



OFFICE OF THE
VICE PRESIDENT & GENERAL COUNSEL
UNIVERSITY OF MICHIGAN

Timothy G. Lynch · Vice President and General Counsel
5010 Fleming Administration Building
503 Thompson Street
Ann Arbor, MI 48109-1340
734 764-0305 FAX 734 615-8937
timlynch@umich.edu

May 3, 2021

Allison R. Lucas, Esq.
53 N 3rd Avenue, Suite 4
Fruitport, MI 49415

Dear Ms. Lucas:

Thank you for your April, 26, 2021, letter regarding the University's April 23, 2021, [announcement](#) that Ann Arbor students who choose to live in our residence halls during the fall term will be required to be fully vaccinated for COVID-19. The University came to its decision after closely studying the law, science, public health, and ethics. We are confident we made the right choice for the safety of our students, staff, and faculty and for the members of our broader community—a choice that is faithful to, and fully supportive of, our educational mission.

More than a century ago, the U.S. Supreme Court established the right of public institutions to protect the health of others by requiring proof of status of vaccinations, because “a community has the right to protect itself against an epidemic of disease which threatens the safety of its members.” *Jacobson v Commonwealth of Mass*, 197 U.S. 11, 28 (1905). You have a different opinion on the value of *all* vaccines in the State of Michigan, not just those to protect against the spread of COVID, based, among other things, on your view that mandatory vaccines are inconsistent with liberty interests and freedom of choice. Respectfully, the Supreme Court has specifically considered and emphatically rejected that view:

The defendant insists that his liberty is invaded when the state subjects him to fine or imprisonment for neglecting or refusing to submit to vaccination; that a compulsory vaccination law is unreasonable, arbitrary, and oppressive, and, therefore, hostile to the inherent right of every freeman to care for his own body and health in such way as to him seems best; and that the execution of such a law against one who objects to vaccination, no matter for what reason, is nothing short of an assault upon his person. But the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others. This court has more than once recognized it as a fundamental principle that ‘persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health, and prosperity of the state; of the perfect right of the legislature to do which no question ever was, or upon acknowledged general principles ever can be, made, so far as natural persons are concerned. [citations omitted] In [Crowley v. Christensen](#), 137 U. S. 86, 89, 34 L. ed. 620, 621, 11 Sup. Ct. Rep. 13, we said: ‘The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order, and morals of the community. *Jacobson*, 197 U.S. at 26.

The approval of COVID vaccines under emergency use authorization does not in any way diminish the University's authority to require the vaccine of students living in our residence halls. By its terms, the Federal Food, Drug, and Cosmetic Act applies to the Secretary of Health and Human Services—not employers, universities, or the University, which is both.¹

As a public research institution, we are dedicated to science and the advancement of truth. As of April 27, 2021, 17,429 people in the State of Michigan have died as a result of COVID, a number that likely underestimates the true number of COVID-related deaths.² The science and data on vaccines, particularly the COVID vaccine, is clear: it saves lives and reduces the severity of illness.³ To take one example, just last week, the CDC released data on the number of "[breakthrough](#)" infections of people who, despite being vaccinated, still tested positive for COVID-19 more than 14 days after getting their second dose of a COVID-19 vaccine. As of last week, there were fewer than 6,000 "breakthrough" infections reported, which represents less than 1% of the [more than 87 million](#) people in the United States who have been fully vaccinated. In other words, vaccinations are extraordinarily effective – in clinical trials and in real world conditions.

As of the time of this email, the State of Michigan has administered more than [2.9 million COVID vaccinations](#) and the CDC has published a study on the [Effectiveness of the Vaccinations](#) in real world conditions, affirming the findings of clinical trials that the approved mRNA vaccines are over 90% effective overall. Given the densely populated conditions in which our students function, particularly in the residence halls, the proven risk of COVID-19 to the public health of our community is significant and the public health benefits of a vaccinated community are compelling. Accordingly, the University does not intend to eliminate the requirement as you have requested in your letter.

Sincerely,



Timothy G. Lynch

¹ For example, the Food and Drug Administration has stated that "whether a state, local government, or employer, for example, may require or mandate COVID-19 vaccination is a matter of state or other applicable law." https://www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations/essentialworker/workplace-vaccination-program.html#anchor_1615585395585.

² As of April 27, 2021, the State of Michigan reports that 829,520 individuals have contracted COVID and 17,429 have died of COVID. https://www.michigan.gov/coronavirus/0,9753,7-406-98163_98173---,00.html.

³ See generally, "Ensuring COVID-19 Vaccines Work," at https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness.html?s_cid=10464:vaccine%20effectiveness:sem.ga:p:RG:GM:gen:PTN:FY21.