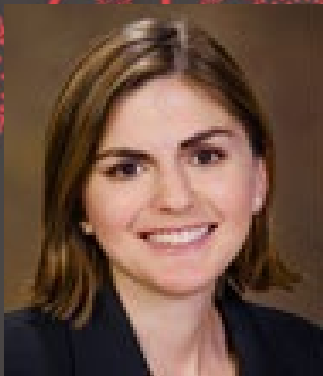


# Vaccine Mandates: Assessing their Legalties

February 24, 2022



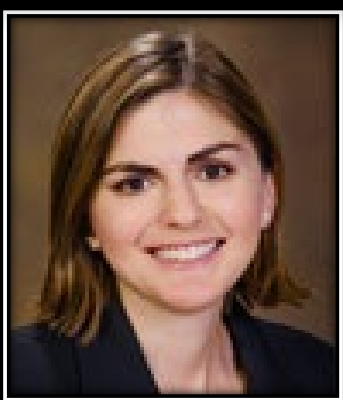
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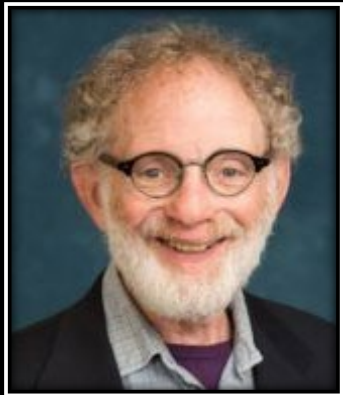


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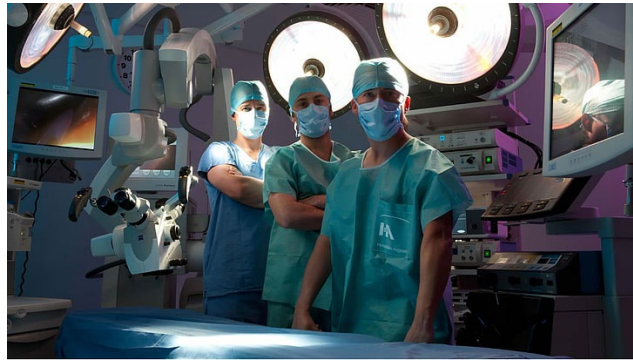
- **State Vaccine Mandates**
  - Litigation
  - Legislation
- **Federal Vaccine Mandates**
- **Policy & Practice Implications**
- **Questions & Comments**

# State Vaccine Requirements: Litigation

# Valdez v. Grisham

(U.S. District Court, D.N.M., Sept. 13, 2021)

- Plaintiffs: a healthcare worker and individual wishing to attend New Mexico State Fair brought a class action complaint against New Mexico Department of Health claiming the Governor’s public health order violated state and federal civil rights protections
  - Public health order required, in part:
    - Hospital workers eligible for COVID-19 vaccination to receive the vaccine, and
    - Eligible attendees of New Mexico State Fairgrounds show proof of vaccination
    - Subject to certain exceptions, including qualifying medical conditions
- Federal district court refused to block the public health order, finding plaintiffs “fail[ed] to make even the baseline showing” required



# Does v. Mills

(U.S. Court of Appeals, 1st Cir., Oct. 19, 2021)

- Plaintiffs:
  - Healthcare workers claimed Maine's law requiring workers in healthcare facilities to receive COVID-19 vaccine violated sincerely held religious beliefs
  - Alleged lack of religious exemption violated First Amendment
- 1st Circuit refused to temporarily halt enforcement:
  - Court found law was neutral toward religion and generally applicable to all healthcare workers, and
  - State's interest in preventing spread of COVID-19 satisfied rational basis review
- October 29, 2021: Application for injunctive relief denied by U.S. Supreme Court



# Wise v. Governor Jay Inslee

(U.S. District Court, E.D. Wash., Oct. 25, 2021)

