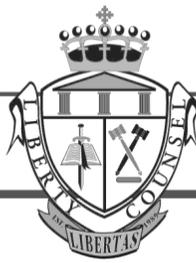


# LIBERTY COUNSEL



**DISTRICT OF COLUMBIA**  
109 Second Street NE  
Washington, DC 20002  
Tel 202-289-1776  
Fax 407-875-0770  
LC.org

**FLORIDA**  
PO Box 540774  
Orlando, FL 32854  
Tel 407-875-1776  
Fax 407-875-0770

**VIRGINIA**  
PO Box 11108  
Lynchburg, VA 24506  
Tel 407-875-1776  
Fax 407-875-0770  
Liberty@LC.org

**REPLY TO FLORIDA**

April 7, 2021

**VIA EMAIL ONLY**

Dr. Dane Delli, Superintendent  
Glenview School District 34  
1401 Greenwood Road  
Glenview, IL 60025  
Email: ddelli@glenview34.org

RE: Glenview School District 34 COVID vaccination mandate

Dear Dr. Delli:

We are writing on behalf of six employees of Glenview School District 34 (“Glenview” or “the District”) who have engaged us to secure their constitutional and statutory rights not to be required to undergo COVID-19 vaccination as a condition of their employment. Undoubtedly, many of their colleagues have similar convictions, and we write on their behalf as well.

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. We have engaged in extensive litigation in the last year regarding civil rights violations ostensibly justified by “COVID-19,” and have had great success holding both government entities and private actors accountable. *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).

Numerous concerned employees of your District have contacted and are contacting Liberty Counsel regarding the recent directive purporting to mandate the COVID vaccine as a condition of further employment. These individuals wish to decline this demand based upon their sincerely held religious beliefs and conscience objections, without adverse employment action taken against them. The District has first requested employees to take the COVID injections, but is now threatening the employees that they will be terminated if they do not take them.

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 District may not condition participation in education programs or continued

employment on taking an EUA-authorized COVID vaccine.

Some of the teachers, parents and students within your District hold sincere religious beliefs against taking any vaccines, or taking those derived from aborted fetal cell lines, or taking those sold by companies that profit from the sale of vaccines and other products derived from abortion. Other teachers and parents are concerned regarding the potential long-term health effects (**on their own bodies or their children's bodies**) of all of the current COVID vaccines, which have not been subject to long-term testing, and have only been approved by the Food and Drug Administration ("FDA") under an EUA.

For the reasons that follow, the District must respect these religious and conscience objections, and cannot condition employment or educational access on mandatory vaccinations.

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

District 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>

### **First Amendment**

The First Amendment protects teachers and students against religious discrimination by government entities. The District 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 and staff to take a vaccine even if it violates their religious beliefs would violate this precept. Forcing them to choose between continued education or employment and violation of religious beliefs or violation of their right to personal autonomy and bodily integrity would likewise be unconstitutional.

### **Title VII**

District employee exemption requests must be accommodated, where a reasonable accommodation exists without undue hardship to the employer, under Title VII of the Civil Rights Act of 1964. 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**

---

<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=PLvvp9iOILTQb6D9e1YZWpbUvzftNMKx2&index=43>. See Minute 1:14:40.

**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 District has shown that reasonable accommodations and alternatives to vaccination indeed exist for employees, and these have been required all along: self-screening with temperature checks, wearing personal protective equipment (PPE), and complying with other safety protocols until the number of COVID infections work their way down to acceptable levels. Logically, if these measures are and were effective at preventing the spread of COVID, they will continue to be effective.

Liberty Counsel's interpretation of Title VII is also supported by the footnoted, linked press releases from the Equal Employment Opportunity Commission (EEOC)<sup>3</sup> and the U.S. Department of Justice (US DOJ).<sup>4</sup> It is unlawful for District to force vaccinations on unwilling staff and employees, 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 District is doing here.

