

The Right to Be Let Alone: How to Safeguard Your Freedoms in the Face of the Government's COVID-19 Power Grabs

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“We’ve reached the point where state actors can penetrate rectums and vaginas, where judges can order forced catheterizations, and where police and medical personnel can perform scans, enemas and colonoscopies without the suspect’s consent. And these procedures aren’t to nab kingpins or cartels, but people who at worst are hiding an amount of drugs that can fit into a body cavity. In most of these cases, they were suspected only of possession or ingestion. Many of them were innocent... But these tactics aren’t about getting drugs off the street... These tactics are instead about degrading and humiliating a class of people that politicians and law enforcement have deemed the enemy.”¹—Radley Balko, *The Washington Post*

The heavy-handed collusion between the Techno-Corporate State and the U.S. government over vaccine mandates is merely the latest manifestation of the extent to which fascist forces are working to overthrow our constitutional republic and nullify the rights of the individual.

In early November 2021, the Biden Administration drew its line in the sand for more than 100 million American workers: get vaccinated against COVID-19 (by Nov. 22 for federal workers, and Jan. 4 for federal contractors and companies with more than 100 employees) or else.² Or else what? For many individuals with sincere objections to the vaccine, either based on their religious beliefs or some other medical or philosophical concern, non-compliance with workplace vaccine mandates will mean losing their jobs and the possibility of no unemployment benefits.³ One survey conducted by the Society for Human Resource Management estimated that 28% of employed Americans wouldn’t get a COVID vaccine even if it meant losing their jobs.⁴

Although OSHA (the Occupational Safety and Health Administration) is requiring that employees be paid for the time it takes to get vaccinated and recover from any side effects, those who refuse to get vaccinated but keep their jobs will have to test negative for COVID weekly

¹ Radley Balko, “Forced catheterizations are a good reminder that the drug war is as barbaric and cruel as ever,” *The Washington Post* (Apr. 14, 2017), <https://www.washingtonpost.com/news/the-watch/wp/2017/04/14/forced-catheterizations-are-a-good-reminder-that-the-drug-war-is-as-barbaric-and-cruel-as-ever/>.

² Andrea Hsu, “Biden’s vaccine rules for 100 million workers are here. These are the details,” *NPR* (Nov. 4, 2021), <https://www.npr.org/2021/11/04/1048939858/oshha-biden-vaccine-mandate-employers-100-workers>.

³ Greg Iacurci, “Fired for refusing a Covid vaccine? You likely can’t get unemployment benefits,” *CNBC* (Oct. 7, 2021), <https://www.cnbc.com/2021/10/07/fired-for-refusing-a-covid-vaccine-you-likely-cant-get-unemployment-benefits.html>.

⁴ Greg Iacurci, “Fired for refusing a Covid vaccine? You likely can’t get unemployment benefits,” *CNBC* (Oct. 7, 2021), <https://www.cnbc.com/2021/10/07/fired-for-refusing-a-covid-vaccine-you-likely-cant-get-unemployment-benefits.html>.

and could be made to shoulder the costs of those weekly tests.⁵ Healthcare workers are not being given an option for testing: it's the vaccine or nothing.⁶ To give the government's arm-twisting some added strength, companies that violate the workplace mandate rules "can face fines of up to \$13,653 per violation for serious violations and 10 times that for willful or repeated violations."⁷ In other words, as Katrina Trinko writes for *USA Today*, "the government is turning employers—who are not paid by, nor work for, the government—into an army of vaccine enforcers."⁸

This has long since ceased to be a debate over how best to protect the populace at large against an unknown pandemic. Rather, it has become a massively intrusive, coercive and authoritarian assault on the right of individual sovereignty over one's life, self and private property. As such, these COVID-19 mandates have become the new battleground in the government's tug-of-war over bodily autonomy and individual sovereignty.

Already, the legal challenges to these vaccine mandates are piling up before the courts. Before long, divided circuit court rulings will make their way to the U.S. Supreme Court, which will be asked to decide whether these mandates constitute government overreach or a natural extension of the government's so-called emergency powers.⁹

With every new court ruling that empowers corporations and the government to use heavy-handed tactics to bring about vaccine compliance, with every new workplace mandate that forces employees to choose between their right to bodily autonomy and economic livelihood, and with every new piece of legislation that insulates corporations and the government from being held accountability for vaccine injuries and deaths,¹⁰ our property interest in our bodies is diminished.

This debate over bodily autonomy, which covers broad territory ranging from forced vaccinations, abortion and euthanasia to forced blood draws, biometric surveillance and basic healthcare, has far-reaching ramifications for who gets to decide what happens to our bodies during an encounter with government officials.

⁵ Greg Iacurci, "Fired for refusing a Covid vaccine? You likely can't get unemployment benefits," *CNBC* (Oct. 7, 2021), <https://www.cnbc.com/2021/10/07/fired-for-refusing-a-covid-vaccine-you-likely-cant-get-unemployment-benefits.html>.

⁶ Greg Iacurci, "Fired for refusing a Covid vaccine? You likely can't get unemployment benefits," *CNBC* (Oct. 7, 2021), <https://www.cnbc.com/2021/10/07/fired-for-refusing-a-covid-vaccine-you-likely-cant-get-unemployment-benefits.html>.

⁷ Andrea Hsu, "Biden's vaccine rules for 100 million workers are here. These are the details," *NPR* (Nov. 4, 2021), <https://www.npr.org/2021/11/04/1048939858/osha-biden-vaccine-mandate-employers-100-workers>.

⁸ Katrina Trinko, "Joe Biden wants your boss to force you to get vaccinated. That's not how it should work," *USA Today* (Nov. 15, 2021), <https://news.yahoo.com/joe-biden-wants-boss-force-160757001.html>.

