with losing a job and / or damaging a career.

Secondly, while many lives were lost due to Covid, when you look at the situation today, younger persons in good health have an extremely high survival rate when infected with the Covid virus. This is much different than smallpox in 1905.

In any event, the United States Supreme Court has made it clear that *Jacobson* is not controlling law regarding Covid. In July of 2020, in *Calvary Chapel Dayton Valley v. Sisolak*,²⁹ Justice Alito recognized the need for emergency action at the beginning of the pandemic when little was known about infection or mortality rates. But he then raises the question as to whether we are still in such an emergency that unquestioned drastic action is needed 10 months later. Then in November 2020, Justice Gorsuch wrote in *Roman Catholic Diocese v. Cuomo*:³⁰

“Government is not free to disregard the First Amendment in times of crisis . . . Yet recently, during the COVID pandemic, certain States seem to have ignored these long-settled principles.”

“Put differently, *Jacobson* didn't seek to depart from normal legal rules during a pandemic, and it supplies no precedent for doing so. Instead, *Jacobson* applied what would become the traditional legal test associated with the right at issue—exactly what the Court does today . . . Nothing in *Jacobson* purported to address, let alone approve, such serious and long-lasting intrusions into settled constitutional rights. In fact, *Jacobson* explained that the challenged law survived only because it did not “contravene the Constitution of the United States” or “infringe any right granted or secured by that instrument.” . . .

Therefore, along with the Title VII religious exemption and the medical / ADA exemption, there are several other arguments available, none of which have been decided definitively by the courts.

At the time of this writing, we are aware of five cases challenging mandatory vaccinations, four of which cite the Nuremberg Code as an argument. The Nuremberg Code was enacted in 1947, in response to the Nazi's use of experimental drugs on people without their consent. There are

²⁹ 2020 U.S. LEXIS 3584, 2020 WL 4251360 (July 24, 2020).

³⁰ 208 L. Ed. 2d 206, 2020 U.S. LEXIS 5708, 28 Fla. L. Weekly Fed. S 590, __ S.Ct. __, 2020 WL 6948354 (Nov. 25, 2020).

10 points to the code, the first of which is “The voluntary consent of the human subject is absolutely essential.”³¹

United States courts have recognized the Nuremberg Code, including in the 1995 case of *In re Cincinnati Radiation Litigation*,³² decided in the United States District Court for the Southern District of Ohio, Western Division. In this case the court stated:

“The Nuremberg Code is part of the law of humanity. It may be applied in both civil and criminal cases by the federal courts in the United States.”

UPDATE: On June 12, 2021, the United States District Court in the Southern District of Texas, in dismissing a lawsuit filed by 116 employees of Houston Methodist Hospital were going to be fired if they did not get the Covid vaccination by June 7, called their citing of the Nuremberg Code as “reprehensible.”³³ The case is being appealed.

In a pending case³⁴ filed March 17, 2021, on behalf of seven teachers from the Los Angeles Unified School District (LAUSD) who were mandated to receive the Covid vaccine against their will, they cited the fact that Covid vaccines do not have FDA approval and are administered under the Emergency Use Authorization, and therefore experimental. Under the Nuremberg Code, they argue these vaccines cannot be administered without the voluntary consent of the recipient. They also cite a violation of California Health & Safety Code § 24170, regarding medical experimentation.

In a complaint filed last week of May 2021, by attorney Jared R. Woodfill, on behalf of 117 employees of Houston Methodist Hospital who do not want to receive the Covid vaccine mandated by hospital administration,³⁵ the Nuremberg Code argument was also cited. But in addition, the complaint cites a compilation of adverse effects data regarding Covid vaccines. The below information and footnotes are obtained from the complaint:

³¹ "Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10," Vol. 2, pp. 181-182. Washington, D.C.: U.S. Government Printing Office, 1949.

³² *In re Cincinnati Radiation Litig.*, 874 F. Supp. 796, 1995 U.S. Dist. LEXIS 401.

³³ *Jennifer Bridges, et al v. Houston Methodist Hospital, et al*, Civil Action H-21-1774, Decided June 12, 2021.

