

No.

**In The
Supreme Court of the United States**

SCOTT TROOGSTAD, et al,

Petitioner,

v.

CITY OF CHICAGO,

Respondents

On Petition for Certiorari to the Seventh Circuit
Court of Appeal

PETITION FOR WRIT OF CERTIORARI

*Jonathan Lubin
8800 Bronx Ave.
Suite 100H
Skokie, IL 60077
773 954 2608
jonathan@lubinlegal.com

**Counsel of Record*

QUESTIONS PRESENTED

I. Whether the City of Chicago violated substantive due process in requiring employees to be vaccinated against COVID-19 as a condition of their employment.

PARTIES TO THE PROCEEDINGS BELOW

Petitioners are employees of the City of Chicago. They include the following individuals: SCOTT TROOGSTAD, MARCUS HARRIS, GARY DUSZAK, TIMOTHY SERBIN, RAUL DE LEON, JOHN CUNNINGHAM, KENNETH BREZINA, MARZENA SEMRAU, JOHN KNIGHT, MICHAEL ZACH, ELVIS PEREZ, NICHOLAS FORTUNA, MEGHAN MICHAELSEN, JAMES WALSH, JEFFREY SUTTER, JENNIFER KARABOYAS, JAMES DUIGNAN, NICK PANTALEO, STEPHEN HODO, DAVID MARTIN, DANIEL RIEGER, KELLY JOINER, ANGELA BANDSTRA, PHILIP MARX, JOSEPH FORCHIONE, MARK ABRATANSKI, RICH CLEMENS, KRYSTAL KRANZ, GRANT VOSBURGH, IRENE RES, MATT PALLER, BRIAN BRANTLEY, DANIEL KAIRIS, ANTHONY ZUMARAS, RICHARD LOUZON, FELIX SERRANO, LUIS QUINONES, ROBERT SKALSKI, RYAN KELLY, ROBERTO CORONADO, EDWARD SANTIAGO, MICHELLE MAXWELL, BRENDAN BERRY, PAUL O'CONNOR, WENDY LUCIANO, JULIAN SANTOS, STEVE ANDOLINO, JOSEPH CUDAR, MICHAEL OUELLETTE, ROBERT STOPKA, CHRIS GRANDE, FLETCHER PRESTIDGE, COLLIN DUSZAK, THOMAS FLAVIN, SETH MARTINEZ, MICHELE MARTINEZ, PHILIP MOCKLER, DANIEL BAUMGARTNER, SCOTT CHIBE, EMILY PECORARO, ANTHONY PECORARO, CHRISTOPHER ESTHERHAMMER-FIC, SANDRA CHLEBOWICZ, CHRIS KING, JOHN DARDANES, DAWN HEDLUND, DAVID LEON, VICTOR MARTIN, FRANK PHEE, ROBERT MORRIS, NICOLAS MINGHETTINO, MICHAEL CANNON, NICHOLAS SMITH, ROBERT THOMPSON, WILLIAM HURLEY, RYAN FRANZEN, DANIEL KRANZ, JAMES SPALLA, STEVEN DORICH, ROY ANDERSON, JR., DAVID MUELLER, MICHAEL RICHIED,

WESLEY SIENKIEWICZ, CLINT RIVERA, KEVIN FERGUSON, JEFFREY KING, ARLETT PAYNE, KELLE SIMZ, SCOTT ROONEY, HEATHER SCHERR, BERNARD CONSIDINE, LEAH LAFEMINA ESCALANTE, STEPHEN COYNE, REBIA BRADLEY, TRANG NGUYEN, GARY HORKAVY, JAIME QUEZADA, THOMAS SERBIN, RAUL MOSQUEDA, RAYMOND WILKE, MICHAEL MALLOY, STEVEN PALUCK, BRET LANDIS, JOHN HERZOG, JOHN BORNER, MICHAEL DAHL, PABLO DELGADO, SHELTON DAVIS, DANIEL KOENIG, JANET CONTURSI, MATT WIECLAWEK, ANTHONY BAGGETT, MICHAEL CRIEL, MATTHEW JOSEPH PUSATERI, JOSE A. PEREZ, THOMAS T. MORRIS, DANIEL McDERMOTT, MITCHELL FIGUEROA, ADAM SAWYER, JOANN IMPARATO, JOHN MULLANEY, MICHAEL REPEL, JAMES RAPPOLD, MONO KACHATORIAN, MATTHEW A. BALANDES, SAAR BRUCE SHAAR, DUHAMEL RENFORT, ANTHONY MARTIN MAGGIO, CHRISTOPHER J. KAHR, ERIK GOFF, TIMOTHY MALOY, and WILLIAM PARKER.

Respondent is the City of Chicago, Defendant in the lawsuit. Governor Jay Robert Pritzker was a defendant in the underlying lawsuit, but none of the claims against Governor Pritzker are relevant to this Petition.

Corporate Disclosure Statement Pursuant to Rule
26(6)

No Plaintiff in this matter is a corporation or other business entity. Therefore, no Plaintiff has a parent corporation, and no corporation owns 10% or more of the stock in any Plaintiff.

Table of Contents

QUESTIONS PRESENTED	ii
PARTIES TO THE PROCEEDINGS BELOW	iii
OPINIONS BELOW	1
CONSTITUTIONAL PROVISIONS AND STATUTES AT ISSUE	3
STATEMENT OF THE CASE.....	3
ARGUMENT	7
I. Plaintiffs have a substantive due process right to refuse to vaccinate against COVID-19 that was violated when the City of Chicago threatened termination against employees who refused to vaccinate.	7
B. This Court has recognized that personal autonomy from forced medical interventions is a fundamental right entitled to protection.	9
C. Jacobson must be read in context.	13
D. Several of this Court’s Justices have indicated a willingness to rethink Jacobson.	18
E. Accepting this Petition for Writ of Certiorari will give this Court occasion to clarify the limits and extents of substantive due process in the wake of Dobbs.....	21
CONCLUSION.....	22
APPENDIX.....	a

Table of Authorities

Cases

<u>Buck v. Bell</u> , 274 U.S. 200 (1927)	16
<u>Calvary Chapel Dayton Valley v. Sisolak</u> , 140 S.Ct. 2603 (2020)	20
<u>Chrysafis v. Marks</u> , 141 S.Ct. 2482 (2021)	20
<u>Cruzan v. Director, Mo. Dep’t of Health</u> , 497 U.S. 261 (1990)	11, 13
<u>Dobbs v. Jackson Women’s Health Org.</u> , 597 U.S. 215 (2022)	10, 13, 21, 22
<u>FDA v. American Coll. of Ob.</u> , 141 S.Ct 10 (2020) ...	20
<u>Halgren v. City of Naperville</u> , 577 F.Supp.3d 700 (N.D. Ill., 2021)	14, 15, 17
<u>Lukaszczyk v. Cook County</u> , 47 F.4th 587 (7th Cir., 2022)	15
<u>McDougall v. County of Ventura</u> , 23 F.4th 1095 (9th Cir., 2022)	19, 21
<u>Olmstead v. United States</u> , 277 US 438 (1928)	12
<u>Planned Parenthood of Southeastern Pennsylvania v. Casey</u> , 505 U.S. 833 (1992)	10, 13, 21
<u>Roe v. Wade</u> , 410 U.S. 113 (1973)	9, 13, 21
<u>Roman Cath. Diocese of Brooklyn v. Cuomo</u> , 141 S.Ct. 63 (2020)	14, 18, 19
<u>Roman Cath. Diocese of Brooklyn v. Cuomo</u> , 592 U.S. 14 (2020)	14
<u>S. Bay. Pentecostal Church v. Newsom</u> , 590 U.S. ___, 140 S.Ct. 1613 (2020)	19
<u>Sell v. United States</u> , 539 US 166 (2003)	12
<u>Tandon v. Newsom</u> , 141 S.Ct. 1294 (2021)	19

<u>Washington v. Glucksberg</u> , 521 U.S. 702 (1997)	10, 13
<u>Washington v. Harper</u> , 494 US 210 (1990)	 11, 12
<u>Winston v. Lee</u> , 470 US 753 (1985)	 12

Other Authorities

28 U. S. C. § 1257(a)	 2
Myhre, J, <i>Sterilizing Immunity and COVID-19 Vaccines</i> , Verywell Health (Dec. 24, 2020)	 15
Patterson, Grace E., <i>Societal Impacts of Pandemics: Comparing COVID-19 With History to Focus Our Response</i> , <i>Frontiers in Public Health</i> (Apr. 21, 2021)	 15

Regulations

85 Fed. Register 52, March 17, 2020	 8
-------------------------------------	---------

Constitutional Provisions

Subramanian, S.V., Kumar, A. <i>Increases in COVID-19 are unrelated to levels of vaccination across 68 countries and 2947 counties in the United States</i> . <i>Eur J Epidemiol</i> (2021)	 9
---	---------

OPINIONS BELOW

This matter comes before this Court after the United States District Court for the Northern District of Illinois dismissed the Third Amended Complaint with prejudice on September 9, 2024. The Seventh Circuit Court of Appeals denied Plaintiffs' appeal on December 9, 2025. This matter was previously appealed after a denial of a petition for Preliminary Injunction filed in the matter of Troogstad v. City of Chicago, 21 CV 5600 (now published as Troogstad v. City of Chicago, 576 F.Supp.3d 578 (N.D., Ill, 2021), before the United States District Court for the Northern District of Illinois, and a decision of the Seventh Circuit Appellate Court, Lukaszczyk v. Cook County, 47 F.4th 587 (7th Cir., 2022), which consolidated this matter, 21-3371, with two other matters, affirming that decision.

On September 9, 2024, the Court dismissed the Third Amended Complaint with prejudice. On September 10, 2024, the Court reissued the same decision, adding language addressing Passarella v. Aspirus, Inc., 108 F.4th 1005 (7th Cir., 2024). The decision was otherwise the same.

The Seventh Circuit issued that decision as an unpublished decision under F.R.App.P 32.1 on Dec. 9, 2025.

JURISDICTION

A complaint was filed on October 21, 2021 in the United States District Court for the Northern District of Illinois. The District Court had jurisdiction pursuant to 28 U.S.C. § 1331 because the Complaint sought relief under 42 U.S.C. § 1983 and under the US Constitution. On Sept. 9, 2024, Hon. Thomas M. Durkin dismissed the Third Amended Complaint. On September 20, 2024, Plaintiff filed a Motion to Reconsider. On March 10, 2025, the District Court denied that Motion. A timely Notice of Appeal was filed on April 3, 2025. The Seventh Circuit Appellate Court affirmed the decision of the Northern District of Illinois on December 9, 2025. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES AT ISSUE

Fourteenth Amendment to the Constitution

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law.

STATEMENT OF THE CASE

A complaint was filed on October 21, 2021. The basis of the Complaint was that Plaintiffs were all employees of the City of Chicago, mostly members of the Fire Department or the Water Department. They complained of the City of Chicago's COVID-19 vaccination policy that required them to vaccinate against COVID-19 in order to keep their jobs. Plaintiffs had various objections to the vaccine, including religious and secular objections. Though the policy allowed Plaintiffs to seek an accommodation from the policy on religious grounds or on medical grounds, the City's forms had various unconstitutional requirements. For example, they required employees seeking a religious accommodation to get their requests for a religious

accommodation signed by some religious or spiritual leader.

A Petition for a Temporary Restraining Order and Preliminary Injunction was filed at the same time. The Complaint and Petition sought an injunction barring the City of Chicago from penalizing its employees who have refused, for a variety of reasons, to take the COVID-19 vaccine.

The subjects of the Petition were two-fold: a State of Illinois mandate requiring health workers (including many Plaintiffs, who were employees of the City of Chicago Fire Department) to vaccinate against COVID-19 or be subject to weekly (and then bi-weekly) COVID-19 tests, and a City of Chicago mandate requiring all of its employees (including all Plaintiffs) to vaccinate against COVID-19. The State of Illinois mandate has since been withdrawn and is not a subject of this Petition. The Chicago mandate had a process by which employees could seek an accommodation from the policy on both medical and religious grounds. However, the religious accommodation process required employees to obtain the signature of a clergy member, to identify their religion, the specific aspect of the religion that required an accommodation from the policy, an explanation of how the religion prevented vaccination, and a statement about whether the religion or religious principle required the employee to refrain generally from vaccinations or other medical products, or just the COVID-19 vaccines.

The Northern District of Illinois denied the Temporary Restraining Order on November 24, 2021, in Troogstad v. City of Chicago, 571 F.Supp.3d 901 (N.D. Ill., 2021). Though that Order was not an interlocutory order from which an appeal can be taken, the Court's reasoning in that Order was adopted later, by reference, in its Order denying the Petition for a Preliminary Injunction. The Preliminary Injunction was denied on December 21, 2021 in Troogstand v. City of Chicago, 576 F.Supp.3d 578 (N.D., Ill, 2021).

A timely Notice of Appeal was filed on December 22, 2021. The Seventh Circuit Appellate Court affirmed the decision of the Northern District of Illinois on August 29, 2022. Lukaszczyk v. Cook County, 47 F.4th 587 (7th Cir., 2022).

The decision of the Seventh Circuit Appellate Court offered many of the same reasons for denial of the Preliminary Injunction that were offered by the District Court. However, it also offered a new reason: the Petition largely rested on principle of substantive due process articulated in, *inter alia*, Roe v. Wade, 40 US 113 (1973) and Planned Parenthood of Southeastern Pa. v. Casey, 505 US 844 (1992). This Court overturned both of those decisions in Dobbs v. Jackson Women's Health Organization, 597 US 215 (2022). As this Petition will argue, this Court's decision in Dobbs does not mean that the Petition was properly denied.

On September 9, 2024, the Court dismissed the Third Amended Complaint with prejudice. On

September 10, 2024, the Court reissued the same decision, adding language addressing Passarella v. Aspirus, Inc., 108 F.4th 1005 (7th Cir., 2024), which had at that point been recently decided. A timely Notice of Appeal was filed.

The Seventh Circuit, in ruling on the substantive due process count, largely invoked its decision in Lukaszczyk v. Cook County, 47 F.4th 587 (7th Cir., 2022), into which Troogstad had been consolidated when Plaintiffs in the instant matter appealed the denial of a preliminary injunction. Specifically, it found that any alleged intrusion into bodily autonomy for the purpose of promoting public health was subject to rational basis review under Jacobson v. Commonwealth of Massachusetts, 197 US 11 (1905), and its progeny. It therefore upheld the denial of a preliminary injunction. That decision, appealed from here, was a nonprecedential decision to be cited only in accordance with F.R.App.P 32.1.

ARGUMENT

I. Plaintiffs have a substantive due process right to refuse to vaccinate against COVID-19 that was violated when the City of Chicago threatened termination against employees who refused to vaccinate.

This is the second time that these parties have sought certiorari on the question of their substantive due process rights. The last time was with respect to a request for a preliminary injunction. Therefore, to succeed on the merits, Plaintiffs would have had to demonstrate that they were entitled to a preliminary injunction – not merely that their interest in bodily autonomy was entitled to constitutional protection.

Here, the question is more straightforward: is bodily autonomy constitutionally protected from the requirement to vaccinate? This is an important question because Plaintiffs, like many others who were forced to choose between vaccination against COVID-19 and various penalties (loss of employment, government bans from places of public accommodation, etc.), had various reasons for not wanting to vaccinate. In some cases, the reasons were religious. In other cases, the reason was understandable apprehension at new medicines that were hastily created and subject to zero long-term testing. This apprehension has been vindicated in the short years since vaccine mandates and social pressure forced most Americans to vaccinate against

COVID-19. The Johnson and Johnson vaccine, for example, is no longer available in America. One of several reasons is that it causes an increased risk of several potentially lethal complications, including Guillain-Barré Syndrome¹. The FDA now requires warning labels to be attached to mRNA COVID-19 vaccines due to incidents of potentially life-threatening myocarditis and pericarditis².

Therefore, if someone was hesitant to vaccinate in 2022, the next several years vindicated that skepticism: we have learned a good deal about these vaccines in the years since they were introduced. Particularly given that vaccine manufacturers are granted immunity from liability due to vaccine injuries (See 85 Fed. Register 52, March 17, 2020), the “vaccine skepticism” of these Plaintiffs is understandable, particularly in retrospect. But under the prevailing interpretation of this Court’s precedents, there is no limit to what a state or municipal government can force a person to do (including to forcibly vaccinate) so long as it claims that the basis is public health. This was despite the fact that even at the time of Chicago’s employee mandate, there were already meta-studies demonstrating that there was no statistical correlation between levels of vaccination and COVID-

¹ <https://www.cdc.gov/vaccine-safety/vaccines/covid-19.html>

² <https://www.fda.gov/vaccines-blood-biologics/safety-availability-biologics/fda-approves-required-updated-warning-labeling-mrna-covid-19-vaccines-regarding-myocarditis-and>

19 cases. Subramanian, S.V., Kumar, A. *Increases in COVID-19 are unrelated to levels of vaccination across 68 countries and 2947 counties in the United States*. Eur J Epidemiol (2021)³.

This Petition therefore asks an important question. Lower courts have answered this question by pointing to Jacobson v. Commonwealth of Massachusetts, 197 US 11 (1905). But, as will be argued here, Jacobson stands for something much more modest than how it has been interpreted. It's been invoked here, and in the past, to provide cover for wild abuses of power, despite its modest holding. It is time for this Court to reconsider that holding, perhaps to tweak it, and perhaps to abrogate it altogether.

B. This Court has recognized that personal autonomy from forced medical interventions is a fundamental right entitled to protection.

This Court has ruled that personal autonomy against forced medical interventions is a fundamental right, and a historically recognized right, several times in the last century. When this matter was initially filed, Plaintiffs sought support for their claims of personal autonomy under Roe v. Wade, 410 U.S. 113 (1973) and Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992). The Seventh Circuit Appellate Court, in

³ <https://doi.org/10.1007/s10654-021-00808-7>

rejecting Plaintiffs’ initial appeal in 2022 noted that Dobbs v. Jackson Women’s Health Org., 597 U.S. 215 (2022) overruled those decisions. Dobbs, however, finds that “[w]hat sharply distinguishes the abortion right from the rights recognized in the cases on which Roe and Casey rely is something that both those decisions acknowledged: Abortion destroys what those decisions call ‘potential life’ and what the law at issue in this case regards as the life of an ‘unborn human being.’”

This Court found, in effect, that the right to personal autonomy (in that case: the right to an abortion) cannot categorically be found to overcome the right to life of the unborn. But Dobbs did not abrogate the concept of personal autonomy or privacy. Rather, it found that any substantive due process right must be deeply rooted in this Nation’s history and tradition and implicit in the concept of ordered liberty. *Id.* at 2242, citing Washington v. Glucksberg, 521 U.S. 702, 721 (1997). Post-Dobbs, therefore, a party seeking recognition of a substantive due process right must point to some recognition of the right’s existence in the history of the country. The right to be free from unwanted medical intrusion qualifies as such a right.

In turn, Glucksberg recognized that “the common-law doctrine of informed consent is viewed as generally encompassing the right of a competent individual to refuse medical treatment.” *Id.* at 724, citing Cruzan v. Director, Mo. Dep’t of Health, 497 U.S. 261, 277 (1990). “The principle that a competent

person has a constitutionally protected liberty interest in refusing unwanted medical treatment may be inferred from our prior decisions.” *Id.* at 724-5, citing Cruzan, 497 U.S. at 278. It could therefore be inferred that a competent person could refuse even life-saving treatment. *Id.*

Cruzan explicitly cited Jacobson in arriving at the above-cited conclusion. Cruzan, 497 U.S. at 278. The decision notes the subject matter of the Jacobson decision but notably does not cite its ultimate holding. Instead, it pivots into discussing other examples of this Court’s longstanding recognition of the fundamental right of personal autonomy against unwanted medical treatment. *Id.* Some of those examples follow here.

This Court recognized that individuals possess a “significant liberty interest” in avoiding unwanted administration of drugs. Washington v. Harper, 494 US 210, 221 (1990). In a partial dissent, Justice Stevens (along with Justices Brennan and Marshall) noted that “[e]very violation of a person’s bodily integrity is an invasion of his or her liberty. The invasion is particularly intrusive if it creates a substantial risk of permanent injury and premature death. Moreover, any such action is degrading if it overrides a competent person’s choice to reject a specific form of medical treatment.” *Id.* at 237 (Stevens, J., dissenting). The partial dissent cites Justice Brandeis, noting that the Founders “conferred, as against the Government, the right to be let alone — the most comprehensive of rights and

the right most valued by civilized men.” *Id.* at 238, citing Olmstead v. United States, 277 US 438, 478 (1928)(Brandeis, J., dissenting).

