



**FROM THE DESK OF
COUNCILWOMAN LISA KELLER**

Chairman Stein, Vice Chair Johnson, Ranking Member Lepore-Hagan and distinguished members of the House Commerce and Labor Committee, thank you for the opportunity to provide interested party testimony on Sub House Bill 435.

I am Lisa Keller, a member of Delaware City Council for the past 13 years and a business owner. The issue of vaccination mandates has greatly impacted the community I serve and daily, I receive communications from constituents who are either facing job loss over vaccine mandates or have already been terminated. Conversely, I have received communications from those begging for mandates and desperately trying to keep themselves safe in uncertain times. As an elected leader, I can sympathize with the position you are in and the difficulty of this decision.

There are many varied and strong opinions on this matter. Let's begin with what I hope we can all agree upon. None of us want to see any Ohioan die unnecessarily from a virus. We all want a safe and healthy environment for our communities. All our lives, we've learned that medicines treat disease and vaccines prevent disease. When many Ohioans rolled up their sleeves to receive the vaccine, they did so under the premise that the vaccination would prevent them from contracting and transmitting Covid-19 to others.

I join you today from Delaware County- the most vaccinated county in the state of Ohio. Our hardworking health district has close to 80% of our eligible population vaccinated. We should be the shining beacon on the hill of Ohio's pandemic response. Other county leaders should be coming to Delaware to see how a pandemic is crushed with the highest vaccination rates not only in the state but the country as well. Despite this, we're still in the trenches with the rest of Ohio. Like every other county, we are red on the CDC's map and are considered to have a high level of spread. Our incredible health district developed its own innovative report card based upon CDC recommendations for communities to examine 5 critical factors to guide Covid-19 response. As of our last report card dated September 29, Delaware failed every critical factor but one. Cases per 100k- failed. Positivity rate- failed. ICU capacity- failed. Cases per 100k in schools- failed. The only metric we passed- our exceptional vaccination rate.

As an elected official, I've had questions about how this could be as I'm sure many of you would have as well. I asked our health director about who is getting sick and who is being hospitalized. I learned while vaccinated individuals are faring better with hospitalizations and deaths, and Delaware county is thankfully faring better than neighboring counties, we are experiencing increasing numbers of breakthrough or fully vaccinated infections. Based upon statistics published by the Delaware Public Health District on September 8 from May through July the fully vaccinated made up 21% of our cases, 41% of our hospitalizations and 20% of our deaths.¹ I heard vaccine efficacy numbers quoted in committee yesterday in the 90% range and I can assure you, real life numbers from the most vaccinated county in the state unfortunately do not match those efficacy percentages.

What we are seeing in Delaware is not unique. On July 20, the CDC published a report on an outbreak in Barnstable, Massachusetts at a large public gathering.² 74% of the cases tied to this gathering were fully vaccinated. Based upon this investigation, just a week later the CDC changed its guidance to

¹ <https://delawarehealth.org/wp-content/uploads/2021/09/COVID19-Monthly-Report-September-1.pdf>

² Brown, Catherine et al. Outbreak of SARS-CoV-2 Infections, Including Covid-19 Vaccine Breakthrough Infections, Associated With Large Public Gatherings- Barnstable County, Massachusetts, July 2021, CDC MMWR Weekly Report, Vol. 70, <https://www.cdc.gov/mmwr/volumes/70/wr/pdfs/mm7031e2-H.pdf>

recommend ALL persons, including the fully vaccinated, wear masks indoors in areas of high or substantial spread. The CDC changed their guidance because they had evidence the vaccinated were transmitting this virus.

On August 6, CDC director Rachel Walensky said in an interview, "Our vaccines are working exceptionally well. They continue to work well with delta with regard to severe illness and death- they prevent it, but what they can't do anymore is prevent transmission."³

An investigation published on September 30, 2021 from a nosocomial outbreak investigation in Israel substantiated the CDC's findings of spread in a highly vaccinated population.⁴ In this publication, a fully vaccinated individual triggered an outbreak in a hospital and caused exposure to 248 people, 238 of them fully vaccinated. All involved were wearing surgical masks and some were in full hospital PPE. Of the 42 people infected, 38 were fully vaccinated. In this real-life scenario in a health care setting, a high level of vaccination and even surgical masks unfortunately did not prevent the virus from spreading, originating with a fully vaccinated individual. Regarding the observed results from this study the authors state "It challenges the assumption that high universal vaccination rates will lead to herd immunity and prevent Covid-19 outbreaks. This was probably true for the wild type SARS-CoV-2 virus, but in the outbreak described here, 96.2% of the exposed population was vaccinated." (p.3)

It is clear in Ohio's data the vaccine provides a level of protection against serious illness and death in the recipient. We don't mandate medical treatments to protect individuals from themselves, however. If so, we would have BMI mandates, required daily exercise mandates, etc. The very justification of a vaccination mandate is to prevent transmission of a disease to others. We don't want unvaccinated nurses putting patients at risk or unvaccinated employees putting other vaccinated employees at risk. (That part has never made sense to me, honestly. I thought the vaccine itself provided that protection.) Regardless, I have heard it discussed repeatedly that a business owner has the right to establish a safe and healthy environment without government interference. If both a vaccinated and an unvaccinated individual can transmit the virus according to the CDC and numerous scientific investigations, how does a business owner or health care facility's vaccine mandate stop transmission? Quite simply, it doesn't. And since it doesn't stop transmission, a mandate unfairly applies consequences to only the unvaccinated for a virus both are capable of transmitting.

