

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

Benjamin Lipp
[REDACTED]
[REDACTED]

CASE NO.

Danielle Seymore
[REDACTED]
New Richmond, OH 45157

JUDGE:

Katelyn Verbarg
[REDACTED]
West Chester, OH 45069

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

and

Nicholai Lekson
[REDACTED]
[REDACTED]

Plaintiffs,

v.

University of Cincinnati
ATTN: Office of Legal Affairs
2600 Clifton Ave.
Cincinnati, OH 45211

and

**Ronald Brown, Thomas Mischell, Kim Heiman,
Phil Collins, Michelle Gillis,
Monica Turner, Phillip Holloman,
Gregory Hartmann, Jill McGruder,
in their official capacity as members of
the Board of Trustees of the University
of Cincinnati**
ATTN: Office of Legal Affairs
2600 Clifton Ave.
Cincinnati, OH 45211

Defendants.

For their Complaint against defendants the University of Cincinnati and its Board of Trustees (collectively “Defendants” or “University of Cincinnati” or “University”), Plaintiffs¹ state as follows:

INTRODUCTION

1. This is a civil action for declaratory and injunctive relief arising under R.C. 3709.212, as construed by Ohio case law, R.C. 3792.04, Article I, Section 1 of the Ohio Constitution and R.C. 2905.12.

2. This action involves the statutory and constitutional validity of Defendants’ vaccination and health measure mandate (the “Mandate”) effective on September 1st, 2021. A copy of the Mandate is attached as **Exhibit 1**.

3. The Mandate required Defendants’ students, faculty, and staff, who are not exempted, to be fully vaccinated by November 15th, 2021. **Exhibit 1**.

4. Students, faculty, and staff granted an exemption from vaccination, must be tested for COVID-19 each week regardless of whether they are symptomatic or have come into direct contact with someone infected by COVID-19. **Exhibit 1**.

5. Students, faculty, and staff who are not approved for an exemption or have not been fully vaccinated are subject to “discipline in accordance with applicable UC policy and collective bargaining agreements” **Exhibit 1**.

6. Defendants lack authority, by reason of R.C. 3709.212 and Ohio case law, to order those who are not diagnosed with a disease or have not come into direct contact with someone who

1. Plaintiffs include Benjamin Lipp, Danielle Seymore, Katelyn Verbarq, and Nicholai Lekson.

has been diagnosed with a disease, to wear masks, undergo weekly testing, or to limit their activities.

7. The Mandate violates R. C. 3792.04 to the extent that Defendants are a state institution of higher education and are discriminating by requiring Plaintiffs to engage in or refrain from engaging in activities or precautions that differ from the activities or precautions of an individual who has received a vaccine that has not been fully approved by the U.S. Food and Drug Administration (“FDA”).

8. The Mandate violates Article I, Section 1 of the Ohio Constitution in that it violates Plaintiffs’ right to refuse medical treatment.

9. The Mandate violates R.C. 2905.12 to the extent that it coerces Plaintiffs from taking or refraining from actions over which they should have legal freedom of choice, by taking, withholding or threatening to take or withhold official action.

PARTIES

10. Plaintiffs Benjamin Lipp, Danielle Seymore, Katelyn Verbarg, and Nicholai Lekson at all times relevant herein, were students at defendant University of Cincinnati.

11. Benjamin Lipp, Danielle Seymore, and Katelyn Verbarg have received exemptions from the University’s Mandate.

12. Nicholai Lekson has met the University’s vaccination requirement. However, he objects to the University’s mandatory vaccination policy and the possibility of having to receive a booster shot to stay in school. The following is a true and accurate screenshot from the University’s novel Coronavirus (COVID-19) webpage:

All World Health Organization endorsed vaccines, including those in the U.S. made by Pfizer, Moderna and Johnson & Johnson, will fulfill the vaccine requirement. Booster shots may also be required in the future.

13. Defendant University of Cincinnati is a state university, a public institution of higher education, and a body politic and corporate, under R.C. 3337.01, within the meaning of R.C. 3345.011, with its principal office in Cincinnati, Ohio.

14. Defendants Ronald Brown, Thomas Mischell, Kim Heiman, Michelle Gillis, Phil Collins, Monica Turner, Phillip Holloman, Gregory Hartmann, and Jill McGruder are members of the Board of Trustees of the University of Cincinnati with the authority to adopt rules applicable to Plaintiffs and students, faculty, and staff of the University of Cincinnati.

COUNT ONE – DECLARATORY RELIEF

15. Plaintiffs incorporate the allegations set forth above, as if fully restated herein.

16. An actual controversy has arisen and now exists between Plaintiffs and Defendants concerning their respective rights and duties. Plaintiffs assert the Mandate is void to the extent that it violates Ohio statutory and constitutional law as described below. Defendants dispute these contentions and contend the Mandate is lawful.

