



LIBERTY COUNSEL

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REPLY TO FLORIDA

April 17, 2023

VIA EMAIL ONLY

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RE: Request for Religious and Medical Exemptions from the COVID-19 Vaccination Mandate by Transplant Candidate [REDACTED] and Reactivation of Position on Kidney Transplant Waiting List

Dear Ms. Adelman and Ms. Adams:

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 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, 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).

I. Background

We are writing on behalf of our client, [REDACTED], who has been advised she must take one of the Covid-19 vaccinations to be placed on the active waiting list for a kidney.

We write this letter to seek a religious and/or medical exemption to the Covid-19 vaccine requirement. Ms. [REDACTED] is a devout Catholic. She is opposed to knowingly ingest or be vaccinated with a substance associated with fetal cell lines. We will address the religious exemption first. 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. Emory Healthcare may not condition participation in its transplantation programs on the taking a COVID vaccine.

That all three of the currently available COVID-19 vaccines are produced by, derived from, manufactured with, tested on, developed with, or otherwise connected to aborted fetal cell lines is no longer controvertible. The following sources generally describe the Covid vaccine's links to fetal cell lines:

- The North Dakota Department of Health, in its literature for those considering one of the three, currently available COVID-19 vaccines, notes the following: “[t]he non-replicating viral vector vaccine produced by Johnson & Johnson *did require the use of fetal cell cultures, specifically PER.C6, in order to produce and manufacture the vaccine.*”¹
- The Louisiana Department of Health likewise confirms that the Johnson & Johnson COVID-19 vaccine, which used PER.C6 fetal cell line, “is a retinal cell line that was *isolated from a terminated fetus in 1985.*”²
- The same is true of the Moderna and Pfizer/BioNTech mRNA vaccines. The Louisiana Department of Health’s publications confirm that aborted fetal cells lines were used in the “proof of concept” phase of the development of their COVID-19 mRNA vaccines.³
- The North Dakota Department of Health, in its handout literature on COVID-19 vaccines, notes: “[e]arly in the development of mRNA vaccine technology, *fetal cells were used for ‘proof of concept’ (to demonstrate how a cell could take up mRNA and produce the SARS- CoV-2 spike protein) or to characterize the SARS-CoV-2 spike protein.*”⁴

Based on the foregoing scientific authorities, there is irrefutable evidence that the COVID vaccines are associated with fetal tissue cell lines. *Thus, individuals who believe God is the creator of life have the right to reject them. If you need a personal statement from [REDACTED] about her religious beliefs, please let us know.*

¹ See North Dakota Health, COVID-19 Vaccines & Fetal Cell Lines, https://www.ndsu.edu/fileadmin/centers/immunize/documents/COVID-19_Vaccine_Fetal_Cell_Handout_10.1.21.pdf (bold added) (last visited February 2, 2023).

² Louisiana Department of Public Health, You Have Questions, We Have Answers: COVID-19 Vaccine FAQ, available at https://ldh.la.gov/assets/oph/Center-PHCH/Center-PH/immunizations/You_Have_Qs_COVID-19_Vaccine_FAQ.pdf (bold added) (last visited February 2, 2023).

³ Louisiana Department of Public Health, You Have Questions, We Have Answers: COVID-19 Vaccine FAQ, https://ldh.la.gov/assets/oph/Center-PHCH/Center-PH/immunizations/You_Have_Qs_COVID-19_Vaccine_FAQ.pdf (last visited February 2, 2023).

⁴ See North Dakota Health, COVID-19 Vaccines & Fetal Cell Lines, https://www.ndsu.edu/fileadmin/centers/immunize/documents/COVID-19_Vaccine_Fetal_Cell_Handout_10.1.21.pdf (bold added) (last visited February 2, 2023).

A. Studies at Johns Hopkins University Demonstrate That Organ Transplant Recipients Benefit *Less* from COVID Vaccines.

Johns Hopkins has published two studies in the March and May issues of JAMA in 2021, acknowledging that organ transplant recipients receive *fewer* benefits from the first and second doses of the COVID vaccines than others. <https://www.hopkinsmedicine.org/news/newsroom/news-releases/organ-transplant-recipients-remain-vulnerable-to-covid-19-even-after-second-vaccine-dose> (last visited February 2, 2023). “[T]he number of transplant recipients in our second study whose antibody levels reached high enough levels to ward off a SARS-CoV-2 infection was still well *below* what’s typically seen in people with healthy immune systems,” says study lead author Brian Boyarsky, M.D, a surgery resident at the Johns Hopkins University School of Medicine. *Id.* (emphasis added).