⁹ Dan Whitcomb, "U.S. appeals court affirms hold on Biden COVID-19 vaccine mandate," *Reuters* (Nov. 13, 2021), <https://www.reuters.com/world/us/federal-appeals-court-affirms-stay-biden-vaccine-mandate-2021-11-12/>.

¹⁰ Adam Andrzejewski, "Feds Pay Zero Claims For Covid-19 Vaccine Injuries/Deaths," *Forbes* (Nov. 4, 2021), <https://www.forbes.com/sites/adamandrzejewski/2021/11/04/feds-pay-zero-claims-for-covid-19-vaccine-injuriesdeaths>.

On a daily basis, Americans are already being made to relinquish the most intimate details of who we are—our biological makeup, our genetic blueprints, and our biometrics (facial characteristics and structure, fingerprints, iris scans, etc.)—in order to clear the nearly insurmountable hurdle that increasingly defines life in the United States: we are now guilty until proven innocent.

This merely pushes us one step further down that road towards a total control society in which the government in collusion with Corporate America gets to decide who is “worthy” of being allowed to take part in society.

Right now, COVID-19 vaccines are the magic ticket for gaining access to the “privileges” of communal life. Having already conditioned the population to the idea that being part of society is a privilege and not a right, such access could easily be predicated on social credit scores, the worthiness of one’s political views, or the extent to which one is willing to comply with the government’s dictates, *no matter what they might be*.

The Right to Bodily Integrity

Freedom is never free. There is always a price—always a sacrifice—that must be made in order to safeguard one’s freedoms. Where that transaction becomes more complicated is when one has to balance the rights of the individual with the needs of the community.

Philosophers such as Thomas Hobbes, John Locke and Jean-Jacques Rousseau envisioned the social contract between the individual and a nation’s rulers as a means of finding that balance. Invariably, however, those in power grow greedy, and what was intended to be a symbiotic relationship with both sides benefitting inevitably turns into a parasitic one, with a clear winner and a clear loser.

We have seen this vicious cycle play out over and over again throughout the nation’s history. Just look at this COVID-19 pandemic: the whole sorry mess has been so overtly politicized, propagandized, and used to expand the government’s powers (and Corporate America’s bank balance) that it’s difficult at times to distinguish between what may be legitimate health concerns and government power grabs.

After all, the government has a history of shamelessly exploiting national emergencies for its own nefarious purposes. Terrorist attacks, mass shootings, civil unrest, economic instability, pandemics, natural disasters: the government has been taking advantage of such crises for years now in order to gain greater power over an unsuspecting and largely gullible populace.

This COVID-19 pandemic is no different.

Yet we will all lose if this pandemic becomes a showdown between COVID-19 vaccine mandates and the right to bodily integrity. It doesn't matter what one's trigger issue is—whether it's vaccines, crime, religion, immigration, terrorism or some other overtly politicized touchstone used by politicians as a rallying cry for votes—we should all be concerned when governments and businesses (i.e., the Corporate State) join forces to compel individuals to sacrifice their *right* to bodily integrity (which goes hand in hand with the right to conscience and religious freedom) on the altar of so-called safety and national security.

That's exactly what's unfolding right now, with public and private employers using the threat of termination to force employees to be vaccinated against COVID-19.¹¹

Unfortunately, legal protections in this area are limited. While the Americans with Disabilities Act protects those who can prove they have medical conditions that make receiving a vaccination dangerous, employees must be able to prove they have a sensitivity to vaccines. Beyond that, employees with a religious objection to the vaccine mandate can try to request an exemption, but even those who succeed in gaining an exemption to a vaccine mandate may have to submit to routine COVID testing and mask requirements, especially if their job involves contact with other individuals.¹²

Under the First Amendment and Title VII of the Civil Rights Act of 1964, individuals have a right of conscience and/or religious freedom to ask that their sincere religious beliefs against receiving vaccinations be accommodated. To this end, The Rutherford Institute has issued guidance and an in-depth fact sheet and model letter for those seeking a religious exemption to a COVID-19 vaccine mandate in the workplace. The Rutherford Institute's policy paper, "Know Your Rights: How To Request a Religious Accommodation for COVID-19 Vaccine Mandates in the Workplace," goes into the details of how and why and in which forums one can request such accommodation, but there is no win-win scenario.

As with all power plays of this kind, the ramifications of empowering the government and its corporate partners to force individuals to choose between individual liberty and economic survival during a so-called state of "emergency" can lead to terrifying results. At a minimum, it's a slippery slope that justifies all manner of violations in the name of national security, the interest of the state and the so-called greater good.

If the government—be it the President, Congress, the courts or any federal, state or local agent or agency—can willfully disregard the rights of any particular person or group of persons,

¹¹ Haley Messenger, "Here are the companies mandating vaccines for all or some employees," *NBC News* (Aug. 3, 2021), <https://www.nbcnews.com/business/business-news/here-are-companies-mandating-vaccines-all-or-some-employees-n1275808>.

¹² The Rutherford Institute, "Know Your Rights: How To Request a Religious Accommodation for COVID-19 Vaccine Mandates in the Workplace," https://www.rutherford.org/publications_resources/legal_features/know_your_rights_how_to_request_a_religious_accommodation_for_covid_19_vaccine_mandates_in_the_workplace.

then that person becomes less than a citizen, less than human, less than deserving of respect, dignity, civility and bodily integrity. He or she becomes an “it,” a faceless number that can be tallied and tracked, a quantifiable mass of cells that can be discarded without conscience, an expendable cost that can be written off without a second thought, or an animal that can be bought, sold, branded, chained, caged, bred, neutered and euthanized at will.