The interest in bodily autonomy is strong, but not unassailable, of course. For example, “it is ordinarily justifiable for the community to demand that the individual give up some part of his interest in privacy and security to advance the community's vital interests in law enforcement.” Winston v. Lee, 470 US 753, 759 (1985). Nonetheless, “[a] compelled surgical intrusion into an individual's body for evidence, however, implicates expectations of privacy and security of such magnitude that the intrusion may be ‘unreasonable’ even if likely to produce evidence of a crime.” *Id.* Similarly, a prisoner awaiting trial may only be forced to take antipsychotic drugs if an “essential” and “overriding” state interest is implicated. Sell v. United States, 539 US 166, 179 (2003). Stated otherwise, “important government interests” must be at stake before the imposition can be constitutionally sound. *Id.* at 180. And even then, there must be an individualized determination rather than sweeping policies. That expression, “important government interest” is very similar to strict-scrutiny language, as opposed to rational basis scrutiny.

While the Harper, and Winston decisions pertain to the rights of incarcerated persons, they establish that there is a robust protection for people’s personal and bodily autonomy. They weigh that interest against various state interests, including the

penological interest. In Glucksberg and Cruzan, these interests were recognized as paramount (though not so paramount that one was entitled to physician-assisted suicide).

Given that the right of personal autonomy has been recognized as against forced medical interventions, Plaintiffs' objections to the vaccine mandates here are on solid constitutional ground even post-Dobbs. In contrast to Roe and Casey, the right to life is not implicated here; only the right to personal autonomy is.

The rejoinder is that forced (or at least compelled) vaccination somehow serves the public good. Even if that claim was empirically sound, however, this Court's rulings in the above-referenced matters do not permit sweeping policies to replace individualized determinations; and they recognize, chiefly, that there is a liberty interest in refusing unwanted medical treatment. That liberty interest is meaningless if it is so subservient to principles of public health that it can be abrogated wholesale so long as some governmental body claims that it is in the interest of public health *regardless of any other consideration*.

C. Jacobson must be read in context.

The last time this Court addressed the question of compulsory vaccination head-on was in 1905, in the decision of Jacobson v. Commonwealth of Massachusetts, 197 US 11 (1905). In construing

Jacobson, this Court and others have found that it applied what would later be identified as “rational basis” scrutiny. See Roman Cath. Diocese of Brooklyn v. Cuomo, 592 U.S. 14, 24-5 (2020)(Gorsuch, J., concurring).

In the Jacobson decision, this Court considered the validity of a Massachusetts statute that required all persons to receive the smallpox vaccine. Jacobson, 197 US at 12. The penalty was a \$5 fine (the equivalent of \$140 today). *Id.*, see Roman Cath. Diocese of Brooklyn, 592 U.S. at 24-5 (Gorsuch, J., concurring). The law contained an exception for children deemed unfit for vaccination who presented a certificate signed by a registered physician. Jacobson, 197 US at 12-13. This Court determined that such a requirement is “not an unusual... requirement.” *Id.* at 27. It further found that any such requirement designed to “protect the public health” was constitutional unless it lacks “real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law.” *Id.* at 31. By contrast, if a policy has “no real or substantial relation” to its ends, courts have a duty to intervene. *Id.* at 31.

The Seventh Circuit Appellate Court pointed out (citing Halgren v. City of Naperville, 577 F.Supp.3d 700 (N.D. Ill., 2021)) that the vaccine at issue here is substantially different than the vaccine at issue in Jacobson. COVID-19 has a “low attack rate” in contrast to the smallpox pandemic. Lukaszczyk v. Cook County, 47 F.4th 587, 600-1 (7th

Cir., 2022); See Patterson, Grace E., *Societal Impacts of Pandemics: Comparing COVID-19 With History to Focus Our Response*, *Frontiers in Public Health* (Apr. 21, 2021). Further, the smallpox vaccine is a sterilizing vaccine. That means that one who is vaccinated, largely, is immune to smallpox. This is not the case with the COVID-19 vaccines. Myhre, J, *Sterilizing Immunity and COVID-19 Vaccines*, *Verywell Health* (Dec. 24, 2020).

Halgren is extremely detailed in its treatment of the subject: There are significant differences between the smallpox vaccine at issue in Jacobson and the various COVID-19 vaccines at issue here. The Court explained “indeed, asymptomatic transmission by both vaccinated and unvaccinated persons may account for more than half of all transmissions.” *Id.* (citation omitted). For this reason, the CDC (at that point) was recommending masking regardless of vaccination status. *Id.* at 714. That decision also noted the significant differences between COVID-19 and smallpox. COVID-19 had an infection fatality range between 0 and 1.63 percent. Smallpox had an infection fatality rate of 3 percent. Its death toll exceeded World War I and II combined. *Id.* at 722.

Therefore, there is a context in which Jacobson must be placed. Interpreting it as allowing almost any invasion of autonomy in the name of public health extends its ambit into potentially dangerous territory. This is not merely the invocation of the slippery slope fallacy. Rather, Jacobson has been

interpreted in downright scary manners. In Buck v. Bell, 274 U.S. 200 (1927), this Court ruled that “imbeciles” may be preemptively sterilized for the betterment of public welfare. It directly cited Jacobson for that conclusion:

It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes. Jacobson v. Massachusetts, 197 U.S. 11. Three generations of imbeciles are enough. *Id.* at 207.

Indeed, a Court ruling on the identical question today would be hard-pressed to explain why Jacobson does not apply in exactly the same way, particularly given how it has been interpreted since COVID-19 became a factor. While the political winds have shifted away from the eugenics movement that made decisions like Buck seem reasonable (indeed, a proper response to it, in the modern day, is to recoil in horror), the modern interpretation of Jacobson offers no explanation whatsoever for why Buck should not be the law today: if a governmental body

claims that it is acting in the interests of public health, it has *carte blanche*.

This is particularly true given that, as Halgren ultimately found, “the legislative act may be based on rational speculation unsupported by evidence or empirical data” and “the state need not produce evidence to sustain its decision.” Halgren, 577 F.Supp.3d at 738. That is to say, the present interpretation of Jacobson as binding law means that there is nearly no limitation (and certainly no limitation that has been recognized) to the invasion into autonomy that a government body may institute so long as it claims to be acting in the name of public health; and this does not change one iota if the government’s justification is entirely specious.

Therefore, a Court ruling on COVID-19 mandates, particularly post-2022 or so, must at least recognize the differences between the context of Jacobson, and the instant one. Halgren once again provides the roadmap: “Finally, there will come a time—perhaps never quite soon enough—that the worst of the epidemic ends, and in the absence of exigency and the immediate need for health protections for the community, a court's review need not be so forgiving.” *Id.* at 724, citing Jacobson, 197 U.S. at 27; Calvary Chapel Dayton Valley v. Sisolak, 140 S.Ct. 2603, 2605 (2020)(Alito, J., dissenting)(“At the outset of an emergency, it may be appropriate for courts to tolerate very blunt rules, but a public health emergency does not give public officials *carte blanche* to disregard the Constitution for as long as

the medical problem persists.”) There is no doubt that Justice Alito is correct in noting that a public health emergency does not give public officials *carte blanche* to disregard the Constitution indefinitely. But as a practical matter, that is what occurred; and while this Court has offered relief from overreaches on equal protection and other grounds, blanket policies – like the vaccine mandate here – were still allowed to occur with the imprimatur of this Court based upon Jacobson.

D. Several of this Court’s Justices have indicated a willingness to rethink Jacobson.

Since COVID-19 appeared on the shores of this country, not a single decision of this Court has squarely addressed Jacobson, despite the fact that it was cited time and time again as a basis for allowing any and all kinds of government actions. But in that time, several of this Court’s Justices have questioned Jacobson, largely in concurrences and dissents. This Petition gives this Court an opportunity to finally address the matter head-on.

Perhaps most notably, Justice Gorsuch issued a dire warning in his concurrence in Roman Cath. Diocese of Brooklyn v. Cuomo, 141 S.Ct. 63 (2020):

Why have some mistaken this Court's modest decision in Jacobson for a towering authority that overshadows the Constitution during a pandemic? In

the end, I can only surmise that much of the answer lies in a particular judicial impulse to stay out of the way in times of crisis. But if that impulse may be understandable or even admirable in other circumstances, we may not shelter in place when the Constitution is under attack. Things never go well when we do. *Id.* at 71.

The Ninth Circuit catalogued some of the other examples of Justices of this Court questioning deference to Jacobson, or refusing altogether to apply it when it would seem to fit. McDougall v. County of Ventura, 23 F.4th 1095 (9th Cir., 2022): “In several recent cases evaluating public health orders issued in response to the COVID pandemic, the Supreme Court applied strict scrutiny and ignored Jacobson entirely.” *Id.* at 1108. The decision then chain cites several such decisions. For example, that decision cites Tandon v. Newsom, 141 S.Ct. 1294 (2021), which overturned a decision upholding specific restrictions on houses of worship during COVID. It cited Roman Cath. Diocese, *supra*, adding that the Chief Justice’s dissent in that decision appears to downplay an earlier invocation of Jacobson in the Chief Justice’s concurrence in S. Bay. United Pentecostal Church v. Newsom, 590 U.S. ___, 140 S.Ct. 1613 (2020). The McDougall Court notes that, as of 2022 when it was decided, the only time the Supreme Court cited Jacobson in *support* of some

COVID-era regulation was in that aforementioned concurrence (agreeing with the majority's decision to deny certiorari) in S. Bay United Pentecostal Church. Incidentally, this may not entirely be true. Justices Sotomayor and Kagan (along with Justice Breyer) joined in dissenting from a grant of injunctive relief in Chrysafis v. Marks, 141 S.Ct. 2482 (2021), which addressed a New York act that placed a moratorium on evictions and foreclosures during the COVID-era. They cited Justice Roberts' concurrence in S. Bay United Pentecostal Church, which cited Jacobson in their treatment. Other than that, however, McDougall is correct.

Justice Thomas (joined by Justice Alito), criticized the Supreme Court's acquiescence to COVID-19 mitigation policies, pointing to the same concurrence in FDA v. American Coll. of Ob., 141 S.Ct 10 (2020)(dissenting). In a different dissent (also from a decision not to grant a preliminary injunction) in Calvary Chapel Dayton Valley v. Sisolak, 140 S.Ct. 2603 (2020), Justices Alito, Thomas and Kavanaugh similarly criticized deference to Jacobson: "it is a mistake to take language in Jacobson as the last word on what the Constitution allows public officials to do during the COVID-19 pandemic. Language in Jacobson must be read in context." *Id.* Both of those dissents cited Jacobson and indicated that its reach should be limited. In simple mathematical terms, that is four of nine Justices indicating explicitly that there is room to question Jacobson.

Given that this treatment, though largely confined to individual concurrences and even dissents, has been interpreted as skepticism about the extent of Jacobson's ambit, the Supreme Court should accept certiorari in order to finally address it. "As the Supreme Court has repeatedly indicated, national crises do not water down the application of Constitutional rights—instead, the need to protect those rights is especially acute during those times." McDougall, 23 F.4th at 1108-9.

With the emergency safely in the past, it is time to address Jacobson. The next time a public health emergency threatens Americans, G-d forbid, the American people deserve clarity as to what will be allowed, and what is off limits.

E. Accepting this Petition for Writ of Certiorari will give this Court occasion to clarify the limits and extents of substantive due process in the wake of Dobbs.

Accepting certiorari in this matter will give this Court an opportunity to clarify Dobbs. By overruling Roe and Casey, this Court left open the question of the limits of substantive due process. In this case, that central right – the right to be left alone – is squarely implicated.

Finally, when analyzing substantive due process questions, this Court has, until now, recognized only two forms of scrutiny: rational basis scrutiny, and strict scrutiny. For the reasons that

have been addressed here, some form of scrutiny that is less deferential than rational basis scrutiny should be employed here. In the equal protection context, an intermediate form of scrutiny exists that has, to date, not been recognized in the substantive due process context. See Dobbs, 142 S.Ct at 2353. Perhaps now is the time to similarly tweak the treatment of substantive due process.

Forcing healthy people to preemptively take medication that may do little to ameliorate against the target virus at the potential risk of negative side-effects (including, potentially, death) is a violation of a right that should be viewed as fundamental, particularly where, as here, the target virus did not threaten the lives of most healthy younger and middle-aged individuals, like Scott Troogstad and many or most of the other co-Plaintiffs. That the vaccines could be associated with serious adverse effects – even if, as some have argued, the chance of adverse effects is small – also mitigates in Plaintiffs favor. However slight the possibility is of death or harm, Plaintiffs’ employment with the government should not be contingent upon accepting that risk. That would be true if the vaccines had been effective at preventing the spread of COVID-19. It is all the more true since the evidence does not demonstrate that the vaccines did limit the spread of COVID-19.

CONCLUSION

Based on the foregoing, Petitioner respectfully requests that this Honorable Court grant this Petition so that this violation of Substantive Due Process can be addressed.

Dated: January 27,

Respectfully Submitted,

s/Jonathan Lubin

Attorney for Plaintiff/Appellants

Jonathan Lubin
8800 Bronx Ave.
Suite 100-H
Skokie, IL 60077
773 954 2608
jonathan@lubinlegal.com

APPENDIX

November 24, 2021 Decision of the United States District Court for the Northern District of Illinois Denying a Temporary Restraining Order.....	2a
December 21, 2021 Decision of the United States District Court for the Northern District of Illinois, Hon. John Z. Lee, Denying a Petition for a Preliminary Injunction.....	44a
August 29, 2022 Decision of the Seventh Circuit Court of Appeals.....	70a
Sept. 10, 2024 Decision of the United States District Court for the Northern District of Illinois, Hon. Thomas M. Durkin, Dismissing Plaintiff's Complaint with Prejudice.....	110a
Dec. 9, 2025 Decision of the Seventh Circuit Court of Appeals.....	119a

In the United States District Court for the Northern
District of Illinois

No. 21 C 5600 (Also reported as 571 F.Supp.3d 901)

2021-11-24

Scott TROOGSTAD et al., Plaintiffs, v. The CITY OF
CHICAGO and Governor Jay Robert Pritzker,
Defendants.

Jonathan D. Lubin, Attorney at Law, Skokie, IL, for
Plaintiffs. Michael A. Warner, Jr., William R.
Pokorny, Franczek Radelet PC, Celia Meza, City of
Chicago Law Department, Erin Kathryn Walsh,
Richard Jason Patterson, Franczek P.C., Chicago, IL,
for Defendant City of Chicago. Hal Dworkin, Mary
Alice Johnston, Office of Illinois Attorney General,
Chicago, IL, for Defendant Jay Robert Pritzker.

John Z. Lee, United States District Judge

Jonathan D. Lubin, Attorney at Law, Skokie, IL, for
Plaintiffs.

Michael A. Warner, Jr., William R. Pokorny,
Franczek Radelet PC, Celia Meza, City of Chicago
Law Department, Erin Kathryn Walsh, Richard
Jason Patterson, Franczek P.C., Chicago, IL, for
Defendant City of Chicago.

Hal Dworkin, Mary Alice Johnston, Office of Illinois
Attorney General, Chicago, IL, for Defendant Jay
Robert Pritzker.

MEMORANDUM OPINION AND ORDER

John Z. Lee, United States District Judge

Various employees of the City of Chicago have filed this case to challenge Governor J.B. Pritzker's Executive Order 2021-22 as well as the City's mandatory vaccination policy. Along with the complaint, Plaintiffs filed a motion for a temporary restraining order. The Court denied that motion on October 29, 2021. This Memorandum Opinion and Order memorializes that ruling.

I. Factual Background

In response to the ongoing COVID-19 pandemic and the rise of the significantly more transmissible Delta variant of the virus, Illinois Governor J.B. Pritzker signed Executive Order 2021-22 ("EO 2021-22") on September 3, 2021. EO 2021-22 mandates that all health care workers be fully vaccinated against COVID-19 or submit to weekly COVID-19 testing by September 19, 2021. Def. Gov. J.B. Pritzker's Resp. Opp'n Pls.' Pet. TRO ("Def. J.B. Pritzker's Resp.") Ex. A (EO 2021-22) § 2(a)(i), ECF No. 14. The order provides exemptions to the vaccination requirement for persons for whom vaccination is "medically contraindicated" and for whom vaccination would require violating "a sincerely held religious belief, practice, or observance." *Id.* § 2(e). Persons who qualify for either exemption must submit to weekly testing. *Id.*

EO 2021-22 defines "Health Care Worker" as

any person who (1) is employed by, volunteers for, or is contracted to provide services for a Health Care Facility, or is employed by an entity that is contracted to provide services to a Health Care Facility, and (2) is in close contact (fewer than 6 feet) with other persons in the facility for more than 15 minutes at least once a week on a regular basis as determined by the Health Care Facility.

EO 2021-22 § 2(a)(i). (Sept. 3, 2021). It defines "Health Care Facility" as

any institution, building, or agency, or portion of an institution, building or agency, whether public or private (for-profit or nonprofit), that is used, operated or designed to provide health services, medical treatment or nursing, or rehabilitative or preventive care to any person or persons.

Id. § 2(a)(ii). EO 2021-22 also implements vaccination mandates for primary and secondary school teachers and personnel; higher education teachers, personnel, and students; and employees at "State-owned or operated congregate facilities." *Id.* §§ 3–5.

Specifically, EO 2021-22 mandates that all covered persons "have, at a minimum, the first dose of a two-dose COVID-19 vaccine series or a single-dose

COVID-19 vaccine by September 19, 2021, and the second dose of a two-dose COVID-19 vaccine series within 30 days following administration of their first dose in a two-dose vaccination series." *Id.* § 2(a)(i).

Following Governor Pritzker's order, the City of Chicago announced its own mandatory vaccination policy ("City Vaccination Policy"). Unlike EO 2021-22, the City's vaccine mandate covers all City employees, *see* Def. City of Chicago's Resp. Pls.' Emergency Pet. TRO ("Def. City's Resp."), Ex. B1 (City Vaccination Policy) § II, ECF No. 18, requiring them either to be fully vaccinated by October 15, 2021, or submit to biweekly COVID-19 testing. *Id.* § IV.A–B. And unlike EO 2021-22, the City Vaccination Policy contains a sunset provision that ends the option to submit to biweekly testing as an alternative to vaccination on December 31, 2021. *Id.* After that date, full vaccination (or an approved medical or religious exemption) will become a "condition of employment." *Id.* § IV.B.

Plaintiffs are employees of the City of Chicago who work for the City's Fire, Water, and Transportation Departments. *See* Compl. ¶¶ 5–139, ECF No. 1. Some Plaintiffs allege that they have already contracted COVID-19, while others do not believe they have had the virus. *See id.* Forty-five Plaintiffs have applied for a religious exemption from the City Vaccination Policy. *See* Def. City's Resp., Ex. B, Owen Decl. ¶ 13. Five of these exemptions have been

denied, and the rest are still pending as of the date of the October 29, 2021 hearing. *Id.*

Plaintiffs oppose EO 2021-22 and the City Vaccination Policy because they believe requiring vaccination and testing as a condition of continued employment violates their constitutional rights and Illinois law. They bring claims against both Governor Pritzker and the City, alleging that EO 2021-22 and the City Vaccination Policy violate their substantive due process, procedural due process, and free exercise rights. Plaintiffs also bring claims against both Defendants under the Illinois Healthcare Right of Conscience Act, [745 Ill. Comp. Stat. 70/1](#) *et seq.*

To prevent the orders from taking effect, Plaintiffs seek a temporary restraining order that:

1. Enjoins the Governor from enforcing EO 2021-22's requirement that all health care workers, firefighters, EMTs, and paramedics be fully vaccinated against COVID-19, until the Court rules on their motion for a preliminary injunction or for the duration of the lawsuit;
2. Enjoins the City of Chicago from enforcing the City Vaccination Policy, which requires all City employees to be vaccinated against COVID-19 or submit to biweekly testing, and will require vaccination as a condition of employment, until the Court rules on their motion for a preliminary injunction or for the duration of the lawsuit; and

3. Enjoins the Governor and the City from terminating or taking disciplinary action against employees who refuse to be vaccinated or submit to COVID-19 testing, until the Court rules on their motion for a preliminary injunction or for the duration of the lawsuit.

II. Legal Standard

As the Seventh Circuit has stated repeatedly, a temporary restraining order or a preliminary injunction is "an exercise of a very far-reaching power, never to be indulged in except in a case clearly demanding it." *Orr v. Shicker*, [953 F.3d 490, 501](#) (7th Cir. 2020) (quoting *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S. of Am., Inc.*, [549 F.3d 1079, 1085](#) (7th Cir. 2008)). And to obtain such drastic relief, the party seeking the relief—here, the Plaintiffs—carries the burden of persuasion by a clear showing. *See Mazurek v. Armstrong*, [520 U.S. 968, 972, 117 S.Ct. 1865, 138 L.Ed.2d 162](#) (1997).

When considering a motion for temporary restraining order, the Court must employ the same test as a request for a preliminary injunction: the plaintiff has the burden to show (1) a likelihood of success on the merits; (2) irreparable harm; and (3) that the balance of the equities and the public interest favors emergency relief. [Fed. R. Civ. P. 65\(b\)\(1\)\(A\)](#) ; *see Winter v. Nat. Res. Def. Council*, [555 U.S. 7, 22, 129 S.Ct. 365, 172 L.Ed.2d 249](#) (2008).

