

117TH CONGRESS
2D SESSION

H. R. 6811

To permit civil actions against the United States or any State or local government entity for COVID–19 vaccination mandates.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 22, 2022

Mrs. HARSHBARGER (for herself, Mr. BANKS, Mr. POSEY, Mr. LAMALFA, Mr. WEBER of Texas, Mr. BABIN, Mr. NORMAN, and Ms. HERRELL) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To permit civil actions against the United States or any State or local government entity for COVID–19 vaccination mandates.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Americans’
5 Medical Rights Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) Government-imposed COVID–19 vaccine
9 mandates that threaten Americans’ jobs and liveli-

1 hoods are authoritarian, unnecessary, overreaching,
2 irrational, and needlessly divisive, and lack a pur-
3 ported scientific basis for public health needs.

4 (2) The policy of the United States is to recog-
5 nize, defend, and protect the inherent rights of the
6 individual, including the right of liberty, the right to
7 be secure in one's person, the right of the individual
8 to be informed about any medical procedures, treat-
9 ment, or vaccination, and the right of the individual
10 to provide or withhold consent to such procedures,
11 treatment, or vaccination.

12 (3) Data from the Centers for Disease Control
13 and Prevention (CDC) confirm that while COVID–
14 19 vaccination can lessen the severity of illness for
15 individuals in certain higher risk categories, it
16 DOES NOT preclude Americans from contracting,
17 spreading, or being hospitalized by the COVID–19
18 virus.

19 (4) As a medical matter, the COVID–19 vac-
20 cine may not be appropriate for everyone. Because
21 of potential risks that COVID–19 vaccines may pose
22 to certain people, it is important that every patient
23 be able to consult his or her doctor or other medical
24 health care provider to determine whether one of the
25 COVID–19 vaccines is safe and appropriate.

1 (5) A significant body of peer-reviewed sci-
2 entific studies concludes that COVID–19 vaccines
3 are among a wide range of clinical public health
4 tools available and accessible to Americans for miti-
5 gating the effects of the COVID–19 virus.

6 (6) Other scientifically confirmed clinical safe-
7 guard tools for mitigating and protecting against
8 COVID–19 include—

9 (A) the durable and lasting protection of
10 natural immunity from previous COVID–19 in-
11 fection;

12 (B) therapeutics, including oral antiviral
13 medications;

14 (C) periodic testing;

15 (D) air filtration or purification systems;

16 (E) choosing to wear masks, shields, and
17 other personal protective equipment (PPE);

18 (F) remote work settings; and

19 (G) social distancing.

20 (7) Wise and constitutionally permissible gov-
21 ernment policies aimed at mitigating adverse public
22 health effects from COVID–19 must be based on
23 clear and consistent scientific evidence, while re-
24 specting the fundamental individual liberties and
25 freedoms enshrined in the Constitution. Such poli-

1 cies must also seek the path or combinations of
2 paths that least infringe on individual liberties to
3 achieve public health gains.

4 (8) Due in large part to the vacillating, arbi-
5 trary, inconsistent, and at times nontransparent and
6 scientifically tenuous COVID–19 guidances issued
7 by the CDC and other government agencies, Ameri-
8 cans may have legitimate questions, concerns, and
9 confusion about what best serves their medical needs
10 with respect to the COVID–19 virus.

11 (9) Americans holding such legitimate questions
12 and concerns—or being opposed to COVID–19 vac-
13 cine mandates—DOES NOT equate to their being
14 “antivaccine” or “antiscience”. It is altogether and
15 entirely consistent for Americans to be “provaccine”
16 for what makes sense for their and their family’s
17 personal health needs in consultation with their
18 board-certified physician or other health care pro-
19 vider, and also be “antivaccine mandate”.

20 (10) To date, there is no scientific data to sug-
21 gest employment settings pose any increased or spe-
22 cial risk for COVID–19 transmission among individ-
23 uals, as compared to home, social, or other gath-
24 erings.

1 (11) The protection of individual rights to make
2 one's own medical decisions in consultation with
3 one's health care provider—without fear of coercion,
4 forced vaccination, loss of civil liberties, or risk of
5 adverse employment action—is especially needed at
6 a time when it is critical for the Nation to increase
7 trust in public health officials. Protection of these
8 individual rights is also vital for encouraging, where
9 and when medically appropriate, vaccination or other
10 scientific measures for keeping Americans safe and
11 healthy.

