April 7, 2021

Office of The Attorney General of Illinois
The Honorable Kwame Raoul
500 South Second Street
Springfield, IL 62701

Your Honor:

I respectfully demand your attention to the disturbing fact that companies in Illinois are being misinformed by the Illinois Department of Health Director, Dr. Ngozi Ezike.[1] Through her authority, businesses are unlawfully demanding their employees be vaccinated with the COVID-19 vaccines, which are currently only available as part of a Phase III clinical trial, for use pursuant to the Emergency Use Authorization Act[2]. Contrary to the comments in the aforementioned article, private businesses have no authority to mandate employee vaccinations of a product not yet fully approved by the FDA. Moreover, any form of discrimination against those choosing not to be vaccinated is in direct violation of federal law.

> (a) Prohibition of discrimination. No individual shall be discriminated against on the basis of **disability** in the **full and equal enjoyment** of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by **any private entity** who owns, leases (or leases to), or operates a **place of public accommodation.** (emphasis added) [3]

Pursuant to 28 CFR § 36.105 "disability" is defined as:

> **(i)** A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
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> **(ii)** A record of such an impairment; or

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[1] *See* https://foxillinois.com/news/local/private-employers-in-illinois-can-require-covid-19-vaccine-for-employees.
[2] *See* 21 U.S.C. § 360bbb
[3] 28 C.F.R. §36.201; *See also* 42 U.S. Code § 12182.
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> **(iii)** Being regarded as having such an impairment as described in paragraph (f) of this section.

"Physical or mental impairment" (under that same Code provision) means:

> (i) Any **physiological** disorder or **condition**, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as: Neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary**, immune**, circulatory, hemic, lymphatic, skin, and endocrine; or
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> (ii) Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability.[4] (emphasis added).

This includes, but is not limited to,

> **contagious and noncontagious diseases** and conditions such as the following: Orthopedic, visual, speech and hearing impairments, and cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, dyslexia and other specific learning disabilities, Attention Deficit Hyperactivity Disorder, Human Immunodeficiency Virus infection (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.[5] (emphasis added).

As these code provisions demonstrate, private places of accommodation are prohibited under federal law from discriminating against *any* person on the basis of their "physiological condition" which, by law, includes the present status of their immune system. In addition, 42 U.S.C. 2000ff-1 expressly prohibits employers from discriminating against employees on the basis of genetic information:

> (a)Discrimination based on genetic information
>
> It shall be an unlawful employment practice for an employer—

[4] 28 CFR § 36.105(b)(1)
[5] 28 CFR § 36.105(b)(2)

(1) to fail or refuse to hire, or to discharge, any employee, or otherwise to discriminate against any employee with respect to the compensation, terms, conditions, or privileges of employment of the employee, because of genetic information with respect to the employee; or

(2) to limit, segregate, or classify the employees of the employer in any way that would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect the status of the employee as an employee, because of genetic information with respect to the employee.[6]

As companies try to institute this illegal action throughout Illinois, it is your duty as the state's chief legal officer, to "advocate on behalf of all of the people of Illinois." Further, "you are responsible for protecting the public interest of the state and its people." We the People demand that you order Dr. Ngozi Ezike, and any other state official parroting his messaging, to cease and desist in continuing to perpetuate false information to the public.

It is your **duty** as the Attorney General to ensure that the federal civil rights of **all persons** in the State of Illinois are protected. Thereby, you must put every public and private entity who plans to mandate their employees or customers be vaccinated on notice **immediately** that they are violating federal law and can be fined up to $50,000 (for the first offense) and $100,000 (for each subsequent offense).[7]

While medical and media sources are not explaining the experimental nature of this vaccine, the COVID-19 Vaccines are all currently still in Phase III clinical trials. This means that each of these corporations are currently using the American public, and

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[6] 42 U.S.C. 2000ff-1(a)

[7] *See* 28 CFR § 36.504*; See also* 45 CFR §46.116, Department of Health and Human Services Regulation, *Protection of Human Subjects*. https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=83cd09e1c0f5c6937cd9d7513160fc3f&pitd=20180719&n=pt45.1.46&r=PART&ty=HTML https://www.hhs.gov/ohrp/regulations-and-policy/regulations/45-cfr-46/revised-common-rule-regulatory-text/index.html#46.116.

more importantly, **your constituents** as unknowing test subjects operating without informed consent.[8]