That’s exactly where we find ourselves now: caught in the crosshairs of a showdown between the rights of the individual and the so-called “emergency” state. All of those freedoms we cherish—the ones enshrined in the Constitution, the ones that affirm our right to free speech and assembly, due process, privacy, bodily integrity, the right to not have police seize our property without a warrant, or search and detain us without probable cause—amount to nothing when the government and its agents are allowed to disregard those prohibitions on government overreach at will.

This is the grim reality of life in the American police state. Our so-called rights have been reduced to technicalities in the face of the government’s ongoing power grabs. Yet those who founded this country believed that what we conceive of as our rights were given to us by God—we are created equal, according to the nation’s founding document, the Declaration of Independence—and that government cannot create nor can it extinguish our God-given rights. To do so would be to anoint the government with god-like powers and elevate it above the citizenry. And that, in a nutshell, is what happens when government officials are allowed to determine who is deserving of constitutional rights and who should be stripped of those rights for whatever reason may be justified by the courts and the legislatures.

In this way, concerns about COVID-19 mandates and bodily integrity are part of a much larger debate over the ongoing power struggle between the citizenry and the government over our property “interest” in our bodies. For instance, who should get to decide how “we the people” care for our bodies? Are we masters over our most private of domains, our bodies? Or are we merely serfs who must answer to an overlord that gets the final say over whether and how we live or die? This debate over bodily integrity covers broad territory, ranging from vaccine mandates and euthanasia to forced blood draws, biometric surveillance and basic healthcare.

Forced vaccinations are just the tip of the iceberg. Forced vaccinations, forced cavity searches, forced colonoscopies, forced blood draws, forced breath-alcohol tests, forced DNA extractions, forced eye scans, forced inclusion in biometric databases: these are just a few ways in which Americans continue to be reminded that we have no control over what happens to our bodies during an encounter with government officials.

Consider the case of *Mitchell vs. Wisconsin* in which the U.S. Supreme Court in a 5-4 decision found nothing wrong when police officers read an *unconscious* man his rights and then proceeded to forcibly and warrantlessly draw his blood *while he was still unconscious* in order to

determine if he could be charged with a DUI.¹³ To sanction this forced blood draw, the cops and the courts hitched their wagon to state “implied consent” laws (all of the states have them), which suggest that merely *driving* on a state-owned road implies that a person has consented to police sobriety tests, breathalyzers and blood draws.

More than half of the states (29 states) allow police to do warrantless, forced blood draws on unconscious individuals whom they suspect of driving while intoxicated.¹⁴ Seven state appeals courts have declared these warrantless blood draws when carried out on unconscious suspects are unconstitutional. Courts in seven other states have found that implied consent laws run afoul of the Fourth Amendment. And yet seven other states (including Wisconsin) have ruled that implied consent laws provide police with a free pass when it comes to the Fourth Amendment and forced blood draws.¹⁵

Read the writing on the wall, and you’ll see how little remains of our right to bodily integrity in the face of the government’s steady assaults on the Fourth Amendment. Our freedoms—especially the Fourth Amendment—continue to be strangled by a prevailing view among government bureaucrats that they have the right to search, seize, strip, scan, spy on, probe, pat down, taser, and arrest *any* individual at *any* time and for the *slightest* provocation.

Worse, on a daily basis, Americans are being made to relinquish the most intimate details of who we are—our biological makeup, our genetic blueprints, and our biometrics (facial characteristics and structure, fingerprints, iris scans, etc.)—in order to clear the nearly insurmountable hurdle that increasingly defines life in the United States: **we are now guilty until proven innocent.**

Such is life in America today that individuals are being threatened with arrest and carted off to jail for the least hint of noncompliance, homes are being raided by militarized SWAT teams under the slightest pretext, property is being seized on the slightest hint of suspicious activity, and roadside police stops have devolved into government-sanctioned exercises in humiliation and degradation with a complete disregard for privacy and human dignity.

While forced searches—of one’s person and property—may span a broad spectrum of methods and scenarios, the common denominator remains the same: a complete disregard for the dignity and rights of the citizenry.

¹³ “Rutherford Institute Challenges Forced Blood Draws and Police Use of Implied Consent Laws to Take Blood from Unconscious Suspects,” The Rutherford Institute (Mar. 4, 2019), https://rutherford.org/publications_resources/on_the_front_lines/rutherford_institute_challenges_forced_blood_draws_and_police_use_of_implied_consent_laws_to_take_blood_from_unconscious_suspects.

¹⁴ Tucker Higgins, “Supreme Court to decide whether police need warrant to draw blood from unconscious drunk-driving suspects,” *CNBC* (Jan. 11, 2019), <https://www.cnn.com/2019/01/11/scotus-to-rule-on-warrantless-blood-draws-from-unconscious-duc-suspects.html>.

¹⁵ Cert petition in *Mitchell vs. Wisconsin*, https://www.supremecourt.gov/DocketPDF/18/18-6210/65183/20181001163136137_Mitchell%20Gerald%20Petition%20for%20Certiorari.pdf.

Unfortunately, the indignities being heaped upon us by the architects and agents of the American police state—whether or not we’ve done anything wrong—are just a foretaste of what is to come. The government doesn’t need to tie you to a gurney and forcibly take your blood or strip you naked by the side of the road in order to render you helpless. As this showdown over COVID-19 vaccine mandates makes clear, the government has other methods—less subtle perhaps but equally devastating—of stripping you of your independence, robbing you of your dignity, and undermining your rights.

With every court ruling that allows the government to operate above the rule of law, every piece of legislation that limits our freedoms, and every act of government wrongdoing that goes unpunished, we’re slowly being conditioned to a society in which we have little real control over our bodies or our lives.

