

Victory Against a Hospital's Denial of Religious Exemption to Vaccination

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The religious exemption to vaccination has emerged as the strongest legal response to ever-increasing vaccine mandates at hospitals, schools, military service, and even ordinary employment. In many ways these vaccine mandates have worsened. Multiple States are taking a hard line against religious exemptions from vaccination, and four States, California, New York, Connecticut, and Maine—prohibit any religious exemption from vaccines. Hospitals, which had already become islands of tyranny, are imposing mandates for what used to be voluntary vaccines, such as seasonal influenza.

The U.S. Supreme Court ruled against overreach with vaccines during COVID. For example, the High Court blocked President Biden's mandate that everyone employed by a large company receive a COVID vaccine. But despite this, the push for vaccine mandates continues at a rapid pace. Medical exemptions from vaccination are universally recognized, but physicians face retaliation by their state medical boards if they issue "too many" medical exemptions. How can there be "too many" instances of a physician doing what is right for a patient? In these perilous times, physicians' actions can be severely punished if they oppose powerful interests such as the pharmaceutical industry.

Today hospitals are routinely requiring an annual influenza vaccine by all employees and physicians who are on the medical staff. Hospitals should recognize assertions of a religious exemption from vaccination, as most "red" states do, and federal employment law requires. When there is a denial of religious liberty, litigation becomes necessary to establish and re-establish this fundamental right. In one ongoing lawsuit that is challenging the removal of religious exemptions to vaccination in California, this author has filed an amicus brief on behalf of the Association of American Physicians and Surgeons in defense of the right to a religious exemption in the U.S. Court of Appeals for the Ninth Circuit. We await a decision in that case, which may next go to the U.S. Supreme Court.

Religious objections to certain or all vaccines are legitimate across all faiths. Being knowledgeable about how to assert these objections can be invaluable to everyone who works in a hospital. Tyrannized hospital patients, including mothers giving birth, should also know their rights to reject vaccination. Additional mandates beyond vaccination, such as giving eyedrops to newborns, can also be declined by the timely assertion of a religious objection.

Hospitals, however, might initially improperly deny a religious exemption to an employee or physician on the medical staff, in which case legal recourse becomes necessary. The recent case of *Palms v. Texas Children's Hospital*, in which this author participated at the final appellate stage, illustrates the importance of being persistent to assert one's religious rights despite an initial refusal by the hospital and even federal district and appellate courts to fully recognize this fundamental liberty.

Palms v. Texas Children's Hospital

A radiographer and radiology specialist who had been employed for more than 20 years by Texas Children's Hospital (TCH), Tisha Palms, responded to a new hospital mandate for the influenza vaccine in 2022 by asserting a religious objection. One might expect that an employee having more than 20 years of service would be treated fairly with respect to her religious exemption. Not so, as vaccine tyranny extends far and wide, and occurs in unexpected places.

In September 2021, this hospital required employees to take the COVID-19 shot or obtain an exemption.¹ On Sep 20, 2021, Ms. Palms submitted her request for a religious exemption from the hospital's COVID-19 shot mandate.² She wrote in her request:

I am respectfully requesting an exemption from taking the covid-19 vaccination. I contracted covid19 and was out on leave in early May 2021. And with God's grace and protection I completely recovered from it at the end of May 2021. Therefore, I should already have antibodies in my system to help fight any further infections. Also, as the Bible states in many scriptures, my body is God's temple and as such I should not inject this vaccine into my body. God has already provided all of His children with an immune system that is built for that specific reason and because I am a child of God and have faith that He WILL continue to protect me... I have a conscious belief and the decision has been made by my family and I that I should not take the vaccine based on the recent discoveries that the vaccine can cause myocarditis and pericarditis in some people. I will however follow TCH's guidelines such as wearing PPE. I have been employed by TCH for over 21 years and have always followed the policies of my employer. I have been a dependable and committed employee and hope to continue working for TCH. It is my sincere hope that you will grant my exemption and allow me to further serve my community through my employment. Thank you for your consideration in this matter. I am awaiting your decision.³

Two days later, on Sep 22, 2021, the hospital granted Ms. Palms' request for a religious exemption from the COVID-19 vaccine.⁴ So far, so good in recognizing religious liberty.

