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Testimony in Support of Substitute HB 248: The Vaccine Choice and Anti-Discrimination Act of 2021.
Health Committee
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Chairman Lipps, vice chairman Holmes, ranking member Russo and members of the committee, thank you for the opportunity to share with you the support of Health Freedom Ohio for Substitute House Bill 248.

Thank you for the opportunity to present testimony and answer questions about this vital bill. I practice public interest law, mostly from a libertarian perspective, am a member of the Vaccine Injured Petitioners Bar Association, and focus on vaccine safety, injury compensation, science policy, applied constitutional economics, and whistleblower protection.

Protection of Liberty: Passage of this bill implements the commitment in the US and Ohio Constitutions to the ideal that government's first job is to secure liberty. Political choices should not be privatized: It is the job of government, not the private sector, to enact uniform public health requirements, especially where there is a need for state-wide uniformity in fighting e.g. respiratory viruses. As we see with rampant social media censorship of speech, which would be unquestionably unlawful if attempted by government, permitting the private sector to regulate health and the most intimate medical choices is perhaps even a greater threat to liberty. Today's its vaccines, but soon, perhaps gun ownership, family relations, nutrition, mental health, and every kind of lifestyle choice.

Enforcement of vaccine mandate is unworkable, and at best will simply encourage an underground industry in fake vaccine passports. Especially with covid, vaccine

status has little to do with preventing the actual spread of disease, which solely depends on achieving herd immunity through a combination of infection and vaccination. Indeed, the mRNA vaccines don't even claim, and were not evaluated for, prevention of infection. More like treatments, their entirely laudable objective is the prevention of severe symptoms and death. The complex relationships between innate and adaptive immunity, from vaccination or infection, and the duration of these immunities is entirely unknown. Again, we face a slippery slope, today its just the vaccine card, but next will come negative PCR and antigen tests, mandatory antibody tests, and an endless array of booster shots – all to obtain that elusive and impossible miracle of a pristine disease free world.

This is pro-business legislation. Vaccination status and medical privacy are matters for patients and doctors, not barbers stylists and grocers. Shifting the burden of making medical decisions to the business community is simply beyond their expertise, will create unnecessary stress and anxiety, and a business environment that is not uniform, unfriendly, and constantly subject to change and uncertainty. Businesses have much better things to do than immerse themselves in scientific journals and the morass of CDC "guidance" documents and the constantly changing whims of Dr. Fauci and a distant inaccessible and unaccountable class of elite experts.

Particularly in the employment context, any "no jab, no job" policy risks employers being liable for injury and death caused by the vaccines.

Vaccination status is a proxy for race and SES. POC are about half as likely to be vaccinated, and with rather good reason to be hesitant. See, for example, RFK Jr.'s outstanding recent documentary Medical Racism – The New Apartheid. Ohio has always been one of the leaders in the civil rights agenda, passing its first law prohibiting discrimination in public accommodations in 1884. Absent this legislation it will be mostly the white and the wealthy 'allowed' back to a 'normal' life of e.g. travel and entertainment.

Medical choice is a civil right which must be protected.

EUA: The need for this bill is especially urgent given the fear-mongering and hysteria associated with the covid pandemic and the responses of the public and private sectors. Ohioans quite understandably want the pandemic to end, want to feel and be safe, and want their pre-pandemic normal lives be restored as quickly as possible.

All three of the covid vaccines are currently authorized under EUAs issued by the FDA. The statute and approval documents expressly state that an EUA is not a license, the vaccines are NOT "FDA approved," and they remain experimental while data on safety and efficacy continues to be collected, with no assurance of eventual approval. The EUA statute[1] expressly states that vaccine recipients be advised "of the option to accept or refuse administration of the product."

No court has ever upheld a mandate for an Emergency Use Authorization (EUA) vaccine, which all COVID vaccines are at present. In fact, a federal court has held that EUA vaccines cannot be mandated to soldiers in the U.S. military, who enjoy far fewer rights than civilians, Doe #1 v. Rumsfeld, 297 F.Supp.2d 119 (2003). That court remarkably held ". . . .the United States cannot demand that members of the armed forces also serve as guinea pigs for experimental drugs." Federal law 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III) requires that the person to whom an EUA vaccine is administered be advised, "of the option to accept or refuse administration of the product, of the consequences, if any, of refusing administration of the product, and of the alternatives to the product that are available and of their benefits and risks." The reason for the right of refusal stems from the fact that EUA products are by definition experimental. Under the Nuremberg Code, no one may be coerced to participate in a medical experiment. Consent of the individual is "absolutely essential." The liability for forced participation in a medical experiment, not to mention injury from such coerced medical intervention, may be incalculable.

The clinical trials are not yet finished. We have no idea of the long-term risks especially of the mRNA vaccines, a modality never before used on humans. These long-term risks include autoimmune diseases, seen in all the childhood vaccines, and anti-enhancement or immune priming disease in response to a variant or surge. This killed many of the ferrets in the trials of mRNA vaccines against SARS-1.

Federal officials have repeatedly stated publicly that EUA vaccines cannot be mandated. At a meeting of CDC's Advisory Committee on Immunization Practices last August the Committee's Executive Secretary and Chief Medical Officer of the National Center for Immunizations and Respiratory Diseases, Dr. Amanda Cohn stated: "I just wanted to add that, just wanted to remind everybody, that under an Emergency Use Authorization, an EUA, vaccines are not allowed to

be mandatory. So, early in this vaccination phase, individuals will have to be consented and they won't be able to be mandated." The Information Fact Sheet for recipients states that, "It is your choice to receive or not receive the Covid-19 Vaccine," and if "you decide to not receive it, it will not change your standard of medical care."