The Court then weighs these factors in what the Seventh Circuit has called a "sliding scale" approach. That is, "[t]he more likely the plaintiff is to win, the less heavily need the balance of harms weigh in his favor; the less likely he is to win, the more need it weigh in his favor." *Valencia v. City of Springfield*, [883 F.3d 959, 966](#) (7th Cir. 2018) (internal quotation marks omitted). And "[w]here appropriate, this balancing process should also encompass any effects that granting or denying the preliminary injunction would have on nonparties (something courts have termed the 'public interest')." *Id.*

Additionally, the Court notes that its ruling is based upon the factual record currently before it on October 29, 2021. The complaint and motion were filed on October 21, 2021. The responses were filed on October 25, 2021, and Plaintiffs' reply brief was filed on October 28, 2021. Neither side has had an opportunity for discovery regarding the various factual and scientific contentions raised in the parties' briefs, and a more fulsome factual record may shed additional light on some of the arguments raised in the case.

Furthermore, the Court notes that Plaintiffs' motion papers do not precisely define the scope of the right to bodily integrity upon which they rely. Most often, Plaintiffs rely on a right to be free from having to take vaccines. At others, Plaintiffs appear to object to

being forced to perform self-administered COVID tests as part of one's employment. The Court focuses here on the first, because that is where the parties aim most of their arguments, but the Court believes its rationale disposes of the second as well.

During the last hearing, Plaintiffs' counsel also talked about the right to be free from having to disclose one's medical information to one's employer. But this is nowhere to be found in Plaintiffs' pleadings or motion papers, and so the Court does not consider it to be raised in this motion.

III. Analysis

I. Likelihood of Success on the Merits

The first factor—"likelihood of success on the merits"—requires the plaintiff to make a "strong showing that she is likely to succeed on the merits" of her claim; a mere "possibility of success is not enough" to warrant emergency relief. *Ill. Republican Party v. Pritzker*, [973 F.3d 760, 762](#) (7th Cir. 2020). This showing "does not mean proof by a preponderance," but requires the plaintiff to provide facts and legal theories supporting "the key elements of its case." *Id.* at 763. The Court will address each of Plaintiffs' claims in turn.

A. Substantive Due Process Claim

Plaintiffs first allege that EO 2021-22 and the City Vaccination Policy violate substantive due process. A

substantive due process claim requires the plaintiff to "allege that the government violated a fundamental right or liberty." *Campos v. Cook Cnty.*, [932 F.3d 972, 975](#) (7th Cir. 2019). The violation must also be "arbitrary or irrational," because "substantive due process protects against only the most egregious and outrageous government action." *Id.*

According to Plaintiffs, requiring them to be vaccinated and submit to regular testing as a condition of employment infringes their fundamental right to bodily autonomy. More specifically, Plaintiffs argue that the vaccination and testing requirements violate the fundamental right to refuse unwanted medical treatment as articulated in *Cruzan v. Director, Missouri Department of Health*, [497 U.S. 261, 110 S.Ct. 2841, 111 L.Ed.2d 224](#) (1990) and *Washington v. Harper*, [494 U.S. 210, 110 S.Ct. 1028, 108 L.Ed.2d 178](#) (1990). From this, they assert that, because they have identified a fundamental right at stake, the Supreme Court's decisions in *Roe v. Wade*, [410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147](#) (1973) and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, [505 U.S. 833, 112 S.Ct. 2791, 120 L.Ed.2d 674](#) (1992), require the Court to apply strict scrutiny to the vaccination orders. Plaintiffs' substantive due process argument is not likely to succeed on the merits for several reasons.

1. The Seventh Circuit's *Klaassen* decision

As an initial matter, Plaintiffs' argument that the Defendants' vaccine orders infringe their fundamental right to bodily autonomy runs squarely in the face of the Seventh Circuit's recent decision in *Klaassen v. Trustees of Indiana University*, [7 F.4th 592](#) (7th Cir. 2021). There, the Seventh Circuit upheld Indiana University's recent vaccination, masking, and testing requirements against a challenge from a group of students, who asserted nearly identical substantive due process claims. *See id.* at 593 ; *Klaassen v. Trs. of Ind. Univ.* , — F. Supp. 3d —, —, 2021 WL 3073926, at *22 (N.D. Ind. July 18, 2021) ("The students assert a right to refuse the vaccine, saying the mandate infringes on their bodily autonomy and medical privacy."). The students, like Plaintiffs here, argued that the vaccine requirement comprised an invasion of bodily privacy that merited strict scrutiny. *Klaassen*, — F. Supp. 3d at —, 2021 WL 3073926, at *17.

The Seventh Circuit in *Klaassen* soundly rejected that argument. It instructed that the Supreme Court's decision in *Jacobson v. Massachusetts* , [197 U.S. 11](#), [25 S.Ct. 358](#), [49 L.Ed. 643](#) (1905), "shows that plaintiffs lack" a substantive due process right not to be vaccinated against [COVID-19](#). *Klaassen*, [7 F.4th at 593](#). The court further noted that the University's testing requirements "cannot be constitutionally problematic" considering the

sweeping vaccine mandates
that *Jacobson* authorized. *Id.*

Plaintiffs' attempts to distinguish *Klaassen* are unconvincing. Plaintiffs first assert that *Klaassen* is outdated because the pandemic is less severe now than it was when the case was decided and because "*Klaassen* ... does not address the newest information ... about vaccine efficacy, or the superiority of natural immunity to vaccine immunity." See Pls.' Reply Supp. Prelim. Inj. ("Pls.' Reply") at 10, ECF No. 25. But the severity of the pandemic at Indiana University did not materially factor into the Seventh Circuit's analysis, and the Court is not convinced that *Klaassen* would have come out differently had COVID-19 cases been at current levels. Indeed, other courts to consider the same question in more recent weeks have come to the same conclusion. See, e.g., *We The Patriots USA, Inc. v. Hochul*, [17 F.4th 266](#), —, 2021 WL 5121983, at *18 (2d Cir. 2021).

Furthermore, the questions Plaintiffs raise about the efficacy of vaccines as compared to natural immunity do not persuade the Court that Defendants' policies lack a rational basis. Nor does the Court believe the comparative efficiencies of vaccine immunity versus natural immunity (at least, as depicted on this record) would have altered the Seventh Circuit's holding.

Plaintiffs next argue that *Klaassen*, which addressed a vaccination requirement for university students, ought not apply to vaccination requirements for public employees because "the determination to terminate or not to renew a public employment contract cannot be premised upon the employee's protected activities." Pls.' Reply at 12 (quoting *Perry v. Sindermann*, [408 U.S. 593](#), [92 S.Ct. 2694](#), [33 L.Ed.2d 570](#) (1972)). But this argument misinterprets *Klaassen*. *Klaassen* did not hold that *Jacobson* permitted the university to violate the fundamental right of students not to be vaccinated. Instead, *Klaassen* held that no such substantive due process right exists in the first instance. See *Klaassen*, [7 F.4th at 593](#) (noting that the students' "argument depends on the existence of a fundamental right ingrained in the American legal tradition. Yet *Jacobson* ... shows that plaintiffs lack such a right.").

Plaintiffs alternatively argue that *Jacobson*, which figured heavily in *Klaassen*'s analysis, should not guide the Court's due process analysis because "it is part of a bygone era in American jurisprudence" akin to the Supreme Court's discredited decisions in *Buck v. Bell*, [274 U.S. 200](#), [47 S.Ct. 584](#), [71 L.Ed. 1000](#) (1927), and *Korematsu v. United States*, [323 U.S. 214](#), [65 S.Ct. 193](#), [89 L.Ed. 194](#) (1944). Pls.' Mot. TRO ("TRO Mot.") at 5, ECF No. 4. But the Supreme Court has given no indication that *Jacobson* is void, and this Court cannot ignore binding precedent

simply because Plaintiffs find it to be antiquated. Indeed, just this past year, Chief Justice Roberts cited favorably to *Jacobson*. See *S. Bay United Pentecostal Church v. Newsom*, — U.S. —, [140 S. Ct. 1613](#), [1613](#), [207 L.Ed.2d 154](#) (2020) (mem.) (Roberts, C.J., concurring in denial of application for injunctive relief). What is more, the Seventh Circuit has cited *Jacobson* numerous times throughout the course of the pandemic as a yardstick for evaluating constitutional challenges to governmental responses to [COVID-19](#). See *Democratic Nat'l Comm. v. Bostelmann*, [977 F.3d 639](#), [643](#) (7th Cir. 2020) (citing *Jacobson* for the proposition that "[d]eciding how best to cope with difficulties caused by disease is principally a task for the elected branches of government"); *Ill. Republican Party*, [973 F.3d at 763](#) ("The district court appropriately looked to *Jacobson* for guidance, and so do we."); *Elim Romanian Pentecostal Church v. Pritzker*, [962 F.3d 341](#), [347](#) (7th Cir. 2020) (citing *Jacobson*, [197 U.S. 11](#), [25 S.Ct. 358](#), [49 L.Ed. 643](#)).

2. Whether a Fundamental Right Exists

Numerous other circuit courts and district courts across the country have done the same. See, e.g., *We The Patriots*, 17 F.4th at —, — & — n.35, 2021 WL 5121983, at *15, *18 & *18 n.35 ("*Jacobson* is still binding precedent." *Id.* at — n.35, 2021 WL 5121983, *18 n.35); *Big Tyme Invs., L.L.C. v. Edwards*, [985 F.3d 456](#), [466–68](#) (5th Cir.

2021) ; *Robinson v. Att'y Gen.*, [957 F.3d 1171, 1179, 1182](#) (11th Cir. 2020) ; *7020 Ent., LLC v. Miami-Dade Cnty.* , [519 F. Supp. 3d 1094, 1105](#) (S.D. Fla. 2021) ; *Tandon v. Newsom* , [517 F. Supp. 3d 922, 949](#) (N.D. Cal. 2021) ; *Mass. Corr. Officers Federated Union v. Baker*, — F. Supp. 3d —, —, 2021 WL 4822154, at *6 (D. Mass. Oct. 15, 2021) (applying *Jacobson* to reject plaintiffs' substantive due process challenges to a similar vaccine mandate for Massachusetts state employees).

But, even if the Seventh Circuit's decision in *Klaassen* did not command this result, the Court concludes that Plaintiffs have not shown that the vaccine and testing orders in question implicate their fundamental right to bodily autonomy.

Plaintiffs' reliance upon the Supreme Court's right-to-privacy cases does not support their claim that Defendants' policies infringe a fundamental right. As Defendants point out, the issues at stake in *Roe*, *Casey*, *Cruzan*, and *Harper* were "rights to individual bodily autonomy [that] do not impact the public health." Def. J.B. Pritzker's Resp. at 19. When an individual's behavior directly affects the health and welfare of others in the community, she cannot rely on the Supreme Court's longstanding protection of "intimate and personal choices," *Casey* , [505 U.S. at 851, 112 S.Ct. 2791](#), to the utter exclusion of all other interests. *See Cassell v. Snyders* , [990 F.3d 539, 550](#) (7th Cir. 2021) (noting that while "[a]

person's ability to make private choices affecting his or her own body and health is fundamental to the concept of individual liberty that our Constitution protects," plaintiffs who challenged capacity limits on religious services during the peak of the pandemic "[were] not asking to be allowed to make a self-contained choice to risk only their own health"); *see also We The Patriots*, 17 F.4th at — n.35, 2021 WL 5121983, at *18 n.35 (rejecting plaintiffs' comparisons between refusing vaccination and the decisions in *Roe* and *Casey* because "[t]hese cases do not establish a broad fundamental privacy right for all medical decisions made by an individual—and particularly not for a decision with such broad community consequences as declining vaccination against a highly contagious disease").

The core flaw with Plaintiffs' claim that refusing vaccination is a fundamental right, then, is not that there is no privacy interest implicated when someone is required or coerced to take a vaccine that they do not want. There certainly is. Rather, the problem is that, when a person's decision to refuse a vaccine creates negative consequences (even life-threatening at times) for other people, that interest is not absolute. *See We the Patriots*, 17 F.4th at —, 2021 WL 5121983, at *18. As *Jacobson* demonstrated, and numerous cases over the course of the pandemic have reiterated, the right Plaintiffs assert here is limited by "reasonable conditions ... essential to the safety, health, [and] peace" of the public. *Jacobson*, [197 U.S.](#)

[at 26](#), [25 S.Ct. 358](#) ; *see, e.g., We the Patriots*, 17 F.4th at — n.35, 2021 WL 5121983, at *18 n.35 ("[T]he the urgent public health needs of the community can outweigh the rights of an individual to refuse vaccination."). Because the exigencies of the current pandemic justify the degree of intrusion at issue here, Plaintiffs have not demonstrated that Defendants' vaccine and testing policies infringe a fundamental constitutional right.

3. Rational Basis Review

Even though Plaintiffs have not shown that Defendants' vaccine policies infringe a fundamental constitutional right, the Court finds that Plaintiffs have shown (or are likely to show) that these policies do abridge an individual's right to liberty and bodily autonomy to a greater than *de minimis* degree, and the Court will apply rational basis review to their substantive due process claims as the district court did in *Klaassen*, — F. Supp. 3d at —, 2021 WL 3073926, at *22 ; *see Brown v. City of Mich. City*, [462 F.3d 720, 733](#) (7th Cir. 2006) ; *Lee v. City of Chi.*, [330 F.3d 456, 466](#) (7th Cir. 2003). In doing so, the Court keeps in mind that rational basis review is "highly deferential," and to find that a government action lacks a rational basis in this context, a court must find the action "utterly lacking in rational justification." *Brown*, [462 F.3d at 733](#) (quoting *Turner v. Glickman*, [207 F.3d 419, 426](#) (7th Cir. 2000)).

On the present record, Defendants have demonstrated that their vaccination policies have a rational justification. Defendants have submitted a substantial amount of evidence supporting the public health necessity of vaccination and testing in abating the ongoing COVID-19 pandemic. For example, Defendants cite to the findings of the Centers for Disease Control and Prevention ("CDC") that "recommend[] that everyone aged 12 years and older gets vaccinated as soon as possible" and maintain that "vaccines are playing a crucial role in limiting spread of the virus and minimizing severe disease." And Defendants cite numerous peer-reviewed studies bolstering their claims that widespread vaccination is effective at reducing the spread of COVID-19.

Delta Variant: What We Know About the Science, CDC (August 26, 2021) https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html?s_cid=11504:is%20there%20a%20vaccine%20for%20delta%20variant:sem.ga:p; see generally, e.g., *Rates of COVID-19 Cases and Deaths by Vaccination Status*, CDC, <https://covid.cdc.gov/covid-data-tracker/#rates-by-vaccine-status> (last visited November 13, 2021).

See, e.g., Jamie L. Bernal et al., *Effectiveness of Covid-19 Vaccines Against the B.1.617.2 (Delta) Variant*, 385 N. Eng. J. Med. 585 (2021) <https://www.nejm->

org.ezproxy.lib.ntust.edu.tw/doi/full/10.1056/nejmoa2108891; Ashley Fowlkes et al., *Effectiveness of COVID-19 Vaccines in Preventing SARS-CoV-2 Infection Among Frontline Workers Before and During B.1.617.2 (Delta) Variant Predominance — Eight U.S. Locations, December 2020–August 2021*, 70 Morbidity and Mortality Wkly. Rep. 1167 (2021) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8389394>.

Defendants also submitted declarations from government health professionals, attesting that widespread vaccination and testing are instrumental in reducing the severity of the COVID-19 pandemic. *See, e.g.*, Def. J.B. Pritzker's Resp., Ex. A, Bleasdale Decl. ¶ 59; Def. City's Resp., Ex. A, Arwady Decl. ¶¶ 18–22, ECF No. 18-1. These officials, who helped to create and administer the challenged policies, include Dr. Allison Arwady, Chief Medical Officer of the Chicago Department of Public Health; Christopher Owen, Commissioner of Human Resources for the City of Chicago; and Dr. Arti Barnes, Medical Director and Chief Medical Officer of the Illinois Department of Public Health. *See generally* Arwady Decl.; Owen Decl.; Def. J.B. Pritzker's Resp., Ex. B, Barnes Decl. The declarations have presented the scientific rationale behind the vaccine and testing orders at issue, and the Court finds that their statements are credible and provide ample rational justification for the policies.

For example, Dr. Arwady notes that City employees are "approximately twice as likely" to be infected with COVID-19 than residents of Chicago as a whole. Arwady Decl. ¶ 10. She explains that the job duties of City employees often require them to be in close contact with the public in unpredictable situations where the COVID-19 exposure status or vaccination status of the resident is not known. *Id.* ¶ 13. Thus, "developing immunity in all employees who have contact with each other and members of the public" is a key component of the City's strategy to reduce the spread of COVID-19. *Id.* ¶ 11. Furthermore, Dr. Bleasdale explains that vaccines provide a high degree of protection against both contracting COVID-19, *see* Bleasdale Decl. ¶¶ 34–37, and—as suggested by preliminary research—transmitting the virus to others. *Id.* ¶ 42. She therefore concludes that mandating vaccination or weekly testing for healthcare workers, who frequently meet populations especially vulnerable to COVID-19, will help prevent "an increase in sickness and quite possibly death" in the state resulting from the significantly more transmissible Delta variant. *Id.* ¶ 44; *see id.* ¶¶ 25–32.

In response, Plaintiffs argue that Defendants' vaccination policies have no rational basis, because there is evidence that "natural immunity" against COVID-19 is more effective than vaccine-created immunity in preventing transmission. And to support this contention, Plaintiffs rely upon two

academic sources. The first is a study that, while showing that prior infection from COVID-19 results in some degree of immunity, does not compare natural immunity with vaccine-created immunity. The second is an unpublished, non-peer reviewed study conducted in Israel in January and February 2021, to which Defendants have raised serious questions regarding its methodological rigor and reliability. *See* Bleasdale Decl. ¶¶ 46–52; Barnes Decl. ¶ 32. This is the sum total of Plaintiff's evidence.

See Jennifer M. Dan et al., *Immunological Memory to SARS-CoV-2 Assessed for up to 8 Months After Infection*, *Science* (Jan. 6, 2021) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7919858/pdf/abf4063.pdf>.

See Sivan Gazit et al., *Comparing SARS-CoV-2 Natural Immunity to Vaccine-Induced Immunity: Reinfections Versus Breakthrough Infections* (August 25, 2021) (unpublished manuscript) <https://www.medrxiv.org/content/10.1101/2021.08.24.21262415v1.full.pdf>.

When the Court weighs the slim evidence presented by Plaintiffs against the substantial evidence presented by Defendants (particularly the declarations by the medical professionals), the Court finds on this record that Plaintiffs have not met their burden to show that EO 2021-22 and the City Vaccination Policy are "arbitrary or

irrational," *Campos*, [932 F.3d at 975](#), or "utterly lacking in rational justification," *Brown*, [462 F.3d at 733](#).

That said, even if there were robust scientific debate about whether natural immunity is more effective than vaccine-created immunity in preventing the contraction and transmission of COVID-19 (as Plaintiffs contend), this still would not be enough for Plaintiffs to prevail. For a government regulation to have a rational basis, the state need not prove the premises upon which it based the action to a degree of scientific certainty. Rather, the government need only show that its rationale is supported by a "reasonably conceivable state of facts." *Minerva Dairy, Inc. v. Harsdorf*, [905 F.3d 1047, 1053](#) (7th Cir. 2018) (quoting *Ind. Petroleum Marketers & Convenience Store Ass'n v. Cook*, [808 F.3d 318](#) (7th Cir. 2015)). This is a low bar. *See id.*; *Monarch Beverage Co., Inc. v. Cook*, [861 F.3d 678, 683](#) (7th Cir. 2017) (noting that under rational basis review, the government's "proffered rationale for the law ... can be 'based on rational speculation unsupported by evidence or empirical data' " (quoting *F.C.C. v. Beach Commc'ns, Inc.*, [508 U.S. 307, 314, 113 S.Ct. 2096, 124 L.Ed.2d 211](#) (1993))). And, in relying on federal and state public health recommendations, credible academic sources, and the expertise of its own health officials, Defendants have met this burden, even if there might be some scientific disagreement on the issue. *See Vasquez v. Foxx*, [895](#)

[F.3d 515, 525](#) (7th Cir. 2018) (rejecting argument that sex-offender registration policy lacked a rational basis because "scant evidence" supported it, since "[the Court's] role is not to second-guess the legislative policy judgment by parsing the latest academic studies on sex-offender recidivism").

Numerous courts have come to the same conclusion for substantially similar reasons. *See Does 1-6 v. Mills*, [16 F.4th 20, 32](#) (1st Cir. 2021) (a state vaccine mandate "easily" passed rational basis review), *application for injunctive relief denied sub nom. Does 1-3 v. Mills*, — U.S. —, — S. Ct. —, —, — L.Ed.2d —, 2021 WL 502177 (mem.) (1st Cir. Oct. 29, 2021) ; *We The Patriots*, 17 F.4th at —, 2021 WL 5121983, at *15 (same); *Norris v. Stanley*, — F. Supp. 3d —, — — —, 2021 WL 4738827, at *3–4 (W.D. Mich. Oct. 8, 2021) (holding that, in response to a similar argument that Michigan State University failed to consider natural immunity in imposing a vaccine mandate, "even if there is vigorous ongoing discussion about the effectiveness of natural immunity, it is rational for MSU to rely on present federal and state guidance in creating its vaccine mandate," *id.* at —, 2021 WL 4738827, *3); *Kheriaty v. Regents of Univ. of Cal.*, No. SACV 21-01367 JVS (KESx), 2021 WL 4714664, at *8 (C.D. Cal. Sept. 29, 2021) (rejecting claim that university's choice not to exempt previously infected students from vaccine mandate lacked a rational basis because "merely drawing different conclusions

based on consideration of scientific evidence does not render the Vaccine Policy arbitrary and irrational").

