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NCLA Clients, Two Fired by MSU, Appeal Its Unlawful Covid-19 Vaccine Mandate 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 (July 5, 2022) – Today, the New Civil Liberties Alliance filed an [opening brief](#) in the U.S. Court of Appeals for the Sixth Circuit in *Norris, et al. v. Samuel L. Stanley, Jr., et al.* Jeanna Norris, Kraig Ehm, and D’Ann Rohrer, current or former employees of Michigan State University fired for refusing a COVID-19 vaccine, have challenged MSU’s unlawful vaccine mandate, which violates their constitutional right to bodily autonomy, conditions their employment on receiving unnecessary medical treatment, and ignores their statutory right to informed consent.

In July of 2021, MSU issued a vaccine mandate requiring all employees and students to receive a COVID-19 vaccine unless they receive an approved medical or religious exemption. Any WHO-approved vaccine, including those that are not FDA-approved (*e.g.*, Chinese-developed Sinovac and Sinopharm vaccines, which have approximately 50% efficacy rates), are sufficient to satisfy MSU’s mandate, but Plaintiffs’ naturally acquired immunity to the virus is not. Disciplinary proceedings against them commenced for declining to receive a COVID-19 vaccination, and two of the three were terminated. Plaintiffs brought suit in federal district court challenging the mandate on federal constitutional and statutory grounds. The district court granted MSU’s motion to dismiss the complaint and ruled MSU’s vaccine mandate survives the low standard of rational basis review.

Plaintiffs maintain that rational basis review is not the appropriate standard by which to evaluate their claim that MSU’s vaccine mandate violates their constitutional right to bodily integrity. Nevertheless, even *if* rational basis applies, Plaintiffs should *still* prevail because MSU’s mandate doesn’t satisfy this standard. The government—including a state actor like MSU—is not entitled, without a compelling reason, to insert itself into personal health decisions. To hold otherwise would endow the government with *carte blanche* to wield unconstrained and limitless power over countless personal decisions in everyday life.

Forcing a COVID-recovered person with natural immunity to take a vaccine that provides no benefit individually nor to third parties, while risking adverse effects, is not rational. MSU’s logic would mean the university could mandate the vaccine for each employee every day—because doing so might slightly boost their antibody levels.

The district court even suggested that were it to decide the case based on the scientific evidence available at the time of the hearing on the motion to dismiss—February of 2022—it may have reached a different conclusion as to the rationality of the mandate. However, it considered itself bound by the state of scientific knowledge as of July 2021, when MSU crafted its vaccine mandate. This was legal error.

MSU’s vaccine mandate leveraged Plaintiffs’ employment in order to coerce them into surrendering their rights to bodily autonomy. The mandate did so by threatening Plaintiffs’ livelihoods despite the fact that the vaccine in question does not stop transmission of the virus. And all of that was accomplished not through democratic means, but through usurpation of legislative authority by an unelected, unaccountable administrator. In the face of these facts, the Sixth Circuit Court of Appeals should reverse the district court’s decision to dismiss the case.

NCLA released the following statement:

“The district court erroneously assumed that *Jacobson v. Massachusetts*, a case from 1905, means MSU’s vaccine mandate is constitutional. The court recognized that the mandate implicates the constitutional right to bodily autonomy, but wrongly concluded that the university had shown sufficient interest in forcing Plaintiffs, who all have natural immunity to COVID-19, to get vaccinated or lose their jobs.”

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

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