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NCLA Tells GMU that Its Forced Vaccination Policy Violates Constitutional Rights and Medical Ethics

George Mason University's Reopening Policy for Fall 2021

Washington, DC (July 22, 2021) – George Mason University (GMU) in Fairfax, Virginia, is doubling down on its flawed reopening policy for the Fall 2021 semester, which tramples on the civil liberties of students, faculty and employees alike. The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, sent GMU a [letter](#) on Wednesday on behalf of NCLA's client, Scalia Law School Professor Todd Zywicki, along with affidavits from Drs. Jay Bhattacharya, Martin Kulldorff, and Hooman Noorhashm, explaining that the school's policy is irrational from a scientific perspective and violates fundamental tenets of medical ethics.

In an [official statement](#) released today via newswire, GMU President Gregory Washington confirmed that the university would "require all students, faculty, and staff to get vaccinated, and to share verification of their vaccination status, in order to work, study, and live on campus." The university's initial press release went so far as to threaten faculty, stating, "disciplinary action will be pursued against those faculty and staff who fail to receive an exemption and do not disclose their status and receive the vaccine. This action could include unpaid leave or possible loss of employment." Less than an hour later, the university removed the incendiary language from the press release on its [website](#).

GMU's unlawful policy mandates that all unvaccinated faculty, including those who can demonstrate natural immunity by way of prior Covid-19 infection, must wear a mask on campus, physically distance, and undergo frequent testing. Employees are also ineligible for merit-based pay increases if they do not upload proof of their vaccination status into an online portal. For Professor Zywicki, who has recovered from Covid-19 and acquired robust natural immunity, it is not only *medically unnecessary* to undergo a vaccination procedure at the current time, but doing so also would create a *risk of harm* to him. Nevertheless, because the penalties GMU attaches to remaining unvaccinated will diminish Professor Zywicki's efficacy in performing his professional responsibilities, the policy coerces him into receiving the vaccine.

The U.S. Supreme Court has held that a "forcible injection ... into a nonconsenting person's body represents a substantial interference with that person's liberty[.]" Subsequent Supreme Court decisions have made explicit that the right to "refus[e] unwanted medical care" is "so rooted in our history, tradition, and practice as to require special protection under the Fourteenth Amendment." Because the reopening policy infringes upon a fundamental, constitutional right not to receive a vaccine against one's will, should it face a lawsuit, GMU would have to demonstrate that its policy furthers a compelling state interest. Given Professor Zywicki's natural immunity, which is confirmed by reliable antibody testing, the university cannot demonstrate such an interest.

Shockingly, according to the university's press release today, GMU will acknowledge *any* vaccine approved by the World Health Organization as satisfying the requirement, not just FDA-approved vaccines. This means it will accept many vaccines that have proven to be quite inferior.

NCLA’s letter urged GMU to re-examine its reopening policy, to deem natural immunity at least equivalent to that achieved through vaccination, and to confirm that Professor Zywicki will not lose eligibility for pay raises in the future if he does not wish to share his vaccination status.

NCLA released the following statements:

“George Mason University has no legitimate legal interest in forcing Professor Zywicki into undergoing a medical procedure that is not necessary to protect him or the university community. Professor Zywicki has immunity as robust and durable as that achieved through vaccination, while at the same time he faces a real risk of adverse effects from the Covid-19 vaccines, as we have established through the declarations of three of the world’s most qualified scientists to address the matter.”

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

“George Mason is forcing me to choose between serving my students on one hand and undergoing an unnecessary and potentially risky medical procedure on the other. Multiple clinical studies have shown that natural immunity provides at least as much protection against reinfection as the most effective vaccines—and unquestionably more protection than less-effective vaccines from China and elsewhere that university policy approves. Clinical studies have also shown that receiving vaccination after recovering from Covid presents an elevated risk of side effects compared to those without natural immunity, who would benefit from vaccination. This is an important health matter that should be determined by my doctor and me—not forced on me by university policy-makers who have no familiarity with my personal medical history under the threat of ‘possible loss of employment’ for failing to comply.”

— **Todd Zywicki, George Mason University Foundation Professor of Law**

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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