Because Plaintiffs cannot show that Defendants' vaccination policies infringe a fundamental constitutional right and cannot show that Defendants' policies lack a rational basis, the Court finds that Plaintiffs are unlikely to succeed on the merits of their substantive due process claim.

B. Procedural Due Process Claim

Plaintiffs next claim that EO 2021-22 and the City Vaccination Policy violate procedural due process. A procedural due process claim requires the plaintiff to show that the government deprived them of a protected interest with "constitutionally deficient procedural protections" surrounding the deprivation. *Tucker v. City of Chi.*, [907 F.3d 487, 491](#) (7th Cir. 2018). Plaintiffs are unlikely to succeed here as well.

1. Procedural Due Process Claim Against the City

Plaintiffs raise two procedural due process arguments against the City. First, they argue that the City Vaccination Policy violates procedural due process because Chicago Mayor Lori Lightfoot exceeded her authority by imposing the policy "unilaterally" without the approval of the city council. TRO Mot. at 11. The problem with Plaintiffs' first argument is that the Chicago Municipal Code does authorize the Mayor to enact policies through

an "administrative officer, subject to the direction and control of the mayor, ... [to] supervise the administrative management of all city departments, boards, commissioners and other city agencies," and to "supervise the conduct of all of the officers of the city." Chi. Mun. Code 2-4-020. By their plain language, these provisions grant the Mayor broad policymaking discretion over City employees.

Additionally, even if Mayor Lightfoot's implementation of the City Vaccination Policy did comprise a traditionally legislative function, this would not raise any constitutional concerns. At its core, Plaintiffs' argument relies on a strict separation-of-powers theory that is not applicable to local governments. *See Auriemma v. Rice*, [957 F.2d 397, 399](#) (7th Cir. 1992) (noting that in the context of local government, "[e]xecutive officials sometimes exercise legislative powers ... [and] executive officials may have the power to set policy ... when the legislature is silent."); *see also* Helen Hershkoff, *State Courts and the "Passive Virtues": Rethinking the Judicial Function*, 114 Harv. L. Rev. 1833, 1884 (2001) ("[L]ocal governments are ... not required to conform to federal-style separation of powers and, for the most part, do not.").

Accordingly, the Court cannot say on this record that Mayor Lightfoot's actions in announcing the City Vaccination Policy were *ultra vires*. Furthermore, the Court takes judicial notice of the fact that, on the

same day as the TRO hearing, the City Council voted to keep the City Vaccination Policy in place, removing one of the core bases of Plaintiffs' argument.

See Chicago City Council Turns Down Attempt to Repeal Vaccine Mandate, NBC Chi. (Oct. 29, 2021 5:42

PM) <https://www.nbcchicago.com/news/local/chicago-city-council-turns-down-attempt-to-repeal-vaccine-mandate/2662116/>.

Plaintiffs' second argument asserts that the policy violates Plaintiffs' due process rights, because it "fundamentally changes the nature of Plaintiffs' contracts with ... the City." TRO Mot. at 11. This argument too is unpersuasive, for two primary reasons.

First, the mere alteration of an employment contract, standing alone, does not violate procedural due process. Plaintiffs must identify some liberty or property interest of which they are being deprived in order to make out a procedural due process claim. *See Hannemann v. S. Door Cnty. Sch. Dist.*, [673 F.3d 746, 752](#) (7th Cir. 2012) ; *Brown*, [462 F.3d at 728](#). To the extent that Plaintiffs argue that the vaccination policy deprives them of their ability to work for the City without being vaccinated, this deprivation is not a violation of procedural due process, because (as the Seventh Circuit has held) Plaintiffs do not have a liberty or property interest in

not being vaccinated. *See Klaassen*, [7 F.4th at 593](#); *see also*, e.g., *We The Patriots*, 17 F.4th at —, 2021 WL 5121983, at *18.

Second, many of Plaintiffs' employment contracts are governed by collective bargaining agreements between the City and public employee unions. Thus, any alleged procedural deficiency in the alteration of Plaintiffs' employment contracts is properly aggrieved under Illinois labor law. Moreover, grievance procedures in collective bargaining agreements "can (and typically do) satisfy" the requirements of procedural due process for terminated public employees. *Calderone v. City of Chi.*, [979 F.3d 1156, 1166](#) (7th Cir. 2020) (quoting *Chaney v. Suburban Bus Div. of Reg'l Transp. Auth.*, [52 F.3d 623, 630](#) (7th Cir. 1995)). Plaintiffs have not garnered any evidence to the contrary.

2. Procedural Due Process Claim Against the Governor

As for EO 2021-22, Plaintiffs first assert that Governor Pritzker violated their procedural due process rights by exceeding the limitations on his emergency powers under the Illinois Emergency Management Agency Act ("EMAA"), [20 Ill. Comp. Stat. 3305/1 et seq.](#) They claim that because "the Governor's power is not unlimited [and] ... [t]he legislature has remained silent on the subject of vaccine mandates," EO 2021-22 "violates Plaintiffs'

rights under the US Constitution and under Illinois law." TRO Mot. at 11. For several reasons, this procedural due process claim against the Governor is not viable.

First, Plaintiffs' procedural due process claim is likely barred by the Eleventh Amendment, under which "absent waiver or valid abrogation, federal courts may not entertain a private person's suit against a State." *Va. Office for Prot. and Advocacy v. Stewart*, [563 U.S. 247, 254, 131 S.Ct. 1632, 179 L.Ed.2d 675](#) (2011) ; *see Cassell v. Snyders*, [458 F. Supp. 3d 981, 999](#) (N.D. Ill. 2020), *aff'd*, [990 F.3d 539](#) (7th Cir. 2021). In *Cassell*, a church and its pastor sued the Governor and other Illinois state officials to enjoin the state's stay-at-home orders that placed capacity limitations on religious services. *See* [458 F. Supp. 3d at 987](#). The *Cassell* plaintiffs alleged the state officials violated, *inter alia*, the state statutory limitations of the EMAA on the Governor's emergency powers. *See id.* This Court denied the injunction as to the EMAA claim because the Governor and state officials had properly raised sovereign immunity. *Id.* at 999.

Like the plaintiffs in *Cassell*, Plaintiffs here are suing the Governor for alleged violations of the EMAA, and the Governor has invoked sovereign immunity. Because "a claim that [a] state official[] violated state law in carrying out [his] official responsibilities" is "a claim against the State that is

protected by the Eleventh Amendment," the Eleventh Amendment precludes Plaintiff's procedural due process claim against the Governor. *Pennhurst State Sch. and Hosp. v. Halderman*, [465 U.S. 89, 101, 121, 104 S.Ct. 900, 79 L.Ed.2d 67](#) (1984) ; see *Cassell*, [458 F. Supp. 3d at 999](#).

Furthermore, setting aside Eleventh Amendment concerns, Plaintiffs cannot bring a federal procedural due process claim to compel state officials to follow state law because "there is no federal constitutional right to state-mandated procedures." *GEFT Outdoors, LLC v. City of Westfield*, [922 F.3d 357, 366](#) (7th Cir. 2019), *cert denied*, — U.S. —, [140 S. Ct. 268, 205 L.Ed.2d 137](#) (2019) ; see also *Charleston v. Bd. of Trs. of Univ. of Ill. at Chi.*, [741 F.3d 769, 773](#) (7th Cir. 2013). A state's decision not to follow its own procedural rules may create a cause of action under state law, but it does not violate federal due process protections. See *Charleston*, [741 F.3d at 773](#). Put simply, any grievances Plaintiffs may have with the way Governor Pritzker did or did not follow state law should be raised in the state courts. See *River Park, Inc. v. City of Highland Park*, [23 F.3d 164, 166–67](#) (7th Cir. 1994) ("Failure to implement state law violates that state law, not the Constitution; the remedy lies in state court.").

That said, in their reply brief, Plaintiffs shift the framing of their procedural due process claim. They now contend that they are suing the Governor to enjoin him from violating the Constitution, not Illinois state law, and that their suit thus is permitted under the doctrine of *Ex parte Young*, [209 U.S. 123](#), [28 S.Ct. 441](#), [52 L.Ed. 714](#) (1908). Specifically, Plaintiffs appear to mount an "unconstitutional conditions" challenge to the policies on the principle that "the government may not deny a benefit to a person because he exercises a constitutional right." *Koontz v. St. Johns River Water Mgmt. Dist.*, [570 U.S. 595](#), [604](#), [133 S.Ct. 2586](#), [186 L.Ed.2d 697](#) (2013) (citations omitted); *see also Klaassen*, — F. Supp. 3d at —, 2021 WL 3073926, at *23. But Plaintiffs' attempt to recharacterize their original claim is unprevailing, both procedurally and on its merits.

First, Plaintiffs' remodeled procedural due process claim, which centers on the Governor's alleged interference with their "liberty to follow a trade, profession, or other calling," Pls.' Reply at 16 (citing *Vill. of Orland Park v. Pritzker*, [475 F. Supp. 3d 866](#), [884](#) (N.D. Ill. 2020)), is nowhere to be found in their earlier pleadings. Plaintiffs' Complaint and Motion for Temporary Restraining Order both rest on the Governor's alleged failure to comply with the EMAA. For example, the Motion's discussion of Plaintiffs' "procedural due process" claim is entitled "The Governor exceeded his authority under Illinois

law in enacting Executive Order 2021-22," TRO Mot. at 10, and the section goes on to cite the EMAA and invoke this Court's previous invitation to challenge the propriety of the Governor's exercises of emergency powers pursuant to that statute. *See id.* (first citing the EMAA, [20 Ill. Comp. Stat. 3305/1](#) *et seq.*, and then citing *Cassell*, 458 F. Supp. 3d at 981 (noting that future parties will be able to bring an EMAA challenge "[s]hould this or any future Governor abuse his or her authority by issuing emergency declarations after a disaster subsides")); *see also* Compl. ¶ 199 (stating, in pleading the procedural due process claim, that because "the Governor did not have the authority to enter the Executive Order[,] ... [t]he imposition on Plaintiff health care workers – including the members of the Fire Department who perform health care services – was therefore taken without due process of law"). Plaintiffs cannot amend their claims in a reply brief.

But, even if the Court were to consider Plaintiffs' new approach, their "unconstitutional conditions" procedural due process claim against the Governor still would fall short, because, as the Seventh Circuit has held, Defendants do not have a fundamental constitutional right to refuse COVID-19 vaccinations. *See Klaassen*, [7 F.4th at 593](#). Put another way, Plaintiffs are correct that they have "the right to hold specific private employment and to follow a chosen profession free

from *unreasonable* governmental interference," *Greene v. McElroy*, [360 U.S. 474, 492, 79 S.Ct. 1400, 3 L.Ed.2d 1377](#) (1959), but the vaccine policies in question are not unreasonable, because they satisfy the rational basis test. *See Turner*, [207 F.3d at 426](#).

What is more, a procedural due process claim requires a plaintiff to allege a deprivation of constitutional rights. *See Tucker*, [907 F.3d at 491](#). But, here, none of the Plaintiffs subject to the Governor's order has been fired or disciplined as of the hearing date.

This is not to say that, were any Plaintiffs to be disciplined or terminated for failure to comply with the vaccination requirement, a procedural due process claim would be viable. On the contrary, under the three-factor balancing test articulated in *Mathews v. Eldridge*, [424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18](#) (1976), used to evaluate procedural due process claims, Plaintiffs' interest in not being terminated for refusing vaccination would likely be outweighed by the public's interest in preventing the spread of COVID-19 and the cost to the public's safety of requiring additional procedures. *See Vill. of Orland Park*, [475 F. Supp. 3d at 883](#) (noting that "the second and third factors in the *Mathews* test weigh heavily against the need for pre-deprivation process" in the context of a

procedural due process challenge to COVID-19 mitigation measures).

For the reasons set forth in this section, the Court finds that it unlikely that Plaintiffs will prevail on their procedural due process claims against the City or the Governor.

C. Free Exercise Claim

Next, Plaintiffs assert that EO 2021-22 and the City Vaccination Policy violate the Free Exercise Clause of the First Amendment. They contend that the policies unconstitutionally burden their free exercise rights by forcing them either to be vaccinated in violation of their sincerely held religious beliefs or lose their jobs. They also claim that the City violated the Free Exercise Clause by denying, or refusing to grant, religious exemptions to them.

A free exercise claim requires a plaintiff to show that a government action has burdened her exercise of a sincerely held religious belief. *See Fulton v. City of Phila.*, — U.S. —, [141 S. Ct. 1868](#), [1876](#), [210 L.Ed.2d 137](#) (2021). Under *Employment Division v. Smith*, [494 U.S. 872](#), [110 S.Ct. 1595](#), [108 L.Ed.2d 876](#) (1990), neutral laws of general applicability that only incidentally burden religion are not subject to strict scrutiny. *Fulton*, [141 S. Ct. at 1876](#) (citing *Smith*, [494 U.S. at 878–82](#), [110 S.Ct. 1595](#)). Government action that satisfies *Smith* receives rational basis review, *see Ill.*

Bible Colls. Ass'n v. Anderson, [870 F.3d 631, 639](#) (7th Cir. 2013), while government action that is not neutral or generally applicable must pass strict scrutiny. *Fulton*, [141 S. Ct. at 1881](#).

Plaintiffs argue that the Court should apply strict scrutiny to the City Vaccination Policy, mainly relying on the Sixth Circuit's decision in *Dahl v. Bd. of Trustees of Western Michigan University*, [15 F.4th 728](#) (6th Cir. Oct. 7, 2021), where the court applied strict scrutiny to Western Michigan University's denial of religious exemptions to its vaccination requirement for student athletes. *Id.* at 734. This too does not win the day for Plaintiffs.

First, whatever the rule may be in the Sixth Circuit, this Court must follow the dictates of the Seventh Circuit's ruling in *Klaassen*, which applied rational basis review to *all* of the plaintiffs' claims against Indiana University's vaccine requirement, including the free exercise claim. *See Klaassen*, [7 F.4th at 593](#); *see also Klaassen*, — F. Supp. 3d at — — —, 2021 WL 3073926, at *25–26. And, as the Court has repeatedly noted, the vaccine orders pass the rational basis test.

Second, Plaintiffs' free exercise challenge is distinguishable from the free exercise claim in *Dahl*, because Plaintiffs here do not state a claim for an as-applied challenge to any specific employee's denial of a religious exemption. In *Dahl*, the plaintiffs alleged specific facts suggesting that the university failed to

accommodate their sincerely held religious beliefs, *See Dahl*, [15 F.4th at 733–34](#). By contrast, Plaintiffs here baldly assert that the City Vaccination Policy's religious exemption has not been administered properly. *See* Pls.' Reply at 19–20. They do not plead the particularized facts present in *Dahl*.

To be clear, if a particular employee is denied a religious exemption, she may challenge that denial, based on the particular facts of her case, as a violation of her free exercise rights. But no Plaintiffs have been denied a religious exemption on grounds other than failing to adequately articulate their individual circumstances, as the City Vaccination Policy requires. *See* Def. City's Resp., Ex. B4, City of Chicago COVID-19 Vaccine Religious Exemption Request Form ("City Religious Exemption Form") (requiring a reason for the request and an explanation of the principle of the applicant's religion that conflicts with taking the vaccine). The City notes that "the only Plaintiffs who have been denied an exemption sought under either statute submitted [a] form letter that did nothing other than quote the HCRCA definition of 'conscience.'" Def. City's Resp. at 23, *see generally* Def. City's Resp., Ex. B5 (scans of the denied applications). Because every denial before the Court at the present time fails to comply with the basic requirements of the City Vaccination Policy's religious exemption process, these denials do not raise free exercise concerns. *Cf. Baer-Stefanov v.*

White, [773 F. Supp. 2d 755, 759–60](#) (N.D. Ill. 2011) (plaintiffs who had not complied with the requirements for applying for a religious exemption could not bring a free exercise claim challenging the constitutionality of the exemption process). And, tellingly, Plaintiffs have not challenged any of these determinations in their motion, nor have they provided the individualized facts necessary to conduct such a review. Thus, on this record, Plaintiffs are not likely to succeed on their free exercise challenge to the City Vaccination Policy. Because Plaintiffs’ free exercise claims are either not fully developed or receive rational basis review, the Court finds that Plaintiffs are unlikely to succeed on the merits of their free exercise claims.

Plaintiffs also seem to argue that the religious exemption in the City Vaccination Policy is unconstitutionally narrow because it requires the signature of a religious leader to verify the sincerity of the applicant's religious objections. The only authority Plaintiffs cite for this proposition is a dissenting opinion in a Title VII case from another circuit. *See* TRO Mot. at 12–13 (quoting *Davis v. Fort Bend Cnty*, [765 F.3d 480, 497](#) (5th Cir. 2014) (Smith, J., dissenting)). But the Court is not persuaded that it should read this requirement into the First Amendment, especially under the present record.

D. Illinois Healthcare Right of Conscience Act (HCRCA)

Plaintiffs' final claims arise under the Illinois Healthcare Right of Conscience Act (HCRCA), [745 Ill. Comp. Stat. 70/1](#) *et seq.* Generally, this statute protects the rights of Illinoisans to refuse to provide, receive, or participate in the administration of health care services "contrary to [their] conscience." *Id.* § 70/2. And the particular provisions at issue prohibit "discrimination against any person in any manner ... because of such person's conscientious refusal to receive ... any particular form of health care services contrary to his or her conscience." *Id.* § 70/5; *see also id.* § 70/7 (prohibiting employment discrimination based on refusal to receive or provide health care services contrary to one's conscience).

The HCRCA defines "conscience" to include both religious and secular or philosophical objections. *See* [745 Ill. Comp. Stat. 70/3](#) ("conscience" is "a sincerely held set of moral convictions arising from belief in and relation to God, or ... from a place in the life of its possessor parallel to that filled by God among adherents to religious faiths").

Plaintiffs argue that EO 2021-22 and the City Vaccination Policy discriminate against them based on their "vaccination status." TRO Mot. at 13. In support of this contention, they cite several cases purporting to show that "employees [cannot] be terminated for their deeply held beliefs concerning health matters." *Id.* (first citing *Vandersand v. Wal-Mart Stores, Inc.*, [525 F. Supp. 2d 1052](#) (C.D. Ill.

2017), and then citing *Rojas v. Martell*, [443 Ill.Dec. 212, 161 N.E.3d 336](#) (Il. App. Ct. 2020)). For the reasons discussed below, the Court concludes that Plaintiffs' HCRCA claims are unlikely to succeed on the merits.

1. HCRCA Claims Against the Governor

Plaintiffs' HCRCA claims against the Governor must be dismissed at the outset, because Governor Pritzker has properly invoked sovereign immunity. *See* Def. J.B. Pritzker's Resp. at 30. As noted above, the Eleventh Amendment bars suits for injunctive relief against state officials for violations of state law when the state is the "real, substantial party in interest." *Pennhurst*, [465 U.S. at 106, 104 S.Ct. 900](#). Here, Plaintiffs again are suing the Governor under a state statute based on his official action taken in his official capacity. Thus, their claim is barred. *Id.*

2. HCRCA Claims Against the City

The Eleventh Amendment does not prohibit Plaintiffs' claims against the City, but they still fall short of the showing required for a temporary restraining order. In their papers, Plaintiffs appear to be marshalling a facial challenge to the City Vaccination Policy under the HCRCA; they quote the statute and argue simply that the vaccine policy is "squarely a violation of the Act." *See* TRO Mot. at 13. And Plaintiffs might well be correct, if the City

Vaccination Policy did not contain any avenue for religious exemptions.

But the City Vaccination Policy does provide a detailed religious exemption process that protects anyone who holds sincere religious objections to being vaccinated. *See generally* City Religious Exemption Form. In fact, the religious exemption included in the City Vaccination Policy safeguards the same religious objections to medical treatment that the HCRCA protects. *Compare id.* (granting exemptions for those with "a sincerely held set of moral convictions arising from belief in and relation to religious beliefs"), *with* [745 Ill. Comp. Stat. 70/3](#) (defining "conscience" as "a sincerely held set of moral convictions arising from belief in and relation to God, or ... from a place in the life of its possessor parallel to that filled by God among adherents to religious faiths"). Accordingly, the Court concludes that the City Vaccination Policy on its face does not violate the HCRCA and that Plaintiffs have not demonstrated more than "a mere possibility of success" on the merits of their HCRCA claim. *Ill. Republican Party*, [973 F.3d at 762](#).