The Right to Be Let Alone

The Biden Administration has announced that it plans to send federal “surge response teams” on a “targeted community door-to-door outreach” to communities with low vaccination rates in order to promote the safety and accessibility of the COVID-19 vaccines.¹⁶ Will you let them in? More to the point, are you required to open the door?

Any attempt by the government to encroach upon the citizenry’s privacy rights or establish a system by which the populace can be targeted, tracked and singled out must be met with extreme caution. These door-to-door “visits” by COVID-19 surge response teams certainly qualify as a government program whose purpose, while seemingly benign, raises significant constitutional concerns.

First, there is the visit itself. While government agents can approach, speak to and even question citizens without violating the Fourth Amendment, Americans have a right *not* to answer questions or even speak with a government agent. Courts have upheld these “knock and talk” visits as lawful, reasoning that even though the curtilage of the home is protected by the Fourth Amendment, there is an implied license to approach a residence, knock on the door/ring the bell, and seek to contact occupants. However, the encounter is wholly voluntary and a person is under no obligation to speak with a government agent in this situation.

Indeed, you don’t even need to answer or open the door in response to knocking/ringing by a government agent, and if you do answer the knock, you can stop speaking at any time. You also have the right to demand that government agents leave the property once the purpose of the visit is established. Government officials would not be enforcing any law or warrant in this

¹⁶ “Press Briefing by Press Secretary Jen Psaki,” White House (Jul. 6, 2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/07/06/press-briefing-by-press-secretary-jen-psaki-july-6-2021/>.

context, and so they don't have the authority of law to remain on the property after a homeowner or resident specifically revokes the implied license to come onto the property.

When the government's actions go beyond merely approaching the door and knocking, it risks violating the Fourth Amendment, which requires a warrant and probable cause of possible wrongdoing in order to search one's property. A government agent would violate the Fourth Amendment if he snooped around the premises, peering into window and going to other areas in search of residents.

It should be pointed out that some judges (including Supreme Court Justice Gorsuch) believe that placing "No Trespassing" signs or taking other steps to impede access to the door is sufficient to negate any implied permission for government agents or others to approach your home, but this view does not have general acceptance.

While in theory one can refuse to speak with police or other government officials during a "knock and talk" encounter, as the courts have asserted as a justification for dismissing complaints about this police investigative tactic, the reality is far different. Indeed, it is unreasonable to suggest that individuals caught unaware by these tactics will not feel pressured in the heat of the moment to comply with a request to speak with government agents who display official credentials and are often heavily armed, let alone allow them to search one's property.¹⁷ Even when such consent is denied, police have been known to simply handcuff the homeowner and conduct a search over his objections.¹⁸

Second, there is the danger inherent in these knock-and-talk encounters. Although courts have embraced the fiction that "knock and talks" are "voluntary" encounters that are no different from other door-to-door canvassing, these constitutionally dubious tactics are highly intimidating confrontations meant to pressure individuals into allowing police access to one's home, which then paves the way for a warrantless search of one's home and property.

The act of going to homes and taking steps to speak with occupants is akin to the "knock and talk" tactic used by police, which can be fraught with danger for homeowners and government agents alike. Indeed, "knock-and-talk" policing has become a thinly veiled, warrantless exercise by which citizens are coerced and intimidated into "talking" with heavily armed police who "knock" on their doors in the middle of the night.

¹⁷ Dana Chicklas, "Michigan Supreme Court hears oral arguments in 'knock and talk' marijuana butter case," *Fox17* (March 9, 2017), <http://fox17online.com/2017/03/09/michigan-supreme-court-hears-oral-arguments-in-knock-and-talk-marijuana-butter-case/>.

¹⁸ On the Front Lines: The Rutherford Institute Challenges Texas Sheriff's Dept. Over Raid, Search, Seizure & Arrest of Homeowner Who Refused to Consent to Warrantless Search, Aug. 5, 2015, https://www.rutherford.org/publications_resources/on_the_front_lines/rutherford_institute_challenges_texas_sheriffs_dept_over_raid_search_seizu.

“Knock-and-shoot” policing might be more accurate, however. “Knock and talks” not only constitute severe violations of the privacy and security of homeowners, but the combination of aggression and surprise employed by police is also a recipe for a violent confrontation that rarely ends well for those on the receiving end of these tactics.

Indeed, while Americans have a constitutional right to question the legality of a police action or resist an unlawful police order, doing so can often get one arrested, shot or killed. For example, although 26-year-old Andrew Scott had committed no crime and never fired a single bullet or threatened police, he was gunned down by police who knocked aggressively on the wrong door at 1:30 am, failed to identify themselves as police, and then repeatedly shot and killed Scott when he answered the door while holding a gun in self-defense. The police were investigating a speeding incident by engaging in a middle-of-the-night “knock and talk” in Scott’s apartment complex.¹⁹

Third, there is the question of how the government plans to use the information it obtains during these knock-and-talk visits. Because the stated purpose of the program is to promote vaccination, homeowners and others who reside at the residence will certainly be asked if they are vaccinated. Again, you have a right not to answer this or any other question. Indeed, an argument could be made that even asking this question is improper if the purpose of the program is merely to ensure that Americans “have the information they need on how both safe and accessible the vaccine is.”

Under the Privacy Act, 5 U.S.C. 552a, an agency should only collect and maintain information about an individual as is “relevant and necessary to accomplish a purpose of the agency.” In this situation, the government agent could accomplish the purpose of assuring persons have information about the vaccine simply by providing that information (either in writing or orally) and would not need to know the vaccination status of the residents. To the extent the agents do request, collect and store information about residents’ vaccination status, this could be a Privacy Act violation.

Of course, there is always the danger that this program could be used for other, more nefarious, purposes not related to vaccination encouragement. As with knock-and-talk policing, government agents might misuse their appearance of authority to gain entrance to a residence and obtain other information about it and those who live there. Once the door is opened by a resident, anything the agents can see from their vantage point can be reported to law enforcement authorities.