³⁴ *CALIFORNIA EDUCATORS FOR MEDICAL FREEDOM, ARTEMIO QUINTERO et al v. LAUSD*, Case No.: 21-cv-02388 Filed 03/17/21, UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION.

³⁵ <https://www.click2houston.com/news/local/2021/05/28/117-employees-file-lawsuit-against-houston-methodist-for-mandating-workers-to-take-covid-19-vaccine/>.

VAERS Database Identifies Serious COVID-19 Health Concerns

In 1990, the Vaccine Adverse Event Reporting Systems (“VAERS”) was established as a national early warning system to detect possible safety problems in U.S. licensed vaccines.³⁶ VAERS is a passive reporting system, meaning it relies on individuals to voluntarily send in reports of their experiences to CDC and FDA. VAERS is useful in detecting unusual or unexpected patterns of adverse event reporting that might indicate a possible safety problem with a vaccine. This way, VAERS can provide CDC and FDA with valuable information that additional work and evaluation is necessary to further assess a possible safety concern.

There were 4,434 death reports and over 12,619 serious injuries reported to the CDC's VAERS database from COVID-19 vaccines through May 10, 2021. By comparison, from July 1, 1997, until December 31, 2013, VAERS received 666 adult death reports.³⁷ The flu vaccines are linked to 20–30 death reports a year, according to Dr. Peter McCullough,³⁸ and those 20–30 death reports come with considerably more vaccines administered.³⁹ Arguably, if the experimental vaccine was any other vaccine or drug, it would already have been removed from the market. Usually, a new drug is withdrawn after 50 deaths, which is not typical because the FDA has a strict approval process. The COVID-19 vaccines have been exempted from the approval process, instead being temporarily "authorized" for emergency use.

Thirty-five hundred plus (3,500 +) reports is 70 times the normal threshold for pulling a drug from the market. Although this is raw data, previous VAERS studies have shown that only 1-10% of vaccine-related deaths are reported to VAERS—or less. The COVID vaccines are adding a year's worth of VAERS reports every week. In just four months, more adverse reports were added to the VAERS database than any single vaccine has had cumulatively over the past 31 years. This is clearly a safety signal; further studies need to be done and Plaintiffs should not be forced to participate in these dangerous trials as a condition for employment.

³⁶ VAERS is co-managed by the CDC and the FDA. VAERS accepts and analyzes reports of adverse events (possible side effects) after a person has received a vaccination. Anyone can report an adverse event to VAERS. Healthcare professionals are required to report certain adverse events and vaccine manufacturers are required to report all adverse events that come to their attention.

³⁷ Pedro L. Moro, Jorge Arana, Mria Cano, Paige Lewis, and Tom T. Shimabukuro, Deaths Reported to the Vaccine Adverse Event Reporting System, United States, 1997-2013, VACCINES, CID 2015:61 (September 2015).

³⁸ Dr. McCullough is vice chief of medicine at Baylor University Medical Center and the most cited American medical doctor on Covid at the National Library of Medicine.

³⁹ Dr. McCullough estimated the flu shot at 195 million people annually, while over 153 million have currently received COVID vaccinations. The disparity between these two vaccine groups is staggering.

NOTE: This lawsuit was dismissed on June 12, 2021. The judge appeared hostile toward the plaintiff's case, stating that claims the vaccines are "experimental and dangerous" were false and irrelevant. The judge also ruled that the EUA provision against mandated vaccination does not apply to private employers. The judge also found the reference to the Nuremberg Code to be "reprehensible."⁴⁰ Plaintiffs have stated they will appeal.

In a lawsuit filed May 20, 2021, *AMERICA'S FRONTLINE DOCTORS, ETC v. XAVIER BECERRA, Secretary of the U.S. Department of Health and Human Services*,⁴¹ plaintiffs are seeking temporary injunctive relief against any existing or further authorization of the Covid vaccines for use in children under the age of 16, including any of the COVID-19 vaccines that have been approved under the EUA provided in 21 U.S. Code § 360bbb-3. This lawsuit also cites the Nuremberg Code.