### **Illinois Executive Orders and Laws:**

Illinois has not issued or authorized the District's COVID vaccine mandate. Governor Pritzker has not mandated that every Illinois resident take COVID vaccinations (nor can he), nor has he authorized subdivisions of the State of Illinois to mandate COVID vaccinations or withhold government benefits from those who decline.<sup>5</sup> Statewide in Illinois, COVID cases have been declining, without mandatory vaccinations.<sup>6</sup> The governors of Florida and Texas<sup>7</sup> have forbidden employment and public facilities access from being granted or withheld on the basis of vaccinations.

Illinois's **Religious Freedom Restoration Act ("Illinois RFRA")** protects the rights of religious conscience from overbearing government mandates. The Illinois RFRA, 775 ILCS § 35 *et seq*, defines an "Exercise of religion" as "an act or refusal to act that is substantially motivated by religious belief, whether or not the religious exercise is compulsory or central to a larger system of religious belief." § 35/5. In § 35/10, the Act declares that "The free exercise of religion is an inherent, fundamental, and inalienable right secured by Article I, Section 3 of the Constitution of the State of Illinois;"<sup>8</sup> and that laws "neutral" toward religion, "as well as laws intended to interfere with the exercise of religion, may burden the exercise of religion." Section 15 of the Act provides that the State "may not substantially *burden* a person's exercise of religion, even if the burden results from

---

<sup>3</sup> <https://www1.eeoc.gov/eeoc/newsroom/release/1-12-18.cfm?renderforprint=1>

<sup>4</sup> <https://www.justice.gov/opa/pr/justice-department-files-lawsuit-against-ozaukee-county-wisconsin-religious-discrimination>

<sup>5</sup> <https://www.dph.illinois.gov/covid19/governor-pritzkers-executive-orders-and-rules>

<sup>6</sup> <https://www.wifr.com/2021/03/28/idph-2678-new-cases-of-covid-19-25-deaths/>

<sup>7</sup> [https://gov.texas.gov/uploads/files/press/EO-GA-35\\_private\\_health\\_information\\_protection\\_vaccines.pdf](https://gov.texas.gov/uploads/files/press/EO-GA-35_private_health_information_protection_vaccines.pdf)

<sup>8</sup> "The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed, and no person shall be denied any civil or political right, privilege or capacity, on account of his religious opinions;" Ill. Const. art. I, § 3

a rule of general applicability, unless it demonstrates that application of the burden to the person (i) is in furtherance of a compelling governmental interest and (ii) is the **least restrictive means of furthering that compelling governmental interest.**" (Emphasis added.) *Morr-Fitz, Inc. v. Quinn*, 976 N.E.2d 1160, 1171 (Ill 4<sup>th</sup> App. Dist. 2012).

There is no compelling government interest to require vaccination against sincerely held religious beliefs and conscience, especially where, as here, other reasonable accommodations exist as discussed above.

Finally, the **Illinois Health Care Right of Conscience Act**, 745 ILCS § 70/1 *et seq*, applies to teachers, staff, and students, and expressly prohibits the District from taking adverse employment or education action against anyone who declines a COVID injection on the basis of religious belief:

Findings and policy. The General Assembly finds and declares that **people and organizations hold different beliefs about whether certain health care services are morally acceptable.** It is the public policy of the State of Illinois to **respect and protect the right of conscience of all persons who refuse to obtain, receive or accept...health care services and medical care** whether acting individually, corporately, or in association with other persons; and **to prohibit all forms of discrimination, disqualification, coercion, disability or imposition of liability upon such persons or entities by reason of their refusing to act contrary to their conscience or conscientious convictions** in...refusing to obtain, receive, accept, ...health care services and medical care.

745 ILCS 70/2. (Emphasis added). The General Assembly has accordingly prohibited:

**Discrimination.** It shall be unlawful for **any person, public or private institution**, or public official to discriminate **against any person in any manner**, including but not limited to, licensing, **hiring, promotion**, transfer, staff appointment, hospital, managed care entity, **or any other privileges, because of such person's conscientious refusal to receive, obtain, accept**, perform, assist, counsel, suggest, recommend, refer or participate in any way in **any particular form of health care services contrary to his or her conscience.**

745 ILCS 70/5. (Emphasis added). In addition to this broad non-discrimination provision that expressly applies here, the Illinois Legislature has also specifically outlawed employment discrimination as well:

