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COMMENTARY

*THE IMPLICATIONS OF THE SUPREME COURT'S DECISION TO UPHOLD
INDIANA UNIVERSITY'S VACCINE MANDATE*

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On August 12, 2021, the Supreme Court denied a request by students at Indiana University to block the school's requirement that they receive the COVID-19 vaccine.¹ The request, reviewed by Justice Amy Coney Barrett, was the first case about vaccination requirements to reach the Supreme Court. The decision forecasts current and future vaccine mandate cases, which are likely to surface given the surging number of cases and hospitalizations across the country.²

The case at issue, *Klaassen v. Trustees of Indiana University*, centers around a decision the university made in May to require all faculty, students, and staff to be vaccinated unless they applied and qualified for a religious or medical exemption.³ In June, eight students sued the university, claiming the mandate violated their right to "bodily integrity" and due process under the U.S. Constitution's Fourteenth Amendment.⁴

In July, U.S. District Court Judge Damon Leichty denied the students' request for a preliminary injunction, finding "the Fourteenth Amendment permits Indiana University to pursue a reasonable and due process of vaccination in the legitimate interest of public health for its students, faculty, and staff."⁵ Judge Leichty reasoned that while students seeking to avoid vaccination may have to forego a semester of school,

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¹ Andrew Chung, *Students can't Block Indiana University Vaccine Mandate –U.S. Supreme Court's Barrett*, REUTERS (Aug. 12, 2021, 2:24 PM), <https://www.reuters.com/world/us/supreme-courts-barrett-rejects-indiana-university-students-vaccine-mandate-2021-08-12/>.

² See *Harris v. Univ. of Massachusetts, Lowell*, No. 21-CV-11244-DJC, 2021 WL 3848012 (D. Mass. Aug. 27, 2021) (upholding the University of Massachusetts' vaccine mandate).

³ *Klaassen v. Trustees of Indiana Univ.*, 7 F.4th 592, 592 (7th Cir. 2021).

⁴ *Id.*

⁵ *Klaassen v. Trustees of Indiana Univ.*, No. 1:21-CV-238 DRL, 2021 WL 3073926 at *1 (N.D. Ind. July 18, 2021).

the students have the option to leave to another university that doesn't require a vaccine.⁶ Given the university's interest in mandating vaccines, the Judge concluded that the "balance of harms tilts heavily in favor of the university."⁷ The students appealed.⁸

The U.S. Court of Appeals for the Seventh Circuit similarly denied the students' request.⁹ In an opinion authored by Judge Easterbrook, the court compared the case to *Jacobson v. Massachusetts*. *Jacobson* was a 1905 Supreme Court case that held "a state may require all members of the public to be vaccinated against smallpox."¹⁰ Judge Easterbrook argued that given *Jacobson*, "there can't be a constitutional problem with vaccination against SARS-CoV-2."¹¹ He further articulated that this case is easier than *Jacobson* for two reasons.¹² First, *Jacobson* lacked exemptions for adults while here, the university has provided religious and medical exemptions.¹³ And second, the state of Indiana is not requiring every member of the public to receive a vaccine, as opposed to *Jacobson* in which it was required by the state of Massachusetts.¹⁴ The university's vaccine requirement had survived another court.

On August 6, 2021, the students requested relief from the Supreme Court.¹⁵ Their arguments claiming constitutional violations mirrored those they made to the lower courts.¹⁶ Without giving reason or referring the matter to the other justices, Justice Barrett rejected the students' plea.¹⁷

It seems improbable that the Supreme Court will come to a different conclusion in future vaccine mandate cases, given the precedent set by *Jacobson* and now, *Klaassen*. Future cases are likely to arise given that hundreds of colleges and universities across the country have mandated the COVID-19 vaccine, as have many private employers.¹⁸ Moreover, various municipalities have begun implementing vaccine mandates for businesses.¹⁹

On a related issue, on September 9, 2021, the Biden Administration announced a vaccine mandate on all private employers with more than 100 employees.²⁰ Employers will have the choice to either (1) ensure employees in the workplace are vaccinated, or (2) have unvaccinated employees in the workplace present negative test results on at least a weekly basis.²¹ Issues are likely to arise as to whether the federal

⁶ *Id.* at *43.

⁷ *Id.*

⁸ *Klaassen*, 7 F.4th at 592.

⁹ *Id.* at 594.

¹⁰ *Jacobson v. Massachusetts*, 197 U.S. 11, 25 (1905).

¹¹ *Klaassen*, 7 F.4th at 593.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Amy Howe, *Barrett Leaves Indiana University's Vaccine Mandate in Place*, SCOTUSBLOG (Aug. 12, 2021, 9:40 PM), <https://www.scotusblog.com/2021/08/barrett-leaves-indiana-universitys-vaccine-mandate-in-place/>.

¹⁶ Chung, *supra* note 1.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See e.g., COVID-19 Policy Tracker, MULTISTATE (last updated Sept. 10, 2021), <https://www.multistate.us/issues/covid-19-policy-tracker>.

²⁰ President Joseph Biden, Remarks by President Biden on Fighting the COVID-19 Pandemic (Sept. 9, 2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/09/09/remarks-by-president-biden-on-fighting-the-covid-19-pandemic-3/>.

²¹ *Id.*

government has authority to mandate these vaccines and at least twenty-four states have threatened to bring a legal challenge against the Biden Administration over this rule.²²

In sum, the Supreme Court's decision to uphold Indiana University's vaccine mandate will likely have implications for future cases surrounding vaccine mandates. These cases are almost inevitable given the vaccine mandates colleges, universities, companies, municipalities, and now, the Biden Administration, have implemented across the country. It is reasonable to assume that while *Klaassen* might have been the first COVID-19 vaccine mandate case to reach the Supreme Court, it likely won't be the last.

²² Harper Neidig, *24 States Threaten Legal Action Over Biden's Vaccine Mandate*, THE HILL (Sept. 16, 2021, 3:32 PM) <https://thehill.com/regulation/court-battles/572649-24-states-threaten-legal-action-over-bidens-vaccine-mandate>.