We know spread has occurred on fully vaccinated cruise ships. I have observed vaccinated spread in the district I represent. Ohio Wesleyan University was one of the first universities to institute a vaccine mandate. Nearly all the students and staff were vaccinated. We would have expected spread to be non-existent, especially nestled in the most vaccinated county in the state, yet there were nearly 3x as many cases reported in just the first 3 weeks of school with a strict vaccine mandate in place than during the entire 14 weeks of spring semester when there was no vaccine available to students. These cases occurred in both the vaccinated and the unvaccinated. The mandate didn't stop the spread, but I could tell you story after story of the young lives that were forced to walk away from scholarships with college plans devastated because of this mandate.

The CDC is abundantly clear on this- a vaccine mandate won't stop transmission, and scientifically it has been well established the unvaccinated and vaccinated are both spreading the virus and with similar viral loads. A vaccine mandate is therefore built upon a false premise that a mandate will ensure a safe environment. Solid legislation should not be built upon a false premise. To talk about what types of mandates are appropriate, when they should go into effect and expire, what type of exemptions should be permissible, wouldn't science first have to agree this mandate would do what it is intended to do? If a mandate won't guarantee transmission of the virus won't occur in the workplace or in the ICU, the only possible reason to issue a vaccine mandate is to impose one's own will upon another and to be punitive

³ <https://www.cnn.com/2021/08/05/health/us-coronavirus-thursday/index.html>

⁴ Shirit, Pnina et al. Nosocomial Outbreak Caused by SARS-CoV-2 Delta Variant in a Highly Vaccinated Population, Israel, July 2021, Euro. Surveillance, <https://www.eurosurveillance.org/docserver/fulltext/eurosurveillance/26/39/eurosurv-26-39-3.pdf?expires=1633353523&id=id&accname=guest&checksum=7058712D12D4C8B8F8F446E353F9AE2F>

to those not vaccinated, thereby creating a system where discrimination is not just permitted but sanctioned.

This is the very scenario when citizens need their government to intervene. The US Chamber of Commerce fought the Americans With Disabilities Act. They lobbied against it calling it the heavy hand of government interfering with the private rights of businesses. Today, individuals with disabilities have access to public places because elected officials passed legislation to protect them, even though a small minority.

And speaking of the heavy hand of government, interestingly business organizations didn't speak out when the Ohio Investigative Unit was issuing violations for alcohol served at 10:01 pm or for patrons simply standing in a bar. There was no business organization that spoke out when the Bureau of Worker's Compensation was inspecting businesses for mask compliance, issuing fines and threatening to shut them down. Why did we not see the same business organizations testifying in favor of Senate Bill 22 to curtail the heavy hand of government?

I'm not against vaccination. I believe medical decisions are best made between people and their doctor, not their employer. Ohioans need protections to ensure that decision remains where it should be, in the doctor's office and not the HR office.

There isn't a single place on earth that has successfully conquered this virus through high vaccination rates, mandates or forced compliance but there are several places that have gone way too far trying. We need legislation that prevents vaccine mandates from being issued. No Ohioan should need to ask their employer for an exemption from a vaccine that science has shown doesn't stop transmission. Employers first need to justify, with some science, that high levels of vaccine compliance have stopped the spread somewhere- anywhere. It unfortunately hasn't.

Sub HB 435 and the protections in this bill apply only to current employees but not those employed after the bill's effective date. Nothing about this virus as it relates to workplace safety is likely to change once this bill takes effect. My biggest concern with the bill is that it codifies an employer's ability to issue vaccine mandates without justification. While it does provide exemptions, several are complicated and unnecessarily narrow. The medical exemption, for example, requires a primary care doctor. What if one's cardiologist doesn't recommend vaccination? One of the exemptions acknowledges natural immunity without any scientific standard. It requires an unvaccinated individual's antibodies be measured at the same level as a vaccinated individual. Is that a vaccinated individual one month after vaccination or four months? When does this protection wane exactly and is this different for each individual? Does age play a role? This is very complicated and so full of potential unintended consequences.

To simplify these complications, consider this bill's exemption for reasons of conscience- essentially any reason. This is essentially the same thing as saying vaccination decisions should be left up to the individual. This committee could simplify 34 pages of legislation, complicated exemption language, grandfather and sunset clauses, etc. and simply say this on page 1. Since Covid-19 vaccines do not prevent transmission, individuals should make their own Covid-19 vaccination decisions with their health care practitioner, free from mandate, coercion or discrimination and should not be barred from employment opportunity or access to public accommodations based upon vaccination status.

Please respectfully consider substantially amending this bill to prevent discriminatory Covid vaccine mandates from occurring.

Thank you to the sponsors of this bill, House leadership and to this committee for furthering the discussion on this important issue for Ohioans.