But the following year, on Sep 20, 2022, the hospital imposed an influenza vaccine mandate that required all employees to receive the vaccine or obtain approval for an exemption. Noncompliance by Nov 17, 2022, would result and did result in placing the employee on a two-week, unpaid administrative leave. If the employee was still noncompliant by Dec 2, 2022, then the hospital stated that it would fire her.

Ms. Palms asserted a religious exemption to this influenza vaccine in a timely manner, on Sep 23, 2022. She explained her religious objection as follows:

I am respectfully requesting an exemption from taking the flu vaccination. The Bible states in many scriptures, my body is God's temple and as such I should not inject vaccines into my body. God has already provided all of His children with an immune system that is built for that specific reason and because I am a child of God and have faith that He WILL continue to protect me. . . I have a conscious belief and the decision has been made by my family and I that I should not take vaccines because my strong belief in God and the fact that He and He alone protects me. I will however follow TCH's guidelines such as wearing PPE. I have been employed by TCH for over 22 years and have always followed the policies of my employer. I have been a dependable and committed employee and hope to continue working for TCH. It is my sincere hope that you will grant my exemption and allow me to further serve my community through my employment. Thank you for your consideration in this matter. I am awaiting your decision.⁵

For most of her employment Ms. Palms had voluntarily received an influenza vaccine but had declined it in 2021 when she also successfully asserted a religious objection to the COVID vaccine. When the hospital made the influenza vaccine a requirement for employment in 2022, Ms. Palms's objection was consistent with her successfully asserted religious exemption and conduct the prior year, but the hospital argued that it was inconsistent with her voluntarily receiving the vaccine in 2020 and earlier years.

Ms. Palms informed the hospital that her religious beliefs had changed with respect to vaccination. The hospital had a form for asserting a religious exemption, which asked employees who had previously taken the influenza vaccine to "describe how and why your beliefs, practices, or observances may have changed." As quoted above, Ms. Palms explained on the form that she believes that vaccination was unnecessary for her due to God's protection of her, and that her body is a temple of God such that she did not believe she should be allowing injection of her body with vaccines. Ms. Palms did not elaborate, nor should she have been required to, as to whether her beliefs about this were new or why her views had changed from when she had voluntarily received the vaccine in many prior years.

The hospital denied Ms. Palms's request and informed her that it would enforce the stated deadlines.

Hospitals, unfortunately, are accustomed to courts ruling in their favor in employee vaccine mandate disputes. Politically, hospitals are powerful in their communities due to their large employment of voters and the good will for hospitals that develops over time. In addition, courts are reluctant to second-guess hospitals about decisions that appear to be based on medical judgment. There also seems to be a bit of institutional kinship between courts and hospitals, whereby some courts view hospitals as pillars of a community analogous to courts themselves. In addition, most courts have long been pro-vaccine, incorrectly viewing critics of vaccination as being on the fringe of society.

Both hospitals and courts can view themselves as partners in a "supreme" secular government, whereby religious liberty is instinctively treated with skepticism. An asserted religious right to be free from government-mandated vaccination is viewed as inferior to the collectivist view that individual rights must be sacrificed for the imaginary "greater good of the group." Individual rights against vaccine mandates may be considered

to be analogous to the right to own guns, which judges nearly unanimously felt was merely a collective rather than an individual right, until the latter prevailed in *D.C. v. Heller*, 554 U.S. 570 (2008). An amicus brief filed by AAPPS (as written by this author) was cited by four of the dissenting judges in that landmark case.

Socialism is advanced by collectivism, and vaccine exemptions interfere with that. This view has typically been an obstacle when arguing in court for a religious exemption to vaccination.

When a religious exemption to vaccination is denied, and internal appeals are exhausted, a lawsuit by the employee against her own hospital becomes the only viable recourse left. It is never easy to prevail in federal court on the vaccine issue, but religious liberty enjoys support by a majority of the U.S. Supreme Court and that should be setting the tone for lower courts. Ms. Palms sued Texas Children's Hospital in federal court on Nov 16, 2022, which was a day before her unpaid leave was scheduled to begin.