In summary, the Court finds that Plaintiffs have not shown a likelihood of success as to any of their claims. This alone is enough to deny their motion for a temporary restraining order. *See GEFT Outdoors*, [922 F.3d at 364](#) ("If the plaintiff fails to meet any of the[] threshold requirements, the court

must deny the injunction." (quoting *Girl Scouts of Manitou Council*, [549 F.3d at 1086](#))). However, the Court will briefly touch on the remaining factors for the sake of completeness.

II. Irreparable Harm

To show that they would suffer irreparable harm absent injunctive relief, Plaintiffs must demonstrate more than a possibility of harm; they must prove that such harm is likely. *Winter*, [555 U.S. at 21](#), [129 S.Ct. 365](#) (plaintiff must "demonstrate that irreparable injury is *likely* in the absence of an injunction"). To this end, Plaintiffs argue that "violations of individuals' constitutional rights constitute irreparable harm as a matter of law," TRO Mot. at 13 (citing *Joelner v. Vill. of Washington Park*, [378 F.3d 613, 620](#) (7th Cir. 2004)). However, because Plaintiffs lack a fundamental constitutional right to decline vaccinations during times of pandemic, *see Klaassen*, [7 F.4th at 593](#), they cannot rely upon the abridgment of that right to establish irreparable harm.

Not to be deterred, Plaintiffs argue that a finding that they have no fundamental right not to be vaccinated does not preclude a finding of irreparable harm, because Defendants' alleged violations of procedural due process also comprise constitutional injury. But Plaintiffs' procedural due process argument likewise hinges upon a finding that they have a fundamental constitutional right to refuse

COVID vaccinations. *See Greene*, [360 U.S. at 492](#), [79 S.Ct. 1400](#) (requiring "*unreasonable* government interference" to state a claim for a procedural due process violation stemming from termination of employment (emphasis added)).

Alternatively, Plaintiffs could establish that EO 2021-22 and the City Vaccination Policy are "unreasonable" for purposes of their procedural due process claim if they could show that the policies lack a rational basis. *See Turner*, [207 F.3d at 426](#). But as the Court has already stated, *see supra* section I.A.3, Defendants' policies survive rational basis scrutiny on the current record.

Moreover, even assuming that EO 2021-22 and the City Vaccination Policy inflict a greater than *de minimis* constitutional injury, there is no evidence in this record that any of the Plaintiffs has been fired or disciplined because he or she has refused to take a vaccine. And if Plaintiffs were to be suspended without pay or lose their jobs pursuant to the Governor or the City's vaccination policies, Plaintiffs would have an adequate relief at law—they could seek money damages. *See D.U. v. Rhoades*, [825 F.3d 331](#), [339](#) (7th Cir. 2016) (money damages can generally provide complete redress for termination of employment). **III. Balance of the Equities**

The Seventh Circuit has indicated that there are circumstances where termination of employment

may lead to irreparable harm, but only when the particular injuries alleged "really depart from the harms common to most discharged employees." *Bedrossian v. Northwestern Memorial Hosp.*, [409 F.3d 840, 845](#) (7th Cir. 2005). Plaintiffs here have not alleged any such extraordinary injuries.

Lastly, Plaintiffs have not shown that the balance of the equities and the public interest, which "merge when the [g]overnment is the opposing party," *Nken v. Holder*, [556 U.S. 418, 435, 129 S.Ct. 1749, 173 L.Ed.2d 550](#) (2009), favors the issuance of a temporary restraining order. In assessing this factor, the Court must weigh the interests favoring an injunction against "the consequences of granting or denying the injunction to non-parties." *Abbott Labs. v. Mead & Johnson Co.*, [971 F.2d 6, 11](#) (7th Cir. 1992). Here, the Court finds that the public's interest in reducing the transmission of COVID-19 weighs heavily against granting the temporary restraining order, and numerous other courts agree. *See, e.g.*, *Does 1–6*, [16 F.4th at 37](#) (finding that public interest weighed in state government's favor in affirming denial of injunctive relief to healthcare workers challenging state vaccine mandate); *We the Patriots*, 17 F.4th at —, 2021 WL 5121983, at *20 ; *Klaassen*, — F. Supp. 3d at — — —, 2021 WL 3073926, at *43–44 ; *Cassell*, [458 F. Supp. 3d at 1003](#).

Although Plaintiffs have disputed the efficacy of vaccination in preventing transmission of COVID-19, under the rational basis standard, the Court may not second-guess the informed and rational scientific judgments upon which Defendants base their policies, especially without the benefit of discovery. *See generally*, *e.g.*, Bleasdale Decl.; Owen Decl.; *see also* *Minerva Dairy*, [905 F.3d at 1055](#) (noting that courtroom fact-finding is inappropriate on rational basis review); *Vasquez*, [895 F.3d at 525](#) (same); *Klaassen*, — F. Supp. 3d at —, 2021 WL 3073926, at *46 ("Given a preliminary record such as today's, the court must exercise judicial restraint in superimposing any personal view in the guise of constitutional interpretation."). Thus, the Court finds that the public interest factor weighs against granting Plaintiffs the emergency relief they seek.

Conclusion

For the reasons stated above, Plaintiffs' motion for a temporary restraining order is denied.

IT IS SO ORDERED.

In the United States District Court for the Northern
District of Illinois

No. 21 C 5600 (published as 576 F.Supp.3d 578)

2021-12-21

Scott TROOGSTAD et al., Plaintiffs, v. The CITY OF
CHICAGO and Governor Jay Robert Pritzker,
Defendants.

Jonathan D. Lubin, Attorney at Law, Skokie, IL, for
Plaintiffs. Michael A. Warner, Jr., William R.
Pokorny, Franczek Radelet PC, Celia Meza, City of
Chicago Law Department, Erin Kathryn Walsh,
Richard Jason Patterson, Franczek P.C., Chicago, IL,
for Defendant City of Chicago. Hal Dworkin, Mary
Alice Johnston, Office of Illinois Attorney General,
Chicago, IL, for Defendant Jay Robert Pritzker.

John Z. Lee, United States District Judge

Jonathan D. Lubin, Attorney at Law, Skokie, IL, for
Plaintiffs.

Michael A. Warner, Jr., William R. Pokorny,
Franczek Radelet PC, Celia Meza, City of Chicago
Law Department, Erin Kathryn Walsh, Richard
Jason Patterson, Franczek P.C., Chicago, IL, for
Defendant City of Chicago.

Hal Dworkin, Mary Alice Johnston, Office of Illinois
Attorney General, Chicago, IL, for Defendant Jay
Robert Pritzker.

MEMORANDUM OPINION AND ORDER

John Z. Lee, United States District Judge

Illinois Governor J.B. Pritzker and the City of Chicago ("City") (collectively "Defendants") enacted policies requiring certain healthcare workers and public employees to be vaccinated against COVID-19 by the end of 2021 or be subject to disciplinary action and termination. Plaintiffs, comprising over 100 employees in the City's Fire, Water, and Transportation Departments, claim that these policies violate their substantive due process, procedural due process, and free exercise rights under the United States Constitution, as well as Illinois law. As such, they seek a preliminary injunction against the policies. For the following reasons, Plaintiffs' motion is denied.

Background

The Court assumes familiarity with the factual record of this case from its previous written opinion denying Plaintiffs' petition for a temporary restraining order. *See* Mem. Op. Order, *Troogstad v. City of Chi.*, [571 F.Supp.3d 901, 905–07](#) (N.D. Ill. Nov. 24, 2021) ("TRO Order"), ECF No. 35. A brief summary of the more salient facts follows.

With the Delta variant of COVID-19 spiking across the country, Illinois Governor J.B. Pritzker signed Executive Order 2021-22 ("EO 2021-22") on September 3, 2021. EO 2021-22 requires all

healthcare workers—defined as persons who work in "health services, medical treatment or nursing, or rehabilitative or preventive care"—in the state to be vaccinated against COVID-19 or submit to weekly COVID-19 testing. Def. Gov. J.B. Pritzker's Resp. Opp'n Pls.' Pet. TRO ("Def. J.B. Pritzker's Resp. TRO"), Ex. A (EO 2021-22) § 2(a)(i), ECF No. 14. EO 2021-22 contains a religious exemption to the vaccination requirement for covered persons whose "sincerely held religious belief[s], practice[s], or observance[s]" conflict with being vaccinated. *Id.*

After Governor Pritzker's order, the City followed with its own mandatory vaccination policy ("City Vaccination Policy"), which requires all City employees to be fully vaccinated (or have an approved exemption) by December 31, 2021 as a "condition of employment." Def. City of Chicago's Resp. Pls.' Emergency Pet. TRO ("Def. City's Resp. TRO"), Ex. B1 (City Vaccination Policy) §§ II–IV, ECF No. 18. Like EO 2021-22, the City Vaccination Policy contains a religious exemption protecting those with "a sincerely held set of moral convictions arising from belief in and relation to religious beliefs" that conflict with COVID-19 vaccination. *See* Def. City's Resp. TRO, Ex. B4, City of Chicago COVID-19 Vaccine Religious Exemption Request Form ("City Religious Exemption Form"). Exemption requests are considered on an individual basis and require the applicant to fill out a form stating the reason for the exemption and the principle of their religion that

conflicts with being vaccinated, and including the signature of a religious leader. *See id.*

Before the December 31 deadline, the City Vaccination Policy requires City employees either to be vaccinated or to submit to biweekly COVID-19 testing. City Vaccination Policy § IV.A–B.

Plaintiffs are City employees, who contend that EO 2021-22 and the City Vaccination Policy violate their rights to bodily autonomy as protected by the constitutional doctrines of substantive due process, procedural due process, and free exercise of religion. They also assert that these policies infringe upon their right of conscience as protected by the Illinois Health Care Right of Conscience Act ("HCRCA"), [745 Ill. Comp. Stat. 70/1](#) *et seq.* Upon filing this suit, Plaintiffs petitioned the Court for a temporary restraining order against enforcement of the policies. *See* Pls.' Mot. TRO ("TRO Mot."), ECF No. 4. The Court denied that petition in an oral ruling, *see* Hr'g Tr., *Troogstad*, No. 21 C 5600 (Oct. 29, 2021), ECF No. 31, which subsequently was memorialized in a written order. *See* TRO Order.

Plaintiffs then informed the Court that they wished to proceed with their motion for preliminary injunction, seeking to enjoin Governor Pritzker and the City from enforcing EO 2021-22 or the City Vaccination Policy. Accordingly, the Court provided Plaintiffs with an opportunity to supplement the factual record with witnesses and additional

evidence. The Court also granted Plaintiffs leave to engage in limited discovery of Defendants' factual contentions.

In the end, Plaintiffs stated that they did not need discovery and would not be presenting any witnesses, but requested an opportunity to file a supplemental brief to support their preliminary injunction motion. The Court agreed and set a schedule for the submission of supplemental briefs. Now, relying on the factual record before it, the Court considers Plaintiffs' motion for a preliminary injunction.

Legal Standard

As the Seventh Circuit has stated, a preliminary injunction is "an exercise of a very far-reaching power, never to be indulged in except in a case clearly demanding it." *Orr v. Shicker*, [953 F.3d 490, 501](#) (7th Cir. 2020) (quoting *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S. of Am., Inc.*, [549 F.3d 1079, 1085](#) (7th Cir. 2008)). And to obtain such drastic relief, the party seeking the relief—here, the Plaintiffs—carries the burden of persuasion by a clear showing. *See Mazurek v. Armstrong*, [520 U.S. 968, 972, 117 S.Ct. 1865, 138 L.Ed.2d 162](#) (1997).

To succeed on a motion for preliminary injunction, the plaintiff has the burden to show (1) a likelihood of success on the merits; (2) irreparable harm; and (3) that the balance of the equities and the public interest favors emergency relief. [Fed. R. Civ. P.](#)

[65\(b\)\(1\)\(A\)](#) ; see *Winter v. Nat. Res. Def. Council*, [555 U.S. 7, 22](#), [129 S.Ct. 365](#), [172 L.Ed.2d 249](#) (2008).

The Court then weighs these factors in what the Seventh Circuit has called a "sliding scale" approach. That is, "[t]he more likely the plaintiff is to win, the less heavily need the balance of harms weigh in his favor; the less likely he is to win, the more need it weigh in his favor." *Valencia v. City of Springfield*, [883 F.3d 959, 966](#) (7th Cir. 2018) (internal quotation marks omitted). And "[w]here appropriate, this balancing process should also encompass any effects that granting or denying the preliminary injunction would have on nonparties (something courts have termed the 'public interest')." *Id.*

Analysis

I. Likelihood of Success on the Merits

The first factor—"likelihood of success on the merits"—requires the plaintiff to make a "strong showing that she is likely to succeed on the merits" of her claim; a mere "possibility of success is not enough" to warrant emergency relief. *Ill. Republican Party v. Pritzker*, [973 F.3d 760, 762](#) (7th Cir. 2020). This showing "does not mean proof by a preponderance," but requires the plaintiff to provide facts and legal theories supporting "the key elements

of its case." *Id.* at 763. The Court will address each of Plaintiffs' claims in turn.

A. Substantive Due Process

Plaintiffs first allege that EO 2021-22 and the City Vaccination Policy violate substantive due process. A substantive due process claim requires the plaintiff to "allege that the government violated a fundamental right or liberty." *Campos v. Cook Cnty.*, [932 F.3d 972, 975](#) (7th Cir. 2019). The violation must also be "arbitrary or irrational," because "substantive due process protects against only the most egregious and outrageous government action." *Id.*

According to Plaintiffs, the vaccine policies offend their fundamental right to bodily autonomy. In support, they cite numerous Supreme Court cases holding that individuals have a fundamental right to refuse unwanted medical treatment, *see, e.g., Cruzan v. Dir., Mo. Dep't of Health*, [497 U.S. 261, 110 S.Ct. 2841, 111 L.Ed.2d 224](#) (1990) ; *Washington v. Harper*, [494 U.S. 210, 110 S.Ct. 1028, 108 L.Ed.2d 178](#) (1990), and argue that, because a right to decline vaccinations is a fundamental constitutional right, the Court should apply strict scrutiny when evaluating the policies.

1. Whether a Fundamental Right Exists

In its ruling on Plaintiffs' TRO motion, the Court discussed its views on this issue at length, *see* TRO

Order at 907–11, and sees no reason to alter its reasoning now. As previously noted, the Seventh Circuit's decision in *Klaassen v. Trustees of Indiana University*, [7 F.4th 592](#) (7th Cir. 2021), forecloses Plaintiffs' claim that requiring vaccination against COVID-19 encroaches upon a fundamental right. In *Klaassen*, a group of Indiana University students challenged the university's vaccination, masking, and testing requirements on similar grounds. *Id.* at 593. The students, like Plaintiffs here, argued that the university's mandate violated their right to bodily autonomy; the Seventh Circuit disagreed. Citing *Jacobson v. Massachusetts*, [197 U.S. 11](#), [25 S.Ct. 358](#), [49 L.Ed. 643](#) (1905), the unanimous panel held that "plaintiffs lack such a right" when it comes to COVID-19 vaccination requirements. *Klaassen*, [7 F.4th at 593](#). As a result, the court endorsed *Jacobson*'s rational basis standard of review for challenges to COVID-19 vaccine mandates under substantive due process. *See id.*; *see also Klaassen v. Trs. of Ind. Univ.*, [549 F.Supp.3d 836](#), [867-68](#) (N.D. Ind. 2021).

Klaassen controls here. And because there is no fundamental constitutional right at stake when people are required to be vaccinated during a pandemic, Plaintiffs' substantive due process challenge to COVID-19 vaccination policies receives rational basis review. Other courts in this district and across the country agree. Furthermore, Plaintiffs' supplemental brief does not raise any new

arguments on this point. Thus, the Court will apply rational basis review.

See, e.g. , Mem. Op. Order at 5–6, *Ciseneroz v. City of Chi.* , Case No. 21-cv-5818, 2021 WL 5630778 (N.D. Ill. Dec. 1, 2021), ECF No. 21 ; Hr'g Tr. at 5:18–20, *Lukaszcyk v. Cook Cnty.* , No. 21 C 5407 (N.D. Ill. Nov. 17, 2021), *appeal docketed* , No. 21-3200 (7th Cir. Nov. 24, 2021).

See, e.g. , *Gold v. Sandoval* , [No. 3:21-cv-00480-JVS-CBL](#), [2021 WL 5762190](#), at [*2](#) (D. Nev. Dec. 3, 2021) ; *Rydie v. Biden* , No. DKC 21-2696, [572 F.Supp.3d 153](#), [161–62](#) (D. Md. Nov. 19, 2021) ; *McCutcheon v. Enlivant ES, LLC* , [No. 5:21-cv-00393](#), [2021 WL 5234787](#), at [*3](#) (S.D.W. Va. Nov. 9, 2021) ; *Smith v. Biden* , [No. 1:21-cv-19457](#), [2021 WL 5195688](#), at [*7](#) (D.N.J. Nov. 8, 2021) ; *see also* TRO Order at 912–13 (collecting other cases).

2. Rational Basis Review

Rational basis review of a substantive due process claim requires the challenged action to be "rationally related to legitimate government interests." *Washington v. Glucksberg* , [521 U.S. 702](#), [728](#), [117 S.Ct. 2258](#), [138 L.Ed.2d 772](#) (1997). This standard is "highly deferential" to the government. *Brown v. City of Mich. City* , [462 F.3d 720](#), [733](#) (7th Cir. 2006) (quoting *Turner v. Glickman* , [207 F.3d 419](#), [426](#) (7th Cir. 2000)).

Rational basis review places the burden on the plaintiff to show that there is no "conceivable basis which might support" the government's action. *Minerva Dairy, Inc., v. Harsdorf*, [905 F.3d 1047, 1055](#) (7th Cir. 2018) (quoting *Ind. Petroleum Marketers & Convenience Store Ass'n v. Cook*, [808 F.3d 318, 322](#) (7th Cir. 2015)). Put differently, the plaintiff must prove irrationality; "it is not the [government's] obligation to prove rationality with evidence." *Hayden ex rel. A.H. v. Greensburg Cmty. Sch. Corp.*, [743 F.3d 569, 576](#) (7th Cir. 2014) ; *see also F.C.C. v. Beach Commc'ns*, [508 U.S. 307, 315, 113 S.Ct. 2096, 124 L.Ed.2d 211](#) (1993) ("[A] legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data."). Thus, the question is not whether Plaintiffs have the better argument—it is whether there is any rational justification for the policies at issue. *See Minerva Dairy*, [905 F.3d at 1054–55](#) ; *Hayden*, [743 F.3d at 576](#) ; *see also, e.g., Gold*, 2021 WL 5762190, at *3 ("While [Plaintiff] cites to numerous studies that he alleges show that the Policy is misguided, that does not mean that his challenge is likely to succeed ... [u]nder rational basis review"); *Kheriaty v. Regents of Univ. of Cal.*, No. SACV 21-01367 JVS (KESx), 2021 WL 4714664, at *8 (C.D. Cal. Sept. 29, 2021) (rejecting substantive due process challenge to university's vaccine policy because "merely drawing different conclusions based on consideration of

scientific evidence does not render the Vaccine Policy arbitrary and irrational").

To this end, Defendants argue that requiring healthcare workers and public employees to be vaccinated is rationally related to reducing the spread of COVID-19 in Illinois and Chicago. Combating the COVID-19 pandemic is "unquestionably a compelling interest." *Roman Cath. Diocese of Brooklyn v. Cuomo*, — U.S. —, [141 S. Ct. 63, 67, 208 L.Ed.2d 206](#) (2020) (holding that abating the COVID-19 pandemic satisfied the much stricter "compelling interest" test under the Free Exercise Clause). The sole question, then, is whether EO 2021-22 and the City Vaccination Policy are "rationally related" to preventing increased sickness and death from COVID-19 in Illinois and Chicago. *Glucksberg*, [521 U.S. at 728, 117 S.Ct. 2258](#). For reasons more fully explained in the Court's previous order, the answer is yes. *See* TRO Order at 911–12.

Defendants have submitted credible evidence to justify these policies—in particular, declarations from the public health officials who designed and implemented them. These medical professionals explain in great detail how healthcare workers and City employees face increased risks of contracting and transmitting COVID-19, and how requiring vaccination will reduce those risks—both to the employees themselves and to the public with whom

they come into contact. *See id.* (first citing Arwady Decl. ¶¶ 10–13, and then citing Bleasdale Decl. ¶¶ 25–44). This alone would suffice to clear the low bar of rational basis review, *see Minerva Dairy*, [905 F.3d at 1053](#), but Defendants go beyond what the Constitution requires and cite research from the Centers for Disease Control ("CDC") and peer-reviewed studies from major scientific journals supporting the efficacy of vaccines in abating the pandemic's spread. *See* TRO Order at 911–12 & 911–12 nn. 5–6.