Moreover, while presumably the targeting will be of areas with demonstrated low vaccination rates, there is no guarantee that this program would not be used as cover for

¹⁹ Mark Joseph Stern, “Appeals Court: Officer Who Shot and Killed Innocent Man in His Own Home Cannot Be Sued,” *Slate* (March 17, 2017), http://www.slate.com/blogs/the_slatest/2017/03/17/appeals_court_rules_officer_who_killed_man_in_his_own_home_cannot_be_sued.html.

conducting surveillance on areas deemed to be “high crime” areas as a way of obtaining intelligence for law enforcement purposes.

Finally, you have the right to say “no.” Whether police are knocking on your door at 2 am or 2:30 pm, as long as you’re being “asked” to talk to a police officer who is armed to the teeth and inclined to kill at the least provocation, you don’t really have much room to resist, not if you value your life. Mind you, these knock-and-talk searches are little more than police fishing expeditions carried out without a warrant. The goal is intimidation and coercion.

Unfortunately, with police departments increasingly shifting towards pre-crime policing and relying on dubious threat assessments, behavioral sensing warnings, flagged “words,” and “suspicious” activity reports aimed at snaring *potential* enemies of the state, we’re going to see more of these warrantless knock-and-talk police tactics by which police attempt to circumvent the Fourth Amendment’s warrant requirement and prohibition on unreasonable searches and seizures.

Here’s the bottom line: these agents are coming to your home with one purpose in mind: to collect information on you. It’s a form of intimidation, of course. You shouldn’t answer any questions you’re uncomfortable answering about your vaccine history or anything else. The more information you give them, the more it can be used against you. Just ask them politely but firmly to leave. In this case, as in so many interactions with government agents, the First, Fourth and Fifth Amendments (and your cell phone recording the encounter) are your best protection. Under the First Amendment, you don’t have to speak (to government officials or anyone else). The Fourth Amendment protects you against unreasonable searches and seizures by the government. And under the Fifth Amendment, you have a right to remain silent and not say anything which might be used against you.

You can also post a “No Trespassing” sign on your property to firmly announce that you are exercising your right to be left alone. If you see government officials wandering around your property and peering through windows, in my opinion, you have a violation of the Fourth Amendment. Government officials can ring the doorbell, but once you put them on notice that it’s time for them to leave, they can’t stay on your property. It’s important to be as clear as possible and inform them that you will call the police if they don’t leave. You may also wish to record your encounter with the government agent. If they still don’t leave, immediately call the local police and report a trespasser on your property.

Remember, you still have rights, among these what Supreme Court Justice Louis Brandeis referred to as the constitutional “right to be let alone.”²⁰ The government may try to abridge those rights, it may refuse to recognize them, it may even attempt to declare martial law and nullify them, but it cannot litigate, legislate or forcefully eradicate them out of existence.

²⁰ Samuel D. Warren and Louis D. Brandeis, “The Right to Privacy,” *Harvard Law Review* (Dec. 15, 1890), https://groups.csail.mit.edu/mac/classes/6.805/articles/privacy/Privacy_brand_warr2.html.

FACT SHEET: HOW TO REQUEST A RELIGIOUS ACCOMMODATION FOR COVID-19 VACCINE MANDATES IN THE WORKPLACE

For good or bad, COVID-19 has changed the way we navigate the world and the way in which “we the people” exercise our rights. Those hoping to navigate this interconnected and highly technological world of contact tracing, vaccine passports and digital passes will find themselves grappling with issues that touch on deep-seated moral, political, religious and personal questions for which there may be no clear-cut answers.

While the courts may increasingly defer to the government’s brand of Nanny State authoritarianism, we still have rights. Among these, we have the right to bodily integrity, a right long been recognized by the U.S. Supreme Court.²¹ More relevant to the issue of forced vaccines is the recognition by courts that there is a constitutional right to bodily integrity that gives persons the right to refuse medical treatment.²²

The right to bodily integrity has been regularly recognized by the Court.

In a case involving abortion regulations, the Court pointed out that the right to obtain an abortion previously established is based not only on the right of privacy, but also the right “of personal autonomy and bodily integrity, with doctrinal affinity to cases recognizing limits on governmental power to mandate medical treatment or to bar its rejection.”²³ More recently, the Court referred to the right of bodily integrity as grounds for refusing to allow the police to require drunk driving arrestees to submit to blood extractions. In so deciding, the Court wrote that such conduct “involve[s] a compelled physical intrusion beneath [the arrestee’s] skin and into his veins to obtain a sample of his blood for use as evidence in a criminal investigation. Such an invasion of bodily integrity implicates an individual’s ‘most personal and deep-rooted expectations of privacy.’”²⁴

Whether such a claim of bodily integrity would ultimately prevail in the face of compelled or forced vaccinations would depend on the courts’ balancing of the individual interest versus the state interest. For example, the Court has held that the forced blood draw from a drunk driving suspect was not unreasonable, because blood draws “are commonplace in these days of periodic physical examination, and experience with them teaches that the quantity of blood extracted is minimal, and that, for most people, the procedure involves virtually no risk,

²¹ *Rochin v. California*, 342 U.S. 165, 173 (1952)

²² *Cruzan v. Director, Mo. Dept. of Health*, 497 U.S. 261, 287 (1990) (O’Connor, J., concurring) (citing *Rochin*).

²³ *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

²⁴ *Missouri v. McNeely*, 569 U.S. 141, 148 (2013). See also *Winston v. Lee*, 470 U.S. 753 (1985) (recognizing right to bodily integrity, but holding that state interest allowed requiring person to submit to surgery to retrieve evidence of crime) and *Sell v. United States*, 539 U.S. 166 (2003) (recognizing liberty interest to refuse to receive anti-psychotic drugs, but finding sufficient state interest to override that interest).

trauma, or pain.”²⁵ Courts may similarly find that the intrusion on bodily integrity from a vaccination is minimal when compared with the public interest in its administration.