12 (12) Under current law, Americans who sustain
13 adverse health effects or injuries resulting from
14 COVID-19 vaccination generally have minimal and
15 restricted compensation recourses. They are gen-
16 erally confined to the notoriously stingy Counter-
17 measures Injury Compensation Program (CICP).

18 (13) The CICP is managed through an admin-
19 istrative process, where there is no court, judge, or
20 right to appeal. Decisions about compensation are
21 made in a figurative black hole by a nameless ad-
22 ministrator. Compensation for lost wages and death
23 benefits are arbitrarily capped, there is no oppor-
24 tunity for collecting damages for pain and suffering,
25 and there is only a one-year statutory limit for mak-

1 ing a claim. In addition, there is no compensation
2 for attorney fees, which makes it extremely difficult
3 for vaccine-injured Americans to find counsel willing
4 to represent them.

5 (14) Since the advent of the COVID–19 vac-
6 cines and as of February 1, 2022, there have been
7 NO compensation awards issued by the CACP for
8 COVID–19 vaccine injury claims.

9 (15) The United States constitutional structure
10 demands measures of accountability for government
11 actions that infringe individual liberties and could
12 cause harm. If Congress or the courts fail to nullify,
13 overturn, or invalidate unnecessary, authoritarian,
14 and overreaching COVID–19 vaccine mandates that
15 threaten the loss of employment for noncompliance,
16 Americans oppressed by such mandates and coerced
17 into vaccination should be able to hold governments
18 accountable. They should have full and unfettered
19 access to legal recourses for any adverse health ef-
20 fects or injuries sustained from such COVID–19
21 vaccine mandates. This should include the right to
22 bring civil actions for declaratory or injunctive relief,
23 or monetary compensatory damages, including eco-
24 nomic and noneconomic damages, against Federal,

1 State, and local government entities that impose
2 such mandates.

3 (16) It is well-established that Congress' power
4 under article I, section 8, clause 1 of the Constitu-
5 tion, also known as the Spending Clause, includes
6 the power to require the States to abide by certain
7 conditions in exchange for receiving Federal finan-
8 cial assistance. The Supreme Court has explained
9 that one such lawful condition may be States volun-
10 tarily waiving their sovereign immunity from suit
11 (under the Eleventh Amendment to the Constitution
12 or otherwise). *South Dakota v. Dole* (483 U.S. 203
13 (1987)); *College Savings Bank v. Florida Prepaid*
14 *Postsecondary Education Expense Board* (527 U.S.
15 666 (1999)).

16 (17) Such a conditional waiver does not coerce
17 a State. The Supreme Court has explicitly recog-
18 nized that when Congress expresses a funding condi-
19 tion "unambiguously", a State's acceptance of Fed-
20 eral funds constitutes a knowing agreement to a
21 congressionally imposed condition on the funds.
22 *Pennhurst State School & Hospital v. Halderman*
23 (451 U.S. 1, 17 (1981)). Accordingly, while Con-
24 gress may not compel States to waive their sovereign

1 immunity, a voluntary State waiver is wholly permis-
2 sible. *Alden v. Maine* (527 U.S. 706 (1999)).

3 (18) This Act protects Americans’ constitu-
4 tional medical rights by ensuring that individuals
5 subject to a scientifically tenuous “Hobson’s Choice”
6 of employment-threatening COVID–19 vaccine man-
7 date, where they feel forced into vaccination against
8 their will, are able to seek equitable and appropriate
9 legal remedies for any COVID–19 vaccine injuries,
10 remedies that are extremely limited or disallowed
11 under current law.

12 (19) This Act further protects Americans’ con-
13 stitutional medical rights by holding Federal, State,
14 and local governments accountable for unnecessary,
15 irrational, overreaching, and liberty-infringing
16 COVID–19 vaccine mandates, when many other sci-
17 entifically proven, and less liberty-intrusive, tools
18 exist for mitigating the effects of and protecting
19 against COVID–19.