17. Plaintiffs desire a judicial determination of Plaintiffs' rights and duties, and a declaration as to whether the Mandate violates the Ohio Constitution and applicable Ohio statutory law.

18. A judicial declaration is necessary and appropriate at this time under the circumstances so that Plaintiffs may ascertain their rights and duties.

LACK OF AUTHORITY

19. Defendants lack authority to order public health or preventative health measures, such as vaccination, masking, or testing for persons not diagnosed with a disease or have come into direct contact with someone diagnosed with a disease.

20. Pursuant to R.C. 3337.01 and 3345.021, Defendants have general authority to administer the University of Cincinnati. However, Ohio case law limits that general authority by requiring that the exercise of such authority be reasonable. *See State ex rel. Barno v Crestwood Bd. Of Edn.*, 134 Ohio App 3d 494, 503 (11th Dist. 1998). Reasonableness must be evaluated by the standards of “common sense ... guided by considerations of public policy manifested in relevant statutory, administrative, and decisional law.” *Id.* at 304.

21. The Ohio Legislature recently set relevant public policy limiting local boards of health regarding issuing orders or regulations for the public health or prevention or restriction of disease by enacting R.C. 3709.212. This statute limits the application of health orders and regulations to persons medically diagnosed with a disease or in direct contact with such persons. The Mandate far exceeds the limits of the Ohio legislature’s explicit statement of public policy. Defendants are using their general authority to administer a university, to assume powers to issue health regulations that the Ohio legislature has expressly prohibited local boards of health from issuing. This is manifestly unreasonable and is beyond Defendants’ authority under Ohio case law.

22. The Mandate requirement that all persons within the University wear masks while indoors is a regulation for the prevention or restriction of disease, which is applied to those who have not been diagnosed with a disease or have not come into direct contact with someone who has been medically diagnosed with a disease, and which therefore exceeds Defendants’ general authority to administer the University.

23. The Mandate requirement that every unvaccinated person within the University submit to weekly COVID-19 testing is a regulation for the public health, which is applied to those who have not been diagnosed with a disease or have not come into direct contact with someone who has been medically diagnosed with a disease, and which therefore exceeds Defendants' general authority to administer the University.

VIOLATION OF R.C. 3792.04

24. Under R.C. 3792.04, a state institution of higher education may not discriminate between an unvaccinated individual and one who has received a Covid-19 vaccine not fully approved by the FDA by requiring the unvaccinated individual to engage in or refrain from engaging in activities or precautions that differ from the activities or precautions of an individual who have received vaccines not fully approved by the FDA.

25. The Covid-19 vaccines currently available, Johnson & Johnson, Moderna and Pfizer, have been authorized for emergency use only (the "EUA vaccines") and have not been fully approved by the FDA. On information and belief, COMIRNATY, the only Covid-19 vaccine that has been fully approved by the FDA, is not currently available.

26. The Mandate clearly states that the University will accept "All World Health Organization endorsed vaccines" (the "WHO") to fulfill their Mandate. **Exhibit 1.**

27. The Mandate requires students, faculty, and staff (including Plaintiffs) who are unvaccinated to submit to weekly testing but does not require persons vaccinated with EUA vaccines to submit to such testing, and therefore is discriminatory within the meaning of R.C. 3792.04.

28. On July 2nd, 2021, Karen A. Ryan, Executive Director of Government Relations for the University, emailed the University's Executive Vice President Ryan Hays after her IUC

meeting and expressed concern that if the University tested the unvaccinated, they would also have to test the vaccinated under HB 244. **Exhibit 2.** A true and accurate screenshot of this email can be seen below:

The General Assembly passed HB 244 which included an amendment prohibiting requiring a vaccine without full FDA approval. Further, is also prohibits discriminating against an individual who has not received a vaccine including by requiring the individual from engaging or refraining from activities or precautions different from the activities and precautions someone who has received a vaccine.

We had high level discussion at my IUC meeting on this. There is obvious concern this will impact the way we approach the fall. For example, if we test some people, i.e., those who are not vaccinated, then we need to test everybody. [REDACTED] talked about it at the direct reports meeting.

29. By accepting WHO endorsed vaccines and treating those vaccinated with a WHO endorsed vaccine the same as an individual vaccinated with an FDA approved vaccine, and by only requiring the unvaccinated to be subject to weekly COVID-19 testing, The University is discriminating against its students, faculty, and staff who have received an exemption or have refused to get vaccinated under the plain language of R.C. 3792.04.