Informed Consent: Public and private vaccine mandates also violate the principle sacred to the practice of medicine, informed consent, which requires voluntary unburdened consent after full information as to risks benefits and alternatives. The modern law on informed consent derives from the Nuremberg Code. As an example of these human rights, the Nuremberg Code states: The voluntary consent of the human subject is absolutely essential. This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved, as to enable him to make an understanding and enlightened decision."

This principle was most recently stated internationally in the Universal Declaration on Bioethics and Human Rights adopted by the United Nations, wherein it is stated: "Article 3 – Human Dignity and Human Rights. . . .
2. The interests and welfare of the individual should have priority over the sole interest of science or society. . . . Article 5 – Autonomy and individual responsibility, The autonomy of persons to make decisions, while taking responsibility for those decisions and respecting the autonomy of others, is to be respected. Article 6 – Consent 1. Any preventive, diagnostic and therapeutic medical intervention is only to be carried out with the prior, free and informed consent of the person concerned, based on adequate information. The consent should, where appropriate, be express and may be withdrawn by the person concerned at any time and for any reason without disadvantage or prejudice."

The principle in caselaw traces to the 1914 New York case of *Schloendorff v. Society of New York Hospitals*. These principles are codified in Federal Law under 45 C.F.R. Part 46, and in Ohio law in R.C. 2317.54 (2019).

Bodily Autonomy: The Supreme Court over the past century has developed and implemented strong protection for bodily integrity and autonomy. Beginning with Griswold, and continuing through Roe v. Wade, and Planned Parenthood, the Court has explained that in popular parlance, my body my choice. In Cruzan this

was extended to non-abortion medical choices, and in Lawrence, to overturn criminal laws against sodomy. The Court said in Cruzan, "The principle that a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment may be inferred from our prior decisions." Even very slight burdens have been consistently thrown out. In many of these instances the state's desire to protect the health and lives of others has been disregarded, the right of each individual to bodily dignity integrity and autonomy being primary and inalienable.

In the case most often cited to uphold seemingly unlimited governmental powers, the Court made quite clear that such exercise was the narrow exception not the rule, and this was before the development of the jurisprudence on bodily autonomy. ""Before closing this opinion, we deem it appropriate, in order to prevent misapprehension as to our views, to observe --perhaps to repeat a thought already sufficiently expressed, namely --that the police power of a State, whether exercised by the legislature or by a local body acting under its authority, may be exerted in such circumstances or by regulations so arbitrary and oppressive in particular cases as to justify the interference of the courts to prevent wrong and oppression."

Justice Gorsuch emphasized the limited reach of Jacobson in his recent concurrence in Roman Catholic Dioses of Brooklyn, throwing out discriminatory New York restrictions on churches: "At that time, COVID had been with us, in earnest, for just three months. Now, as we round out 2020 and face the prospect of entering a second calendar year living in the pandemic's shadow, that rationale has expired according to its own terms. Even if the Constitution has taken a holiday during this pandemic, it cannot become a sabbatical. . . . Why have some mistaken this Court's modest decision in Jacobson for a towering authority that overshadows the Constitution during a pandemic? In the end, I can only surmise that much of the answer lies in a particular judicial impulse to stay out of the way in times of crisis. But if that impulse may be understandable or even admirable in other circumstances, we may not shelter in place when the Constitution is under attack. Things never go well when we do. (emphasis added)."

Ohioans Must Be Protected From Federal Anti-Scientific Regulatory Malpractice. This bill is not anti-vaccine. For example, the school and daycare mandates for the childhood schedule remain intact, with the long-standing exemptions for medical, religious, and conscience reasons. As quasi-government choice slips into private

hands, there is growing awareness that additional consumer protection measures needed.

Vaccines are the only product sold in Ohio for which the federal government has banned access to the traditional common law tort system to redress injury. Companies and providers have immunity. The IOM recommended that Congress establish an expeditious front-end no-fault compensation system as a matter of ethics and fairness. Congress passed VICA in 1986 but was conned by industry into granting legal immunity, basically to prevent the inevitable bankruptcies that would have resulted from smoking guns disclosed in early 1980's litigation. The Vaccine Court, and the provisions for vaccine safety have never been properly implemented. The inability to redress injury is even worse for covid vaccines, as these also have complete immunity under an obscure and secretive CICP.

None of the childhood vaccines were trialed against a 'true' placebo and all of the clinical trials were far too short to detect long-run injury. CDC keeps injury data on millions of children more secret than our nuclear codes. It is virtually impossible to win cases in the Vaccine Court without access to such data to prove causation. The IOM has repeatedly noted the crucial gap in causation literature and noted how little we actually know about the response of the human immune system to vaccines.

Rather than simply protecting Ohioians against public and private mandates, the legislature might well consider banning products that are exempt from tort liability or for which crucial scientific data remains inadequate or hidden, even though both Congress and the Supreme Court have found that vaccines are "unavoidably unsafe." See for example, 1986: The Act, Vaxxed, and the listing of studies comparing vaccinated and unvaccinated children on Childrens Health Defense. While government data remains hidden, these show that disease and developmental delay, including autism, in vaccinated children is statistically greater than in unvaccinated controls.

In conclusion, the Committee is to be commended for its extraordinary leadership in recognizing and protecting the civil right of health freedom and in turning the business community into nervous armchair doctors.