*Legarreta v. Macias*⁴² was filed on February 28, 2021, on behalf of a corrections officer at the Doña Ana County Detention Center in Las Cruces, New Mexico. His employer issued a "Mandatory COVID-19 Vaccination Directive" requiring him to receive a COVID-19 vaccine as a condition of ongoing employment. Mr. Legarreta refused, and received a write-up instructing him that he must comply. The complaint cites the fact that EAU vaccines are voluntary on the part of the recipient, and alleges retaliatory discharge, claiming that his termination for "refusing a vaccine which federal law requires not to be mandated" would violate New Mexico law.

On June 10, 2021, a group of plaintiffs filed a case against the Secretary of Health and Human Services, Doctor Anthony Fauci, and others, in the United States District Court for the Northern District of Alabama. Plaintiffs in this case include medical professionals who have been fired or have their license threatened, parents who do not want their children vaccinated, the estate of a woman they allege died from the vaccine, and others who claim they were seriously injured or became ill because of the vaccine. In addition to several of the arguments already stated such as the Nuremberg Code and the dangers of the vaccine, the plaintiffs request the court to find that there is no longer a "public health emergency", and therefore the EUA should no

⁴⁰ *Jennifer Bridges, et al v. Houston Methodist Hospital, et al*, Civil Action H-21-1774, Decided June 12, 2021.

⁴¹ Case 2:21-cv-00702-CLM, Filed May 20, 2021 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA.

⁴² 2021 U.S. Dist. LEXIS 44474, 2021 WL 833390.

longer be in effect, and only vaccines with FDA approval should be administered. The complaint also argues that the vaccines are ineffective, with a very low absolute risk reduction (ARR).⁴³

UPDATE: Two additional lawsuits of interest have been filed, as follows:

1. On May 21, 2021, Indiana University announced that all students coming to campus for the fall semester would be required to upload proof of vaccination to their website prior to being admitted to campus. Eight students filed a lawsuit to stop the requirement.⁴⁴ The lawsuit cited the EUA consent requirements and argued that it violated medical ethics due to a lack of voluntary consent and the fact that the vaccine is not needed for young adults because of their nearly zero chance of death from Covid. The complaint also stated that threatening an expulsion from school if you refuse the vaccine is not an attempt to garner consent, it is coercion. The complaint also cited the increased risk of heart inflammation for young men 30 and younger. The suit claims they also violated a new state law forbidding government vaccine passports. On May 26, 2021, Todd Rokita, Attorney General for the state of Indiana, issued an opinion stating that Indiana University's policy violated the new Indiana law. Indiana University subsequently changed its policy, still requiring vaccinations but not requiring students to provide proof.⁴⁵ The case is continuing.
2. On June 24, 2021, a lawsuit was filed on behalf of three students at Chico State University, against the CSU system and federal authorities.⁴⁶ All three of the students have had Covid and recovered and are required to be vaccinated prior to the start of the fall semester. The lawsuit alleges plaintiffs will lose their right to choose their own health care by this mandate, arguing that students' right to be safe and secure in their persons will be violated when forced to obtain a vaccination "that is inherently dangerous and life threatening". The lawsuit also argues that this will violate a "historic liberty interest" protected by the Due Process Clause of the 14th Amendment. The lawsuit also addresses federal authorities who put out blanket recommendations for vaccinations for everyone, without considering individual circumstances such as the students who have recovered from Covid.⁴⁷

⁴³ AMERICA'S FRONTLINE DOCTORS et al v. XAVIER BECERRA et al, Civil Action No. 2:21-cv-00702-CLM, filed June 10, 2021.

⁴⁴ *Carini v. The Trustees of Indiana University*, United States District Court Northern District of Indiana, case # 1:21-cv-238, filed June 21, 2021.

⁴⁵ "AG Rokita: Indiana University COVID-19 Vaccine Policy Violates State Law," by BRANDON SMITH, WFYI Indianapolis, May26, 2021.

⁴⁶ *Higley, Clark and Clark v. California State University, US Department of Health and Human Services, et al*, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA, case # 2:21-at-583, filed June24, 2021.

