

## Indiana District Court Denies Students' Challenge to Indiana University's Vaccine Mandate

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Hundreds of colleges and universities across the country, both public and private, have issued policies requiring students be fully vaccinated against COVID-19 prior to the start of the fall semester. In the first court case to address a challenge to a university's COVID-19 vaccination mandate, the Northern District of Indiana denied a preliminary injunction motion filed by eight students seeking to enjoin Indiana University from enforcing its policy requiring the COVID-19 vaccine for the fall 2021 semester. *Klaassen et al. v. The Trustees of Indiana University*, No. 1:21-CV-00238 (N.D. Ind. July 18, 2021).

While the court did not issue a final decision on the merits of the case, it found the students failed to establish a likelihood of success on the merits of their constitutional claim, as well as failed to establish the requirements needed to grant a preliminary injunction.

### Indiana University Policy

Similar to many mandatory COVID-19 vaccination policies, Indiana University's policy requires all students, faculty, and staff be fully vaccinated before returning to campus in August. The policy, however, allows both religious and medical exemptions from the COVID-19 mandatory vaccination policy. In addition, students enrolled in an online program that does not require them to come onto campus are not required to be vaccinated.

Students approved for an exemption from the mandatory vaccination requirement based on religious or medical reasons are permitted to be on campus, but are required to participate in more frequent mitigation testing, quarantine following exposure to COVID-19, and wearing a mask in public. Exempted students are required to return to their permanent residence in the event of a serious outbreak.

### District Court Decision

In their motion to enjoin Indiana University from enforcing its vaccination policy, the students argued that Indiana University's vaccine mandate violates substantive due process rights secured by the Fourteenth Amendment to the United States Constitution. The court did not see it that way. The court held the students had numerous choices and were not forced to be vaccinated as they argued. For example, the students could transfer to a school that did not require the vaccine, take classes online, take a semester off since the University stated they would reassess the mandate after the fall semester, or, if they qualified for an exemption, they could mask, practice social distancing, and be tested for COVID-19. Indeed, the court found that since potentially seven out of the eight plaintiffs qualified for either medical or religious exemptions, the students failed to show irreparable harm or an inadequate remedy at law since they could go onto campus subject to the masking, social distancing, and surveillance testing. The court further found that the one student who is not eligible for exemption has a low likelihood of success as she did not show her interest outweighed the University's legitimate aim of public health and safety for its students, faculty, and staff.

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This decision was the first of its kind, which the court itself noted. It stated, "No case to date has decided the constitutionality of whether a public university, such as Indiana University, may mandate that its students receive a COVID-19 vaccine." However, in denying the students' preliminary injunction motion, the court answers a major question: "How should the law respond to state action that infringes on the People's liberties during such times?" In answering this question, the court

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leaned on U.S. Supreme Court precedent (*Jacobson v. Massachusetts*, 197 U.S. 11 (1905)) and reviewed expert testimony concerning the current health climate around the country, herd immunity, and risks of vaccination.

A motion for a preliminary injunction is an “extraordinary remedy.” Although the court believed bodily autonomy to be a constitutionally protected right, it determined this right is not a fundamental right requiring anything more than rational basis review. The court noted, however, that this review does not mean a court will give “blind deference to the government when it acts in the name of public health or in a pandemic.” It said, “In short, the court stated that the Constitution doesn’t permit the government to declare a never-ending public emergency and expand its powers arbitrarily. Instead, as our country and communities progress through a pandemic, the government must continually update its practices in light of the most recent medical and scientific developments.”

Therefore, the court concluded that, as it stands today, Indiana University has a rational basis for requiring its students to be vaccinated. Public health vis-à-vis COVID-19 has not waned from being a legitimate state interest. According to the district court, this is true even in today’s improved public health climate, citing guidance from government agencies and health officials. And, while experts may disagree about the best course of action as we have seen throughout the COVID-19 pandemic, the court stated it is not up to a court to “intervene so long as the university’s process is rational in trying to achieve public health.”

The students promptly appealed this decision to the Seventh Circuit Court of Appeals and moved once again to stay the University from enforcing its vaccination policy while the Court of Appeals reviews the case. The district court once again denied this request.

We will continue to monitor this case and how the Seventh Circuit handles this case on appeal.

Please contact a Jackson Lewis attorney with any questions about the decision and its implications for universities and other educational institutions.

(Summer law clerk Nicholas Bonelli contributed to this article.)

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