



May 13, 2021

Via U.S. Mail and Email

Ray L. Watts, M.D.
President

John Daniel
Deputy General Counsel and Chief University Counsel

University of Alabama at Birmingham
1720 2nd Avenue South
Birmingham, AL 35294

Re: Religious Exemptions from UAB's Mandatory Vaccine Policy

Dear Dr. Watts and Mr. Daniel:

First Liberty Institute is the nation's largest law firm dedicated exclusively to defending and restoring religious liberty for all Americans. We represent Jackie Gale, a student at the University of Alabama at Birmingham ("UAB") who is entering her sophomore year. Due to Ms. Gale's religious beliefs, she cannot receive the childhood immunizations UAB requires under its immunization policy. For Ms. Gale's freshman year, UAB accepted her state-issued religious exemption certificate and permitted her to attend in-person classes, but UAB now asserts that it will only recognize medical exemptions and not religious exemptions. Now, Ms. Gale cannot register for classes that are filling up quickly unless she violates her religious convictions. We ask that you immediately correct this religious discrimination. Please direct all communication on this matter to my attention.

Background

When Ms. Gale was admitted to UAB as a freshman and registered for her first semester, she had no problems registering for or attending her first and second semester classes.

In early January 2020, however, right before her second semester began, Ms. Gale tried to add an additional class to her schedule but found that UAB placed an administrative hold on her record. When Ms. Gale contacted UAB about the hold, UAB told her that she needed to upload proof of her immunizations to register for classes. Ms. Gale uploaded a copy of the state-issued religious exemption certificate she had used for every other school she had attended, but the university said that her certificate is not valid at institutions of higher education. Shortly thereafter, before Ms. Gale responded to that message, the university removed the administrative hold on her record. Ms. Gale completed her second semester, including attending in-person classes, with no problems.

When Ms. Gale logged into the school system to register for fall classes, she again noticed an administrative hold on her record. She contacted UAB to resolve the matter, and spoke on the phone with a UAB official who informed Ms. Gale that the university would not recognize a religious exemption to the school's vaccination policy and that she had no choice but to violate her religious convictions to register for classes. Ms. Gale followed up the phone call with an email to the official asking to speak to another official about the university's policy on religious exemptions. UAB told Ms. Gale that someone would call her soon. No one did. Instead, UAB sent Ms. Gale a message comprised of one sentence: "Please refer to our website for more information."

UAB's Immunization Policy

For a student like Ms. Gale who wants to attend in-person undergraduate classes at UAB, the school's immunization policy¹ requires proof of immunity to Measles, Mumps, and Rubella (which would require two MMR shots), Tetanus, Diphtheria, and Acellular Pertussis (requiring one Tdap shot), Chickenpox/Shingles (requiring two VZVIgG shots), Meningitis (requiring one Menactra, Menveo, or Mennomune shot), as well as proof that she underwent a Tuberculosis screening. In total, Ms. Gale would need to receive six shots before UAB will permit her to register for next semester's classes. While UAB provides exceptions for students who can document medical or other contraindications to a vaccine, UAB refuses to recognize exceptions for students who hold religious objections to vaccines.

Ms. Gale's Religious Objections

Ms. Gale's Christian faith prohibits her from receiving vaccines because of her understanding of the Biblical commands that Christians must honor God in how they take care of their bodies and that Christians should not participate in medical treatments that rely upon abortion. Due to these religious convictions, Ms. Gale has never had a vaccine injected into her body.

Ms. Gale believes the Bible commands Christians to honor God in how they take care of their bodies, which leads her to maintain an active lifestyle, to eat a healthy diet, and to refrain from injecting extra chemicals into her body. Ms. Gale believes that she would be profaning her body, and therefore dishonoring God, by receiving any vaccines.

Ms. Gale also believes she has a duty to object to vaccines that are connected, whether in development or in testing, to abortion. Two of the vaccines required by UAB, the MMR and chickenpox vaccines, were developed using cell lines from aborted fetal tissue. Many additional vaccines are tested using cell lines from aborted fetal tissue. Ms. Gale believes that taking any of these vaccines would be an impermissible acceptance of abortion and would be a failure to advocate for victims of abortion.

¹ See "Immunization Requirements," available at <https://www.uab.edu/students/health/medical-clearance/immunizations/level-1>.

For both of these reasons, Ms. Gale cannot and will not take the vaccines required by UAB. Asking her to do so is asking her to violate her deepest convictions and deny her faith.

Legal Analysis

Both the First Amendment to the U.S. Constitution and the Religious Freedom Amendment of the Alabama Constitution protect Ms. Gale's religious exercise right to refuse to take UAB's mandated vaccines. UAB is a public university that provides exemptions to its immunization policy for medical, but not religious, reasons. As such, UAB's policy triggers, and subsequently fails, strict scrutiny under recent Supreme Court precedent interpreting the Free Exercise Clause. In addition, UAB's immunization policy impermissibly burdens Gale's religious exercise under the Alabama Religious Freedom Amendment. To conform with both state and federal legal protections, UAB should provide Gale, and other students like her with religious objections to UAB's mandated vaccines, a religious exemption to its immunization policy.