- Plaintiffs: employees of multiple state agencies, local government entity, and healthcare provider sought to block Governor Inslee’s proclamation that all “educators, healthcare workers, and state employees and contractors” receive the COVID-19 vaccine, claiming the proclamation violated state and federal laws, including religious freedoms
- Federal district court declined to issue an injunction because:
  - Plaintiffs had not demonstrated likelihood of success on religious freedom claims,
  - Mandate would not cause irreparable harm to plaintiffs, and
  - Public interest strongly favored state’s position

*“The Proclamation is rationally related to that interest because it is based on overwhelming evidence that the vaccines are safe and effective, and increasing vaccination rates among those employees who come into regular contact with vulnerable populations (e.g., those who are immunocompromised, who cannot get vaccinated-like children under age 12, and those who must interact with public employees-like prisoners) is a rational action to reduce the spread of COVID-19.”* United States District Judge Thomas Rice

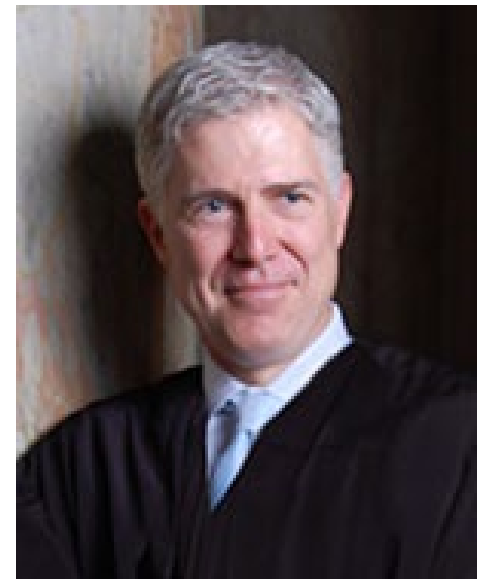
- Plaintiffs: 20 New York healthcare workers challenging the state's requirement that all healthcare workers receive the COVID-19 vaccine, arguing the requirement violates the First Amendment because the requirement does not include a religious exemption
- December 13, 2021: Justice Sotomayor declined to block enforcement of the requirement
  - Justices Gorsuch and Alito dissented from denial of application for injunctive relief





# Keil v. City of New York (U.S. Supreme Court, Date to be Determined)

- Plaintiffs: 15 New York public school employees who claimed they face permanent termination for not being vaccinated for COVID-19
  - Cited religious grounds for vaccine refusal and argued the city's religious exemptions were too narrow
- February 11, 2022: Justice Sotomayor declined an emergency request, without comment, to consider an appeal blocking the City's vaccine requirement
- Plaintiffs then resubmitted their application to Justice Neil Gorsuch
- February 16, 2022: Justice Gorsuch, without comment, referred the matter to the full court



# State Vaccine Requirements: Legislation

The COVID-19 vaccine prohibited from being required by any government entity.

H.B. 2498

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 36, chapter 6, Arizona Revised Statutes, is  
3 amended by adding article 4.2, to read:

4 ARTICLE 4.2. VACCINATIONS

5 36-685. Vaccinations; prohibition; definition

6 A. ANY GOVERNMENT ENTITY MAY NOT REQUIRE A RESIDENT OF THIS STATE  
7 TO RECEIVE A VACCINATION FOR COVID-19 OR ANY VARIANT OF COVID-19.

8 B. FOR THE PURPOSES OF THIS SECTION, "GOVERNMENT ENTITY" MEANS THIS  
9 STATE AND ANY POLITICAL SUBDIVISION OF THIS STATE THAT RECEIVES AND USES  
10 TAX REVENUES.

“No agency shall require proof of any vaccination of any person as a condition of providing any service or access to any facility issuing any license, permit, or other type of authorization, or performing any duty of such agency.”