Forced vaccinations.

Forced vaccinations are quickly shaping up to be the next major legal front in the COVID-19 battle between security and individual liberty. As such, bodily integrity remains a central issue in the debate over what authority the government has in compelling the public to submit to medical treatment that may run counter to their personal beliefs.

There is precedence for such concerns. For instance, in the 1905 case *Jacobson v. Massachusetts*, the United States Supreme Court addressed mandatory vaccinations in regard to smallpox.²⁶ The Court ruled that the police power of a state absolutely included reasonable regulations established by legislature to protect public health and safety. The Court reasoned that such regulations do not violate the Fourteenth Amendment right to liberty because they fall within the many restraints to which every person is necessarily subjected for the common good: real liberty for all cannot exist if each individual is allowed to act without regard to the injury that his or her actions might cause others; liberty is constrained by law. The Court went on to determine that a state may require vaccination if the board of health deems it necessary for public health or safety.²⁷

When determining the legality of a statute enacted to protect public health and safety, the Court found it immaterial that a portion of the medical community thought the vaccination worthless or even injurious. The state has the right to choose between opposing medical theories and to refer the matter to a board composed of persons residing in the affected location who are qualified to make a determination.

The courts do not become involved in legislation formed under the state’s police power as long as it relates substantially to public health, morals, or safety and is not a plain, palpable invasion of rights secured by fundamental law.²⁸ It is immaterial whether or not the vaccine is actually effective, so long as it is the belief of state authorities that the mandatory vaccine will promote common welfare and is a reasonable and proper exercise of the police power.²⁹

The Court has not revisited or altered the *Jacobson* ruling in any meaningful way since it was issued over 100 years ago. The Court reasoned it could not allow individuals to refuse vaccination while remaining within the general population because this would strip the legislative branch of its authority to care for the public health and safety when threatened by epidemic disease. The only exception to a mandatory vaccination is an offer of apparent or

²⁵ *Schmerber v. California*, 384 U.S. 757, 771 (1966).

²⁶ *Jacobson v Massachusetts*, 197 U.S. 11 (1905).

²⁷ *Jacobson v Massachusetts*, 197 U.S. 11, 25-27 (1905).

²⁸ *McDaniel v. Paty*, 435 US 618, 698 (1978).

²⁹ *Jacobson v Massachusetts*, 197 U.S. 1, 38 (1905).

reasonably certain proof to the state's board of health that the vaccination would seriously impair an individual's health or probably cause death.³⁰

All 50 states and the District of Columbia now require children receive diphtheria, tetanus, pertussis, polio, measles, rubella, and varicella vaccinations before attending public school, and all also offer a variety of vaccine exemptions for medical, religious, and philosophical reasons. Only 11 states can override these exemptions in an outbreak.

The authority for these requirements has also been upheld by the Supreme Court in a case where officials excluded a student from a public school because she refused to submit to vaccinations.³¹ She also was barred from attending private school under ordinances providing that no child or other person shall attend a public school or other place of education without having first presented a certificate of vaccination. The trial court sustained the officials' demurrer and dismissed the bill. In upholding the officials' actions, the Supreme Court held that the ordinances conferred no arbitrary power to the administering officials, but only the broad discretion required for the protection of the public health.

That said, although the courts have upheld vaccine requirements and the imposition of sanctions for a refusal to receive, there is no indication that the courts have upheld the forced administration of vaccines upon a person.

Compelled vaccinations.

Those in positions of power and authority have already sought to leverage that power to coerce members of the public to receive COVID-19 vaccinations. Daily, growing numbers of public and private employers are requiring employees to be vaccinated against COVID-19 and using the threat of termination to force acceptance of the vaccine.³²

Unfortunately, legal protections in this area are limited.

While the Americans with Disabilities Act protects those who can prove they have medical conditions that make receiving a vaccination dangerous, employees must be able to prove they have a sensitivity to vaccines.

The requirement established by Title VII of the Civil Rights Act of 1964 that employers provide religious accommodations may be invoked by employees who have sincere religious beliefs against receiving vaccinations. But an employer's duty of accommodation is not absolute, and if it can show that accommodating the worker's objections to vaccinations will interfere with

³⁰ *Jacobson v. Massachusetts*, 197 U.S. 1, 38 (1905).

³¹ *Zucht v. King*, 260 U.S. 174 (1922).

³² Robin Young and Serena McMahon, Can Employers Require Workers To Get The COVID-19 Vaccine? One Expert Says It's Complicated," *WBUR* (Jan. 19, 2021), <https://www.wbur.org/hereandnow/2021/01/19/employees-vaccine-requirements>.

its operations or workplace safety, the employee may face the choice between keeping her job or violating her religious beliefs.³³

Protocols for requesting religious accommodation in the workplace.