**Discrimination by employers or institutions.** It shall be **unlawful for any public or private employer**, entity, agency, institution, official or person...to deny admission because of, to place any reference in its application form concerning, to orally question about, **to impose any burdens in terms or conditions of employment on, or to otherwise discriminate against**, any applicant, in terms of employment, admission to or participation in any programs for which the applicant is eligible, **or to discriminate in relation thereto, in any other manner, on account of the applicant's refusal to receive, obtain, accept**, perform, counsel, suggest, recommend, refer, assist or participate in any way in **any forms of health care services contrary to his or her conscience.**

745 ILCS 70/7. (Emphasis added). Further, Section 3(a) of the Act defines “Health care” broadly as:

**any phase of patient care, including but not limited to [essentially anything]... in connection with the use or procurement of contraceptives and sterilization or abortion procedures...or other care or treatment rendered by a physician or physicians, nurses, paraprofessionals or health care facility, intended for the physical, emotional, and mental well-being of persons...**

745 ILCS 70/3(a). (Emphasis added). Vaccines are rendered by “paraprofessionals” and other persons within the contemplation of the Act.

Courts in Illinois have held that the Health Care Right of Conscience Act’s non-discrimination provisions protect **all** “persons,” not just employees in the healthcare field. See *e.g.*, *Vandersand v. Wal-Mart Stores, Inc.*, 525 F. Supp. 2d 1052, 1057 (C.D. Ill. 2007) (“Wal-Mart also argues that the Right of Conscience Act is also limited to ‘health care personnel’ as defined in the statute. However, **the anti-discrimination provisions are not limited to health care personnel.** ... the Right of Conscience Act prohibits **discrimination against any ‘person.’**” (emphasis added)).

Section 3(e) of the Act defines “Conscience” as a “sincerely held set of moral convictions arising from belief in and relation to God, or which, though not so derived, arises from a place in the life of its possessor parallel to that filled by God among adherents to religious faiths.” 745 ILCS 70/3(e). The Act supersedes “all other Acts or parts of Acts to the extent that any Acts or parts of Acts are inconsistent with the terms or operation of this Act.” 745 ILCS 70/14.

Notably, the Act provides a private cause of action against offending entities, such as the District. 745 ILCS 70/12. Indeed, demonstrating the reprehensibility of discrimination based on health care decisions, the Act imposes liability for “**threefold the actual damages** ... the costs of suit and reasonable attorney’s fees,” *id.* (emphasis added), “**but in no case shall recovery be less than \$2,500 for each violation in addition to costs of the suit and reasonable attorney’s fees.**” *Id.* (emphasis added).

Liberty Counsel and its clients and constituents in your District are deeply concerned by this situation. The District must accommodate sincere religious beliefs, and comply with federal and state law. Moreover, given the District’s threats of adverse employment consequences for dissenters, our clients and constituents are rightfully concerned that the District will retaliate against them for their objections to the District’s mandatory vaccination policy.

**We are therefore requesting a written assurance from the District that: (1) the District vaccine mandate has been withdrawn, at least as to any employee with a religious or conscience objection to the vaccine; and (2) the District will not take any adverse employment action, or otherwise retaliate, against any employee who objects to the District’s vaccination mandate and requests an exemption.**

**If we do not receive these assurances by close of business on April 16, 2021, we will unfortunately conclude that only litigation will prevent the District from inflicting irreparable harm on the rights of District staff and employees, and we will proceed accordingly. We will promptly file suit against the District seeking injunctive relief, statutory damages, treble damages, attorney’s fees and costs, and all other relief available in law or equity.**

Thank you for your consideration and prompt response.

Sincerely,



Richard L. Mast†



Horatio G. Mihet††

CC

**Via Email**

Sorin A. Leahu †††

sleahu@daltontomich.com

Glenview Board of Education  
Natalie Jachtorowycz,  
Jim Baumstark  
John Heggie  
Katie Jones  
Mike Korman  
Scott Nelson  
Diane Stefani

ksiegel@glenview34.org

---

† Licensed in Virginia

†† Licensed in Florida and Ohio

††† Licensed in Illinois