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

## SECTION 1.

Chapter 1 of Title 50 of the Official Code of Georgia Annotated, relating to general provisions regarding state government, is amended by adding a new Code section to read as follows:

"50-1-11. (a) As used in this Code section, the term 'Agency' means: (1) Every state department, agency, board, bureau, office, commission, public corporation, and authority; (2) Every county, municipal corporation, school district, or other political subdivision of this state; (3) Every department, agency, board, bureau, office, commission, authority, or similar body of each such county, municipal corporation, or other political subdivision of this state; and (4) Every city, county, regional, or other authority established pursuant to the laws of this state. (b)(1) No agency shall require proof of any vaccination of any person as a condition of providing any service or access to any facility, issuing any license, permit, or other type of authorization, or performing any duty of such agency. (2) No agency, through any rule, regulation, ordinance, resolution, or other action shall require that any person or private entity require proof of vaccination of any person as a condition of providing any service or access to any facility, or as a condition of such person or private entity's performance of any regular activity by such person or private entity."

## SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.

On January 24, 2022, Senator Richard Pan introduced the Keep Schools Open and Safe Act.



**SENATE BILL**

**No. 871**

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**Introduced by Senator Pan**  
**(Principal coauthors: Senators Newman and Wiener)**  
(Principal coauthors: Assembly Members Aguiar-Curry, Akilah Weber,  
and Wicks)

January 24, 2022

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An act to amend Sections 120325 and 120335 of, and to repeal Section 120338 of, the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

SB 871, as introduced, Pan. Public health: immunizations.

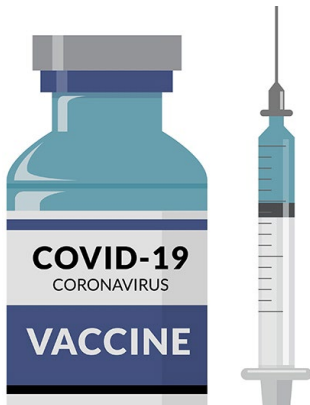
Existing law prohibits the governing authority of a school or other institution from unconditionally admitting any person as a pupil of any public or private elementary or secondary school, childcare center, day nursery, nursery school, family day care home, or development center, unless prior to their admission to that institution they have been fully immunized against various diseases, including measles, mumps, pertussis, hepatitis B, and any other disease deemed appropriate by the State Department of Public Health, as specified. Existing law authorizes an exemption from those provisions for medical reasons.

On December 14, 2021: Governor Jon Bel Edwards declared via letter that the Louisiana Department of Health will proceed with its addition of COVID-19 vaccines to the schedule of immunizations required for school entrance.

First and foremost, I am allowing this rule to go into effect because it will save lives and will help Louisiana to emerge from this pandemic. The facts of this pandemic at this point are crystal clear. As of today, over 770,000 people in Louisiana have tested positive for COVID-19. Tragically, we have lost almost 15,000 people to COVID-19 in the last 22 months. This includes 19 children under 18 years old. By contrast, there have been only 12 significant adverse events related to vaccine administration in Louisiana with zero deaths. By any measure, the COVID-19 vaccines have been a historic success. However, we know that there have been far too many of our friends and neighbors who have yet to be vaccinated. This includes school age children who do have a risk of serious illness and death. By adding the COVID-19 vaccination to the immunization schedule, the Louisiana Department of Health and the State Health Officer are doing exactly as directed and authorized by the Louisiana Legislature pursuant to *La. R.S. 40:4*, *La. R.S. 40:5*, *La. R.S. 40:31.15*, and *La. R.S. 17:170* to protect the health and safety of the people of Louisiana.

- **State Vaccine Mandates**
  - **Litigation**
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# Federal Vaccine Mandates





## Federal Vaccine Mandates

OSHA Large Employers Rule

CMS Health Care Sector Rule

Federal Contractor Rule

Federal Employees

Federal Military Rule

Head Start Program



**Who is covered:** non-remote workers at companies with 100 or more employees, U.S. Postal Service workers, public employees in the 28 states and territories that enforce OSHA rules



**Requirement:** employees must be vaccinated or undergo weekly testing; medical and religious exemptions permitted

**Current legal status:** stayed by the US Supreme Court in [NFIB v. OSHA](#) & [Ohio v. OSHA](#); withdrawn by OSHA



The logo for the Occupational Safety and Health Administration (OSHA). It consists of a stylized blue and white circular icon followed by the letters "OSHA" in a bold, black, sans-serif font, with a registered trademark symbol (®) to the upper right.

