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Why I'm Suing Over My Employer's Vaccine Mandate

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In a few weeks I will begin my 24th year as a law professor at George Mason University. Last year I volunteered to teach in person, even though I'm in my 50s. Teaching law is my job and I owe my students my best. I also knew I could do it safely. During the spring of 2020 I contracted and recovered from Covid-19, which I later confirmed through a positive antibody test. Multiple positive antibody tests have since confirmed that I continue to have a robust level of immune protection.

But now my employer, a state institution, is requiring Covid vaccines. In my case, vaccination is unnecessary and potentially risky. My only other options are to teach remotely or to seek a medical exemption that would require me to wear a mask, remain socially distanced from faculty or students during, say, office hours, and submit to weekly testing.

It would be impossible for me to perform my duties to the best of my ability under such conditions. The administration has threatened those who don't submit with disciplinary action, including termination of employment. This week the public-interest lawyers at the New Civil Liberties Alliance filed suit on my behalf, challenging the university's mandatory vaccination requirement for those with naturally acquired immunity. This coercive mandate violates my constitutional right to bodily integrity for no compelling reason.

Clinical studies from Israel, the Cleveland Clinic, England and elsewhere have demonstrated beyond a doubt that natural immunity to SARS-CoV-2 provides robust and durable protection against reinfection comparable to or better than that provided by the most effective vaccines. Examining the evidence this May, the World Health Organization concluded: "Current evidence points to most individuals developing strong protective immune responses following natural infection with SARS-CoV-2."

Protection from natural immunity may even exceed that of the less effective Johnson & Johnson vaccine, which according to the CDC demonstrated only 66.3% effectiveness at preventing infection in clinical trials.

But GMU's policy is even more bizarre than that. It allows employees to comply by receiving any vaccine approved by the World Health Organization, including low-quality Chinese vaccines such as the Sinovac vaccine, which the WHO concluded was only 51% effective at preventing *symptomatic* disease, and the Sinopharm vaccine, which has performed so poorly that

some countries are systematically revaccinating their populations with higher-quality options. Even China is considering the same. Whatever the university's reasoning for endorsing these low-quality vaccines while slighting natural immunity, it clearly doesn't stand up on public-health grounds.

It isn't merely unnecessary for me to get the shot. It's potentially dangerous. Covid-recovered individuals have been mostly excluded from the vaccine clinical trials, rendering any claims about the purported safety for this group largely speculative. Moreover, clinical evidence has suggested that Covid survivors suffer more-frequent and more-serious side effects from vaccination than those who have never been infected.

The onslaught of the Delta variant in recent weeks has reinforced the lessons about the robust protection afforded by natural immunity. Unlike the current vaccines, which are designed to target the spike protein of the virus, natural immunity recognizes the entire complement of SARS-CoV-2 proteins and thus protects against a greater array of variants.

Thus even as vaccine breakthrough infections multiply around the world, natural immunity is robust to the Delta and other variants. With respect to the Gamma variant, a recent analysis of an outbreak among a small group of mine workers in French Guiana found that 60% of fully vaccinated miners suffered breakthrough infections compared with zero among those with natural immunity.

And whereas the vaccine's protection may wane faster than expected, the latest estimates on the durability of natural immunity stretch to at least 11 months, the duration of most follow-up studies. Some 16 months after contracting Covid I am still testing positive for antibodies. In fact, researchers have discovered that the antibodies produced by natural infection continue to evolve to generate "increasingly broad and potent antibodies that are resistant to mutations" compared with the more static "antibodies elicited by vaccination."

If I were not already naturally immune to Covid, I would have long ago gotten vaccinated at the first opportunity. But for those of us who have acquired natural immunity, vaccination provides none of the benefits of vaccination with all of the costs.

George Mason University's vision aspires to "bring new perspectives and solutions to the world's most pressing problems." By breaking from the herd and following the example of George Mason himself—who refused to sign the U.S. Constitution until it included a Bill of Rights—my university can live up to this promise and treat naturally acquired immunity as at least equivalent to vaccinated status.

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