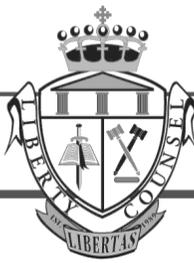


# LIBERTY COUNSEL



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**REPLY TO FLORIDA**

June 29, 2021

**VIA E-MAIL (mheeren@atsu.edu) AND FACSIMILE (660.626.2672)**

Matthew Heeren  
VP and General Counsel  
A.T. Still University  
800 W. Jefferson St.  
Kirksville, MO 63501  
Telephone: 660-626-2121

RE: A.T. Still University COVID vaccine mandates

Dear Mr. Heeren:

Liberty Counsel is a national non-profit litigation, education and public policy organization with an emphasis on First Amendment liberties, and a particular focus on religious freedom and the sanctity of human life. Liberty Counsel has engaged in extensive litigation in the last year regarding civil rights violations ostensibly justified by "COVID-19," and we have had great success holding both government entities and private actors accountable. *See, e.g., Harvest Rock Church, Inc. v. Newsom*, 141 S. Ct. 1289 (2021) (permanent injunction granted and \$1,350,000 in attorney's fees awarded in *Harvest Rock Church, Inc. v. Newsom*, No. 2:20-cv-06414, C.D. Cal., May 17, 2021); *Harvest Rock Church, Inc. v. Newsom*, 141 S. Ct. 889 (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).

We are writing on behalf of students of A.T. Still University ("ATSU" or "University") who have engaged us to secure their legal rights not to be required to undergo COVID-19 vaccination as a condition of enrollment and participation in classes and activities. Undoubtedly, many of their classmates have similar convictions, and we write on their behalf as well.

Sharon Murza and Ashley Swanson are enrolled in the ATSU School of Dentistry and Oral Health. As a matter of sincerely held religious belief, both Sharon and Ashley believe that they must not receive the COVID-19 vaccine, and that doing so would be a sin that would distance them from the will of God.

On or around April 27, 2021, Sharon and Ashley received an email notification that ATSU was requiring them to receive a COVID-19 vaccine "to participate in clinical academic experiences."

(See Attachment, p. 1). Sharon and Ashley inquired of the Student Success Coordinator as to what procedure they should follow to request a religious exemption. (See Attachment, pp. 2-4 [Sharon]; pp. 5-6 [Ashley]). They were informed that there is no form, and that they should submit an email request to Dr. Branch-Mays in which they were to “explain in the body of the email why you are requesting an exemption.” (See *id.*).

Ashley and Sharon complied with this instruction, and each submitted an email to Dr. Branch-Mays requesting a religious exemption and explaining what they believe and why they could not receive the vaccine. (See Attachment, p. 7 [Ashley]; pp. 8-9 [Sharon]). They both indicated that God had revealed to them, through Bible reading, prayer and revelation from the Holy Spirit, that they were not permitted to receive the COVID-19 vaccine, and that doing so would be sinful disobedience to God. (See *id.*). **Importantly, in requesting an exemption, both Ashley and Sharon made clear that they were willing to continue to follow all of the various safety protocols that were previously in place, including masking, temperature checks, self-certification questionnaires, and any other reasonable precautions that the University might require.** (See *id.*).

When they did not receive a timely response, both Sharon and Ashley followed up with the Student Success Coordinator. (See Attachment, pp. 3-4). On May 19, instead of a response to their exemption request, Ashley and Sharon each received an email informing them that there was now a form they needed to complete to request a religious exemption. (See Attachment, pp. 10-12). Importantly, the form only asked them to “identify your religious belief and state how such beliefs prevents you from receiving the vaccine,” and asked them to acknowledge that the University “may ask me to document my religious practice or belief or consult religious scholars or leaders to confirm the appropriateness of the requested accommodation.” (See *id.*). **The form did not ask them to provide any “evidence” upfront, other than to identify their religious belief as indicated above.** (See *id.*).

In response, Ashley and Sharon each submitted their previous requests onto this form, and provided the needed biographical details. (See Attachment, p. 13 [Sharon]; p. 14 [Ashley]). The University then sent each of them a notice that their request had been “denied due to unsubstantiated evidence.” (See Attachment, p. 15 [Sharon]; p. 16 [Ashley]). The University did not explain what “evidence” was lacking, nor even what “evidence” it had requested or expected, which was particularly puzzling since the University’s form did not request or require any “evidence” beyond a statement from the applicant.

Both Ashley and Sharon then asked the University to clarify what additional “evidence” the University was seeking. (See *id.*). ATSU refused to provide this clarification, and instead sent them each a curt non-response, telling them that their exemption request had been denied, and that “there is no appeal process based on guidelines by University legal counsel.” (See *id.*).

This denial is improper, as the University’s exemption request form did not solicit any “evidence” beyond the explanation that our clients provided. The failure of the University to specify what evidence it seeks, both in the initial form and then in response to express requests from Sharon and Ashley, is a violation of due process and is inconsistent with the University’s own purported exemption policy and procedure, particularly when the University claims to have denied the requests for lack of such phantom “evidence.” The entire course of conduct by the University evidences a lack of respect for, and outright hostility to, Sharon and Ashley’s religious beliefs and their fundamental rights not to be required to violate those sincerely held beliefs.