⁴⁷ "Lawsuit targets CSU mandate that students get vaccine shots," by Sam Stanton, The Sacramento Bee, June 26, 2021.

In addition to the lines of argument already described, there is an argument to be made regarding the freedom of religion rights in the First Amendment to the Constitution of the United States. The Bill of Rights only applies to actions taken by government or agents of government. So, if the violation is by an employer, that employer must be some form of government entity, either state, federal, or local. Regarding education, public schools would be under the Bill of Rights, as would state or other government sponsored colleges and universities.

The United States Supreme Court in the case of *West Virginia State Board of Education v. Barnette*,⁴⁸ stated:

“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”

Therefore, anytime a government actor orders you to be a recipient of the vaccine, and that conflicts with your sincerely held religious belief, they may be in violation of the First Amendment.

In summary, legal challenges to employer mandated Covid vaccinations that do not have FDA approval include the Emergency Use Authorization, 21 U.S. Code § 360bbb-3, which requires such vaccinations be voluntary. In addition, the argument is being made that this is a violation of the Nuremberg Code, which prohibits medical experimentation on patients without their consent.

However, the EEOC declares that an employer can mandate the vaccine for its employees. Such mandates are subject to the religious exemption of Title VII of the Civil Rights Act of 1964. The Americans with Disabilities Act also requires accommodation by employers.

State actors (governments or their agents) fall under the Bill of Rights, and the First Amendment rights to freedom of religion may apply.

Lastly, there is an argument for basic freedom, the right to life, liberty, and a pursuit of happiness. This resource has previously quoted the large number of deaths and serious illnesses that have been reported to be a result of the Covid vaccines. According to the CDC, the chance of surviving Covid without any treatment at all is as follows: age 0-19 (99.997%), 20-50

⁴⁸ *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628, 1943 U.S. LEXIS 490, 147 A.L.R. 674.

(99.98%), 50-69 (99.5%), and >age 70 (95%).⁴⁹ As Americans compare the adverse effects with the survival rates, they should have the freedom to decide whether or not to take the Covid vaccine.

Question: What are the basic roles and powers of the government regarding vaccines?

Answer: In general, administering vaccines have not been the role of the federal government. In a report by the Congressional Research Service in 2014, discussing mandatory vaccinations, the report noted that: “Historically, the preservation of the public health has been the primary responsibility of state and local governments, and the authority to enact laws relevant to the protection of the public health derives from the state’s general police powers.” “Federal jurisdiction over public health matters derives from the Commerce Clause of the United States Constitution, which states that Congress shall have the power “[t]o regulate Commerce with foreign Nations, and among the several States....”

Congress has enacted requirements regarding vaccination of immigrants seeking entry into the United States, and military regulations require American troops to be immunized against a number of diseases. The Secretary of Health and Human Services has authority under the Public Health Service Act to issue regulations necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the states or from state to state. Current federal regulations do not include any mandatory vaccination programs; rather, when compulsory measures are needed, measures such as quarantine and isolation are generally utilized to halt the spread of communicable diseases.⁵⁰

States, however, have traditionally handled vaccinations and have even mandated them in an emergency. This resource has discussed *Jacobson v. Massachusetts* from 1905 regarding the smallpox vaccine. State governments have also mandated vaccines in their schools for many years, and that right was upheld by the United States Supreme Court in 1922, in the case of *Zucht v. King*.⁵¹

Question: Can a store or restaurant make me show proof of vaccination before doing business with me or letting me inside? Can I be required to get a vaccine passport to get into certain venues?

⁴⁹ TEN MEDICAL FACTS REGARDING THE COVID-19 EXPERIMENTAL VACCINES, Dr. Shelley Cole, Medical Director AFLDS, dated April 12, 2021.

⁵⁰ “Mandatory Vaccinations: Precedent and Current Laws,” Congressional Research Service, Jared P. Cole, Legislative Attorney, Kathleen S. Swendiman, Legislative Attorney May 21, 2014.