These officials include Dr. Allison Arwady, Chief Medical Officer of the Chicago Department of Public Health, *see* Def. City's Resp. TRO, Ex. A, Arwady Decl., ECF No. 18-1 ; Christopher Owen, Commissioner of Human Resources for the City of Chicago, *see* Def. City's Resp. TRO, Ex. B, Owen Decl., ECF No. 18-1 ; Dr. Susan Bleasdale, Associate Professor of Clinical Medicine at the University of Illinois at Chicago, *see* Def. J.B. Pritzker's Resp., Ex. A, Bleasdale Decl.; and Dr. Arti Barnes, Medical Director and Chief Medical Officer of the Illinois Department of Public Health, *see* Def. J.B. Pritzker's Resp. TRO, Ex. B, Barnes Decl., ECF No. 14-1.

Plaintiffs failed to rebut Defendants' justifications at the TRO stage, and their arguments fare no better now. Plaintiffs' supplemental brief supporting their preliminary injunction petition contains little if any legal argument. Instead, Plaintiffs "update the court

with some recent scientific findings," Pls.' Suppl. Br. Supp. Pet. Prelim. Inj. ("Pls.' Suppl. Br.") at 1, ECF No. 32, that purportedly bolster their critique of COVID-19 vaccines and their efficacy. But the rational basis test does not allow courts to "second-guess ... policy judgment[s] by parsing the latest academic studies." *Vasquez v. Foxx*, [895 F.3d 515, 525](#) (7th Cir. 2018). And even if it did, Plaintiffs have not presented any expert witnesses or conducted any discovery (despite the opportunity to do so) that would allow the Court to evaluate the scientific merits of the articles on which they rely. *Cf. Daubert v. Merrell Dow Pharms., Inc.*, [509 U.S. 579, 592–93, 113 S.Ct. 2786, 125 L.Ed.2d 469](#) (1993) (noting that the introduction of scientific evidence "is premised on the assumption" that the evidence, through introduction by a qualified expert, will have "a reliable basis in the knowledge and experience of [the] discipline" from which it arises).

What is more, even on the most generous reading of their evidence, Plaintiffs have shown only the existence of some scientific debate surrounding the degree of immunity provided by vaccines and whether "natural immunity" from prior COVID-19 infection provides comparable (or, as Plaintiffs assert, superior) protection from the virus. *See* TRO Order at 912–13. But the existence of debate would mean, by definition, that Defendants' policies are not "arbitrary or irrational." *Campos*, [932 F.3d at 975](#); *see* TRO Order at 912–13 (explaining that

"even if there were robust scientific debate about whether natural immunity is more effective than vaccine-created immunity ... this still would not be enough for Plaintiffs to prevail"). Therefore, Plaintiffs' additional studies and scientific arguments do not alter the Court's conclusion that EO 2021-22 and the City Vaccination Policy survive rational basis review.

Because Plaintiffs have not identified a fundamental right at stake and because the challenged policies satisfy the rational basis test, the Court finds that Plaintiffs are unlikely to succeed on the merits of their substantive due process claims.

B. Procedural Due Process

The parties have not addressed Plaintiffs' procedural due process, free exercise, or HCRCA claims in their supplemental briefs on the preliminary injunction petition. Thus, the conclusions reached in the TRO Opinion, which contains a more comprehensive treatment of those claims, remain unchanged.

Plaintiffs next contend that Defendants' policies violate procedural due process. A procedural due process claim requires a plaintiff to show that the government deprived them of a constitutionally protected interest with "constitutionally deficient procedural protections" surrounding the deprivation. *Tucker v. City of Chi.*, [907 F.3d 487, 491](#) (7th Cir. 2018). Plaintiffs, however, have not

established that Defendants' enactment or implementation of their vaccine policies violate Plaintiffs' procedural due process rights.

1. Procedural Due Process Claims Against the Governor

As to the Governor, Plaintiffs argue that EO 2021-22 is procedurally invalid because it was issued in violation of Governor Pritzker's statutory authority under the Illinois Emergency Management Agency Act ("EMAA"), [20 Ill. Comp. Stat. 3305/1](#) *et seq.* However, Plaintiffs do not identify what procedures they believe the Governor owed them. The closest they come is a suggestion that only the state legislature can enact such restrictions under Illinois law. *See* TRO Mot. at 4 (stating that "[t]he legislature has remained silent on the subject of vaccine mandates"). But, even if Plaintiffs were correct as a matter of state law, "there is no federal constitutional right to state-mandated procedures." *GEFT Outdoors, LLC v. City of Westfield*, [922 F.3d 357, 366](#) (7th Cir. 2019), *cert denied*, — U.S. —, [140 S. Ct. 268](#), [205 L.Ed.2d 137](#) (2019). And, in any case, this argument is foreclosed by the Eleventh Amendment, which bars any "claim that [a] state official[] violated state law in carrying out [his] official responsibilities." *Pennhurst State Sch. and Hosp. v. Halderman*, [465 U.S. 89, 121](#), [104 S.Ct. 900](#), [79 L.Ed.2d 67](#) (1984).

In the alternative, Plaintiffs argue that EO 2021-22 unconstitutionally conditions their employment on being vaccinated. In support, they recite the maxim that the government cannot condition their public employment on exercising a constitutional right and assert that EO 2021-22 violates their procedural due process rights on this basis alone. But identifying an alleged constitutional violation is only one half of the test—Plaintiffs must also point to specific procedural shortcomings surrounding the violation, which they have not done here. *See Tucker*, [907 F.3d at 491](#). Moreover, despite nearly two months having passed since EO 2021-22 took effect, Plaintiffs have not alleged on this record that any of them have been terminated, or even disciplined, pursuant to the Governor's order. For these reasons, the Court finds that Plaintiffs' procedural due process claims against the Governor are unlikely to succeed on the merits.

Plaintiffs have not alleged sufficient constitutional shortcomings to warrant a *Mathews* analysis, but as the Court noted in its prior ruling, were one needed, "Plaintiffs' interest in not being terminated for refusing vaccination would likely be outweighed by the public's interest in preventing the spread of COVID-19 and the cost to the public's safety of requiring additional procedures." TRO Order at 916 n.10 (citing *Vill. of Orland Park v. Pritzker*, [475 F. Supp. 3d 866, 883](#) (N.D. Ill. 2020) (conducting a *Mathews* analysis and concluding that "the second and third factors in the *Mathews* [*v. Eldridge*, [424](#)

[U.S. 319](#), [96 S.Ct. 893](#), [47 L.Ed.2d 18](#) (1976)] test weigh heavily against" the plaintiff in a challenge to COVID-19 mitigation measures)).

2. Procedural Due Process Claims Against the City

Plaintiffs' procedural due process claims also fail as to the City. Plaintiffs first contend that Mayor Lightfoot exceeded her authority in promulgating the City Vaccination Policy, which, Plaintiffs claim, is legislative in nature and requires the approval of the Chicago City Council. Once more, Plaintiffs have not articulated what, if any, procedural protections they should be afforded or exactly how the promulgation of the City's policy violated their procedural due process rights. Moreover, as the Court's previous order explained, strict separation-of-powers is not applicable to local governments, and it is certainly not enforceable as a federal right. *See Auriemma v. Rice*, [957 F.2d 397](#), [399](#) (7th Cir. 1992). Alternatively, Plaintiffs argue that the City Vaccination Policy impermissibly alters their employment contracts. But again, they do not identify how these changes contravened procedural due process. In the same vein, Plaintiffs also fail to address how the City Vaccination Policy could unconstitutionally "alter" their employment contracts when those contracts are governed by collective bargaining agreements, which "can (and typically do) satisfy" the requirements of procedural due process for terminated public

employees. *Calderone v. City of Chi.* , [979 F.3d 1156, 1166](#) (7th Cir. 2020) (quoting *Chaney v. Suburban Bus Div. of Reg'l Transp. Auth.* , [52 F.3d 623, 630](#) (7th Cir. 1995)). Thus, the Court finds that Plaintiffs' procedural due process claims against the City are unlikely to succeed on the merits.

C. Free Exercise

Next, Plaintiffs bring a challenge under the Free Exercise Clause of the First Amendment. They argue that Defendants' policies unconstitutionally burden their exercise of sincerely held religious beliefs by forcing them either to be vaccinated in violation of those beliefs or lose their jobs. Additionally, they claim that the City violated the Free Exercise Clause by denying, or refusing to grant, religious exemptions. Based on the current record, the Court finds that neither of these claims are likely to succeed on the merits.

Under the Free Exercise Clause, a government action that burdens a plaintiff's exercise of a sincerely held religious belief generally receives strict scrutiny. *Fulton v. City of Phila.* , — U.S. — —, [141 S. Ct. 1868, 1876, 210 L.Ed.2d 137](#) (2021). The Supreme Court created an exception to this rule in *Employment Division v. Smith* , which held that a neutral law of general applicability that only incidentally burdens religion receives rational basis review. *Fulton* , [141 S. Ct. at 1876](#) (citing [494 U.S. 872, 878–82, 110 S.Ct. 1595, 108 L.Ed.2d 876](#) (1993)

); *Ill. Bible Colls. Ass'n v. Anderson*, [870 F.3d 631, 639](#) (7th Cir. 2017).

The Court need not apply the *Smith* test to Defendants' policies at this stage because Plaintiffs have not stated a claim under the Free Exercise Clause on the current record. On the facts before the Court, no Plaintiffs have alleged that they have applied for an exemption from EO 2021-22, let alone have been denied one. And none of the Plaintiffs who have applied for and been denied an exemption from the City Vaccination Policy have made a good faith attempt to comply with the Policy's exemption process, which requires the applicant to fill out a form providing a reason for the request and an explanation of the principle of the applicant's religion that conflicts with vaccination. *See* City Religious Exemption Form. Instead, rather than providing individualized facts, they have submitted formulaic recitations of the HCRCA's definition of a "sincerely held religious belief." *See* Def. City's Resp. TRO, Ex. B5 (collecting the denied applications); *see also* City Religious Exemption Request Form. This is in stark contrast to *Dahl v. Board of Trustees of Western Michigan University*, [15 F.4th 728](#) (6th Cir. 2021), where the plaintiffs pleaded individualized facts showing that the university disregarded their sincerely held religious beliefs. *See id.* at 733–34; *Dahl v. Bd. of Trs. of W. Mich. Univ.*, [558 F.Supp.3d 561, 563–64](#) (W.D. Mich. Aug. 31, 2021), *aff'd*, [15 F.4th 728](#). Here too, Plaintiffs were

given an opportunity to develop the factual record on this point, but they have not done so. Based upon the current record, the Court finds that they are unlikely to succeed on the merits of their free exercise claims.

D. Illinois Health Care Right of Conscience Act (HCRCA)

Plaintiffs' final claims arise under the Illinois Health Care Right of Conscience Act (HCRCA), [745 Ill. Comp. Stat. 70/1](#) *et seq.* Generally, this statute protects the rights of Illinoisans to refuse to provide, receive, or participate in the administration of health care services "contrary to [their] conscience." *Id.* § 70/2. The section of HCRCA relevant here prohibits "discrimination against any person in any manner ... because of such person's conscientious refusal to receive ... any particular form of health care services contrary to his or her conscience." *Id.* § 70/5. Plaintiffs' HCRCA claims against the Governor and the City are addressed in turn.

1. HCRCA Claims Against the Governor

Plaintiffs' HCRCA claims against the Governor cannot succeed because, as explained more fully above and in the Court's previous order, the Eleventh Amendment prevents Plaintiffs from suing the Governor in his official capacity for violations of state law. *See Pennhurst*, [465 U.S. at 106](#), [104 S.Ct. 900](#).

2. HCRCA Claim Against the City

Although the Eleventh Amendment does not bar the HCRCA claims against the City, the Court concludes that Plaintiffs are unlikely to succeed on the merits of these claims, because the City Vaccination Policy's religious exemption neatly tracks the definition of a protected religious belief under HCRCA. *Compare* City Religious Exemption Form (granting exemptions for individuals with "a sincerely held set of moral convictions arising from belief in and relation to religious beliefs"), *with* [745 Ill. Comp. Stat. 70/3](#) (protecting persons with "a sincerely held set of moral convictions arising from belief in and relation to God, or ... from a place in the life of its possessor parallel to that filled by God among adherents to religious faiths"). Plaintiffs' facial challenge cannot succeed in light of this substantial overlap. *See Ezell v. City of Chi.*, [651 F.3d 684, 698–99](#) (7th Cir. 2011) (a successful facial challenge requires a law to be unconstitutional "in all its applications" (emphasis omitted)). And although it is unclear at this preliminary stage whether the City complies with HCRCA in administering the religious exemption, Plaintiffs have not adduced any facts indicating that it does not. Accordingly, the Court finds that Plaintiffs' HCRCA claim against the City is unlikely to succeed on the merits.

Again, Plaintiffs do not specify whether they believe the City Vaccination Policy violates HCRCA on its face or as applied to their individual applications, but language in their TRO Motion suggests the

former. *See* TRO Mot. at 13 ("The threatened suspension and subsequent termination here is squarely a violation of the [HCRCA].").

In summary, the Court reaches the same conclusion as it did in its prior ruling—Plaintiffs have not established a likelihood of success as to any of their claims. This alone is enough to deny injunctive relief, *see GEF T Outdoors*, [922 F.3d at 366](#) ("If the plaintiff fails to meet any of the[] threshold requirements, the court must deny the injunction." (quoting *Girl Scouts of Manitou Council*, [549 F.3d at 1086](#))), but the Court will briefly discuss the other preliminary injunction factors for the sake of completeness.

II. Irreparable Harm

In order to show that they would suffer irreparable harm without injunctive relief, Plaintiffs must "demonstrate that irreparable injury is likely." *Winter*, [555 U.S. at 21](#), [129 S.Ct. 365](#) (emphasis omitted). Plaintiffs contend that the Court must find irreparable harm as a matter of law because Defendants' policies violate their constitutional rights. For the reasons stated above, the Court finds no constitutional violation arising out of Defendants' policies, so this argument is unavailing. But, even assuming *arguendo* that requiring Plaintiffs to be vaccinated as a condition of employment does inflict some degree of constitutional injury, the record in this case contains

no evidence that any Plaintiffs were fired or disciplined because they refused to get the vaccine. And as the Court noted in its prior ruling, termination of employment is typically redressable through money damages. *See Bedrossian v. Northwestern Mem'l Hosp.*, [409 F.3d 840, 845](#) (7th Cir. 2005) ; *Garland v. N.Y. City Fire Dep't*, [21-cv-6586, 574 F.Supp.3d 120, 131–32](#) (E.D.N.Y. Dec. 6, 2021) (rejecting argument that termination for refusing to comply with vaccine policy comprised irreparable harm because, even if plaintiffs alleged constitutional injuries, they could be made whole through damages and reinstatement). Therefore, on these facts, the Court finds that Plaintiffs have not demonstrated that they would suffer irreparable harm in the absence of injunctive relief.

III. Balance of the Equities

Finally, the Court finds that the balance of the equities and the public interest, which are considered together when the government is the party opposing injunctive relief, *see Nken v. Holder*, [556 U.S. 418, 435, 129 S.Ct. 1749, 173 L.Ed.2d 550](#) (2009), do not favor a preliminary injunction. The Court must evaluate this factor by weighing the degree of harm the nonmoving party would suffer if the injunction is granted against the degree of harm to the moving party if the injunction is denied. *See Cassell v. Snyders*, [990 F.3d 539, 545](#) (7th Cir. 2021). The analysis also should consider the public interest, or

"the consequences of granting or denying the injunction to non-parties." *Id.* (quoting *Abbott Labs. v. Mead Johnson & Co.*, [971 F.2d 6, 11](#) (7th Cir. 1992)).

Here, the Court finds, as have numerous other courts, that the public's interest in reducing the transmission of COVID-19 weighs heavily against granting an injunction. *See, e.g., Does 1–6 v. Mills*, [16 F.4th 20, 37](#) (1st Cir. 2021), *cert denied sub nom. Does 1–3 v. Mills*, — U.S. —, [142 S. Ct. 17, 211 L.Ed.2d 243](#) (mem.) (2021); *We The Patriots USA, Inc. v. Hochul*, [17 F.4th 266, 295–96](#) (2d Cir. 2021); *Doe v. San Diego Unified Sch. Dist.*, [19 F.4th 1173, 1181–83](#) (9th Cir. 2021); *Garland*, [574 F.Supp.3d at 132–34](#); *Rydie*, [572 F.Supp.3d at 161–62](#). Conversely, Plaintiffs' interest in not being vaccinated is relatively weak, given the absence of a fundamental constitutional right to refuse vaccination during a pandemic such as the one facing us today. *See Klaassen*, [7 F.4th at 593](#). Indeed, when confronted with a widely contagious pandemic, "plaintiffs are not asking to be allowed to make a self-contained choice to risk only their own health," given that their refusal to be vaccinated "could sicken and even kill many others who did not consent" to their decisions. *Cassell*, [990 F.3d at 545](#). As a result, the Court finds that Plaintiffs have not shown that the balance of the equities favors the relief they seek.

To the extent that developments since the Court's ruling on the TRO have impacted the balance of the countervailing interests, they only push the needle farther in Defendants' favor. Since that ruling was issued, the seven-day average of daily new COVID-19 cases reported in Illinois has increased more than fourfold. *See COVID-19 Home: Daily Cases Change Over Time*, Ill. Dep't Pub. Health, (Dec. 20, 2021, 12:00 PM) <https://dph.illinois.gov/covid19.html> (showing a seven-day average of 10,179 new cases per day as of December 20, 2021, compared to 2,088 new cases per day on October 29, 2021). Additionally, the Omicron variant has emerged, *see Science Brief: Omicron (B.1.1.529) Variant*, CDC, (Dec. 2, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/scientific-brief-omicron-variant.html>, and is currently "rapidly spreading" across the country. Nate Rattner, *Omicron Now the Dominant US Covid Strain at 73% of Cases, CDC Data Shows*, CNBC (Dec. 20, 2021, 6:46 PM), <https://www.cnbc.com/2021/12/20/omicron-now-the-dominant-us-covid-strain-at-73percent-of-cases.html>. And, although little is known about whether Omicron presents a greater risk of transmission or reinfection than previous variants, its emergence prompted the CDC to "strengthen[] its recommendation" on booster doses of the vaccine. Maggie Fox, *All Adults Should Get a COVID-19 Booster Shot Because of the Omicron Variant, CDC Says*, CNN (Nov. 29, 2021, 5:35 PM) <https://www.cnn.com/2021/11/29/health/cdc->

[booster-guidance-omicron/index.html](#). This uncertainty, combined with the upswing in cases, makes Defendants' position regarding the balance of the equities and public interest factor even stronger than it was at the TRO stage.

Conclusion

Because Plaintiffs have not satisfied any of the elements necessary to obtain preliminary injunctive relief, their motion for a preliminary injunction is denied.

IT IS SO ORDERED.

United States Court of Appeals, Seventh Circuit.

BARBARA LUKASZCZYK, et al., Plaintiffs-Appellants,

v.

COOK COUNTY, et al., Defendants-Appellees.

JOHN HALGREN, et al., Plaintiffs-Appellants,

v.

CITY OF NAPERVILLE, et al., Defendants-Appellees.

SCOTT TROOGSTAD, et al., Plaintiffs-Appellants,

v.

CITY OF CHICAGO and JAY ROBERT PRITZKER, Governor, Defendants-Appellees.

Nos. 21-3200, 21-3231, 21-3371. (Published as 47 F.4th 587).

Argued May 26, 2022.

Decided August 29, 2022.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division, No. 1:21-cv-05407, Robert W. Gettleman, *Judge*.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division, No. 1:21-cv-05039, John Robert Blakey, *Judge*.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division, No. 1:21-cv-05600, John Z. Lee, *Judge*.

Before BRENNAN, SCUDDER, and ST EVE, *Circuit Judges*.

BRENNAN, *Circuit Judge*.

In these appeals, which we consolidate for decision, three district judges denied motions for preliminary injunctions against state and local COVID-19 vaccine mandates. The plaintiffs argue the mandates violate their constitutional rights to substantive due process, procedural due process, and the free exercise of religion. They also contend the mandates violate Illinois state law. Although the plaintiffs could have presented some forceful legal arguments, they have failed to develop factual records to support their claims. Because the plaintiffs have not shown a likelihood of success on the merits, we affirm the decisions of the district judges.

I. Factual Background.

In response to the COVID-19 pandemic, state and local authorities in Illinois enacted a series of mandates and restrictions. The State of Illinois, Cook County Health and Hospitals System, the City of Chicago, and the City of Naperville each issued an order, policy, or directive requiring certain employees to vaccinate or regularly test for the virus. Employees who failed to comply with the mandates would be subject to disciplinary action, including possible termination. We begin by briefly

summarizing each of the relevant state and local policies.

The 2021 Illinois Mandate. On September 3, 2021, Governor Pritzker used his emergency powers under the Illinois Emergency Management Agency Act, 20 ILL. COMP. STAT. 3305/1 *et seq.*, to issue Executive Order 2021-22 ("2021 Order"). The 2021 Order requires certain healthcare workers to vaccinate, or test at least weekly, for COVID-19. Workers who fail to comply with the mandate will not be permitted on the premises of a healthcare facility. Under the 2021 Order, a "Health Care Worker" is defined as "any person who (1) is employed by, volunteers for, or is contracted to provide services for a Health Care Facility, or is employed by an entity that is contracted to provide services to a Health Care Facility, and (2) is in close contact" with other persons in the facility for a specified amount of time. Initially, a "Health Care Facility" included "any institution, building, or agency ... whether public or private (for-profit or nonprofit), that is used, operated or designed to provide health services, medical treatment or nursing, or rehabilitative or preventive care to any person or persons." According to the Order, "hospitals" and "emergency medical services" met this definition.

