



# Foundation for Moral Law

ONE DEXTER AVENUE  
MONTGOMERY, ALABAMA 36104  
PH: 334.262.1245 • FAX: 334.262.1708  
www.morallaw.org

**Roy S. Moore**  
Founder and President Emeritus

**Kayla Moore**  
President

**Col. John Eidsmoe**  
Senior Counsel and Resident  
Scholar

August 11, 2021

## TO VAX OR NOT TO VAX, THAT IS THE QUESTION

*"Did ya get the jab?"*

*"No, not yet."*

*"Well, you'd better. Otherwise you'll die of COVID, and you'll spread it to everyone around you."*

*"What makes you think that?"*

*"That's what the scientists are saying. What's the matter, don't you believe in science?"*

*"Well, yes, but lots of scientists don't support the vaccine, and those who do keep changing their minds."*

*"All lies and misinformation by charlatans. Listen to Dr. Fauci and the CDC. They're the experts."*

Similar conversations are taking place all across America. Millions of Americans, trusting the CDC and the network news, have lined up to receive the vaccine. But millions of others have refused, concerned that the vaccines may be ineffective or may have adverse or even deadly side effects, many of which may not yet have come to light. And still others halt between two opinions, uncertain what to believe or what to do.

The purpose of this treatise is not to tell you whether you should or should not receive the vaccine.<sup>1</sup> The medical evidence is changing so fast that whatever we say may well be obsolete by the time you read this. As Christians we do not oppose science, only "the oppositions of science falsely so-called" (I Timothy 6:20). Which scientist do we believe? And once we decide that, do we believe what he said last week, this week, or next week? Suffice it to say that at the present time there is

---

<sup>1</sup> The Foundation uses the term "vaccine" herein only because the term is in common use. We recognize that many insist that the "jab" is, technically speaking, not really a vaccine.

ample evidence from highly-qualified experts on which a reasonable person could conclude that it is not advisable to get the vaccine.

Preserving health and containing pandemics is very important, but preserving civil liberties is also important, and we believe our liberties are at stake. As James Madison warned,

It is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of citizens, and one of the noblest characteristics of the late Revolution.<sup>2</sup>

Restrictions on liberty are commonly imposed at times of war, epidemic, or other major crises, because at such times people are much more likely to accept restrictions. However, such restrictions often remain after the emergency ends, or if not, the precedent for future restrictions is set, and future restrictions, sometimes more severe, are more readily accepted. Soon, such restrictions become the rule rather than the exception. The thought that churches might be closed each year because of flu season would have seemed ludicrous a few months ago, but now that possibility must be taken seriously.

Ironically, many who loudly proclaim "My body, my choice" in defense of abortion, are strangely silent about this intrusion on our bodily integrity.

If your employer<sup>3</sup> requires that you get vaccinated, you should first ask to see their vaccination policy. Read the policy, and if necessary, ask someone to help you interpret it. Does it apply to all employees? Does it allow for any exceptions or exemptions? Frequently these policies allow exceptions for those who are currently infected, those who are allergic to any of the ingredients in the vaccines, those who are undergoing chemotherapy, those who are pregnant, and those with other medical reasons. Some employers' policies include a form for you to fill out if you seek exemption from vaccination. If there is no form, you will have to prepare a written statement of your objection to vaccination and your request for exemption.

---

<sup>2</sup> James Madison, *A Memorial and Remonstrance*, 1785, Works 1:163.

<sup>3</sup> What we say here about employers generally applies to educational institutions as well.

If your employer's policy provides for medical exemptions, it may allow for religious exemptions as well. If it does not, a 2021 Supreme Court decision may apply. In *Fulton v. City of Philadelphia*, 141 S.Ct. 1868 (2021), the Court held that if a government policy contains any exemptions, it must also include religious exemptions.

Read the policy to determine what constitutes a religious exemption. You will probably be required to state the nature of your religious exemption, which you should do in your own words. If your objection is based on Scripture, make sure you explain that you consider the Scripture to be the inspired and inerrant Word of God and the final authority for faith and practice. Then quote the Scriptures to support your objection. Some common objections include:

(1) That the body is the temple of the Holy Spirit and therefore should not be defiled with an experimental drug that could be dangerous.

(2) That some COVID vaccines are made from, or were developed from, cells or cell lines from aborted fetuses, and taking the vaccine makes the recipient an accessory to abortion, which Christians believe to be against God's laws.