⁵¹ 260 U.S. 174, 176 (1922).

Answer: Generally, businesses have the right to refuse to serve persons as long as the reason is not discriminatory, and it serves a legitimate purpose. For example, store management can ask someone to leave if they have no shirt or no shoes. Dressing in this manner may be upsetting to customers, causing them to leave or avoid a place of business, and thus constitutes a legitimate purpose.

However, you cannot refuse to serve someone who is in a protected class, because they are in that protected class. Race, ethnicity, sex, religion, are just some of the protected categories. Some states have additional protected categories to those of federal law.

You can also be excluded by businesses for conduct, even if it is conduct that is your right. For example, as an adult you have the right to smoke, but a store owner can require you to leave because your conduct can upset or endanger other customers. The same with being intoxicated or being loud and boisterous.

In regard to requiring the wearing of a mask, that would very likely be considered a legitimate purpose because it is for the safety of employees and customers. The same is true for requiring proof you have taken the Covid vaccine.

If you should file a lawsuit because you were prohibited from entering or required to leave a place of business and you were not discriminated against as a member of a protected class, the remedy would likely be the ability to enter and remain in that place of business in the future. This is hardly a deterrent for inappropriate behavior on the part of a proprietor.

Question: What if you have already had the virus and therefore have antibodies to fight Covid naturally?

Answer: It likely does not make any difference because it is the opinion of government health agencies that you should still be vaccinated. Those agencies maintain that no one knows how long the antibodies will last. Refer to the question, “I already had Covid and recovered, so I have antibodies to fight off future exposures. Do I still have to get a vaccine?” starting on page 7, for additional information.

Question: What if I have a medical condition and a letter from my doctor exempting me from the vaccine?

Answer: If you are considered disabled under the Americans with Disabilities Act and are refused service because of that disability, that is likely discrimination under the ADA, and you should have legal recourse. Federal law prohibits discrimination against disabled Americans, and it can have serious consequences. But other than an ADA violation, the establishment will likely face little or no consequences.

Question: What if a Covid vaccine is required for admission to a college or university?

Answer: Some colleges and universities are requiring vaccinations as a prerequisite for living on campus or intending in-person classes. However, as stated previously, state (government)-sponsored institutions should not be permitted to do this while the vaccines are still approved only under the EUA. If getting the Covid vaccine violates your sincerely held religious beliefs, there may be a basis for legal action in these cases, under the First Amendment for state sponsored colleges or universities or applying state anti-discrimination laws.

In addition, 44 of our 50 states allow religious exemption for vaccinations. Only California, Connecticut, New York, Maine, Mississippi and West Virginia do not.⁵²

Both the California State University⁵³ system and the University of California⁵⁴ system have gone on record, stating that they will not require Covid vaccinations while they are under the Emergency Use Authorization. However, they will mandate vaccination to come to campus or participate in athletics as soon as a vaccine is approved by the FDA. But even then, both systems are on record stating that they will allow religious and medical exemptions.

UPDATE: The University of California system has gone back on their promise not to require vaccines until there is at least one with FDA approval. Faculty, staff and students will be required to be vaccinated for Covid before reporting for the Fall Semester. The UC is expected to issue the new policy on July 15, 2021, effective August 4, 2021. Religious exemptions will still be allowed, along with “narrow medical exceptions.”⁵⁵

Should any government sponsored institution of higher learning in California not allow for religious exemption to a Covid vaccine mandate, an action could be brought for religious discrimination under Article 3, Section 220 of the California Education Code, Prohibition of Discrimination; as well as California Government Code, Article 9.5, Section 11135, Discrimination.⁵⁶ It is difficult to predict how the courts would rule on such cases, or when they would deliver a definitive ruling.

⁵² “States with Religious and Philosophical Exemptions from School Immunization Requirements,” National Conference of State Legislatures, April 30, 2021.

⁵³ “CSU to Implement COVID-19 Vaccination Requirement Upon FDA Approval,” the California State University, April 22, 2021.

⁵⁴ COVID-19 Vaccination Draft Policy, Student Frequently Asked Questions, University of California, May 4, 2021.