A worker is exempt from the vaccination requirement if "(1) vaccination is medically contraindicated," or "(2) vaccination would require

the individual to violate or forgo a sincerely held religious belief, practice, or observance." But exempt workers still need to "undergo, at a minimum, weekly testing." The 2021 Order also provides that "[s]tate agencies... may promulgate emergency rules as necessary to effectuate" it.

The 2021 Order states it is intended to reduce COVID-19 exposure and transmission: "health care workers, and particularly those involved in direct patient care, face an increased risk of exposure to COVID-19." Requiring these workers to receive a "vaccine or undergo regular testing can help prevent outbreaks and reduce transmission to vulnerable individuals who may be at higher risk of severe disease." The Order states that "stopping the spread of COVID-19 in health care settings is critically important because of the presence of people with underlying conditions or compromised immune systems."

The 2022 Illinois Mandate. Ten months later, on July 12, 2022, Governor Pritzker issued Executive Order 2022-16 ("2022 Order"), which re-issued and modified the 2021 Order. The 2022 Order removes "emergency medical services" and "IDPH licensed emergency medical service vehicles" from the definition of a "Health Care Facility." It also requires that certain healthcare workers undergo weekly or biweekly testing only when the level of COVID-19 Community

Transmission is moderate or high, depending on the type of facility.

The Cook County Mandate. Cook County Health and Hospitals System ("Cook County Health") is an agency of Cook County, Illinois. On August 16, 2021, it issued a vaccination policy ("County Health Vaccination Policy") that required all personnel be fully vaccinated by September 30, 2021 as a condition of their employment.^{[\[1\]](#)} The policy applies to all Cook County Health personnel, including contractors like the Hektoen Institute for Medical Research, LLC, a nonprofit organization that administers medical research grants. Failure to comply with the County Health Vaccination Policy "constitute[s] gross insubordination and will result in disciplinary action, up to and including termination."

The policy permits exemptions "based upon a disability, medical condition, or sincerely held religious belief, practice, or observance." Exemption requests are considered individually. When reviewing an exemption request, Cook County Health considers: (1) "the duration of the request (either permanent in the case of exemptions or temporary in the case of deferrals)," (2) "the nature and severity of the potential harm posed by the request," (3) "the likelihood of harm," and (4) "the imminence of the potential harm." Exempt personnel are still "required to comply with preventive infection control measures established by the Health System,"

which could include conditions "such as job location, job duties, and shift, but will minimally include weekly COVID-19 testing and enhanced [personal protective equipment] protocols." At first, Cook County Health decided to reject any religious accommodation request made by a person who had previously taken the flu vaccine. It remains unclear whether this approach was formally reversed, but there is no dispute that Cook County Health later decided to grant religious exemptions.

The City of Chicago Mandate. On October 8, 2021, the City of Chicago issued a COVID-19 Vaccination Policy ("Chicago Vaccination Policy"), which required all City employees to be fully vaccinated by the end of the calendar year. Effective October 15, 2021, all employees, "as a condition of employment," had to "either be fully vaccinated against COVID-19" or undergo testing on a "twice weekly basis with tests separated by 3-4 days." Employees are "responsible for obtaining tests on their own time and at no cost to the City." The testing option expired at the end of the year, at which point employees would need to be fully vaccinated. The Chicago Vaccination Policy permits accommodations for a disability, medical condition, or sincerely held religious belief. To receive a religious accommodation, an employee must fill out a request form, including the reason for the exemption, the religious principle that conflicted with being vaccinated, and the signature of a religious leader.

The City of Naperville Mandate. On September 9, 2021, the City of Naperville issued "Naperville Fire Department Special Directive #21-01" ("Naperville Special Directive"). Under that directive, emergency medical technicians and firefighters employed by Naperville are required to either produce weekly negative COVID-19 tests or show proof of vaccination. This mandate is effectively coterminous with the State of Illinois's 2021 Order.

II. Procedural Background.

Three lawsuits were filed in the Northern District of Illinois, each challenging the Governor's 2021 Order and one of the local mandates.

In *Troogstad v. City of Chicago*, a group of City employees ("*Troogstad* plaintiffs") challenged the Chicago Vaccination Policy and the 2021 Order. They claimed the regulations violated their rights to bodily autonomy under the constitutional doctrines of substantive due process, procedural due process, and the free exercise of religion. They also claimed the policies violated the Illinois Health Care Right of Conscience Act. The *Troogstad* plaintiffs petitioned for a temporary restraining order against the enforcement of the policies, which Judge John Lee denied. They then moved for a preliminary injunction. The *Troogstad* plaintiffs declined to supplement the record with witnesses and limited discovery, instead filing a supplemental brief in support of their motion. Judge Lee denied that

motion, and the *Troogstad* plaintiffs appeal that decision.

In *Lukaszczyk v. Cook County*, a group of Cook County Health and Hektoen employees ("*Lukaszczyk* plaintiffs") challenged the County Health Vaccination Policy and the 2021 Order. They brought claims implicating substantive due process, procedural due process, free exercise of religion, and the Illinois Health Care Right of Conscience Act. Based on these claims, the plaintiffs moved for a preliminary injunction to bar enforcement of the mandates. Judge Robert Gettleman denied that motion from the bench. The *Lukaszczyk* plaintiffs appeal that decision.

In *Halgren v. City of Naperville*, employees of the City of Naperville Fire Department ("*Halgren* plaintiffs") challenged the Naperville Special Directive and the 2021 Order. The *Halgren* plaintiffs named as defendants Governor Pritzker, the City of Naperville, and Edward-Elmhurst Healthcare ("EEH")—a health system which operates a Naperville hospital and coordinates emergency medical services with the Fire Department. The Naperville Special Directive also stated that the Edward Hospital EMS System required the Fire Department to "provide a roster of who is vaccinated and a roster of who will be submitting to weekly testing." According to the *Halgren* plaintiffs, the regulations violated their

rights to privacy and bodily autonomy under the constitutional doctrines of substantive due process, procedural due process, and equal protection. They moved for a temporary restraining order and preliminary injunction against the policies, as well as a declaratory judgment that the Governor had exceeded his statutory authority. The parties later agreed to convert the *Halgren* plaintiffs' combined motion for emergency relief into a motion only for a preliminary injunction. When given the opportunity, both parties chose to forgo discovery. Judge John Robert Blakey denied the *Halgren* plaintiffs' motion, which they now appeal.

III. Mootness and Standing.

Two threshold issues for our consideration are whether certain claims are moot because of the 2022 Order and if certain parties have standing.

The Constitution limits federal jurisdiction to cases and controversies. U.S. CONST. art. III, § 2. This limitation applies "at `all stages of review, not merely at the time the complaint is filed." [*UWM Student Ass'n v. Lovell*, 888 F.3d 854, 860 \(7th Cir. 2018\)](#) (quoting [*Ciarpaglini v. Norwood*, 817 F.3d 541, 544 \(7th Cir. 2016\)](#)). A plaintiff has standing if he has "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." [*Fox v. Dakota Integrated Sys., LLC*, 980 F.3d 1146, 1151 \(7th Cir.](#)

2020) (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016)). "The party invoking federal jurisdiction bears the burden of establishing these elements." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (citation omitted). The case becomes moot, "[i]f at any point the plaintiff would not have standing to bring suit at that time." *Milwaukee Police Ass'n v. Bd. of Fire & Police Comm'rs of City of the Milwaukee*, 708 F.3d 921, 929 (7th Cir. 2013). As a general rule, cases or individual claims for relief are moot when the "issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *League of Women Voters of Ind., Inc. v. Sullivan*, 5 F.4th 714, 721 (7th Cir. 2021) (quoting *Powell v. McCormack*, 395 U.S. 486, 496 (1969)).

A. The 2022 Order

Governor Pritzker's 2022 Order, which amended the 2021 Order, removed (among other things) the phrase "emergency medical services" from the definition of a "Health Care Facility." This amendment meant the 2021 Order no longer applied to emergency medical services because employees at these facilities did not fall within the definition of a healthcare worker. So, employees of the Chicago and Naperville Fire Departments were not subject to the Governor's vaccination mandate. As a result, the claims of those plaintiffs against Governor Pritzker are moot because they seek to enjoin a policy that no

longer applies to them. All other plaintiffs may still proceed with their claims against the Governor.

Practically, this means all the *Halgren* plaintiffs' claims against Governor Pritzker are moot,^[2] and all the claims made by Chicago Fire Department employees in *Troogstad* against Governor Pritzker are moot. Each of these plaintiffs were considered healthcare workers because they were part of "emergency medical services," so they now seek to enjoin an inapplicable policy.

B. The Hektoen Employees

Governor Pritzker argues that the *Lukaszczyk* plaintiffs lack standing to challenge the 2021 Order because their alleged injury is not fairly traceable to the mandate. According to the Governor, the plaintiffs failed to present evidence that they objected to the weekly testing option, which was permitted in lieu of vaccination. Each of the *Lukaszczyk* plaintiffs—the Cook County and Hektoen employees—testified in their depositions that they were willing to comply with a testing option. So, the Governor submits, the plaintiffs' "alleged injuries of unwanted vaccination and/or employment discipline are the product of the County's mandate and are not fairly traceable to the Governor's conduct."

We disagree and conclude that the *Lukaszczyk* plaintiffs have standing to challenge

the 2021 Order. There is standing if a plaintiff has a fairly traceable injury that the court could redress with a favorable decision. [Fox, 980 F.3d at 1151](#). An injury in fact is "an invasion of a legally protected interest which is (a) concrete and particularized," and "(b) actual or imminent, not conjectural or hypothetical." [Lujan, 504 U.S. at 560](#) (cleaned up). An injury is "particularized" if it "affect[s] the plaintiff in a personal and individual way." *Id.* at 560 n.1. It is concrete if it is "real," not abstract. [Spokeo, Inc., 578 U.S. at 340](#) (citation omitted). The *Lukaszczyk* plaintiffs' successfully alleged an injury in fact by claiming they were burdened by scheduling and paying for weekly COVID-19 tests. See [Czyzewski v. Jevic Holding Corp., 137 S. Ct. 973, 983 \(2017\)](#) ("For standing purposes, a loss of even a small amount of money is ordinarily an 'injury.'" (citations omitted)). The burden of scheduling and paying for weekly tests suffices for an Article III injury.

The injuries here are also fairly traceable to the defendants because they are a direct result of the County Health Vaccination Policy. Both the district court and our court could redress the plaintiffs' injuries by enjoining the vaccination mandate, eliminating the extra costs imposed on the defendants. See *id.* The *Lukaszczyk* plaintiffs therefore have standing to challenge the County Health Vaccination Policy.

C. Edward-Elmhurst Healthcare

EEH argues it is not responsible for the vaccine and testing mandates so it should not be a party. Standing requires "a causal connection between the injury and the conduct complained of." [*Lujan*, 504 U.S. at 560-61](#) (citing [*Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41-42 \(1976\)](#)). Because EEH did not issue or require compliance with either the 2021 or 2022 Orders or the Naperville Special Directive, EEH argues it did not cause the harm the *Halgren* plaintiffs allege.

On this record, the *Halgren* plaintiffs do not have standing against EEH. Like those plaintiffs, EEH was subject to the Naperville Special Directive. But there is no evidence that EEH helped promulgate it. By its own terms, the Naperville Special Directive mentions EEH only once, stating that certain employers must provide EEH with "lists of vaccinated and tested employees." Affidavits from an EEH official confirm this account. The plaintiffs do not respond to this argument, except to state that EEH's agent is empowered to supervise, and potentially to suspend, EMS personnel. But the only evidence the plaintiffs provided are their own affidavits, claiming that Naperville told them that EEH required compliance with the Special Directive. That EEH complied with Naperville's Special Directive is not, by itself, enough to prove a causal connection. See [*Doe v. Holcomb*, 883 F.3d 971, 975-](#)

[76 \(7th Cir. 2018\)](#) (noting that when a plaintiff sues a state official to enjoin the enforcement of a state statute, he must "establish that his injury is causally connected to that enforcement and that enjoining the enforcement is likely to redress his injury"). So, the *Halgren* plaintiffs do not have standing against EEH, and we need not resolve EEH's alternative argument that it is not a state actor. The *Halgren* plaintiffs may proceed on their claims against Naperville, but not against EEH.

IV. Preliminary Injunction.

Having resolved those justiciability questions, we now review the denial in each case of a motion for a preliminary injunction. Such a denial is examined for abuse of discretion. [DM Trans, LLC v. Scott, 38 F.4th 608, 617 \(7th Cir. 2022\)](#). A district court abuses its discretion "when it commits a clear error of fact or an error of law." [Cassell v. Snyders, 990 F.3d 539, 545 \(7th Cir. 2021\)](#) (quoting [Abbott Lab'ys v. Mead Johnson & Co., 971 F.2d 6, 13 \(7th Cir. 1992\)](#)). We consider the district court's legal conclusions de novo and its findings of fact for clear error. [Common Cause Ind. v. Lawson, 978 F.3d 1036, 1039 \(7th Cir. 2020\)](#) (citations omitted).

A preliminary injunction is "an exercise of a very farreaching power, never to be indulged in except in a case clearly demanding it." [Cassell, 990 F.3d at 544](#) (quoting [Orr v. Shicker, 953 F.3d 490, 501 \(7th Cir. 2020\)](#)). A party seeking a preliminary injunction

"must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." [*Winter v. Natural Res. Defense Council, Inc.*, 555 U.S. 7, 20 \(2008\)](#) (citation omitted). The first step requires that the plaintiff "demonstrate that [his] claim has some likelihood of success on the merits, not merely a better than negligible chance." [*Mays v. Dart*, 974 F.3d 810, 822 \(7th Cir. 2020\)](#) (internal citation and quotation marks omitted). It "is often decisive." [*Braam v. Carr*, 37 F.4th 1269, 1272 \(7th Cir. 2022\)](#). If plaintiffs fail to establish their likelihood of success on the merits, we need not address the remaining preliminary injunction elements. [*Doe v. Univ. of S. Ind.*, No. 22-1864, 2022 WL 3152596, at *3 \(7th Cir. Aug. 8, 2022\)](#).

We address the remaining claims in the order presented on appeal, which is the same order in which the district judges addressed them. Those claims are:

<i>Halgren v.</i>	<i>Lukaszczyk v.</i>	
<i>Troogstad v.</i>		
<i>City of</i>	<i>Cook County,</i>	<i>City of</i>
<i>Naperville,</i>	No. 21-3200	
<i>Chicago,</i>		
No. 21-3231	Judge Gettleman	No.
21-3371		

	Judge Blakey		Judge Lee
Substantive			
Due	X	X	X
Process			
Procedural			
Due	X	X	X
Process			
Free		X	X
Exercise			
Illinois			
Health Care			
Right of		X	X
Conscience			
Act			

A. Substantive Due Process

The plaintiffs in each case claim state and local COVID-19 regulations violated their constitutional right to substantive due process by interfering with their rights to bodily autonomy and privacy.

The Fourteenth Amendment provides in part that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1. The Due Process Clause has a substantive and procedural component. But "[t]he

scope of substantive due process is very limited." *Campos v. Cook Cnty.*, 932 F.3d 972, 975 (7th Cir. 2019) (quoting *Tun v. Whitticker*, 398 F.3d 899, 902 (7th Cir. 2005)). "Substantive due process protects against only the most egregious and outrageous government action." *Id.* (citations omitted). When stating a claim, a "plaintiff must allege that the government violated a fundamental right or liberty." *Id.* (citing *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997)). Such a violation must have been arbitrary and irrational. *Id.* (citations omitted). Courts should also be "reluctant to expand the concept of substantive due process because guideposts for responsible decisionmaking in this uncharted area are scarce and open-ended." *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992) (citation omitted).

Under this framework, we consider whether the plaintiffs assert a fundamental right or liberty. If so, we must apply heightened scrutiny. If not, we review the claim for a rational basis. Several cases speak to this decision. In *Jacobson v. Commonwealth of Massachusetts*, the Supreme Court considered the validity of a Massachusetts statute that required all persons older than 21 receive the smallpox vaccine. 197 U.S. 11, 12 (1905). Failure to comply with the law would result in a \$5 fine (about \$140 today). *Id.*; *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 70 (2020) (Gorsuch, J., concurring). The law's only exception was for

children deemed unfit for vaccination who presented a certificate signed by a registered physician. *Jacobson*, 197 U.S. at 12. In response to the state law, the city of Cambridge board of health adopted a regulation requiring that all city inhabitants be vaccinated or revaccinated. *Id.* at 12-13. Henning Jacobson did not comply with the mandate and was sentenced to jail until he agreed to pay the fine. *Id.* at 13. He appealed, claiming the Massachusetts law authorizing the local mandate violated his constitutional rights under the Fourteenth Amendment. *Id.* at 14.

The Supreme Court held in *Jacobson* that a state may require, without exception, that the public be vaccinated for smallpox. *Id.* at 39. The Court reasoned that "[a]ccording to settled principles, the police power of a state must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety." *Id.* at 25 (citations omitted). The Massachusetts legislature "required the inhabitants of a city or town to be vaccinated only when, in the opinion of the board of health, that was necessary for the public health or the public safety." *Id.* at 27. Investing "such a body with authority over such matters was not an unusual, nor an unreasonable or arbitrary, requirement," the Court concluded. *Id.* But "if a statute purporting to have been enacted to protect the public health, the public morals, or the public

safety" lacks any "real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution." *Id.* at 31 (citations omitted).

Jacobson, although informative precedent, is factually distinguishable. The Massachusetts law and Cambridge mandate were challenged in the wake of the smallpox pandemic, which was of a different nature than the COVID-19 pandemic of the last few years. For example, as Judge Blakey found in *Halgren*, the smallpox fatality rate among the unvaccinated was about 26 percent; by contrast, the COVID-19 infection fatality rate was estimated in January 2021 to be somewhere between 0.0-1.63 percent. Frank Fenner et al., *Smallpox and its Eradication*, WORLD HEALTH ORGANIZATION (1988); John P.A. Ioannidis, *Infection fatality rate of COVID-19 inferred from seroprevalence data*, WORLD HEALTH ORGANIZATION BULLETIN (Oct. 14, 2020) (stating that COVID-19 "[i]nfection fatality rates ranged from 0.00% to 1.63%" with "corrected values from 0.00% to 1.54%" and in "people younger than 70 years, infection fatality rates ranged from 0.00% to 0.31% with crude and corrected medians of 0.05%").

In *Halgren* the district court also found that COVID-19 has "a low attack rate"[\[3\]](#) in contrast to the

smallpox pandemic. Grace E. Patterson et al., *Societal Impacts of Pandemics: Comparing COVID-19 With History to Focus Our Response*, FRONTIERS IN PUBLIC HEALTH (Apr. 21, 2021). Judge Blakey further concluded that the vaccines for smallpox and COVID-19 are distinguishable — the smallpox vaccine was a sterilizing vaccine, intended to kill the virus and prevent transmission, but many of the COVID-19 vaccines are, by design, non-sterilizing. James Myhre and Dennis Sifris, MD, *Sterilizing Immunity and COVID-19 Vaccines*, VERYWELL HEALTH (Dec. 24, 2020).

Jacobson is also legally and historically distinguishable. The decision predates [*United States v. Carolene Products Co.*, 304 U.S. 144 \(1938\)](#), in which the Court reserved the possibility of stricter standards of review for certain constitutional cases implicating "prejudice against discrete and insular minorities." *Id.* at 152-53 & n.4. The principles underlying *Jacobson* are also important to consider. As Judge Blakey noted in a thorough opinion, in *Jacobson* the Court voiced concerns for federalism, the limits of liberty, and the separation of powers. *Jacobson* instructed that in emergency circumstances courts defer to the executive and legislative branches, but they do not abdicate their constitutional role. If a policy had "no real or substantial relation" to its ends, the Court

in *Jacobson* reasoned, courts had a duty to intervene. *Jacobson*, 197 U.S. at 31.

Recent circuit precedent supplements *Jacobson*. In *Klaassen v. Trustees of Indiana University*, eight students brought a lawsuit against Indiana University challenging the school's COVID-19 vaccine policy. 7 F.4th 592, 592 (7th Cir. 2021). That policy required all students be vaccinated against COVID-19 unless they were exempt for religious or medical reasons. *Id.* The students sought a preliminary injunction, claiming the policy violated their due process rights under the Fourteenth Amendment. *Id.* Citing *Jacobson*, this court applied the rational basis standard. *Id.* at 593. We noted that the university's vaccine policy made for an easier case than *Jacobson* because the university's policy had religious and medical exceptions, and it required only university attendees to vaccinate, rather than all the citizens of a state. *Id.* This court then denied the request for an injunction pending appeal. *Id.* at 594.

