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REPLY TO FLORIDA

March 19, 2021

VIA EMAIL TO COUNSEL

Dr. Robert Laughlin, Dean
Louisiana State University School of Dentistry
1100 Florida Avenue
New Orleans, Louisiana 70119
Email: wdecuirjr@lsu.edu

RE: LSU School of Dentistry COVID vaccination mandate

Dear Dr. Laughlin:

By way of brief introduction, Liberty Counsel is a national non-profit litigation, education and public policy organization with an emphasis on First Amendment liberties, with a particular focus on religious freedom and life issues.

Liberty Counsel has engaged in extensive litigation in the last year regarding civil rights violations ostensibly justified by "COVID-19," with great success on behalf of our many clients. See, e.g., *Harvest Rock Church v. Newsom*, No. 20A137, 2021 WL 406257 (U.S. Feb. 5, 2021); *Harvest Rock Church v. Newsom, Gov. of CA*, No. 20A94, 2020 WL 7061630 (U.S. Dec. 3, 2020); *Elim Romanian Pentecostal Church v. Pritzker*, 962 F.3d 341 (7th Cir. 2020); *Maryville Baptist Church, Inc. v. Beshear*, 957 F.3d 610 (6th Cir. 2020).

Concerned Louisiana State University ("LSU") School of Dentistry students have contacted Liberty Counsel regarding the recent directive from the Office of the Dean that the Pfizer COVID vaccine is now mandatory. The March 16, 2021 mandate states: "Effective Monday, March 22, 2021, all LSU Health New Orleans, School of Dentistry personnel to include faculty, staff, residents, and students involved in direct patient care will be required to show proof of having received full vaccination for COVID-19." Many such individuals wish to decline this demand without adverse educational or employment action against them. LSU has first cajoled, in a number of emails, and is now threatening the students. See attached.

The COVID-19 pandemic does not justify violations of fundamental individual, economic and religious liberties. These include the rights of personal autonomy and bodily integrity, and the right to accept or reject the various COVID vaccines based on religious belief. All existing COVID vaccines are under an Emergency Use Authorization ("EUA") and LSU may not condition participation in education programs or continued employment on taking an EUA-authorized COVID vaccine.

Some people hold sincere religious beliefs against taking vaccines in general, or taking those derived from aborted fetal cell lines, or sold by companies that profit from the sale of vaccines and other products derived from abortion. Other people are concerned regarding the potential long-term health effects (**on their own bodies**) of all of the current COVID vaccines, which have not been subject to long-term testing, and have only been approved by FDA under an Emergency Use Authorization.

LSU employees and students are protected against mandated COVID vaccines, under [21 U.S.C. §360bbb-3](#), which provides that Emergency Use Authorization (“EUA”) products (like all of the COVID vaccines) require (as a condition of emergency approval) that people have “the option to accept or refuse administration of the product.” “FDA has an obligation to ensure that recipients of the vaccine under an EUA are informed...that they have the option to accept or refuse the vaccine...”¹

At the Centers for Disease Control Advisory Committee on Immunization Practices (ACIP) meeting held at the CDC in Atlanta, Georgia, in August 2020, the CDC-ACIP Executive Secretary Amanda Cohn, MD confirmed the non-mandatory nature of an EUA vaccine: “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.” (Emphasis added).²

Consistent with these authorities, the LSU Health Network hosts the “Fact Sheet For Recipients and Caregivers” regarding the “Emergency Use Authorization (EUA) of the Pfizer-Biontech COVID-19 Vaccine.” (“Fact Sheet”).³ The Fact Sheet states in two separate places “**It is your choice to receive**” the vaccine (emphasis added). It recognizes that the vaccine “may not protect everyone.” The Fact Sheet further answers the question: “WHAT IF I DECIDE NOT TO GET THE PFIZER-BIONTECH COVID-19 VACCINE?” The response “It is your choice to receive or not receive the Pfizer-BioNTech COVID-19 Vaccine. **Should you decide not to receive it, it will not change your standard of medical care.**” (Emphasis added). In light of these clear statements, It is difficult to understand the authority of the School of Dentistry to deny educational or employment opportunities on the same grounds.