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on religion.³⁴ Title VII further defines religion broadly to include not only beliefs, but also religious practices and observances. As a result, the federal employment discrimination law forbids discharging an employee because the employee chooses to engage in certain conduct, or not engage in certain conduct, that is a part of the employee's religious beliefs and practices, and holds that someone cannot be discriminated against by their employer based on their religion unless the employer cannot reasonably accommodate an employee's religious observance or practice without undue hardship on the conduct of the employer's business.³⁵

Although there have been very few cases that have dealt specifically with Title VII's ban on employment discrimination based on religion in the context of religious objections to vaccines mandated by the employer, it appears established that if an employee holds sincerely-held religious beliefs in opposition to receiving a vaccination, an employer that has a rule requiring that vaccination must reasonably accommodate the employee's beliefs. Thus, the Equal Employment Opportunity Commission has posted guidance on this issue in relation to the COVID vaccine which provides as follows: "Once an employer is on notice that an employee's sincerely held religious belief, practice, or observance prevents the employee from getting a COVID-19 vaccine, the employer must provide a reasonable accommodation unless it would pose an undue hardship."³⁶

For an employee who objects to an employer's vaccine requirement, the first step is to give notice to the employer of the religious objection to receiving the vaccine. The notice should be given to the appropriate human resources officer or supervisor that is responsible for enforcing the vaccine requirement. It should also note the following: (1) the specific vaccination mandate the religious objection relates to and when notice of that mandate was received; (2) that the employee has sincerely-held religious beliefs and/or practices that would be violated if forced to receive the vaccine; (3) then nature and basis of the religious beliefs and/or practices that conflict with the vaccination; and (4) a specific request for an accommodation of those religious beliefs as required by Title VII of the federal Civil Rights Act.

³³ "What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws," U.S. Equal Employment Opportunity Commission (Dec. 15, 2020), <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>.

³⁴ 42 U.S.C. § 2000e-2(a).

³⁵ 42 U.S.C. § 2000e(j).

³⁶ What you should know about COVID-19 and the ADA, the Rehabilitation Act, and other EEO laws, U.S. Equal Employment Opportunity Commission, (Updated May 28, 2021), <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>.

The Rutherford Institute has provided a form letter for use in providing an employer notice of the conflict with religious beliefs and requesting an accommodation.³⁷

In setting forth and describing the religious beliefs that are the basis for the accommodation request, it is important to know that under the law “the definition of religion is broad and protects beliefs, practices, and observances with which the employer may be unfamiliar. Therefore, the employer should ordinarily assume that an employee’s request for religious accommodation is based on a sincerely held religious belief, practice, or observance.”³⁸ It is helpful if the description of the pertinent religious beliefs can refer to religious texts or the teachings of religious leaders as the basis for the beliefs. However, it is not necessary that the belief have been adopted as the formal doctrine or position of an established religious organization or endorsed by church hierarchy.

Religious beliefs and practices that are sincerely-held and protected by the Constitution and Title VII can be wholly personal and can even be at odds with the beliefs of others of the same faith. As the Supreme Court has held, “the guarantee of free exercise [of religion] is not limited to beliefs which are shared by all of the members of a religious sect. Particularly in this sensitive area, it is not within the judicial function and judicial competence to inquire whether [an employee] or his fellow worker more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation.”³⁹

Once notice of the conflict with religious beliefs is given and an accommodation requested, the employer is required by law to attempt to find a reasonable accommodation, i.e., a modification of the employees work conditions, that allows the employee to continue to work without violating his or her religious beliefs. Examples of reasonable accommodations that exempt employees from vaccination requirements include (1) permitting an unvaccinated person to enter the physical workplace while wearing a facemask, working at a social distance from coworkers or nonemployees, working a modified shift, or getting periodic COVID tests, (2) telecommuting, or (3) reassignment.⁴⁰ Reassignment should be the last resort.⁴¹

What constitutes a reasonable accommodation will depend on all the circumstances surrounding the workplace and the employees’ duties. In the healthcare worker setting, for

³⁷ Model Vaccine Religious Exemption Letter, https://www.rutherford.org/files_images/general/2021_Vaccine_Exemption_Form_Letter.pdf

³⁸ What you should know about COVID-19 and the ADA, the Rehabilitation Act, and other EEO laws, U.S. Equal Employment Opportunity Commission, (Updated May 28, 2021), section K.12, <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>.

³⁹ *Thomas v. Review Bd. of the Indiana Employment Security Div.*, 450 U.S. 707 (1981).

⁴⁰ What you should know about COVID-19 and the ADA, the Rehabilitation Act, and other EEO laws, U.S. Equal Employment Opportunity Commission, (Updated May 28, 2021), section K.12, <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>.

⁴¹ What you should know about COVID-19 and the ADA, the Rehabilitation Act, and other EEO laws, U.S. Equal Employment Opportunity Commission, (Updated May 28, 2021), section K.12, <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>.

example, teleworking might not be a real option because employees have to directly interact with patients. But the employer is required to consider and explore options for accommodating the employee, and the employee is allowed to offer suggestions as to what accommodation would be agreeable and remove the conflict with his religious beliefs.⁴²

However, the obligation of an employer is to provide a “reasonable” accommodation, not any accommodation whatsoever. The Supreme Court has held that an employer is not required to provide a particular accommodation if it imposes an “undue hardship” on the employer and its operations.⁴³ Courts have indicated that an undue hardship consists of more than “de minimis” costs, which can entail not only monetary concerns, but also the employer’s burden in conducting its business.⁴⁴

A reasonable accommodation also may create an undue hardship if it causes more than a de minimis impact on co-workers.⁴⁵ For example, in one case a court ruled that granting a health care employee’s request for no vaccination while allowing her to keep her patient care position would have been an undue hardship because it would have increased the risk of transmitting flu to the already vulnerable patient population.⁴⁶ And having the woman avoid only the most vulnerable patients would have been unworkable and been more than a de minimis cost.⁴⁷

If an employer refuses to offer an accommodation or offers one the employee does not believe resolves the conflict with his religious beliefs, the employee can file a claim with the EEOC or an equivalent state agency charged with enforcing employment discrimination laws alleging religious discrimination by the employer. A claim should be filed promptly as there are time limits on filing such a claim. The agency is then obligated to investigate the claim and may intervene on behalf of the employee and seek to require the employer to take steps to accommodate the employee. If the agency declines to step in on behalf of the employee, it will issue a “right to sue” letter allowing the employee to bring a claim in court asserting a violation of Title VII by the employer.

