

The Washington Times

George Mason University professor sues over vaccine mandate, cites his ‘natural immunity’

Alex Swoyer

August 10, 2021

A George Mason University law professor sued the university over its COVID-19 requirements, asserting that he has natural immunity to the coronavirus and does not need the vaccine.

Todd Zywicki, the professor, filed a federal lawsuit in the Eastern District of Virginia earlier this month, alleging the school’s policy regarding the coronavirus pandemic violates his constitutional rights.

His legal battle includes affidavits from his doctor that say Mr. Zywicki has natural immunity from the virus after having fully recovered from COVID-19 previously. The lawsuit argued there is stronger evidence available about natural immunity from the virus compared to data about immunity through various vaccines.

“The Policy violates both Professor Zywicki’s constitutional and federal statutory rights because it undermines his bodily integrity and conditions his ability to perform his job effectively on his willingness to take a vaccine that his doctor has advised could harm him,” reads the 45-page complaint.

GMU has a vaccine mandate requiring students to be vaccinated by Aug. 1 and faculty and staff by Aug. 15. Those who do not comply must show a medical or religious exemption.

GMU announced in June that part of its reopening for the 2021 school year would require any unvaccinated faculty or staff members to wear face masks, socially distance and be tested for COVID-19 frequently.

The school policy also takes away merit-based pay increase eligibility from employees who do not comply with the COVID-19 requirements, according to the complaint. Mr. Zywicki’s lawyers said the school has also threatened employees who do not comply with termination, arguing the requirements are coercive.

Mr. Zywicki asked the court to declare that the university’s plan runs afoul of the constitution.

Harriet Hageman, senior litigation counsel at New Civil Liberties Alliance representing Mr. Zywicki, said the scheme is “indefensible from a medical standpoint, violates our client’s constitutional rights, and deprives him of due process of law.”

“Common sense and medical science should underpin GMU’s actions. Both have gone missing with this latest effort to force a distinguished professor to take a vaccine that he does not need—not for his own protection nor for anyone else’s safety,” she said.

The case is pending before Judge Thomas Selby Ellis, a Reagan appointee.

George Mason University, meanwhile, issued a statement saying it would not comment on ongoing litigation.

“As it relates generally to the steps Mason is taking to protect its community against COVID-19, the decisions the University has made have been guided by currently available medical and scientific information and the guidance issued by federal and state public health agencies. Based on this information and guidance, we believe that the steps we are taking will best protect the health and safety of the Mason community and allow the Mason community to engage in a vibrant in-person campus experience,” the school said.

Lawrence Gostin, a global health law professor at Georgetown University, called the lawsuit “bogus.”

“The factual predicate is dead wrong,” he said.

Just last week, the Centers for Disease Control and Prevention said a new study showed unvaccinated people were twice as likely to get reinfected with COVID-19.

Other studies, though, have revealed conflicting results.

Dr. Marty Makary, a professor at Johns Hopkins University School of Medicine, pointed recently in a U.S. News & World Report op-ed to an Israeli study, which he said showed natural immunity is 6.7 times greater than for vaccinated people.

Ilya Shapiro, vice president at the Cato Institute, said natural immunity is an important issue being uncovered and that some scientific reports have suggested it provides no less protection against COVID than vaccines, making vaccine mandates potentially “irrational and arbitrary.”

“Given the higher chance of adverse reactions to vaccines among those who’ve already had COVID, courts are likely to see any cost-benefit balancing very differently,” he said.