Not only must student exemption requests be honored; but those of LSU employees as well, where a reasonable accommodation exists without undue hardship to the employer, under Title VII of the Civil Rights Act of 1964. As you know, Title VII, as amended, 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.” 42 U.S.C. § 2000e-2(a). (Emphasis added). By pattern and practice, the School of Dentistry has shown that a reasonable accommodations indeed exists for employees.

¹ <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

² <https://www.youtube.com/watch?v=p0zCEiGohJs&list=PLvvp9iOILTQb6D9e1YZWpbUvzftNMKx2&index=43>. See Minute 1:14:40

³ <https://www.lsuhn.com/wp-content/uploads/2021/01/Pfizer-BioNTECH-COVID-19-Vaccine-EUA-Fact-Sheet-for-Recipients-Revised-12-23-20.pdf>

The accommodation for employees can be identical to what LSU has required of School of Dentistry students: be tested for COVID-19 every two weeks, self-screen with temperature checks, and wear personal protective equipment (PPE) including masks, and comply with other safety protocols. Logically, if these measures are and were effective at preventing the spread of COVID, they will continue to be effective. Students who decline the vaccine may continue complying with these safety measures.

Statewide in Louisiana, COVID cases have been declining, without the requirement of vaccinations. Hospital cases in Louisiana have dipped below 500.⁴ Moreover, multiple state governors have removed statewide mask restrictions (or never enacted them in the first place); never mind that such are not mandating vaccines at this late date.

The First Amendment protects students against religious discrimination by government entities. LSU cannot enforce an “orthodoxy” in matters of opinion about the current COVID issue: “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.**” *West Virginia State Board of Education v. Barnette*, 319 U. S. 624 (1943). Clearly, forcing students to “confess” their faith in the COVID narrative “by...act” of accepting an EUA vaccine would violate this precept. Forcing them to choose between continued education or violation of religious beliefs or violation of their right to personal autonomy and bodily integrity would likewise be unconstitutional.

Louisiana does not authorize the LSU COVID vaccine mandate. Governor Edwards has not issued any executive order mandating COVID vaccinations, nor authorizing subdivisions of the State of Louisiana to mandate COVID vaccinations or withhold government benefits from those who decline.⁵ Louisiana law recognizes the right of students to be free from “creed” discrimination, which includes discrimination based on religious beliefs, and nonreligious beliefs. See La. Stat. Ann. § 17:111.

Louisiana requires postsecondary institutions to recognize religious and other personal reasons as exemptions to vaccine mandates. See, e.g., La. Stat. Ann. § 17:170.1, (“Any person who is eighteen years of age or older and who signs a waiver provided by the postsecondary education institution stating that the person has received and reviewed the information ... and has chosen not to be vaccinated ... for religious or other personal reasons.”)

Louisiana has enacted the Preservation of Religious Freedom Act, La. Stat. Ann. § 13:5231-5242. The Act declares religion a “fundamental right of the highest order in this state.” The Act requires the government to show that it had a compelling interest in taking a particular action which burdened religious exercise through its effect and that such action was the least restrictive of a person's right to freely exercise his religious beliefs. As set forth above, the approved use of PPE by LSU dentistry students throughout 2020 demonstrates that a less restrictive alternative exists to prevent the spread of COVID, than a heavy-handed mandate.

Finally, I understand that you addressed students during a recent Zoom conference. The students were told that even after getting the vaccines, they can still contract, carry and spread the

⁴ <https://www.wvtv.com/article/news/health/coronavirus/louisiana-covid-19-hospitalizations-dip-below-500-for-1st-time-since-march-2020/289-4e0ad316-95c3-4e25-9597-f8087ff746d3>

⁵ <https://gov.louisiana.gov/coronavirus/>

virus; and therefore, they would be required to continue wearing PPE, notwithstanding the vaccinations. Thus, this is not about patient health. The only person the vaccine will potentially help is the student him or herself, by keeping the student from experiencing greater symptoms from the virus. It will not stop the spread of COVID. In light of this, and the above authority, the students have the right to decide if they want that protection, or not.

