

# The Detroit News

---

**OPINION** *This piece expresses the views of its author(s), separate from those of this publication.*

## Opinion: Why my client is suing MSU over vaccine mandate

**Jenin Younes**

Published 10:04 p.m. ET Sep. 1, 2021

Among the most bizarre aspects of an undeniably strange past 18 months has been the refusal of the media, as well as various governmental entities and public health authorities, to acknowledge the existence of naturally acquired immunity in the context of COVID-19.

Scads of scientific literature have settled the existence, durability, and robustness of natural immunity to COVID-19. An Israeli study released mere days ago found that “natural immunity affords longer-lasting and stronger protection against infection, symptomatic disease and hospitalization due to the Delta variant.”

Referring to this research, former Food and Drug Administration Commissioner (and Pfizer board member) Dr. Scott Gottlieb remarked, “the balance of the evidence demonstrates that natural immunity confers a durable protection.” Yet, precious few among the plethora of vaccine mandates account for naturally acquired immunity, even when an individual can provide proof in the form of an antibody test.

George Mason University, against which the New Civil Liberties Alliance filed a lawsuit on behalf of Professor Todd Zywicki in August, informed me that the university’s policy did not recognize the existence of naturally acquired immunity.

Likewise, Michigan State University announced an employee and student vaccine mandate about a month ago, which explicitly excludes naturally acquired immunity as a basis for a medical exemption. All employees were required to receive at least one dose of a vaccine by Aug. 31. Those who did not comply face disciplinary action, including possible termination of employment.

Jeanna Norris, an administrative associate and fiscal officer at MSU who has naturally acquired immunity as established by recent antibody testing, does not want to receive a COVID-19 vaccine.

The NCLA has filed a class-action lawsuit and motion for a preliminary injunction on behalf of Norris and similarly situated employees challenging MSU's policy on the grounds that requiring naturally immune employees to get the vaccine violates their constitutional and statutory rights.

The U.S. Constitution recognizes an individual's right to bodily integrity and to decline medical interventions. The Ninth and 14th Amendments, as well as other parts of the Constitution, support these rights. If the government wishes to override an individual's right to bodily autonomy, it must demonstrate a compelling state interest.

In the case of employees who have naturally acquired immunity, MSU can show no such interest. Norris is no more likely to contract or spread COVID-19 than vaccinated individuals. She is certainly more protected against COVID-19 than people who have received vaccines such as the foreign, non-FDA-approved Sinovac and Sinopharm, which MSU arbitrarily considers sufficient to satisfy its mandate.

Some claim that a 1905 Supreme Court case, *Jacobson v. Massachusetts*, stands for the proposition that all vaccine mandates are legal, but Norris' case is different. In *Jacobson*, the court held that a town could fine an individual \$5 for refusing to get the smallpox vaccine.

The plaintiff, Henning Jacobson, did not have natural immunity to smallpox, a disease with an approximately 30% fatality rate. And he could not have proven immunity anyway, because antibody testing had not yet been invented. So, the government's interest in compelling his vaccination was far stronger, yet he still paid the fine (about \$140 today) rather than be vaccinated.

*Jacobson* has been misapplied before. In the notorious *Buck v. Bell* case, the Supreme Court cited *Jacobson* to uphold a Virginia law allowing forced sterilization of mentally ill women. It stated: "the principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes ... Three generations of imbeciles are enough."

That *Jacobson*'s logic led to the repulsively misogynistic holding in *Bell* should give pause to glib cheerleaders of compulsory vaccination.

The motivation to indiscriminately vaccinate everyone without regard to naturally acquired immunity remains a mystery. Science has been denigrated, perhaps in a uniquely disturbing way, throughout this pandemic.

Nowhere is that more evident than the inexplicable denial of natural immunity's existence.

A large portion of the American public has become attuned to this fact and accordingly has lost trust in public health authorities and their unscientific and unconstitutional mandates.

Heroes like Norris are seeking to vindicate not just their own liberty through the courts but also science itself.

*Jenin Younes is litigation counsel at the New Civil Liberties Alliance (NCLA) and represents the plaintiffs in Norris v. Samuel L. Stanley, Jr., et al. The NCLA is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar Philip Hamburger to protect constitutional freedoms from violations by the administrative state.*