According to the US Food and Drug and Administration (FDA), there is **no exception** to clinical trial regulations for products approved for Emergency Use Authorization:

> Even for an emergency use, the investigator is required to obtain informed consent of the subject or the subject's legally authorized representative unless both the investigator and a physician who is not otherwise participating in the clinical investigation certify in writing all of the following
>
> 1. The subject is confronted by a life-threatening situation necessitating the use of the test article.
> 2. Informed consent cannot be obtained because of an inability to communicate with, or obtain legally effective consent from, the subject.
> 3. Time is not sufficient to obtain consent from the subject's legal representative.
> 4. No alternative method of approved or generally recognized therapy is available that provides an equal or greater likelihood of saving the subject's life.
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> If, in the investigator's opinion, immediate use of the test article is required to preserve the subject's life, and if time is not sufficient to obtain an independent physician's determination that the four conditions above apply, the clinical investigator should make the determination and, within 5 working days after the use of the article, have the determination reviewed and evaluated in writing by a physician who is not participating in the clinical investigation. The investigator must notify the IRB within 5 working days after the use of the test article.[9]

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[8] Each of the corporations list the current "clinical trial status" on their website. *See* **MODERNA: https://www.modernatx.com/sites/default/files/mRNA-1273-P301-Protocol.pdf; https://www.modernatx.com/covid19vaccine-eua/providers/clinical-trial-data; PFIZER: https://www.pfizer.com/science/find-a-trial/nct04713553; JOHNSON & JOHNSON: https://www.jnj.com/coronavirus/about-phase-3-study-of-our-covid-19-vaccine-candidate**

[9] *See* 21 CFR 50.23(c); *see also* https://www.fda.gov/regulatory-information/search-fda-guidance-documents/emergency-use-investigational-drug-or-biologic

As a citizen of the State of Illinois, I respectfully demand that you take action immediately against all facilities offering access to these clinical trials without obtaining and documenting the requisite informed consent pursuant to federal law. Moreover, it is your duty to enforce the federal civil rights of all Illinoisans and therefore must enjoin any private corporation who attempts to discriminate against those who choose not to partake in this unprecedented biological experiment on the American people. [10]

The law is clear, no place of public accommodation may treat a person differently on the basis of their physiological status. Choosing to not be vaccinated falls squarely within that protected category of "disability" under federal law.

I expect a reply to this letter within one week of receipt. If I do not, I will be filing a complaint with ABA ***Special Committee on Bioethics and the Law,*** as well

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[10] Case law re: strict liability for lack of informed consent in clinical trials: *Looney v. Moore*, No. 15-13979, 2018 U.S. App. LEXIS 8070 at *16 (11th Cir. Mar. 30, 2018) (citing *Houston Cnty. Health Care Auth. v. Williams*, 961 So. 2d 795, 810 (Ala. 2006) (stating as a general matter that all of the claims in the case, including claims for lack of informed consent, were governed by the AMLA because they "allege a medical injury arising in the context of their patient-hospital relationship as the basis for each of their claims")); *see also Montgomery v. Bazaz-Sehgal,* 798 A.2d 742, 748-49 (Pa. 2002) (stating that a claim for "informed consent sounds in battery")*; Rowinsky v. Sperling,* 452 Pa. Super. 215, 224-25 (Pa. Super. Ct. 1996) (holding that where plaintiff established that she was not informed of certain risks, recovery was "permitted under the doctrine of informed consent, regardless of causation and actual damages"). *But see Cochran v. Wyeth*, 3 A.3d 673 (Pa. Super. Ct. 2010) (treating a claim for lack of informed consent as analogous to negligent failure to warn, and holding that a plaintiff cannot prove proximate causation when the nondisclosed risk did not materialize in injury — "In informed consent cases it appears to be well-settled and without debate that the non-disclosed risk must manifest itself into actual injury in order for a plaintiff to establish proximate causation."); *see also* Centers for Disease Control & Prevention, The Tuskegee Timeline, https://www.cdc.gov/tuskegee/timeline.htm (accessed Aug. 2, 2017); HHS regulations at 45 CFR 46.116 and 45 CFR 46.117 describe the informed consent requirements for federally funded clinical trials, while FDA regulations at 21 CFR part 50 govern those for trials done pursuant to FDA approval.

as filing a ***writ of mandamus*** to force action on behalf of the people of the State of Illinois.

Thank you in advance for your service,

Name
Contact Information

Cc: Honorable Governor J.B. Pritzker