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NCLA Asks Supreme Court to Revisit 120-year-old Precedent that Led to Rights Abuses Amid Pandemic

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

Washington, DC (March 11, 2024) – On behalf of clients Jeanna Norris, Kraig Ehm, and D’Ann Rohrer, the New Civil Liberties Alliance has [petitioned](#) the Supreme Court to hear *Norris, et al. v. Stanley, et al.* regarding Michigan State University’s unlawful and unscientific Covid-19 vaccine mandate. MSU fired two of NCLA’s three clients, all of whom had naturally acquired immunity to Covid, for refusing the vaccine. By conditioning their public employment on receiving unnecessary medical treatment, MSU violated their constitutional right to refuse medical intervention and ignored their statutory right to informed consent. NCLA’s petition for a *writ of certiorari* asks the Court to hold that the 1905 *Jacobson v. Massachusetts* decision requires states to satisfy at least intermediate scrutiny before mandating their employees receive an unnecessary vaccine. NCLA further urges the Court to hold that MSU’s policy failed to meet that standard.

An unelected, unaccountable administrator imposed MSU’s Covid vaccine mandate on all employees and students without an approved medical or religious exemption. Despite claiming to rely on CDC guidance, MSU permitted individuals to satisfy the standard by taking any WHO-approved vaccine, including those that are not FDA-approved. At the same time, and contrary to all scientific evidence and basic principles of immunology, MSU refused to recognize naturally acquired immunity to the virus. Instead of following the science, MSU terminated Mr. Ehm and Ms. Rohrer (while providing Ms. Norris with a religious exemption). The district court dismissed these brave Americans’ claims of constitutional and statutory rights violations, holding MSU’s policy survived rational basis review—the most permissive form of judicial scrutiny.

NCLA’s petition maintains that rational basis review is not the proper standard by which to evaluate vaccine mandates because such mandates impinge upon the constitutional rights to bodily integrity and to refuse medical intervention. Instead, intermediate scrutiny must be applied, meaning that the policy in question must be substantially related to an important governmental interest. MSU’s mandate failed that test because vaccinating already immune individuals was not related to any legitimate interest. The Supreme Court has long recognized that the right to refuse treatment is deeply rooted in America’s history and traditions, and a state actor like MSU is not entitled to interfere in personal health decisions without a sufficiently compelling reason and even then, only in a way that is necessary to achieve a legitimate goal. To hold otherwise would give the government free rein to wield unconstrained and limitless power over countless personal healthcare decisions. Forcing a Covid-recovered person with natural immunity to take a vaccine that provides no additional benefit (to themselves or to third parties), while risking adverse effects, does not meet any standard of review.

The *Jacobson* case, decided during a smallpox epidemic, held that a state government can mandate vaccinations. But the lower courts have been overreading that case and treating it as an unlimited license for government authorities to impose dissimilar mandates under wildly different circumstances and in the face of modern scientific advances. Lower courts have failed to recognize that *Jacobson* preceded modern constitutional analysis that requires government to bear a heavier burden before limiting citizens’ rights to bodily autonomy.

NCLA’s petition presents the Supreme Court with an ideal opportunity to correct this widespread misunderstanding before another emergency pandemic breaks out.

NCLA released the following statements:

“During the Covid pandemic various governmental entities ran roughshod over not just constitutional law, but also the basic scientific principles which they claimed to be following. Now that the country mostly has returned to normal, the Court has an opportunity to clarify once and for all that while government has broad powers to protect public health it still must act with due regard to people’s civil liberties.”

— **Gregory Dolin, M.D., Senior Litigation Counsel, NCLA**

“*Jacobson* is an outdated precedent. The failure to address its shortcomings has tacitly enabled enormous violations of Americans’ rights, like the right to refuse medical treatment. The Court needs to update the precedent to reflect current constitutional law.”

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

“CDC’s flawed guidance was not subject to direct court challenge, because it was deemed mere guidance. If MSU’s actions, which only partially followed that guidance, are insulated by a permissive standard of judicial review, then Americans will have lost their constitutional rights to control what goes into their bodies.”

— **Mark Chenoweth, President, 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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