In a recent article entitled, *Doctors ‘Push the Limit’ with Organ Transplants as Covid-19 Extends Waitlists*, <https://www.mlive.com/public-interest/2021/06/doctors-push-the-limit-with-organ-transplants-as-covid-19-extends-wait-lists.html> (last visited February 3, 2023), Dr. Marwan Aboujioud, chair of Henry Ford Health System’s Transplant Institute was interviewed about how, in the face of COVID, “[the] transplant community start[ed] pushing the limit.” *Id.* The article explained Dr. Aboujioud’s meaning of the use of the phrase “push the limits”:

By ‘pushing the limit,’ he means using organs from donors who are labeled “increased risk” because of one of a number of factors, including they were old, obese, had diabetes, a history of drug use or were previously incarcerated, among other factors. Instead of simply ruling them out, Aboujioud said there’s value in pairing those increased-risk donors with patients who have higher risk of dying on the wait list.

He used the example of a 70-year-old on dialysis with liver or kidney disease and a 25% chance of dying on the waiting list. If there’s a 3-5% chance of an ‘increased risk’ organ not working, and a 1% chance of the patient developing treatable Hepatitis C, is it worth the risk to try the transplant instead of waiting for a healthier donor to come along?

‘At 70 years old on dialysis, your risk of dying is really high,’ he said. ‘Now if I give you a kidney with increased risk, it might not last you 15 years but the statistics say you won’t live 15 years ... When I say I can give you five years off dialysis, would you take it? I surely would.’

‘It’s an area the transplant community has battled with for some time. When I say increased risk, it’s for us to manage the risk. We won’t give you a bad organ but we’ll match a donor with a recipient and redefine expectations.’

Id. (emphasis supplied).

Consistent with the pragmatism espoused by Dr. Aboujioud, a moral and ethical approach to organ transplantation in the COVID era would be to allow organ recipients to determine, with medical advice, the level of risk he/she is willing to take to remain on the active waitlist while remaining free from coerced, novel vaccinations.

LEGAL ANALYSIS

A. The US Is No Longer Under A COVID Emergency.

In January 2023, after a significant decline in COVID cases throughout 2022, the Biden Administration announced that it would not extend the COVID emergency declarations. <https://www.reuters.com/world/us/us-end-covid-19-emergency-declarations-may-11-2023-01-30/> (last visited on April 14, 2023). On April 11, 2023, “President Biden signed into law a measure that terminates the national emergency related to the COVID-19 pandemic more than a month earlier than his administration had previously planned.” <https://www.usnews.com/news/politics/articles/2023-04-10/biden-moves-on-from-covid-19-emergency-bringing-america-with-him-ready-or-not> (last visited Apr. 13, 2023).

Despite rushing the vaccines to market, as of April 13, 2023, only **16.7%** of the US population has received an “updated booster dose”. <https://covid.cdc.gov/covid-data-tracker/#datatracker-home> (last visited Apr. 13, 2023).

Throughout the pandemic, the CDC presented confusing information on COVID and the “vaccines”. As of today, the CDC represents that vaccinated persons have a “7.9 x” less risk of dying from COVID as compared to unvaccinated persons. <https://covid.cdc.gov/covid-data-tracker/#rates-by-vaccine-status> (last visited Apr. 13, 2023). Yet, studies have shown the durability of natural immunity provided to those who were unvaccinated.

“The risk for medically significant illness increases with age, disability status, and underlying medical conditions *but is considerably reduced by immunity derived from vaccination, previous infection, or both, as well as timely access to biomedical prevention measures and treatments.*” <https://www.cdc.gov/mmwr/volumes/71/wr/mm7133e1.html> (last visited Apr. 14, 2023) (emphasis added).

Fortunately, the “CDC’s public health recommendations [have] change[d] in response to evolving science.” *Id.* Mrs. [REDACTED] is 41 years old and has recovered from the COVID virus; therefore, as explained in more detail below, she should be treated as a patient who has demonstrated immunity to the SARS-CoV-2 virus notwithstanding that her immunity is not from the COVID shot. In fact, a study in Israel concluded that:

The natural immune protection that develops after a SARS-CoV-2 infection offers considerably more of a shield against the Delta variant of the pandemic coronavirus than two doses of the Pfizer-BioNTech vaccine, according to a large Israeli study that some scientists wish came with a “Don’t try this at home” label. *The newly released data show people who once had a SARS-CoV-2 infection were much less likely than never-infected, vaccinated people to get Delta, develop symptoms from it, or become hospitalized with serious COVID-19.* (Emphasis supplied).