20 **SEC. 3. DEFINITIONS.**

21 In this Act:

22 (1) AGGRIEVED INDIVIDUAL.—The term “ag-
23 grievied individual” includes—

24 (A) an individual who received or is re-
25 quired to receive a COVID–19 vaccine as a re-

1 sult of Executive Order 14042 or 14043 to pre-
2 vent the termination, or any other adverse con-
3 sequence, of the employment of the individual
4 with a Federal agency, or as a condition of new
5 employment;

6 (B) an individual who received a COVID-
7 19 vaccine as a result of a Federal agency re-
8 quirement (or is required to do so by the indi-
9 vidual’s employer acting pursuant to a Federal
10 agency requirement) as a condition of new or
11 continued employment, including a COVID-19
12 vaccine requirement resulting from—

13 (i) the rule titled “COVID-19 Vac-
14 cination and Testing; Emergency Tem-
15 porary Standard” published on November
16 5, 2021 (86 Fed. Reg. 61402 et seq.); or

17 (ii) the rule titled “Medicare and
18 Medicaid Programs; Omnibus COVID-19
19 Health Care Staff Vaccination” published
20 November 5, 2021 (86 Fed. Reg. 61555 et
21 seq.); and

22 (C) an individual who received or is re-
23 quired to receive a COVID-19 vaccine as a re-
24 sult of a State or local governmental require-
25 ment, or by their employer that is acting pursu-

1 ant to a State or local governmental require-
 2 ment, as a condition of new or continued em-
 3 ployment.

4 (2) COVID-19 VACCINE.—The term “COVID-
 5 19 vaccine” means a vaccine that is intended to pre-
 6 vent or mitigate coronavirus disease 2019, including
 7 any booster to such a vaccine.

8 (3) FEDERAL AGENCY.—The term “Federal
 9 agency” means any department, agency, office, or
 10 other entity in the executive branch of the Federal
 11 Government.

12 (4) INJURIES.—The term “injuries” includes
 13 any adverse health effects, reactions, and other ad-
 14 verse health consequences, including incapacity or
 15 wrongful death, resulting from COVID-19 vaccina-
 16 tion.

17 **SEC. 4. CIVIL ACTIONS AGAINST THE UNITED STATES OR**
 18 **ANY STATE OR LOCAL GOVERNMENT ENTITY**
 19 **FOR COVID-19 VACCINATION MANDATES.**

20 (a) ACTION AUTHORIZED.—In lieu of seeking com-
 21 pensation under sections 319F-3 and 319F-4 of the Pub-
 22 lic Health Service Act (42 U.S.C. 247d-6d, 247d-6e), any
 23 aggrieved individual, or in the case of a deceased aggrieved
 24 individual his or her survivors, may commence an action
 25 against the United States, or against any State or local

1 governmental entity, whichever imposed the applicable re-
2 quirements, in an appropriate district court of the United
3 States, seeking declaratory or injunctive relief and com-
4 pensatory damages, including economic and noneconomic
5 damages, for injuries sustained by the aggrieved individual
6 as a result of receiving a COVID–19 vaccine.

7 (b) LIABILITY.—The United States and any State or
8 local governmental entity, whichever imposed the applica-
9 ble requirements, shall be liable to any aggrieved indi-
10 vidual, or in the case of a deceased aggrieved individual
11 his or her survivors, for injuries sustained by the aggrieved
12 individual as a result of receiving a COVID–19 vaccine.

13 (c) ATTORNEY’S FEES.—The court may award attor-
14 ney’s fees to an aggrieved individual who prevails in an
15 action under this section (or to his or her survivors who
16 so prevail if applicable).

17 **SEC. 5. VOLUNTARY WAIVER OF STATE AND LOCAL SOV-**
18 **EREIGN IMMUNITY AS CONDITION OF RE-**
19 **CEIVING ANY FEDERAL FUNDING RELATED**
20 **TO COVID–19.**

21 The receipt or use, on or after the date of enactment
22 of this Act, of any Federal funding related to COVID–
23 19 by a State or political subdivision of a State (including
24 any municipal or county government) is deemed to con-
25 stitute a clear and unequivocal expression of, and agree-

1 ment to, waiving sovereign immunity under the 11th
2 Amendment to the Constitution or otherwise, to a civil ac-
3 tion for declaratory or injunctive relief, compensatory
4 damages, and attorney's fees under section 4.

5 **SEC. 6. RULE OF CONSTRUCTION.**

6 Nothing in this Act may be construed to permit or
7 otherwise authorize a COVID–19 vaccination mandate
8 under Federal law (including any regulation).

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