(3) That a believer should rely upon God, not vaccines, to heal or prevent disease. (If you raise this objection, be prepared to explain whether your objection is to all medical care or just to some kinds of medical care, and how you distinguish between them.)

(4) That when the vaccine is imposed so strongly that a vaccination passport or the equivalent becomes necessary for being allowed to fly, enter stores, obtain food or other necessities, or participate in public events, it becomes what some believe is the "mark of the beast" of Revelation 13.

Be open about your objection and the reasons for your objection. However, if your employer or his representative tries to argue you out of your objection, point out that your objection is protected by the First Amendment and the Civil Rights Act of 1964 whether your employer agrees with your objection or not. As the Supreme Court said in *United States v. Ballard*, 322 U.S. 78 at 87 (1944),

Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences

which are as real as life to some may be incomprehensible to others. yet the fact that they may be beyond the ken of mere mortals does not mean they can be made suspect before the law.

If your objection is part of the doctrine of your church, cite that provision of church doctrine. But that is not essential. *Thomas v. Review Board*, 450 U.S. 707 at 715-16 (1980) held: "...the guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect."

If your employer refuses to grant an exemption, we suggest you contact the Foundation or other legal counsel for advice and assistance before proceeding further.

You should also consider the terms of your employment. Do you and your employer have a contract by which your employment is guaranteed for a certain period of time? If not, you are normally considered an "at will" employee, meaning you can quit your job anytime you want to, but also meaning your employer can terminate your employment without giving a reason whenever he chooses to do so. However, your employer may not terminate your employment for reasons deemed illegal under the law, such as terminating you because of your race, gender (male or female), religion or religious beliefs.

Here are some other factors to consider:

### **COVID Vaccines Are Released Under Emergency Use Authorization (EUA)**

At the time of this writing, the FDA has not licensed any of the COVID vaccines. They are all released under Emergency Use Authorization (EUA), and as such, they cannot be required as a condition of employment. 21 U.S.C. § 360bbb-3 provides that when a vaccine or other medication is introduced for "emergency use" that is not approved, licensed, or cleared for commercial distribution, persons to whom the vaccine is administered must be informed of "significant known and potential benefits and risks," and of their "option to accept or refuse administration of the product [vaccine]."

The Foundation believes that threatening to terminate an employee for refusal to accept the vaccination, makes the vaccination involuntary in violation of this provision.

In February 2021 the Secretary of Health and Human Services invoked the **Public Readiness and Emergency Preparedness (PREP) Act**, thus immunizing vaccine makers from lawsuits for injuries or other damages resulting from their vaccines — even if they are shown to be negligent, although they may not be immune from gross negligence. But employers who order employees to get the vaccine may not be immune. If an employee is vaccinated pursuant to his employer’s order, that vaccination may be considered work-related. Workers compensation may or may not apply, depending on state law.

If employers are aware they could be liable for adverse reactions to the vaccine, they might be hesitant to order it.

### **The First Amendment**

The First Amendment provides in part, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."

The Amendment applies to actions by federal, state, or local governments, but generally not to actions by private employers. If you are a federal, state, or local employee, your employer must respect not only your right to religious belief but also your right to act in accordance with that belief. To justify infringing your religious convictions, such as forcing you to be vaccinated when your religious beliefs forbid it, your employer must show need for doing so that overrides your religious objections, as defined at the federal level by the Religious Freedom Restoration Act of 1993, Public Law No. 103-141, 107 Stat. 1488, 42 U.S.C. § 2000bb.<sup>4</sup>

At the state and local level, a variety of state laws, including state constitutional provisions comparable to the First Amendment and state religious freedom restoration acts, may protect you. Also, some states have enacted statutes

---

<sup>4</sup> The Religious Freedom Restoration Act was held inapplicable to states, *Boerne v. Flores*, 521 U.S. 507 (1997), but applicable to the federal government, *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 544 U.S. 973 (2005).

prohibiting employers from firing employees for refusing to get a COVID vaccination. This will vary from state to state.<sup>5</sup>

## **Civil Rights Act of 1964**

Although the First Amendment is generally limited to governmental entities and does not cover private employers, the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2, does cover both public and private employers and educational institutions. The Act prohibits religious discrimination, and provides that "The term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." § 2000e(j).