<https://www.science.org/content/article/having-sars-cov-2-once-confers-much-greater-immunity-vaccine-vaccination-remains-vital> (last visited Apr. 14, 2023).

In a *Lancet* article earlier this year, researchers noted that dozens of studies (worldwide) demonstrated that natural immunity from past infection was high for four of the five waves of COVID:

We identified a total of 65 studies from 19 different countries. Our meta-analyses showed that protection from past infection and any symptomatic disease was high for ancestral, alpha, beta, and delta variants, but was substantially lower for the omicron BA.1 variant.

[https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(22\)02465-5/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(22)02465-5/fulltext) (last visited Apr. 14, 2023).

Thus, it would be improper and unscientific not to consider the implications about natural immunity from the data obtained and analyzed in a myriad of COVID studies during the past two years.

B. The Federal Emergency Use Authorization Statute Prohibits Mandating That [REDACTED] Take the Currently Available COVID-19 Vaccines.

The Emergency Use Authorization statute prohibits mandating COVID vaccines. In fact, the United States Code provides,

[S]ubject to the provisions of this section, the Secretary (of the Department of Health and Human Services) may authorize the introduction into interstate commerce, during the effective period of a declaration under subsection (b), of a drug, device, or biological product intended for use in an actual or potential emergency (referred to in this section as an “emergency use”). 21 U.S.C. § 360bbb-3(a)(1) (emphasis added) [hereinafter EUA Statute].

As an essential part of the explicit statutory conditions for emergency use authorization (EUA), the EUA Statute mandates that all individuals to whom the EUA product may be administered be given the option to accept or refuse administration of the product. *See* 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III) (requiring that “individual to whom the product is administered are informed . . . of the option to accept or refuse administration of the product” (emphasis added)). The currently available COVID-19 vaccines (Janssen/Johnson & Johnson, Moderna, and Pfizer-BioNTech) are authorized for use under the EUA Statute, alone; they have no general approval under federal law. Thus, the administration of such vaccines *cannot be mandatory* under the plain text of the EUA Statute.

The statutorily required Fact Sheets for each of the EUA COVID-19 vaccines acknowledge that individuals *cannot be compelled* to accept or receive the vaccine. *See* Moderna, *Fact Sheet for Recipients and Caregivers* (June 24, 2021)⁵ (“*It is your choice to receive or not to receive the Moderna COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care.*” (emphasis added)); Pfizer-BioNTech, *Fact Sheet for Recipients and Caregivers* (June 25, 2021)⁶ (“*It is your choice to receive or not to receive the Pfizer-BioNTech COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care.*” (emphasis added)); Janssen, *Fact Sheet for Recipients and Caregivers* (July 8, 2021)⁷ (“*It is your choice to receive or not to receive the*

⁵ <https://www.fda.gov/media/144638/download> (last visited February 2, 2023).

⁶ <https://www.fda.gov/media/144414/download> (last visited February 2, 2023).

⁷ <https://www.fda.gov/media/146305/download> (last visited February 2, 2023).

Janssen COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care.” (emphasis added)).

The recent FDA biologics license application (BLA) approval of the product COMIRNATY, COVID-19 Vaccine, mRNA, manufactured by BioNTech Manufacturing GmbH,⁸ *does not change the EUA status* of the Pfizer-BioNTech COVID-19 Vaccine that has been available under EUA since December 23, 2020. According to the EUA extension letter issued by the FDA to Pfizer on August 23, 2021,⁹ the Pfizer-BioNTech COVID-19 Vaccine and BioNTech’s COMIRNATY, COVID-19 Vaccine, mRNA “are legally distinct” products.¹⁰ Moreover, the now “approved” COMIRNATY vaccine cannot be distributed for use until BioNTech submits “final container samples of the product in final containers together with protocols showing results of all applicable tests” and BioNTech receives “a notification of release from the Director, Center for Biologics Evaluation and Research (CBER).”¹¹