With respect to filing a claim, it is important to note that the ability of an employee to proceed with a filing with the EEOC or state agency may be affected by an arbitration agreement entered into in connection with the employment.

It has been increasingly common for employers to have new or current employees sign arbitration agreements in which the employee waives the right to file employment discrimination claims with the EEOC or other agency and requires such claims to be submitted to arbitration.⁴⁸

⁴² *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60 (1986).

⁴³ *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977).

⁴⁴ *Beadle v. City of Tampa*, 42 F.3d 633, 636 (11th Cir. 1995).

⁴⁵ *Harrell v. Donahue*, 638 F.3d 975, 980 (8th Cir. 2011).

⁴⁶ *Robinson v. Children’s Hospital Boston*, 2016 WL 13337255, at * 9 (D. Mass. 2016).

⁴⁷ *Robinson v. Children’s Hospital Boston*, 2016 WL 13337255, at * 9 (D. Mass. 2016) at *10.

⁴⁸ *Circuit City Stores v. Adams*, 532 U.S. 105 (2001)

Employees considering filing employment discrimination claims should review available records to determine whether they have entered into such an arbitration agreement and how its terms affect the way in which they seek to enforce any religious discrimination claim.

Religious accommodations at colleges and universities, and in the military.

While individuals within the workplace, at colleges and universities, and in the military have a right to request and seek an exemption to vaccine mandates based on their religious beliefs, vaccine requirements imposed by colleges, universities and the U.S. military are not subject to Title VII's religious accommodation requirement or procedures.

Thus, the process for requesting a religious accommodation to a COVID-19 vaccine mandate—and the determination of whether such a request will be granted—will vary depending on the environment and state laws. It must also be noted that, if granted, such an accommodation can and likely will also require other concessions on the part of those seeking exemptions, such as the wearing of masks and routine COVID-19 testing.

In the case of colleges and universities, the ability to seek and obtain an exemption based on religious beliefs will depend upon the law of the state in which the school is located and upon the policies and regulations adopted by the school. The procedure for seeking an exemption is usually established by the college/university and persons seeking such an exemption should follow the established procedure.

In the case of U.S. military personnel who are required to be vaccinated against COVID-19,⁴⁹ it may be possible to seek an exemption from any vaccine, either temporary or permanent, for a variety of reasons including health issues or religious beliefs. For service members who have religious objections to receiving a vaccine, the path for how they might seek an exception to the vaccine is defined by their individual military service's regulations.⁵⁰

⁴⁹ Lolita C. Baldor, "COVID vaccine to be required for military under new US plan," *Associated Press* (Aug. 9, 2021), <https://apnews.com/article/coronavirus-vaccine-us-military-requirement-pentagon-3975940c732352f72e41f6e34a3a2669>.

⁵⁰ C. Todd Lopez, "Services Will Make Call on Religious Exemptions to COVID-19 Vaccines," *U.S. Department of Defense* (Aug. 10, 2021), <https://www.defense.gov/Explore/News/Article/Article/2726774/services-will-make-call-on-religious-exemptions-to-covid-19-vaccines/>.

Model Letter: Requesting Religious Accommodation in the Face of COVID-19 Vaccine Workplace Mandate

Dear [Name of Human Resources Officer or other appropriate supervisor]:

On [set forth date], I and other employees of [name of employer] were notified that all employees must be fully vaccinated against COVID-19 and provide proof thereof or face termination of our employment. This letter will serve as my formal notice to [name of employer] of the following:

Receiving the COVID-19 vaccination would violate my sincerely-held religious beliefs, practices and/or observances. The following is a description of my religious beliefs that prevent me from receiving the COVID-19 vaccination: [include here a description of your religious beliefs in opposition to receiving the vaccine. If possible, include references to religious texts or statements by leaders of your religion supporting your opposition, although neither are necessary to support a sincerely-held religious belief]. Under established law, including the U.S. Constitution, the definition of religion is broad and protects beliefs, practices, and observances which may be unfamiliar, so an employer must assume that an employee's statement of objection to a vaccination requirement is based on a sincerely held religious belief, practice, or observance.

Because receiving the COVID-19 vaccination would violate my sincerely-held religious beliefs, I hereby request an accommodation of those beliefs with respect to the recently-imposed vaccination requirement. Under Title VII of the federal civil rights laws, an employer may not discharge or otherwise discriminate against an individual because of the individual's religion. 42 U.S.C. § 2000e-2(a)(1). As the U.S. Supreme Court has held, this law requires an employer to seek to accommodate an employee whenever there is a conflict between a requirement of the employment and the employee's religious beliefs, practices or observances. *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977). An accommodation that fully eliminates the conflict with my religious beliefs must be provided unless any and all accommodations would impose an undue hardship. To the extent the law of the [State or Commonwealth where employed] imposes a similar duty to accommodate the religious beliefs, practices or observances of employees, I hereby invoke any and all rights under state law as well.

Having formally notified [name of employer] of the conflict between the COVID-19 vaccination requirement and my religious beliefs, I look forward to receiving in a prompt and timely manner your decision on what accommodation you will provide. Failing that, I reserve my right to pursue legal remedies available to me with the Equal Employment Opportunity Commission or otherwise in accordance with established law.

Sincerely yours,

[Signature]
[Your name printed]

Defending your rights

The Rutherford Institute is working hard to push back against the government's overreaches, power grabs and ongoing assaults on the Constitution, and we stand ready to defend your rights if they are violated by the government. For over a quarter century, we have assisted, without charge, persons deprived of their liberty by government officials.

Should you have further questions or need legal assistance in exercising your constitutional rights, please contact the Legal Department at legal@rutherford.org.

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