⁵⁵ “California college system makes COVID vaccines mandatory for students, staff and faculty,” by ÁNGELA PÉREZ AGUILAR, June 15, 2021.

⁵⁶ Brennon B. v. Superior Court, 57 Cal. App. 5th 367, 2020 Cal. App. LEXIS 1077, 271 Cal. Rptr. 3d 320, 2020 WL 6689639.

As previously mentioned, refusal by government sponsored institutions of higher learning to allow religious exemptions may violate the First Amendment of the United States Constitution, which would be enforced under federal law by 42 U.S.C. § 1983.

The Fair Housing Act prohibits discrimination based on religion,⁵⁷ and student housing owned by the college or university falls under the Fair Housing Act.⁵⁸ Therefore, if a student is refused student housing on the basis of not being a recipient of the Covid vaccine, and the college or university refuses to allow religious exemptions, there may be an action for discrimination under the Fair Housing Act. This argument could be made against private colleges or universities as well as government sponsored institutions.

If a college or university is mandating Covid vaccinations and not allowing religious exemptions, contact the Pacific Justice Institute to discuss your legal rights.

Question: What about special events, or transportation? Can they require vaccine passports or proof of vaccination? If so, how can we stop all of these passports and requirements to prove we have been vaccinated?

Answer: There are a number of people and entities pushing for vaccine passports that you would need for entry into different places and different events, or give you additional rights such as mass travel, that the unvaccinated do not have. This could be used to coerce more people into getting vaccinated. In essence, this would create two classes of citizens, the vaccinated and the unvaccinated.

On June 14, 2021, the European Union announced the requirement of a digital vaccine passport for travel in the EU. At this time, evidence of a negative Covid test or documentation that you have recovered from Covid will also be accepted. The system will be opened to other nations as well, including the United States. During the ceremony for the system that will be effective July 1, 2021, the presidents stated:

“The EU Certificate will again enable citizens to enjoy this most tangible and cherished of EU rights – the right to free movement. Signed into law today, it will enable us to travel more safely this summer. Today we reaffirm together that an open Europe prevails.”⁵⁹

⁵⁷ HOUSING DISCRIMINATION UNDER THE FAIR HOUSING ACT, U.S. Department of Housing and Urban Development.

⁵⁸ United States v. Univ. of Neb. at Kearney, 940 F. Supp. 2d 974, 2013 U.S. Dist. LEXIS 56009, 2013 WL 1694603.

⁵⁹ “EU Presidents Officially Sign Regulation on EU Vaccine Passports for Travel,” Schengenvisa.info News, June 14, 2021.

But several state legislatures and governors have taken action to preserve the rights of their citizens, to prohibit vaccine passports and / or to prohibit the requirement to prove you're vaccinated.

In regard to events, such as athletic events, some could have separate sections for those vaccinated and those who are not. Government-sponsored activities including air travel will have a difficult time requiring a vaccine while they are under the EUA. However, once one or more of the vaccines are approved by the FDA, vaccines could be required in theory. Pfizer has submitted its vaccine for FDA approval on May 7, 2021.

As previously noted, the wearing of a mask and the requiring of a vaccine would both likely be considered legitimate business purposes and, without discrimination of a protected class, would likely be upheld. This is why it is so important for states to pass legislation to protect their citizens from being placed in a separate unvaccinated classification. Lawmakers in more than 40 states have introduced legislation that would forbid mandates requiring people get vaccinated.⁶⁰

Below is a summary of status of actions by state legislatures and governors to prohibit vaccine passports, and / or prohibit governments or businesses refusing service without proof of Covid vaccination, as of June 1, 2021.⁶¹

Alabama- New law bans businesses and government entities across the state from requiring coronavirus vaccine passports. Law also states that "an entity or individual doing business in this state may not refuse to provide any goods or services, or refuse to allow admission, to a customer based on the customer's immunization status or lack of documentation that the customer has received an immunization."

Arizona- An executive order prohibiting state and local government agencies from requiring residents "to provide their COVID-19 vaccination status to receive service or enter an area." Applies to government only.