The footnoted, linked press releases from the Equal Employment Opportunity Commission (EEOC)⁶ and the U.S. Department of Justice (US DOJ),⁷ support Liberty Counsel's position, that it is unlawful for LSU to force vaccinations on unwilling staff and students, and to refuse a reasonable accommodation. In 2018, one hospital paid \$89,000 to settle a suit after refusing to accommodate and firing employees who declined flu vaccinations based on their religious beliefs. US DOJ sought compensatory damages on behalf of a nursing home employee against whom Ozaukee County, Wisconsin discriminated, much like LSU is doing here with employees and students.

Liberty Counsel is deeply concerned by this situation. LSU must accommodate sincere religious beliefs, and comply with federal law. There exists both a reasonable accommodation, and federal law forbidding an EUA-authorized vaccine from being mandated. LSU should respect religious rights, conscience rights, and the personal autonomy/bodily integrity rights of employees and students. **I am therefore requesting a written response from LSU that the LSU School of Dentistry vaccine mandate has been withdrawn.**

If I do not receive that response by close of business on Saturday, March 20, 2021, I will unfortunately conclude that only litigation will prevent LSU from inflicting irreparable harm on the rights of LSU students and employees.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard L. Mast', written over a horizontal line.

Richard L. Mast†

CC

Via Email

George Armbruster, Esq. ††

George@arm-assoc.com

⁶ <https://www1.eeoc.gov/eeoc/newsroom/release/1-12-18.cfm?renderforprint=1>

⁷ <https://www.justice.gov/opa/pr/justice-department-files-lawsuit-against-ozaukee-county-wisconsin-religious-discrimination>

† Licensed in Virginia

†† Licensed in Louisiana

From: Dr. Larry H. Hollier - Chancellor <MMReplies-LHH-LCapo@lsuhsc.edu>
Sent: Friday, February 5, 2021 10:48 AM
To: LSUHSC N.O. Faculty, Staff and Students <MMR-NO-FacStuStaff@lsuhsc.edu>
Subject: COVID Vaccination Form & Appointments

Dear LSU Health New Orleans faculty, staff and students,

We are grateful to all who have submitted the COVID-19 Vaccination Self-Reporting Form. It is an essential indicator of how well our campus is protected. If you have not taken the quick, simple survey, please do it now. This includes everyone, even those vaccinated elsewhere. The form is available at this [link](#).

Some first-dose vaccination appointments are still available, but we would like to fill them as soon as possible. You can register and schedule your appointment [here](#). Your relatives who are aged 65 and older can be vaccinated on-campus beginning Monday. You can register and make appointments for them at the same link. LSUHSC New Orleans employees must accompany their relative to the appointment at the Vaccination Clinic.

We are not mandating vaccinations at this time but are strongly encouraging them. You need to be aware that if you opt out, you will be required to undergo PCR testing via nasopharyngeal swabs every two weeks. With at least one more contagious SARS-CoV-2 variant circulating in our community, for everyone's safety, it is vital that we know the status of our campus.

Thank you for doing your part to keep our campus healthy.

Larry Hollier, MD
Chancellor

This message has been authorized by LSU Health Sciences Center administration for mass distribution as a service to our faculty, staff and students

From: Dr. Larry H. Hollier - Chancellor <MMReplies-LHH-LCapo@lsuhsc.edu>

Sent: Friday, March 5, 2021 8:31 AM

To: LSUHSC N.O. Faculty, Staff and Students <MMR-NO-FacStuStaff@lsuhsc.edu>

Subject: COVID Vaccine Update

Dear LSU Health New Orleans faculty, staff and students,

We have a very limited number of first doses of the Pfizer COVID-19 vaccine. Please register and schedule your appointment now [here](#) before they are all gone. With at least one of the new variants circulating in our community, it is even more imperative that as many people as possible be vaccinated as soon as possible to curtail transmission. This variant is more contagious and may be more virulent as well.

We requested and received enough vaccine to fully protect our campus. Thank you to all of you who have taken advantage of this highly coveted opportunity. Given the increasing demand for vaccinations, we have been surprised that some of you have chosen to remain vulnerable to this potentially deadly virus, which not only risks your own health but that of everyone around you. Nonetheless, we are not requiring you to be vaccinated, but we will be mandating biweekly PCR testing for those who opt out.

Thank you also to those who have submitted the COVID-19 Vaccination Self-Reporting Form, available [here](#). We ask that those of you who haven't taken the short survey yet, regardless of where you were vaccinated, please take it now.