UAB's Policy Violates the Free Exercise Clause of the U.S. Constitution.

A government actor, like UAB, triggers strict scrutiny under the Free Exercise Clause whenever it treats a comparable secular activity more favorably than religious exercise. *See Tandon v. Newsom*, 141 S. Ct. 1294 (2021); *see also Roman Catholic Diocese of Brooklyn*, 141 S. Ct. 63, 67 (2020). In *Tandon*, the Supreme Court enjoined California from enforcing COVID-19 restrictions on private religious gatherings. 141 S. Ct. at 1296. The Court explained that California may not treat secular activities such as hair salons, movie theatres, and indoor restaurants more favorably than religiously-motivated activities by allowing more than three households at a time to gather for some secular activities but not for religious exercise. *Id.* at 1297. Notably, the Court specified that a secular activity is comparable to religious exercise not when the reasons for gathering are similar but when both the secular and religious activities present "similar risks." *Id.* at 1296. When the risks are similar after taking equal precautions in both secular and religious activities, "precautions that suffice for [secular] activities suffice for religious exercise too." *Id.* at 1297.

UAB exempts from its immunization policy students who do not receive vaccines for medical reasons, but offers no exemptions to students who cannot receive vaccines for religious reasons. Thus, under its current policy, UAB is treating a comparable secular activity—the act of declining vaccines for medical reasons—more favorably than when a student performs the same activity because of her religious convictions. The Court recognized in *Tandon* that a person's reasons for an activity do not matter when the community risks associated with both the religious and secular activities are the same. In addition, any precautions that suffice for the secular activity—the medical exemption—will suffice for a religious exemption as well. At UAB, the same risks to the community are present under both types of exemptions because, in both scenarios, a student is attending in-person classes while being unimmunized. UAB already recognizes in its policy that the school can achieve its goal of protecting student health on campus while exempting some

students from its immunization policy. Therefore, the First Amendment requires UAB to provide that same exemption when the student requests it for religious reasons as well.

UAB's Policy Violates the Alabama Religious Freedom Amendment.

The Alabama Religious Freedom Amendment, Ala. Const. Art. I, § 3.01 (“ARFA”), provides that state governmental entities “shall not burden a person’s freedom of religion,” unless the government can show that the application of a burden to the person is the least restrictive means of furthering a compelling government interest. *Id.* § 3.01(V). ARFA applies to the actions of any state instrumentality or official, *id.* § 3.01(IV), and its stated purpose is to provide a claim “for persons whose religious freedom is burdened by government,” *id.* § 3.01(III).

ARFA prohibits *any* burden on religious exercise. *Id.* § 3.01(V). In this way, ARFA is more protective of religious exercise than the similar federal statute upon which ARFA was based, the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.* See *Thai Meditation Ass’n of Ala., Inc. v. City of Mobile*, 980 F.3d 821, 837 (11th Cir. 2020). Under ARFA, “any burden—even an incidental or insubstantial one”—will trigger strict scrutiny. *Id.* at 840. UAB’s immunization policy burdens Gale’s religious exercise because UAB will not permit Gale to register for classes—and complete her degree—unless she violates sincerely held religious beliefs that she has honored her entire life.

With a burden on religious exercise established, the “compelling interest test” requires the government to demonstrate that its interest in promulgating its policy is compelling when applied to the person who is seeking a religious exemption. See, e.g., *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 726-27 (2014). This means that the analysis must look beyond “broadly formulated interests” like health and safety and instead focus on the asserted harm of granting the *specific* exemption to the *particular* religious person. *Id.* UAB cannot show that it has a compelling interest in Ms. Gale receiving the mandatory vaccines. Ms. Gale has attended classes—along with both immunized and nonimmunized students—without a problem. Furthermore, as Alabama has already recognized through the religious exemption certificate it provides for K-12 students, Gale has attended public schools her entire life without the mandated vaccines.

Nor can UAB show that the burden on religion is the *least* burdensome of all means to achieve its compelling interest. *Id.* at 728. In *Hobby Lobby*, the Court held that if some organizations could be exempt from the Affordable Care Act’s contraceptive mandate, then that established that the least burdensome religious accommodation is an exemption. *Id.* at 730-31. UAB has also demonstrated, by offering a medical exemption, that its blanket refusal to offer any religious exemptions is not the least restrictive means of furthering any interest. If UAB can offer an exemption for medical reasons without endangering the public health, it can offer an exemption for religious reasons and still achieve that goal. See *id.* at 728.

Conclusion

Jackie Gale is entitled to continue receiving a religious exemption to UAB's mandatory vaccine policy so that she can register for and attend in-person classes. UAB's refusal to recognize Ms. Gale's religious exemption violates both federal and state law, and UAB should revise its policies to provide religious exemptions to students who hold such religious convictions. Please respond to this letter by May 27, 2021, and indicate whether UAB will grant Ms. Gale a religious exemption. If you want to discuss this matter further, you may reach me by email at cpratt@firstliberty.org or by phone at 972-941-4444.

Sincerely,



Christine Pratt
Counsel
First Liberty Institute

cc: Steve Marshall
Attorney General of Alabama