Arkansas- New laws prevents state and local governments from requiring proof of vaccination as a condition of employment or to access goods and services. Applies to government only.

⁶⁰ "State lawmakers opposed to COVID vaccine mandates have filed a flurry of bills this session. Some worry about the message they send." By Elizabeth Weise and Kaitlin Lange. Published 5:00 AM CDT Apr. 27, 2021 Updated 11:03 AM CDT Apr. 27, 2021.

⁶¹ "These States Have Banned Vaccine Passports," by Elliott Davis. US News and World Report, June 1, 2021.

Florida- Executive order and new law bans vaccine passports. No state government entity shall be permitted to issue "vaccine passports, vaccine passes or other standardized documentation for the purpose of certifying an individual's COVID-19 vaccination status to a third party." The order also prohibits businesses from requiring similar documentation to enter or get services from a business.

Georgia- An executive order states "that no state agency, provider of state services or state property shall implement a vaccine passport program or otherwise require an individual to provide proof of COVID-19 vaccination as a condition to enter the premises of or conduct business with a state agency." Applies to government only.

Idaho- An executive order prohibits government agencies from producing Covid vaccine passports or requiring such proof as a condition of accessing state services. Applies to government only.

Indiana- New law prohibits "the state or a local unit from issuing or requiring a COVID-19 'immunization passport.'" Applies to government only.

Iowa- New law prohibits businesses and government entities from requiring people to show proof of vaccination against Covid in order to enter their premises and notes that state grants and contracts "shall not be awarded to or renewed" with entities that violate this provision. The law also prohibits government agencies from issuing identification cards that include Covid vaccination status.

Kansas- Legislature passed a budget that includes language banning vaccine passports from being a requirement for entering a state government building or receiving related services. Applies to government only.

Montana- Executive order bans the development or use of vaccine passports. Believed to apply to government only.

North Dakota- New law bans state and local governments from requiring inoculation proof documents and prohibits businesses – with some exceptions – from requiring vaccination documents of customers and patrons for access.

Oklahoma- New law prohibiting schools from requiring Covid vaccines for students, requiring vaccine passports, or imposing mask mandates on unvaccinated students. Applies to schools only.

South Carolina- An executive order bans vaccine passports in the state.

South Dakota- An executive order bans the development or use of Covid vaccine passports.

Tennessee- New law bans government-issued vaccine passports. Applies to government only.

Texas- An executive order bans state agencies or political subdivisions from creating a vaccine passport requirement. The order also "prohibits organizations receiving public funds from requiring consumers to provide documentation of vaccine status in order to receive any service or enter any place."

Utah- New law prohibits state government from requiring people to get the Covid vaccine. Applies to government only.

Wyoming- A directive from the governor prohibits "state agencies, boards and commissions from requiring 'vaccine passports' to access state spaces and state services." Applies to government only.

Federal legislation has been introduced to prohibit the Transportation Security Administration (TSA) from requiring Americans to show proof of vaccination or produce a vaccine passport for domestic flights and protect the privacy of personal health information.⁶²

If the government issues and / or requires a vaccine passport, or unreasonably restricts access to persons who will not or do not prove they have been vaccinated, such a policy may violate the rights granted under the Privileges and Immunities Clause of Article IV, Section 2 of the United State Constitution. Such a government action would, in essence, create two classes of people- vaccinated and unvaccinated.

The Privileges and Immunities Clause of Article IV, Section 2 of the Constitution states that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

This clause protects fundamental rights of individual citizens and restrains state efforts to discriminate against out-of-state citizens. However, the Privileges and Immunities Clause extends not to all commercial activity, but only to fundamental rights. But much debate surrounds the particular rights which the Privileges and Immunities Clause protects, so it is difficult to predict how a case might be decided in regard to an action based on this clause.⁶³

⁶² "Sen. Rick Scott Introduces Freedom to Fly Act Banning TSA from Requiring Vaccine Passports," Office of Senator Rick Scott, June 2, 2021.

⁶³ Privileges and Immunities Clause, Legal Information Institute, Cornell Law School.

