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MI District Court Ruling Keeps MSU Vaccine Mandate in Place, NCLA Plans Appeal to Sixth Circuit

Norris, et al. v. Samuel L. Stanley, Jr., in his official capacity as President of Michigan State University, et al.

Washington, DC (February 23, 2022) - On Tuesday, Judge Paul Maloney of the U.S. District Court for the Western District of Michigan [granted](#) Michigan State University's (MSU) [Motion to Dismiss](#) the class-action lawsuit, *Norris, et al. v. Samuel L. Stanley, Jr., et al.*, ruling that the school acted rationally in enforcing its vaccination policy. The New Civil Liberties Alliance believes the Court erred, among other ways, in ruling that MSU's vaccine mandate survives rational basis review. NCLA plans to file an appeal with the U.S. Court of Appeals for the Sixth Circuit.

The rationale MSU has offered means that it could mandate the vaccine for each employee every day—because that would boost their antibody levels. At the very least, the question warrants further litigation and cannot be resolved at the motion-to-dismiss stage. Additionally, this case raises the specific question whether vaccinating the naturally immune constitutes a violation of constitutional rights, since there is no compelling government interest to do so, and vaccination always carries a risk of (possibly severe) adverse effects.

MSU's vaccine mandate requires all faculty, staff, and students to be fully vaccinated or obtain an approved exemption. Naturally acquired immunity is explicitly excluded as the basis for an exemption from the blanket rule, even though natural immunity provides equivalent or greater protection against re-infection and transmission to others than immunity generated by Covid-19 vaccines. Perversely, while MSU rejects natural immunity, it accepts non-FDA approved, inferior foreign vaccines such as Sinovac and Sinopharm, which start out with approximately 50% efficacy rates and wane relatively quickly.

Two plaintiffs, Kraig Ehm and D'Ann Rohrer, who demonstrated naturally acquired immunity to Covid-19 were fired by MSU during the course of the lawsuit for refusing to take the vaccine. The plaintiffs have experienced, and will continue to experience, concrete and particularized harm as a direct consequence of MSU's policy. MSU's vaccine mandate not only violates plaintiffs' bodily autonomy and right to informed consent, but it unconstitutionally forces them to choose between keeping their jobs and asserting control over personal health decisions.

In a silver lining to the District Court's decision, Judge Maloney indicated that even though MSU achieved its goal of protecting staff and students from Covid-19 based on guidance from the Centers for Disease Control and Prevention (CDC), the calculus may have changed going forward, given CDC's [new research](#) on the strong protection provided by natural immunity. In other words, considering the new research, it may no longer be rational for universities to fire those who can establish that they have natural immunity.

NCLA released the following statements:

“NCLA is disappointed that the district court granted MSU's motion to dismiss. We understand that the court believed it had no choice given the prevailing case law. However, contrary to the judge's opinion, a higher level

of review is warranted. Under such a standard, MSU’s policy is unconstitutional. We look forward to vindicating our clients’ rights in the Sixth Circuit.”

— **Jenin Younes, Litigation Counsel, NCLA**

“Michigan State’s policy is completely irrational and should have been struck even on the lowest standard of review. But when your government employer is forcing an unnecessary medical procedure on a disfavored group, the courts should apply a more searching standard than the district court believed it was bound to apply.”

— **John Vecchione, Senior Litigation Counsel, NCLA**

For more information visit the case page [here](#) or watch the related case video [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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