Ms. Palms also filed a complaint with the Equal Employment Opportunity Commission (EEOC), which is ordinarily required before an employee can file a lawsuit against her employer, but she did not await a ruling by the EEOC because time was of the essence. The hospital did not assert a lack of exhaustion by plaintiff Palms of her remedies at the EEOC, which is a federal agency, and accordingly the district court held in her lawsuit that "[b]ecause exhaustion is not jurisdictional, the Court need not address it *sua sponte*," meaning that the court would not raise this procedural issue on its own.⁶ The court then quoted the Supreme Court precedent of *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393 (1982), for the principle that "filing a timely charge of discrimination with the EEOC is not a jurisdictional prerequisite to suit in federal court, but a requirement that, like a statute of limitations, is subject to waiver, estoppel, and equitable tolling."⁶ But future plaintiffs should remain aware that typically exhaustion of the EEOC process is first required before an employee can sue an employer for discrimination. In cases of religious exemption to vaccination there may not be enough time to await a decision by the EEOC, however, and in *Palms* the district court did not require exhaustion of the EEOC procedures before hearing and deciding her lawsuit in federal court.

In her lawsuit that her attorney filed in federal district court in Houston, Ms. Palms attached a new affidavit to her Complaint, which explained why her attitude toward influenza vaccines had changed. She declared, for example, that "[w]hen God, during my prayers, focused my attention on Covid and the vaccines developed for it[,] he also made it clear to me...that he did not want me to partake of any other vaccines for the very same deeply spiritual reasons."⁷

Her lawsuit had a big influence on the hospital, a sign that rights of vaccine choice are making progress. A few days after Ms. Palms sued, the hospital sent her an email informing her that the hospital decided to exempt her from its vaccine mandate after all, supposedly based on new information in her affidavit filed in court. The hospital told her that she could return to work the next day. She then continued to be a paid employee of the hospital.

But note: While the hospital acted as though its belated granting of a religious exemption had resolved the matter, Ms. Palms obtained this relief only **after** finding an attorney and incurring the substantial expenses of filing a federal lawsuit. The hospital should have initially granted her request for a religious exemption, without making a federal lawsuit necessary. If the

hospital needed more information from Ms. Palms, then it could have requested it while allowing her to work, without placing her on unpaid leave.

The hospital should have accepted Ms. Palms' initial explanation of her religious objection to vaccination. It is not for secular authorities, in this case hospital administrators, to assess or find fault with someone's assertion of a religious objection. The fact that Ms. Palms had voluntarily received the flu vaccine two and more years in the past is not a valid basis for the hospital to doubt the sincerity of her religious objection now. As Ms. Palms's attorney explained to the court, she provided a specific and sincere reason for her religious objection in fall 2022, and it is not her obligation to explain more than this. The beliefs and views of many people change over time, as judges sometime admit about themselves. The liberal media calls this "growth" when one's views change more to their liking, but people are free to "grow" in other directions too.

The recognition of religious liberty by courts has improved from the days when courts doubted the sincerity of someone's religious beliefs in order to reject them. Despite this, the district court relied on prior conduct by Ms. Palms to rule in favor of the hospital in denying her 2022 request for a religious exemption from the influenza vaccine. The district court relied on outdated decisions, one from 1981 (more than 40 years ago)⁸ and another from 2002 (more than two decades ago, by the one-sided First Circuit).⁹ The court ruled that a fatal defect in Ms. Palms's assertion of a religious exemption was her lack of explanation of why she had voluntarily taken the influenza vaccine in the past. The district court thereby dismissed Ms. Palms's lawsuit.

Then the hospital brazenly demanded that Ms. Palms reimburse it for some of its expenses in this lawsuit. The hospital asserted that it was the prevailing party in the district court, because ultimately its motion to dismiss was granted, despite the fact that the hospital's wrongdoing necessitated the lawsuit and it was only after Ms. Palms filed the lawsuit that the hospital did the right thing. But by calling itself the prevailing party, the hospital then submitted a substantial demand for and obtained an award in its favor of costs against its victim, Ms. Palms, totaling \$8,466.37. The applicable federal employment law, known as Title VII, provides for awarding attorneys' fees to the victims of religious discrimination, rather than rewarding the perpetrators of it. Ms. Palms was the victim of religious discrimination, and yet the district court then ordered Ms. Palms to pay the hospital \$8,466.37. This is a result opposite to what federal employment law intends in prohibiting religious discrimination.