**VIOLATION OF OHIO CONSTITUTION, ARTICLE I, SECTION 1
RIGHT TO REFUSE MEDICAL TREATMENT**

30. Plaintiffs have a fundamental right under Article I, Section 1 of the Ohio Constitution to refuse medical treatment to protect the liberties of personal security, bodily integrity, and autonomy. *Steele v. Hamilton Cty. Community Mental Health Bd.*, 90 Ohio St. 3d 176, 180-181 (2000):

31. “The liberty interests infringed upon when a person is [medically treated] against his or her wishes is significant...This type of intrusion clearly compromises one's liberty interests in personal security, bodily integrity and autonomy.” *Id.* at 182.

32. “The right to refuse [medical treatment] is not absolute and it must yield when outweighed by a compelling government interest.” *Id.* at 181. “Whether the potential benefits of [medical treatment] are worth the risks is a personal decision that, in the absence of a compelling state interest, should be free from government intrusion.” *Id.* at 183.

33. A state may have a compelling interest to override an individual's decision to refuse [medical treatment] to prevent harm to that individual or others. *Id.* at 183. However, the state's right to invoke its police power to override an individual's decision to refuse [medical treatment] arises only when there is an imminent danger of harm. *Id.* at 184.

34. Any such forced [medical treatment] must be medically appropriate for the individual and it must be the least intrusive means of accomplishing the state's interest of preventing harm. *Id.* at 184. And the state must establish its compelling interest to override the individual decision to refuse [medical treatment] by clear and convincing evidence. *Id.* at 180.

35. The Mandate's requirement to wear masks is a form of medical treatment. The Mandate requires the use of cloth face masks, surgical masks or N95 masks (the “masks”). The masks are currently authorized by the FDA as medical devices intended for a medical purpose. As such, their use is a form of medical treatment which Plaintiffs have a right to refuse under Article I, Section 1 of the Ohio Constitution. Further, the emergency use authorization of the masks is conditioned on Plaintiffs' right to refuse their use.

VIOLATION OF R.C. 2905.12 – COERCION

36. Under R.C. 2905.12, no person may coerce another from taking or refraining from action concerning which the other person has a legal freedom of choice, by taking, withholding, or threatening to take or withhold official action.

37. The Mandate involves taking or withholding official action to coerce Plaintiffs to accept medical treatment which Plaintiffs have the legal freedom to refuse under, as stated above, Article I, Section 1 of the Ohio Constitution and therefore violates R.C. 2905.12.

COUNT TWO – INJUNCTIVE RELIEF

38. Plaintiffs incorporate the allegations set forth above, as if fully restated herein.

39. Plaintiffs have a substantial likelihood of success on the merits for the reasons described above.

40. By reason of Defendants' violation of Plaintiffs' constitutional and statutory rights as described above, Plaintiffs are presumed to have suffered irreparable harm.

41. Plaintiffs have no adequate or speedy remedy at law. Defendants' violations are ongoing and will continue as long as there is no injunction in place. Defendants have not indicated that the Mandate, or any related policy, will be lifted. If Plaintiffs refuse to comply, they may be terminated or expelled.

42. The balancing of equities consideration merges into the consideration of the public interest. "In the preliminary injunction analysis, the public-interest factor merge[s] with the substantial-harm [to third parties] factor when the government is the defendant." *Daunt v. Benson*, 956 F 3d 396, 422 (6th Cir. 2020).

43. "Whether the grant of a preliminary injunction furthers the public interest [is] largely dependent on the likelihood of success on the merits because the protection of


constitutional rights is always in the public interest.” *Id.* citing *Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724, 752 (8th Cir. 2008).

WHEREFORE, Plaintiffs request judgment for:

1. A declaration that the Mandate is void to the extent that it violates Ohio constitutional and statutory law;
2. Preliminary and permanent injunctive relief prohibiting Defendants, their officers, agents, employees, successors, and attorneys and those in active concert or participation with them, from enforcing the Mandate and from discriminating against Plaintiffs in violation of Plaintiffs’ statutory and constitutional rights;
3. Attorney fees and costs incurred in this action;
4. Such other and further relief as the Court may deem just and proper.


Respectfully Submitted,

MENDENHALL LAW GROUP


Warner Mendenhall (0070165)
Kyle Wenning (0101391)
Mendenhall Law Group
190 North Union St. Ste 201
Akron, Ohio 44304
Counsel for Plaintiffs

INSTRUCTIONS FOR SERVICE

Plaintiffs request the Clerk of Courts to serve summons and a copy of this Complaint on Defendants at the addresses listed in the caption of the Complaint.


Warner Mendenhall



UC requires COVID-19 vaccine

President Neville G. Pinto's announcement to campus regarding UC's vaccine requirement



By John Bach 513-556-2019

September 1, 2021

The below message was shared with all faculty, staff and students today:



As we have all along, university leaders continue to follow the scientific data and listen to medical experts from our Academic Health Center to enact measures to support the health of our community. These experts have made it clear that COVID-19 cases are rising at a concerning rate both locally and nationally.

