



Activists say Covid college mandates in question under Supreme Court ruling

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June 20th, 2022

With campus COVID vaccine and booster mandates looming over the next academic year, even amid inconsistent exemption processes and disparate treatment of those who choose to forgo jabs, veterans of campus fights are sharing strategies and scientific research to help students and parents challenge those mandates in higher education.

It is unknown how many of the more than 1,100 colleges and universities still have the same mandates from January, when The Chronicle of Higher Education last updated its tracker amid a surge of booster mandates on campuses.

But the National Association of Scholars webinar last week featured law professor Todd Zywicki, who sued George Mason University (GMU) to recognize his natural immunity, and Joni McGary, who co-founded No College Mandates this year to help students such as her Dartmouth son fight back.

Across higher ed, McGary said she's seen "no leaning toward dropping" vaccine and booster mandates despite continual outbreaks on campuses with 90-95% vaccination.

Some colleges subject unvaccinated students to more frequent testing and "more punitive quarantine" while also violating their medical privacy by forcing them to continue masking, she said. Others require "attestations" from students that they'll report noncompliant behavior.

Changes have come through one-offs, political action and litigation. Two Rhode Island colleges recently suspended their mandates, with the University of Rhode Island also suspending surveillance testing for unvaccinated individuals.

Several Virginia public colleges including GMU suspended their mandates after new state Attorney General Jason Miyares said they lacked authority, several months after GMU backed down by giving Zywicki a medical exemption.

In Canada, the University of Ottawa suspended its vaccine mandate in May following negotiations with the Justice Centre for Constitutional Freedoms on behalf of a pregnant student.

The Canadian civil liberties group filed a complaint on behalf of dismissed McMaster University students last week.

Zywicki said the zeal for mandates was a product of "scientifically illiterate" and "neurotic" Baby Boomers. "This is clown time," he said of "mid-level bureaucrats" who reject requests from doctors to exempt their patients.

McGary said one college ignored requests for a booster exemption from two doctors whose patient suffered months of health problems after a two-dose vaccine, simply telling her to boost with the other vaccine.

Zywicki's lawsuit focused on scientific research comparing natural and vaccine immunity, which the law professor argued courts must not ignore as they evaluate cases under the Supreme Court's 1905 *Jacobson* ruling.

That ruling concerned a smallpox vaccine mandate imposed by a legislature, unlike today's COVID mandates, and it concerned a 100-year-old product that was "well-established to be safe" and to stop transmission, Zywicki argued. SCOTUS soon followed with an economic liberty ruling that confirmed that state police power was "not a blank check" for mandates in the name of public welfare.

By applying the 1960s SCOTUS turn toward individual liberties to the *Jacobson* framework, government officials must show that vaccines and boosters each provide better individual protection and lower reinfection than natural immunity, according to Zywicki.

Several studies show COVID vaccine efficacy goes negative around 6 months against the Omicron variant, while others show natural immunity is longer-lasting and more durable because it provides targeted "mucosal immunity" and recognizes the whole of the evolving virus, not just the spike protein from the Wuhan strain treated by mRNA vaccines.

The studies are detailed in his March RealClearMarkets essay, his Cato Institute filing in the employer vaccine mandate proceeding and a tweet thread, Zywicki told Just the News. Another was just published in the New England Journal of Medicine.

The problem is less the law and more the difficulty in finding students willing to take on their schools in court, said McGary, whose organization provides an informal network for information-sharing, research, legal resources and model legislation.

She said it is risky to question the unexplained deaths of students in their sleep, as recently happened at Cornell. Not only are schools awash in federal funding with vaccine strings, from the National Institutes of Health to the CARES Act, but the White House has made them into "pharmaceutical marketing arms" through its vaccine challenge.

Last week No College Mandates published the legal warning letter it has sent to dozens of college presidents, urging supporters to send it to their own institutions.

It warned colleges will "lose immunity from liability" under emergency use authorization (EUA) and federal law for mandating vaccines if "fraud or willful misconduct is proven" by Pfizer and the FDA, made possible through the slow rollout of clinical-trial data under public records requests.

Among the revelations, according to the letter, is that the company and regulator "most likely knew" that heart damage was a risk for teenagers a month before their EUA for the vaccine, but left it out of disclosures for two months. It also referred to whistleblower allegations about a Pfizer subcontractor's work.

Schools should be aware of research that finds younger adults have a much higher risk of myocarditis from COVID vaccines than the infection, McGary said.

She pointed Just the News to a preprint that separated men and women in the data from a peer-reviewed Nature Medicine study on myocarditis in ages 40 and under. The preprint, which has not been reviewed, revealed that men in this age group had more myocarditis following Pfizer doses 2 and 3, and Moderna doses 1 and 2, than from infection.

University of California San Francisco epidemiologist Vinay Prasad speculated that males ages 16-24 would "likely look worst" if the authors had further parsed the data.