Appeal to the U.S. Court of Appeals for the Fifth Circuit

Although the hospital restored the employment of Ms. Palms after she sued, she suffered harm in the form of lost wages, legal fees, mental anguish, and so on. Even though the hospital's ultimate actions confirmed that Ms. Palms was entitled to a religious exemption, Ms. Palms was denied recovery by the district court despite being right in filing her lawsuit. This was an *Alice in Wonderland* type of illogical result.

Success for Ms. Palms on appeal seemed likely, but a 2-1 panel decision by the U.S. Court of Appeals for the Fifth Circuit upheld the dismissal of this case by the district court. The panel majority resorted to procedure to uphold the lower court decision, while there was a vigorous dissent in protest. Judge Engelhardt's

dissent stated:

There can be no question as to the sincerity of Palms' religious beliefs. Her employer, the hospital, does not dispute that Palms held a bona fide religious belief, admitting that "Palms always had strong religious beliefs." The hospital also previously granted Palms a religious exemption to the COVID-19 vaccine based on the same religious beliefs only a year before denying her religious exemption to the flu vaccine. That fact fully establishes the hospital's appreciation of Palms' bona fide religious belief. It is also undisputed that the hospital received Palms' request for a religious exemption to the flu vaccine and that Palms was placed on unpaid leave because she refused to receive the vaccine.

The hospital reasoned that because Palms received the vaccine in the past, there was no good reason she could refuse to receive it again. Unless, of course, she explained her religious beliefs to the employer's satisfaction. That is itself religious discrimination.¹⁰

Once an appellate panel renders a decision, there are only two options left for litigants on the losing side: (1) seek reconsideration by all the active judges on the same court, known as the "en banc" court, and this request can also be made of the panel to reconsider its own decision, or (2) petition the U.S. Supreme Court to "grant cert." and accept the case. Unfortunately, the Supreme Court grants certiorari on only about 1 percent of the petitions filed with it, so that approach is rarely successful. In vaccine cases, the odds of obtaining Supreme Court review are even less than 1 percent due to the Supreme Court Justices preferring to avoid sparking ire by Big Pharma and its allies in the House, which has impeachment power.

That means the best approach is to seek reconsideration by the same court, in the form of a petition for rehearing en banc by the full Fifth Circuit, which is the finest appellate court in the country. It presides in New Orleans over Texas, Louisiana, and Mississippi. This author, on request, wrote and filed this petition.

Suddenly the hospital was willing to settle to resolve the case, such that further rulings would not be forthcoming from the court. The terms of the settlement remain confidential, but it is a matter of public record that the appellate panel decision in favor of the hospital was fully vacated and erased, such that it is no longer a valid precedent. Victory was obtained for the religious exemption to vaccination, and for the hospital employee!

Bases for Religious Exemptions from Vaccination

All major religions—Christianity, Judaism, Islam, Hinduism, and Buddhism—recognize religious objections against defiling the body by ingesting something that is spiritually unclean. In Hinduism, for example, cows are generally considered to be sacred, and the eating of beef is typically prohibited. Some sects of Hinduism prohibit eating any meat, and some go further and prohibit eating eggs, too. These bans are not merely "incidental" to the practice of this religion. A law that has the effect of forcing Hindus to eat beef would plainly be in violation of the Free Exercise Clause. Similarly, in Buddhism there is a fundamental principle of non-violence known as "*ahimsa*," such that many Buddhists are vegetarians or vegans, to avoid supporting violence towards animals.