C. Other Hospitals Have Granted Religious Exemptions to Organ Transplant Recipients/ Donors.

Notably, in a recent online publication of the American Journal of Transplantation (AJT), the results of a “survey canvassing current policies of transplant centers regarding a COVID-19 vaccine mandate for transplant candidates and living donors ... from staff at 141 unique transplant centers ... represent[ing] 56.4% of US transplant centers performing transplants from October 14, 2021 – November 15, 2021” demonstrated that “60.7% reported that vaccination was not required.” *See Survey of Current Transplant Center Practices Regarding COVID-19 Vaccine Mandates in the United States*, <https://pubmed.ncbi.nlm.nih.gov/35143100/> (last visited February 2, 2023). Thus, in the survey of more than 140 transplant centers, “[o]nly 35.7% of centers reported implementing a vaccine mandate.” *Id.* This objective data is from transplant centers nationwide.

Extrapolating the AJT data for the 250 transplant centers in the United States, that translates to approximately 150 of the 250 transplant centers in the country not requiring transplant patients to take the COVID-19 vaccine. This survey demonstrates that requiring transplant patients to receive the COVID-19 vaccine is *not* the predominate clinical perspective today.

Considering the survey discussed in the AJT publication showing that transplant patients are generally not required to take the COVID-19 vaccine to go through the evaluation process, remain on the organ transplant waiting list, or receive an organ.

D. [REDACTED] Has Acquired Natural Immunity to COVID.

Like most Americans, [REDACTED] has successfully recovered from Covid. Attached is her March 2, 2023, test result showing that [REDACTED] SARS-CoV2 Spike Ab Dilution is 76.6 U/mL. As reflected on the test results, *anything greater than 0.8* demonstrates significant antibodies to SARS-CoV2 in the blood sample. Clearly, [REDACTED] level of antibodies is extremely high. Because of her acquired natural immunity and documented SARS-CoV-2 antibodies and other factors, [REDACTED] respectfully requests that the Transplant Team and/or Committee permit her to obtain an exemption

⁸ BLA Approval Letter for COMIRNATY, COVID-19 Vaccine, mRNA, <https://www.fda.gov/media/151710/download> (last visited February 2, 2023).

⁹ EUA Extension Letter for Pfizer-BioNTech COVID 19 Vaccine, <https://www.fda.gov/media/150386/download> (last visited February 2, 2023).

¹⁰ See EUA Extension Letter, *supra* note 2, at 2 n.8.

¹¹ See BLA Approval Letter, *supra* note 1, at 2.

from the COVID-19 vaccinations because of the risks associated with vaccinating *someone with such a high antibody count*. In so doing, we wanted to highlight the pertinent COVID developments since 2021 demonstrating the factual and scientific bases for [REDACTED] request for an exemption:

1. On January 28, 2022, the CDC released data from large scale population studies in California and New York revealing that immunity from “infection alone provides protection superior to immunity from vaccination alone.” In fact, natural immunity provides 2.8 times greater prevention from hospitalization and 3.3 to 4.7 times greater protection against subsequent COVID infection.¹²
2. On February 3, 2022, the *New England Journal of Medicine* published a piece espousing that the normal 2-dose regimen of Pfizer provided “**no neutralization efficiency against the omicron variant.**”¹³ Experts acknowledge that Pfizer provides *no protection from infection/transmission* with the current dominant strain of SARS-CoV-2.
3. Due to her prior bout with COVID, [REDACTED] has a demonstrated indicia of immunity by an antibody (Ab) test. Her antibody test shows SARS-CoV-2 Ab titers at 16.10 BAU/mL, which is higher than Ab titers possessed by most people completing their 2-dose series of Pfizer and much higher than most vaccinated individuals who are more than 90 days post vaccination, because of the rapid pace at which vaccine-induced immunity wanes.¹⁴
4. On February 3, 2022, Johns Hopkins published a study in the *Journal of the American Medical Association* (JAMA), demonstrating that the antibody response to infection lasts at least 20 months (the whole length of time possible to study at t [his/her] point from the subjects involved) and involved a detectable SARS-CoV-2 Ab titer in over 99% of individuals tested regardless of length of time following infection.¹⁵ Notably, the study also proved the presence of nucleocapsid and cellular immune response not found in studies of those receiving the mRNA shots alone.¹⁶

¹² Leon, Dorabawila, *et al.*, “COVID-19 Cases and Hospitalizations by COVID-19 Vaccination Status and Previous COVID-19 Diagnosis — California and New York, May–November 2021”, *MMWR*, at <https://www.cdc.gov/mmwr/volumes/71/wr/mm7104e1.htm> (last visited February 2, 2023); *see also* Jeffrey Klausner, MD, MPH at <https://thehill.com/opinion/healthcare/592457-the-cdc-is-finally-recognizing-natural-immunity-legislators-should-follow> (last visited February 2, 2023).