In response to last week's full FDA approval of the Pfizer-BioNTech vaccine, the University of Cincinnati will require students, faculty and staff to be vaccinated against COVID-19. The university is taking this step to promote the health and safety of our university community. Research shows vaccines are the most effective form of protection against COVID-19.

The deadline for all UC students, faculty and staff to have at least the first dose of a COVID-19 vaccine is October 15, 2021. Those receiving a two-dose sequence must have received the second dose by November 15, 2021. All World Health Organization endorsed vaccines, including those in the U.S. made by Pfizer, Moderna and Johnson & Johnson, will fulfill the vaccine requirement. Booster shots may also be required in the future.

The vaccination requirement will apply to students, faculty and staff members who come to campus for their classes, work and/or otherwise use campus facilities. There will be an opportunity to request an exemption from the vaccine requirement for medical reasons, sincerely held reasons of conscience or religious beliefs.

Members of the campus community who are not vaccinated by the above deadlines will be required to be tested weekly. Students who do not achieve and share fully vaccinated status (which requires two weeks after final dose) or do

not receive an exemption by Spring semester will be unenrolled from Spring semester classes. Faculty and staff who are not vaccinated by the at-risk deadlines and who are not approved for an exemption will be subject to discipline in accordance with applicable UC policy and collective bargaining agreements.

Our focus continues to be the wellbeing of our community. We believe this step best positions our university to meet the needs of our campus community. To put it simply, the higher our vaccination rate, the less disruption we anticipate to our academic mission and the better we expect to be able to deliver a more dynamic campus experience.

We have taken time to engage our campus and review the feedback that has been shared from faculty, staff and students regarding the idea of requiring a vaccine. I'd like to thank everyone who took the time to convey their thoughts on the matter, from undergraduate to graduate students, to our faculty and staff via their governance bodies, as well as the collective bargaining units that have partnered with administration, to help us reach a decision. It is important to us to listen to our community, and there is strong support for this requirement.

Still, it isn't lost on me that some in our UC community hold a different opinion. Please know the decision to require a vaccine does not come easily, and I recognize that deeply personal reasons impact your thoughts and choices around this topic. As we move forward, we will continue to emphasize the common good while also listening closely to all of our communities.

Listening to one another is crucial, even if we disagree. The more we truly listen, the more we will unite over our common values rather than divide over polarizing issues. We have a long road ahead during this unpredictable pandemic, and it will be a journey best travelled caring for one another.

I am sure that you may have questions, and we have updated our Public Health website with an [FAQ](https://www.uc.edu/publichealth/vaccine/requirement.html) (<https://www.uc.edu/publichealth/vaccine/requirement.html>) on the matter. You may also call 513-556-2658 to reach our COVID-19 hotline.

Thank you for doing your part to safeguard our campus community.

**Warm regards,
Neville G. Pinto**

Tags

College-Conservatory of Music

College of Pharmacy

College of Medicine

College of Arts and Sciences

College of Allied Health Sciences

College of Education, Criminal Justice, & Human Services

Veteran's Affairs

COVID-19

Blue Ash College

Clermont College

Faculty Staff

College of Design, Architecture, Art, and Planning

Graduate School

College of Law

Student Affairs

President's Office

College of Nursing

Lindner College of Business

Admissions

Provost

College of Engineering and Applied

COVID-19

From: [Karen, Ryan \(karon\)](#)
To: [Ryan, Karen \(ryan2k5\)](#)
Subject: Re: HB 244
Date: Friday, July 2, 2021 12:49:26 PM

Got it. Thanks so much

EXHIBIT

2

On Jul 2, 2021, at 9:15 AM, Ryan, Karen (ryan2k5) <ryan2k5@ucmail.uc.edu> wrote:

Hi Ryan,

I wanted to be sure to loop you into HB 244. It's the vaccine bill - link below. The vaccine committee didn't meet yesterday - Dustin and Vic were out, where I planned to discuss. I am on vacation for the next meeting.

The General Assembly passed HB 244 which included an amendment prohibiting requiring a vaccine without full FDA approval. Further, is also prohibits discriminating against an individual who has not received a vaccine including by requiring the individual from engaging or refraining from activities or precautions different from the activities and precautions someone who has received a vaccine.

We had high level discussion at my IUC meeting on this. There is obvious concern this will impact the way we approach the fall. For example, if we test some people, i.e., those who are not vaccinated, then we need to test everybody. [REDACTED] talked about it at the direct reports meeting.

There is no emergency clause, so it will take effect 90 days from his signing. There are rumblings that the governor may veto it....

https://search.prod.lis.state.oh.us/solarapi/v1/general_assembly_134/bills/hb244/EN/06/hb244_06_EN?format=pdf

Feel free to call anytime to talk more..
Karen

Karen A. Ryan
Executive Director, Government Relations
University of Cincinnati
karen.ryan@uc.edu
513-556-0733 (office)