Christianity teaches that one's body is a temple of God, and thus not to be defiled: "If any man defile the temple of God, him shall God destroy; for the temple of God is holy, which *temple* ye are." (1 Corinthians 3:17, King James Version, italics in original). This is not merely "incidental" to the Christian faith. Some denominations of Christianity nearly entirely reject the practice of medicine, which includes vaccination, on their bodies. For example, Christian Scientists, who have long operated the Pulitzer Prize-winning newspaper *The Christian Science Monitor* and many high schools throughout the country, reject blood transfusions and allow medical treatment only for only essential problems like broken bones. This faith relies on healing through spirituality and prayer. Jehovah's Witnesses, another Christian denomination, rejects blood transfusions for a different reason: to them blood is sacred and thus forbidden to be used for the purposes of medicine. These are not beliefs that are merely incidental to their faith. Many Christians, including Roman Catholics, reject vaccines that are derived from aborted fetal tissue.

The consumption of pork is generally prohibited by both Orthodox Jewish and Muslim religions. Porcine gelatin, derived from pork, is used in multiple vaccines, particularly as a stabilizer in vaccines carrying live viruses. This is objectionable to some adherents of Judaism (as non-Kosher), Islam (because Halal prohibits consuming pork and its derivatives), and some Hinduism and Jainism followers (based on their belief in *ahimsa*, or non-harm).^{11,12} See, e.g., *We the Patriots United States v. Conn. Office of Early Childhood Dev.*, 76 F.4th 130, 142 (2d Cir. 2023) (concerning Muslim parents who object to vaccines because "they abstain from consuming pork products, which they allege are used as a stabilizer in some vaccines").

Modern vaccines are, of course, a relatively recent development in the course of world history, arising long after the sacred scriptures of most religions were written. But the principles against defiling one's own body, as adhered to by all major religions, are unchanging and stand against vaccines viewed as spiritually unclean.

Objections to mRNA Injections

Fetal cells have reportedly been used in the development of mRNA injections but not in their production. Manufacturers of mRNA injections, such as COVID vaccines, assert they do not have biological material in them.

A hospital in Florida rejected more than a hundred assertions of a religious exemption to a mandated mRNA injection when the basis was an objection to the use of fetal cells derived from an abortion. The hospital decided, without giving employees an opportunity to amend their claim for a religious exemption, that it was factually incorrect to oppose these injections based on a moral opposition to abortion.

This issue is on appeal in a Florida state court.¹³ It seems that a moral objection to the use of fetal cells from abortion in the development of an injection, or vaccine, even if the current product does not contain fetal material, would be an adequate basis for a successful religious exemption. To avoid encountering this impediment as unjustifiably raised by the Florida hospital, applications for religious exemptions should include multiple grounds and not be limited to a factual assertion that a hospital may deny.

Lessons from *Palms* Litigation

When physicians or patients seek to assert religious exemptions to vaccinations, they should expect unreasonable resistance to religious liberty. Persistence is necessary to overcome it. Several tips to keep in mind can be helpful.

First, it helps to submit a thorough initial request for the exemption, which will send an important message of seriousness to the hospital. It is important to create an impression of determination and expertise.

Second, a backup plan is needed to file a lawsuit if the hospital stubbornly denies a religious exemption. If the victim of a hospital vaccine mandate is an employee, then it might be necessary to file a complaint with the EEOC prior to filing the lawsuit. There is a strict deadline for complaining to the EEOC of 180 days (in some states it is extended to 300 days) from the act of religious discrimination.¹⁴ Usually deadlines to be vaccinated happen much faster than 180 days (which is nearly 6 months).

In the case of an independent physician on a hospital medical staff, the law is murky about whether the EEOC procedures apply. In many of these situations a physician could sue immediately and see whether the hospital asserts as a defense a lack of an EEOC complaint. As seen in the *Palms* decision, the court proceeded to render a verdict without requiring exhaustion of the EEOC procedures even by a hospital employee.

Appellate courts are generally better on the religious exemption issue than many district courts. So, if litigation becomes necessary, a plan to pursue it through appeal is most likely to succeed.

Conclusion

Hospitals are often hostile to respecting the First Amendment right to free exercise of religion, or laws against religious discrimination, with respect to vaccination exemption. Requests must be carefully formulated, and litigation may be required. Persistence is necessary.

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