¹³ Nemet, Kliker, Lustig, *et al.*, “Third BNT162b2 Vaccination Neutralization of SARS-CoV-2 Omicron Infection,” *NEJM*, at https://www.nejm.org/doi/full/10.1056/NEJMc2119358?query=featured_home (last visited February 2, 2023).

¹⁴ <https://www.testingforall.org/understanding-your-roche-anti-sars-cov-2-s-test-result/> (last visited February 2, 2023).

¹⁵ Alejo, Mitchell, Chang, *et al.*, “Prevalence and Durability of SARS-CoV-2 Antibodies Among Unvaccinated US Adults by History of COVID-19,” *Journal of the American Medical Association* (JAMA), at <https://jamanetwork.com/journals/jama/fullarticle/2788894> (last visited February 2, 2023).

¹⁶ *Id.* at <https://jamanetwork.com/journals/jama/fullarticle/2788894> and <https://thehill.com/opinion/healthcare/592457-the-cdc-is-finally-recognizing-natural-immunity-legislators-should-follow> (both last visited February 2, 2023).

5. Conversely, the latest vaccines wane in effectiveness significantly in the six months following the shot.¹⁷ A large-scale study from Israel released in December 2021 reinforced that natural immunity from prior infection is both more effective and longer lasting than the Pfizer vaccine.¹⁸ Because Israel vaccinated early and widely, used almost exclusively Pfizer's mRNA vaccine, its data is especially informative. Yet, despite its very high vaccination rate, Israel suffered a *severe wave* of the Delta variant in August – September 2021, like the record-level outbreaks in highly vaccinated Iceland, Singapore, UK, etc.

6. Even though its population has been “boosted” with a third dose of Pfizer, Israel has experienced yet another record-breaking wave of infections with Omicron, overwhelmingly among the vaccinated. Over 0.5% of their entire national population was reported as positive for infection in one day on January 23, 2022 (this would be the equivalent of over 1.6M infections being reported in one day in US - a milestone we thankfully have not even come close to with our peak day thus far being 904K infections on January 7, 2022.)¹⁹ On February 20, 2022, Israel experienced their highest number of COVID deaths in a single day since the start of the pandemic.²⁰ As of today, the United States registers a 97.9% recovery rate for COVID (dividing the recovered cases/total cases).²¹

CONCLUSION

In summary, we request written assurances from Emory Healthcare no later than April 30, 2023:

- (1) That Emory Healthcare, Inc. will not require ██████████ to take any of the COVID vaccines;
- (2) That ██████████ receive written notification from Emory Healthcare, Inc. that her request for an exemption be granted;
- (3) That Emory Healthcare, Inc. will not take any adverse action, or otherwise retaliate, against ██████████ based on her sincerely held religious beliefs or request for an exemption from receiving any of the COVID vaccines.

¹⁷ <https://www.news-medical.net/news/20211019/Waning-COVID-vaccine-efficacy-especially-against-reinfection.aspx> and <https://www.medrxiv.org/content/10.1101/2021.10.13.21264966v1> (both last visited February 2, 2023).

¹⁸ https://www.medrxiv.org/content/10.1101/2021.12.04.21267114v1_full.pdf (last visited February 2, 2023).

¹⁹ <https://www.worldometers.info/coronavirus/country/israel/> (last visited February 2, 2023). Notably, both these “peak infection days” for the entirety of the pandemic have occurred recently, considerably after high levels of vaccination had been achieved.

²⁰ *Id.* (last visited February 2, 2023).

²¹ <https://www.worldometers.info/coronavirus/country/unitedstates/> (last visited April 6, 2023).

Emory Healthcare, Inc.

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We look forward to hearing from you about Mrs. [REDACTED] request for a religious and/or other exemptions to the COVID-19 vaccine no later than April 30, 2023. Thank you for your consideration and prompt response.

Sincerely,

s/ Deborah A. Catalano

Deborah A. Catalano*
Senior Litigation Coordinator
Liberty Counsel

*Licensed in Florida

Attachment 1: [REDACTED] Quest SARS-CoV2 Ab test results for 03/02/2023