Lastly, and very importantly- Citizen participation in their government is vital to a thriving democracy, or in our case a representative republic. If you feel strongly about issues relating to vaccine passports or not being required to provide proof of Covid vaccination to travel, transact business, attend church, school or work, or participate in leisure or recreational activities, you should contact your elected representatives at the local, state, and federal level about executive and legislative guarantees that will preserve your liberty and freedom. Support those elected officials or candidates that fight for rights that are important to you.

Question: What if my state or local government requires churches to have all their employees sign a statement every two weeks as to whether or not they (1) have been vaccinated, (2) are not vaccinated or (3) decline to state? What if they are requiring church attendees to display proof of vaccination to enter without a mask? What if they require separate seating in churches for the vaccinated and those who have not been vaccinated?

Answer: These circumstances or similar ones are in play in several areas of the country. We at the Pacific Justice Institute believe such mandates are unconstitutional. However, as of this writing, it is difficult to predict how the courts will rule on challenges to these mandates, or when the courts will have a final, definitive ruling.

Some violations of this nature carry large administrative fines, which can quickly accumulate into tens of thousands of dollars. It is important to contact the Pacific Justice Institute before taking any actions that could result in this type of heavy-handed enforcement.

Question- Are there any vaccines coming that are more like the traditional vaccines we have taken as children?

Answer- Yes. The next set of vaccine candidates, expected mid-to late 2021, are heavily skewed toward approaches that have produced successful vaccines. Conventional methods include using a killed or inactivated version of the pathogen that causes a disease to provoke an immune response, such as those used to make flu, polio and rabies vaccines.

Also more common are protein-based vaccines that use purified pieces of the virus to spur an immune response. Vaccines against whooping cough, or pertussis, and shingles employ this approach.

French drug maker Sanofi is developing a protein-based Covid vaccine employing the same approach it uses for its Flublok seasonal flu vaccine. Sanofi targets FDA approval in the 4th Quarter of 2021.

Novavax Inc. is using similar purified protein technology and targets it to be available 3rd quarter of 2021. They have a combination Covid vaccine / flu shot that has tested well for both.⁶⁴ Update: Novavax stated on June 14, 2021, that their Phase 3 trials continue to go well, and following approval, it is on track to reach manufacturing capacity of 100 million doses per month by the end of the third quarter and 150 million doses per month by the end of the fourth quarter of 2021.⁶⁵

In closing-

The Pacific Justice Institute is not anti-vaccination, it is pro-freedom. Undoubtedly the Covid vaccines have served portions of the American population very well and have saved lives. We commend those who have worked tirelessly since the outbreak of the pandemic to make those vaccines available in record time.

However, because they have been approved only under the Emergency Use Authorization, they should not be mandated on any American. Further, even if one or more vaccines receive full FDA approval, Americans should have the right to assess their own risk and make informed decisions as to whether or not they want to be vaccinated.

There is risk involved in nearly everything we do in life. We as free citizens assess that risk and act accordingly. This nation was brought forth by people who took the great risk of traveling across the Atlantic Ocean to come to the New World. The United States of America was founded by people who decided to take the risk of going to war with the world's only superpower to become a free nation. The western part of our nation was settled by people who took the risk to travel across the wilderness by horse and buggy.

As previously stated, the odds of survival when contracting Covid, even if untreated, for healthy people under the age of 50 is 99.98% or higher.⁶⁶ American citizens should have the right to examine that risk and decide whether or not a vaccination is right for them. They should not be forced in either direction by their government, nor should they become another class of citizen based on the decision they make.

⁶⁴ "Next crop of COVID-19 vaccine developers take more traditional route," By Julie Steenhuysen, Caroline Copley, Reuters.

⁶⁵ "Novavax COVID-19 vaccine 90.4% effective in clinical trial, company says," Foxnews.com, By Alexandria Hein, June 14, 2021.

⁶⁶ TEN MEDICAL FACTS REGARDING THE COVID-19 EXPERIMENTAL VACCINES, Dr. Shelley Cole, Medical Director AFLDS, dated April 12, 2021.