Also, even if you have been vaccinated, until we have achieved herd immunity, we must continue to practice mitigation measures, including wearing your masks and physical distancing.

Thank you for doing your part to help put this pandemic in our rearview mirror.

Sincerely,

Larry Hollier, MD

Chancellor

This message has been authorized by LSU Health Sciences Center administration for mass distribution as a service to our faculty, staff and students.

From: Dr. Larry H. Hollier - Chancellor <MMReplies-LHH-LCapo@lsuhsc.edu>

Sent: Friday, March 12, 2021 1:16 PM

To: LSUHSC N.O. Faculty, Staff and Students <MMR-NO-FacStuStaff@lsuhsc.edu>

Subject: COVID Vaccination Clinic Taking Appointments

Dear LSU Health New Orleans community,

We have received another shipment of the Pfizer COVID vaccine. If you or your [eligible family members](#) have not yet had the opportunity to be vaccinated, you can schedule appointments now. Faculty, staff and students can use [this link](#). Family members can use [this link](#).

The COVID Vaccination Clinic will be open next week, and appointments are available. Remember, you must accompany your family member to the appointment. You must bring your LSUHSC ID, and your family member must bring information documenting eligibility.

Not all of our faculty, staff and students have taken advantage of this opportunity to protect themselves and each other. Myths about the vaccines have been widely circulated, which could be influencing decisions. Here are the facts.

Myth—People who have had COVID don't need to be vaccinated.

Fact—We don't yet know how long people are protected after recovering from COVID-19. Some scientists believe the vaccine offers better protection for coronavirus than natural infection.

Myth -- The COVID-19 vaccine can affect women's fertility.

Fact -- The COVID-19 vaccine does not affect fertility. False claims surfaced on social media that the spike protein on the coronavirus that the vaccines teach the body to fight is the same spike protein involved in placental growth and attachment. They are not the same protein. They are very different, and one has nothing to do with the other. It is also true that COVID infection can have a serious impact on pregnancy and the mother's health. The American College of Obstetricians and Gynecologists (ACOG), the American Society for Reproductive Medicine (ASRM) and the Society for Maternal-Fetal Medicine (SMFM) issued a statement available [here](#).

Myth – The vaccines were rushed and aren't safe.

Fact – The technology used in the Pfizer and Moderna vaccines has been around for years. It allows for a faster approach, and scientists were already familiar with similar viruses and had the genetic sequence from China, so they were not starting from scratch. Tens of thousands of people wanted to participate in vaccine testing, and enrollment was unprecedented. Skyrocketing cases allowed developers to quickly determine effectiveness. Since they were approved, the vaccines have safely been given to millions of people.

Please remember to complete and submit the COVID Vaccination Self-Reporting Form regardless of where you were vaccinated. It is available at [this link](#).

Thank you for helping to keep our campuses safe.

Sincerely,
Larry Hollier, MD
Chancellor

This message has been authorized by LSU Health Sciences Center administration for mass distribution as a service to our faculty, staff and students.

From: Pittman, Lynn <LPittm1@lsuhsc.edu> on behalf of Laughlin, Robert M. <rlaugh@lsuhsc.edu>

Sent: Tuesday, March 16, 2021 3:49 PM

To:

Subject: ****LSU School of Dentistry Policy on COVID-19 Vaccination****

LSU School of Dentistry Faculty, Staff, Residents and Students:

Effective Monday, March 22, 2021, all LSU Health New Orleans, School of Dentistry personnel to include faculty, staff, residents, and students involved in direct patient care will be required to show proof of having received full vaccination for COVID-19. This policy is being initiated out of an abundance of caution and safety for our patients and fellow LSU Health New Orleans family members. Your safety and our patients' safety are paramount. As Dean and a healthcare provider, it is my obligation to ensure LSU School of Dentistry has every possible safety and prevention measure in place to ensure the safest possible campus for you and our patients.

Thank you all for everything you do to provide the highest level of care for our patients and community. Together, we will prevail.

Very Respectfully,

Rob

Robert M. Laughlin DMD
Dean and
JR Peltier Chairman for Oral and Maxillofacial Surgery
LSU Health New Orleans,
School of Dentistry