An employee who has been terminated or threatened with termination because of his refusal on religious grounds to get a COVID vaccination, may first raise his objections with the employer, then file a complaint with the Equal Employment Opportunity Commission (EEOC), and then file a lawsuit in federal or state court.

Employers may argue that they cannot accommodate an employee's vaccination exemption request without undue hardship, because the employer needs to protect other employees and customers from COVID. However, the burden of proof is on the employer to demonstrate that he cannot accommodate the employee. Not only must he demonstrate a strong need for this protection; he must also demonstrate that other forms of accommodation (masks, social distancing, protective screens, etc.) will not suffice.

If an employer places unreasonable or humiliating conditions or restrictions on unvaccinated employees, this could constitute a "hostile work environment" and could be the basis for an EEOC complaint.

---

<sup>5</sup> As of this writing, the following states prohibit employers from discriminating against employees who refuse vaccination: Arizona, Montana, New Hampshire, and Texas. Arkansas, North Dakota, Tennessee, and Utah prohibit state agencies from discriminating against employees who refuse vaccination. Similar bills are pending in many states. In other states, governors have issued executive orders containing similar protections. This list may be incomplete.

## The *Jacobson* Precedent

Those who insist they have the authority to force you to accept vaccination cite *Jacobson v. Massachusetts*, 197 U.S. 11 (1905) as authority for the proposition that the judiciary must defer to the states' judgment in dealing with emergency health crises. The Foundation believes that *Jacobson* is not a valid precedent for the following reasons:

- (1) *Jacobson* involved a state law that empowered health departments to compel vaccinations to prevent the spread of smallpox.
- (2) Mr. Jacobson simply argued that the law violated his right to decline vaccination; he did not raise a religious objection to vaccination.<sup>6</sup>
- (3) *Jacobson* did restrict the state's authority to regulate in ways that are "beyond all question, a plain, palpable invasion of rights secured by the fundamental law," i.e., constitutional guarantees in our Bill of Rights.
- (4) *Jacobson* is a 1905 case, decided before the courts developed the "strict scrutiny" doctrine that government can infringe fundamental rights only by demonstrating a compelling state interest that cannot be achieved by less restrictive means.

Furthermore, in three recent decisions the Supreme Court has upheld religious liberty against state COVID restrictions: *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. \_\_\_, 141 S.Ct. 63 (2020) (note concurring opinion by Gorsuch, J., re application of *Jacobson*); *South Bay United Pentecostal Church v. Newsom*, 592 U.S. \_\_\_, 141 S.Ct. 716 (2021); *Gateway City Church v. Newsom*, \_\_\_ U.S. \_\_\_, 141 S.Ct. 1460 (2021). Although none of these cases addresses vaccination, the Court

---

<sup>6</sup> A subsequent case, *Prince v. Massachusetts*, 321 U.S. 158 (1944), said that "The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death." However, that was dicta, not holding. *Prince* involved a Jehovah's Witness who had her child with her while preaching in public, and no issue of disease or epidemic was present in the case. And as the Court expressly said in *Prince*, "Our ruling does not extend beyond the facts the case presents."

clearly believes that our basic civil liberties, especially our religious liberties, are not suspended during a pandemic.<sup>7</sup>

## **Conclusion**

As President Ronald Reagan reminded us,

Freedom is a fragile thing and is never more than one generation away from extinction. It is not ours by inheritance; it must be fought for and defended constantly by each generation, for it comes only once to a people. Those who have known freedom and then lost it have never known it again.

The temptation to sacrifice liberty on the altar of public health can be very alluring, but our Founders prized liberty more than life itself. The decision whether to accept a foreign substance into our bodies should be ours and ours alone.

If your employer, educational institution, or a government agency are forcing you to get the vaccine and you object to the injection, please feel free to contact the Foundation for assistance and advice.<sup>8</sup>

---

<sup>7</sup> In *Bridges v. Houston Methodist Hospital*, Case No. 4:21-cv-01774, June 12 2021, the Federal District Court dismissed a lawsuit of 117 hospital employees challenging the Hospital's vaccine mandate. The case is on appeal to the Fifth Circuit, and the case does not involve a religious objection. Even the Hospital noted that it would have to make an exception for a religious objection.

<sup>8</sup>This letter is advisory and does not constitute legal advice.