**Who is covered:** health care workers at facilities that run Medicare and Medicaid programs

**Requirement:** HCWs must be “fully vaccinated”

**Current legal status:** in effect nationwide after being upheld by the Supreme Court in *Biden v. Missouri & Becerra v. Louisiana*



# Federal Employee Mandate

**Who is covered:** federal employees of the executive branch



**Requirement:** employees must be “fully vaccinated”; medical and religious exemptions permitted

**Current legal status:** enforcement on hold nationwide pending appellate review



**Who is covered:** employees of companies with government contracts



**Requirement:** employees must be “fully vaccinated”; medical and religious exemptions permitted

**Current legal status:** enforcement on hold nationwide pending appellate review



# Military Mandate

**Who is covered:** members of the U.S. armed forces (active & reserve)

**Requirement:** members must be “fully vaccinated”; medical exemptions permitted

**Current legal status:** enforcement in effect nationwide, on hold for civilians pending appellate review

The U.S. Army will begin dismissing vaccine holdouts. *The New York Times*

Source: <https://www.nytimes.com/2022/02/02/us/us-army-vaccine-mandate.html>

The defense secretary tells Republican governors: National Guard troops must be vaccinated.

*The New York Times*

Source: <https://www.nytimes.com/2022/02/01/us/national-guard-vaccine-mandate.html>



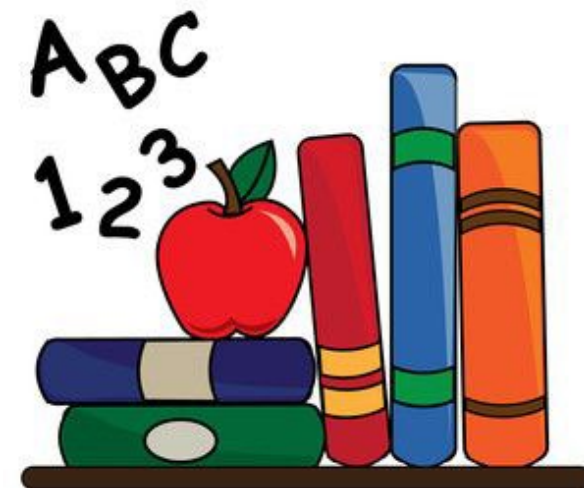
# Head Start Program Mandate

**Who is covered:** teachers, contractors, and volunteers participating in the federal Head Start program



**Requirement:** employees must be “fully vaccinated”; medical exemptions permitted

**Current legal status:** enforcement on hold in 25 states pending appellate review



# Federal Vaccine Mandates





- **State Vaccine Mandates**
  - **Litigation**
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- **Potential litigation alarms**
  - *Jacobson v. Massachusetts* under siege
  - Shifting view of separation of powers
  - Shifting view of federalism—skeptical about federal authority
  - New exemptions for religion
  - Non-delegation doctrine

- **Sentinel effects of litigation**
  - Increasing the burden of justifying intervention (especially lockdowns and mandates)
  - Skeptical view of science and professionalism
  - Limits on authority
  - Encourages legislation to limit public health authority

- **Potential litigation/legislative attacks**
  - Limiting public health authority
  - Limits on enforcement
  - Shifting authority to elected officials
  - Undermining professionalism
  - Shifting funding to private entities
  - Preemption

- **Hardening resistance to PH**
  - PH's collective ethos colliding with rampant individualism
  - Increasing enforcement difficulties
  - Attacks on vaccines, especially childhood vaccine requirements, HPV
  - Concerns about recruiting public health professionals
  - Difficulty restoring trust

- **Post-pandemic strategies**
  - Messaging
  - Talk to communities about return to routine public health
  - Develop litigation strategies to preserve *Jacobson v. Massachusetts*
  - Evaluate effects on the public's health from shift to direct political control

- **Post-pandemic strategies**
  - Develop alternative strategies that avoid mandates
  - Develop new enforcement mechanisms
  - Develop a public health voice
  - Develop new legislative strategies for an altered post-pandemic environment

# Questions & Comments

Thank  
you



**Ask the Network** re: additional questions/comments

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