The University's denial is also improper, as an illegal act of discrimination on the basis of religion under the Missouri Human Rights Act.

Simply put, 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. Aside from religious objections, all existing COVID vaccines are permitted under a federal Emergency Use Authorization ("EUA"), and the University may not condition participation in degree programs, housing or continued enrollment on taking an EUA-authorized COVID vaccine.

The University must respect these religious and conscience objections and cannot condition enrollment, course selection or degree completion on mandatory vaccinations, especially where the student has declined on religious grounds.

### **EUA Vaccines Cannot Be Mandatory**

University employees and students are protected against mandated COVID vaccines under [21 U.S.C. §360bbb-3](#), which provides that Emergency Use Authorization 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..."<sup>1</sup> Amanda Cohn, MD, the Executive Secretary of The Centers for Disease Control Advisory Committee on Immunization Practices (CDC-ACIP) 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).<sup>2</sup>

### **Missouri Law Prohibits Religious Discrimination**

The Missouri Human Rights Act ("MHRA") prohibits discrimination on the basis of religion by "places of public accommodation." Section 213.065 of the MHRA mandates that all "persons are entitled to the full and equal use and enjoyment of public accommodations within this state without discrimination." *Doe ex rel. Subia v. Kansas City, Mo. Sch. Dist.*, 372 S.W.3d 43, 47–48 (Mo.App. W.D.2012). The section makes it an unlawful practice

for any person, directly or indirectly, to refuse, withhold from or deny any other person, or to attempt to refuse, withhold from or deny any other person, any of the accommodations, advantages, facilities, services, or privileges made available in any place of public accommodation ... or to segregate or discriminate against any such person in the use thereof on the grounds of ... religion...

§ 213.065.2.

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

<sup>2</sup> <https://www.youtube.com/watch?v=p0zCEiGohJs&list=PLvvp9iOILTQb6D9e1YZWpbUvzfpNtNMKx2&index=43>. See Minute 1:14:40.

Section 213.010(15) provides in relevant part that “places of public accommodation” are:

all places or businesses offering or holding out to the general public, goods, services, privileges, facilities, advantages or accommodations for the peace, comfort, health, welfare and safety of the general public or such public places providing food, shelter, recreation and amusement[.]

*Id.*

ATSU is a “place of public accommodation” within the ambit of the Act. “While admission to the ... program and the University is restricted, its admittees are a subset of the general public that was invited to apply. Because admission is open to a subset of the general public, the University is ‘in fact open to the public.’ Moreover, to find that restrictions on admission exempted an entity from the MHRA would wholly circumvent the legislature's intent.” *State ex rel. Washington Univ. v. Richardson*, 396 S.W.3d 387, 396 (Mo. Ct. App. 2013). The Court of Appeals continued:

The MHRA is a remedial statute, which we construe broadly. *Red Dragon Restaurant, Inc.* 991 S.W.2d at 167. Under the University’s argument, secular, private universities who hold themselves out by offering education to the general public, then selectively choose a subset of those applicants, would be immune from liability for discrimination under the MHRA. We cannot accept an interpretation of “open to the public” that so circumvents the legislature’s purpose. Likewise, we cannot accept an interpretation that would allow any establishment to avoid the MHRA merely by instituting admissions criteria. On these facts, the MFA Program and the University are places of public accommodation under subsection 213.010(15) and are not exempted by subsection 213.065.3.

*Id.* Private universities in Missouri (like ATSU) are bound by the MHRA and must accommodate sincere religious beliefs, in compliance with federal and state law. *Id.*

ATSU has clearly failed to provide such accommodation here. It has asked Sharon and Ashley only to identify their religious beliefs and to state how those beliefs preclude them from receiving the COVID-19 vaccine. When Sharon and Ashley complied with ATSU’s request, ATSU purported to deny their religious exemption on the purported basis that they did not provide some sort of “evidence” that ATSU never asked them to provide. And when Sharon and Ashley asked ATSU to clarify what “evidence” it wanted so that they could provide it, ATSU refused to provide any clarification, telling them instead that their request was denied and that they had no recourse.

This callous treatment of Sharon’s and Ashley’s religious beliefs is egregious, unconscionable, and illegal.

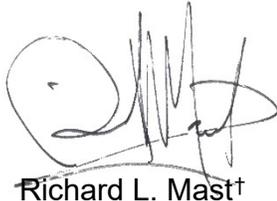
**We are therefore requesting written assurances from the University that: (1) the University vaccine mandate has been withdrawn as to Sharon and Ashley, and any other students who have made a religious or conscience objection to the vaccine; and (2) the University will not take any adverse enrollment action, or otherwise retaliate, against any student who objects to the University’s vaccination mandate and requests an exemption.**

Please also provide us a copy of the purported “guidelines by University legal counsel” which ATSU invoked in denying Sharon’s and Ashley’s exemption requests.

**Time is of the essence, because Sharon and Ashley must soon begin their clinical work. If we do not receive these assurances by close of business on July 6, 2021 we will unfortunately conclude that only litigation will prevent A.T. Still University from inflicting irreparable harm on the rights of students and staff, and we will proceed swiftly with a lawsuit against the University to vindicate our clients’ rights.**

Thank you for your consideration and prompt response.

Sincerely,



Richard L. Mast†



Horatio G. Mihet††

Enclosure as stated.

CC

**Via Email**

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