The plaintiffs here cite several other decisions to argue they have a fundamental liberty and bodily autonomy interest, which require our court to review the mandates under strict scrutiny review. See [*Cruzan v. Dir., Missouri Dep't of Health*, 497 U.S. 261, 278 \(1990\)](#) (stating that a "competent person has a constitutionally protected liberty interest in refusing unwanted medical

treatment"); *Washington v. Harper*, 494 U.S. 210, 221-22, 229 (1990) (recognizing that prisoners possess "a significant liberty interest in avoiding the unwanted administration of antipsychotic drugs under the Due Process Clause of the Fourteenth Amendment" and stating that the "forcible injection of medication into a nonconsenting person's body represents a substantial interference with that person's liberty" (citations omitted)); *Glucksberg*, 521 U.S. at 735 (holding that a state ban on assisted suicide did "not violate the Fourteenth Amendment, either on its face or as applied to competent, terminally ill adults who wish to hasten their deaths by obtaining medication prescribed by their doctors" (citation and internal quotation marks omitted)). The plaintiffs also rely on *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), both since overruled by *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2242 (2022).

"Unless a governmental practice encroaches on a fundamental right, substantive due process requires only that the practice be rationally related to a legitimate government interest, or alternatively phrased, that the practice be neither arbitrary nor irrational." *Lee v. City of Chicago*, 330 F.3d 456, 467 (7th Cir. 2003) (citing *Glucksberg*, 521 U.S. at 728). Following the guidance of the Supreme Court, our court has been hesitant to expand the scope of fundamental rights under substantive due

process. *See, e.g., Campos*, 932 F.3d at 975 (noting that employment-related rights are not fundamental); *Palka v. Shelton*, 623 F.3d 447, 453 (7th Cir. 2010) (stating that "an alleged wrongful termination of public employment is not actionable as a violation of substantive due process unless the employee also alleges the defendants violated some other constitutional right or that state remedies were inadequate" (citation omitted)). Using similar reasoning, our court applied rational basis review to the vaccine mandate claim in *Klaassen*. 7 F.4th at 593. *E.g. Cuomo*, 141 S. Ct. at 70 (Gorsuch, J., concurring) ("Although *Jacobson* pre-dated the modern tiers of scrutiny, this Court essentially applied rational basis review to Henning Jacobson's challenge."). We follow that path here.

Plaintiffs in each case have failed to provide facts sufficient to show that the challenged mandates abridge a fundamental right. Nor do they provide a textual or historical argument for their constitutional interpretation. Plaintiffs do not cite any controlling case law or other legal authority in support of their position, instead relying on decisions that are either factually distinguishable or that have been overruled. Neither this court nor the district judges deny that requiring the administration of an unwanted vaccine involves important privacy interests. But the record developed and presented here does not demonstrate that these interests

qualify as a fundamental right under substantive due process.

The district judge in each of these cases followed Supreme Court and circuit court precedent by applying the rational basis standard. Following that same authority, we decline to apply strict scrutiny and instead review for rational basis. "Under rational-basis review, a statutory classification comes to court bearing a strong presumption of validity, and the challenger must negative every conceivable basis which might support it." [Minerva Dairy, Inc. v. Harsdorf](#), 905 F.3d 1047, 1053 (7th Cir. 2018) (quoting [Ind. Petroleum Marketers & Convenience Store Ass'n v. Cook](#), 808 F.3d 318, 322 (7th Cir. 2015)). So, "to uphold the statute, we need only find a reasonably conceivable state of facts that could provide a rational basis for the classification." *Id.* (quoting [Ind. Petroleum Marketers](#), 808 F.3d at 322). Rational basis review is "a heavy legal lift for the challengers." [Ind. Petroleum Marketers](#), 808 F.3d at 322. As Judge Blakey stated in *Halgren*, the plaintiffs' substantive due process claim "is two-fold: (1) the mandate is based on a misconception that vaccinated individuals are less likely to spread the SARS-CoV-2 virus than the unvaccinated and naturally immune; and (2) natural immunity provides incredibly strong protection against infection from COVID-19, and it does so on par with any vaccine protection."

In *Halgren*, the parties agreed that the vaccines can mitigate some dangerous COVID-19 symptoms. They also agreed that both unvaccinated and vaccinated people can spread the virus, and they did not dispute the existence of serious vaccine-induced side-effects. The parties did dispute the relative protection provided by natural immunity and COVID-19 vaccines. The defendants provided evidence from the Centers for Disease Control, declarations from public health officials, and numerous studies, all reporting that the vaccine is effective against COVID-19. The evidence that vaccines reduce the rate of transmission provides a reasonably conceivable set of facts to support the mandates.

The same is true for the protections afforded by natural immunity. The challenged mandates are susceptible to scientific critique, but the plaintiffs did not provide any evidence—studies, expert reports, or otherwise—showing that the benefits of vaccination on top of natural immunity eliminate a "conceivable basis" for the mandates under rational basis review. The plaintiffs do not dispute that these governments have an interest in preventing the spread of COVID-19, and they relied on reasonably conceivable scientific evidence when promulgating the contested policies. Even if the vaccination policies do not fully account for natural immunity or studies with contrary results, under rational basis review a government need only show that its rationale is supported by a "reasonably conceivable state of

facts." [Minerva Dairy, 905 F.3d at 1053](#). The governments here have met that low bar. As Judge Blakey noted, the plaintiffs do not account for the fact that vaccination combined with natural immunity could reasonably be judged as more effective than natural immunity alone.

On this record, the *Lukaszczyk*, *Troogstad*, and *Halgren* plaintiffs have not met their burden under the rational basis standard to show that the challenged policies violate their substantive due process rights. They have shown the efficacy of natural immunity as well as pointed out some uncertainties associated with the COVID-19 vaccines. But they have not shown the governments lack a "reasonably conceivable state of facts" to support their policies. *Id.* Thus, the district judges correctly concluded that the substantive due process claims were not likely to succeed on the merits.

B. Procedural Due Process

Plaintiffs in each case claim the state and local COVID-19 regulations violated their procedural due process rights. *See* U.S. CONST. amend. XIV, § 1. Before reviewing this claim, we consider the doctrine of sovereign immunity.

1. The Eleventh Amendment

The Eleventh Amendment provides that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity,

commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. CONST. amend. XI. A "claim that state officials violated state law in carrying out their official responsibilities is a claim against the State that is protected by the Eleventh Amendment." [*Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 121 \(1984\)](#). "A federal court's grant of relief against state officials on the basis of state law, whether prospective or retroactive, does not vindicate the supreme authority of federal law." *Id.* at 106. Rather, "it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law." *Id.* This type of "result conflicts directly with the principles of federalism that underlie the Eleventh Amendment." *Id.*

Even "when properly raised, sovereign immunity is not absolute immunity." *Council 31 of the Am. Fed'n of State, Cnty., and Mun. Emps., AFL-CIO v. Quinn*, 680 F.3d 875, 882 (7th Cir. 2012). A state may be subjected to an action in federal court in three instances: "(1) where Congress, acting under its constitutional authority conveyed by amendments passed after the Eleventh Amendment ... abrogates a state's immunity from suit; (2) where the state itself consents to being sued in federal court; and (3) under the [*Ex parte Young*] doctrine." *Id.* (citation omitted). Under the *Ex parte Young* doctrine, private parties

may "sue individual state officials for prospective relief to enjoin ongoing violations of federal law." *Id.* (quoting [MCI Telecomms. Corp. v. Ill. Bell Tel. Co.](#), 222 F.3d 323, 337 (7th Cir. 2000)). The longstanding rationale for this doctrine is that "[b]ecause an unconstitutional legislative enactment is 'void,' a state official who enforces that law 'comes into conflict with the superior authority of the Constitution,' and therefore is 'stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct.'" *Id.* (quoting [Va. Office for Prot. & Advocacy v. Stewart](#), 563 U.S. 247, 254 (2011)). A court therefore "need only conduct a straightforward inquiry into whether the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." *Id.* (quoting [Ind. Prot. & Advocacy Servs. v. Ind. Fam. and Soc. Servs. Admin.](#), 603 F.3d 365, 371 (7th Cir. 2010)).

For reasons previously discussed, the procedural due process claims against Governor Pritzker of all *Halgren* plaintiffs and those *Troogstad* plaintiffs who were Chicago Fire Department employees are moot. The remaining claims, made by the *Lukaszczyk* plaintiffs and the rest of the *Troogstad* plaintiffs are against Governor Pritzker in his official capacity and seek prospective relief. To the extent these plaintiffs allege violations of Illinois law—such as whether Governor Pritzker

exceeded his authority under the Emergency Management Agency Act—sovereign immunity bars their claims in this court. Individual state officials may be sued personally for federal constitutional violations committed in their official capacities, but that principle does not extend to "claim[s] that state officials violated state law in carrying out their official responsibilities." [*Pennhurst*, 465 U.S. at 121](#).

2. The Fourteenth Amendment

Review of the claim that Governor Pritzker's 2021 Order violated the Fourteenth Amendment by depriving the *Lukaszczyk* and *Troogstad* plaintiffs of their protected property interests is not barred by the Eleventh Amendment. A plaintiff who asserts "a procedural due process claim must have a protected property interest in that which he claims to have been denied without due process." [*Khan v. Bland*, 630 F.3d 519, 527 \(7th Cir. 2010\)](#) (citation omitted). To demonstrate a procedural due process violation of a property right, the plaintiff must establish that there is "(1) a cognizable property interest; (2) a deprivation of that property interest; and (3) a denial of due process." *Id.* (quoting [*Hudson v. City of Chicago*, 374 F.3d 554, 559 \(7th Cir. 2004\)](#)).

In *Board of Regents of State Colleges v. Roth*, the Supreme Court explained that "[t]o have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it," and "more than a unilateral expectation of it." 408 U.S. 564, 577

(1972). Instead, the person must "have a legitimate claim of entitlement to it." *Id.* For "[i]t is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined." *Id.* The right to a hearing provides an opportunity to vindicate those claims. *Id.*

The *Lukaszczyk* and *Troogstad* plaintiffs argue that the right to earn a living is protected under the Fourteenth Amendment. They contend that even if an employee does not have a property interest in public employment, a termination or decision not to renew a contract "cannot be premised upon the employee's protected activities." But beyond these general statements, the plaintiffs have not provided any evidence or a legal argument as to why they have a property interest in public employment. Conclusory statements are not enough to establish "a legitimate claim of entitlement," so the plaintiffs' claim against Governor Pritzker fails.

The *Lukaszczyk* and *Troogstad* plaintiffs also assert procedural due process claims against local authorities. They argue that local executives exceeded their authority by promulgating vaccination policies without legislative directives. The *Troogstad* plaintiffs claim the City of Chicago violated their procedural due process rights when Mayor Lori Lightfoot promulgated the City Vaccination Policy. According to

the *Troogstad* plaintiffs, the City Vaccination Policy is legislative in nature and requires approval from the Chicago City Council. As to the County Health Vaccination Policy, the *Lukaszczyk* plaintiffs point out that Cook County Health "answer[s] to the [Cook] County Board." Other than this uncontested assertion, though, they fail to explain what procedural violation occurred.

The procedural due process claims here fail because the *Lukaszczyk* and *Troogstad* plaintiffs have not articulated what procedural protections they should have been afforded. As this court has stated before, "[s]tate and local governments need not follow the pattern of separated powers in the national Constitution." [*Auriemma v. Rice*, 957 F.2d 397, 399 \(7th Cir. 1992\)](#) (citations omitted). For example, "[e]xecutive officials sometimes exercise legislative powers (think of the city manager model, related to parliamentary government)." *Id.* A "[p]urely executive official[] may have the power to set policy by delegation (express or implied by custom) when the legislature is silent." *Id.* (citations omitted). In fact, "[e]ven executive action in the teeth of municipal law could be called policy." *Id.* Without specifying the process that was due, how it was withheld, and evidence for the alleged protected interest, the plaintiffs' procedural due process claims fail. *See Roth*, 408 U.S. at 577; [*Khan*, 630 F.3d at 527](#).

* * *

The district judges correctly ruled that the procedural due process claims of the plaintiffs were unlikely to succeed on the merits due to the bar of sovereign immunity or because they have failed to show how the local policies denied them procedural due process.

C. Free Exercise of Religion

The *Lukaszczyk* and *Troogstad* plaintiffs also claim that the state and local COVID-19 regulations unconstitutionally burdened their right to the free exercise of religion under the First Amendment. Many of these plaintiffs object on religious grounds to the use of alleged aborted fetal cells in the development of the vaccine.

The First Amendment provides that "Congress shall make no law ... prohibiting the free exercise" of religion. U.S. CONST. amend I. To merit protection under the Constitution, "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others." [*Thomas v. Review Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 714 \(1981\)](#). According to the plaintiffs, the COVID-19 regulations violated the exercise of their sincerely held religious beliefs by forcing them to either vaccinate in violation of their faith or lose their jobs. We consider these claims, with the exception of the Chicago Fire Department employees' claims against Governor Pritzker

in *Troogstad*, which are moot for the reasons discussed above.

The *Lukaszczyk* and *Troogstad* plaintiffs cite certain decisions to guide our evaluation of these claims. In *Fulton v. City of Philadelphia*, the Supreme Court reiterated that "laws incidentally burdening religion are ordinarily not subject to strict scrutiny under the Free Exercise Clause so long as they are neutral and generally applicable." 141 S. Ct. 1868, 1876 (2021) (citing [*Emp. Div., Dep't of Human Res. of Oregon v. Smith*, 494 U.S. 872, 878-82 \(1990\)](#)). The government "fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature." *Id.* (citations omitted). Further, a law is not generally applicable if it provides "a mechanism for individualized exemptions" or "prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Id.* at 1877 (citations omitted) (quoting [*Smith*, 494 U.S. at 884](#)). So, "where the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of religious hardship without compelling reason." *Id.* (quoting [*Smith*, 494 U.S. at 884](#)).

The Sixth Circuit reviewed a similar claim in [*Dahl v. Board of Trustees of Western Michigan University*, 15 F.4th 728 \(6th Cir. 2021\)](#). There, a public university promulgated a policy requiring

"student-athletes to be vaccinated against COVID-19." *Id.* at 730. The policy permitted the school to consider "individual requests for medical and religious exemptions on a discretionary basis." *Id.* But, when 16 student-athletes requested religious exemptions, the university ignored or denied their requests and barred them from participating in team activities. *Id.* The student-athletes sued the university, and a district court preliminarily enjoined the officials from enforcing the mandate. *Id.* The Sixth Circuit denied the motion for a stay of the preliminary injunction because the Free Exercise challenge would likely succeed on appeal. *Id.* at 736. The court stated that "having announced a system under which student-athletes can seek individualized exemptions, the University must explain why it chose not to grant any to plaintiffs." *Id.* Because "the University's policy is not neutral and generally applicable," the court "analyze[d] the policy through the lens of what has come to be known as `strict scrutiny.'" *Id.* at 734 (citing *Fulton*, 141 S. Ct. at 1881).

In *Troogstad*, Judge Lee concluded that there was no need to apply the test reiterated in *Fulton* because the plaintiffs had "not stated a claim under the Free Exercise Clause on the current record." On the facts before him, no plaintiff that "applied for and [was] denied an exemption from the City Vaccination Policy ... made a good faith attempt to comply with the Policy's exemption process." That process

requires applicants to "fill out a form providing a reason for the request and an explanation of the principle of the applicant's religion that conflicts with vaccination."

Before us, the *Troogstad* plaintiffs concede that Judge Lee "correctly pointed out that there was no as-applied challenge" in the case. The plaintiffs note, though, that when the petition was filed, the City of Chicago had "not yet ruled on requests for religious accommodations." Rather than wait for the accommodation decisions, the *Troogstad* plaintiffs brought a facial challenge, arguing the accommodation forms "demonstrate that the City reserved great discretion for itself to rule on whether the religious beliefs were legitimate, consistent, and approved by religious leaders." But this facial challenge is insufficient. On paper, the City of Chicago provides religious exemptions for its vaccination policy. Judge Lee gave the *Troogstad* plaintiffs an opportunity to develop the factual record on this point, but they declined to do so. It is unlikely that they will succeed on the merits without evidence of how the religious exemption is applied in practice.

The *Lukaszczyk* plaintiffs argue that Cook County Health's initial decision to reject any religious accommodation request made by someone who had previously received the flu vaccine violated the Free Exercise Clause. They claim this policy was never

rescinded, although they admit that the government did an "about-face," later deciding to grant religious exemptions. According to the *Lukaszczyk* plaintiffs, this accommodation permitted individuals to seek "non-existent telecommuting positions" and favored individuals who received one Pfizer or Moderna shot over those who had natural immunity. Once again, if these assertions have merit, there is no record evidence to support them. The plaintiffs should have gathered facts and created a record detailing any wrongful denials of requests for religious exemptions. Instead, they made a facial challenge, which ignored the text of the policy's religious exemption and the status of the plaintiffs' exemption requests. This does not show a violation of their right to freely exercise their religions.

For these reasons, the district judges correctly concluded that the free exercise claims of the *Lukaszczyk* and *Troogstad* plaintiffs were unlikely to succeed on the merits.

D. The Illinois Health Care Right of Conscience Act

Finally, the *Lukaszczyk* and *Troogstad* plaintiffs claim that the state and local COVID-19 regulations violate their rights under the Illinois Health Care Right of Conscience Act, 745 ILL. COMP. STAT. § 70/1 *et seq.* ("HCRCA"). Between these two cases, the plaintiffs make claims against Governor Pritzker, Cook County, the City of Chicago, and Hektoen. As discussed above, the HCRCA claims against

Governor Pritzker are either mooted by the 2022 Order or barred by the Eleventh Amendment. *See Pennhurst*, 45 U.S. at 106.

The HCRCA states in part:

It shall be unlawful for any person, public or private institution, or public official to discriminate against any person in any manner ... because of such person's conscientious refusal to receive, obtain, accept, perform, assist, counsel, suggest, recommend, refer or participate in any way in any particular form of health care services contrary to his or her conscience.

745 ILL. COMP. STAT. § 70/5. The statute defines "[c]onscience" as "a sincerely held set of moral convictions arising from belief in and relation to God, or which, though not so derived, arises from a place in the life of its possessor parallel to that filled by God among adherents to religious faiths." *Id.* § 70/3. The plaintiffs claim that the local vaccine mandates on their face violate this provision. But both of the challenged mandates provide individualized religious exemptions. For example, as Judge Lee explained in *Troogstad*, the City of Chicago's religious exemption form separates out individuals with "a sincerely held set of moral convictions arising from belief in and relation to religious beliefs." So, both the HCRCA and the City's Vaccination Policy endeavor to protect those who object to the vaccine for moral reasons.

The same is true in *Lukaszczyk*. Those plaintiffs argue that the County Health Vaccination Policy violates the HCRCA because it "threaten[s] suspension and subsequent termination" of noncompliant employees. But on its face, the policy permits exemptions "based upon a disability, medical condition, or sincerely held religious belief, practice, or observance." The text of this exemption fits within the HCRCA's conscience protections. The County Health Vaccination Policy also states it does not permit "exemption[s] or deferral[s] based solely upon a general philosophical or moral reluctance." Although more troubling on its face, this language does not disqualify the County Health Vaccination Policy under the HCRCA because that Policy still permits exemptions based upon a sincerely held religious belief.

The *Lukaszczyk* plaintiffs also have not made an as-applied claim or provided any evidence that the County Health Vaccination Policy's religious exemption does not cover people who are protected under the HCRCA. See [*Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450-51 \(2008\)](#) ("[W]e must be careful not to go beyond the statute's facial requirements and speculate about 'hypothetical' or 'imaginary' cases." (citing [*United States v. Raines*, 362 U.S. 17, 22 \(1960\)](#))). In short, the *Lukaszczyk* plaintiffs do not present any textual argument or evidence that the County Health Vaccination Policy violates Illinois state law.

We cannot conclude that the local vaccine mandates violate the HCRCAs as a facial matter. To pursue this claim, the plaintiffs should have produced evidence of their allegations. Without this evidence, it is unlikely that their claims against the local governments and Hektoen will succeed on their merits.

V. Conclusion.

Based on the records before us, the district judges did not abuse their discretion when they denied the plaintiffs' motions for a preliminary injunction. Even if the plaintiffs had established the other elements required for a preliminary injunction, they have not shown that their claims are likely to succeed on the merits. We therefore AFFIRM the decisions of the district court.

[1] Several days later, the Cook County President issued an executive order, which mandated the COVID-19 vaccine for certain Cook County employees and encouraged County offices to develop their own vaccination policies.

[2] The *Halgren* plaintiffs were the only parties to raise an equal protection claim, and that claim was made solely against the Governor, so we have no occasion to reach that constitutional argument.

[3] An "attack rate" is typically "calculated as the number of people who became ill divided by the

number of people at risk for the illness." *Attack Rate*, ENCYCLOPEDIA BRITANNICA (2016).

In the United States District Court
For the Northern District of Illinois

Scott Troogstad,

v.

The City of Chicago

Hon. Thomas M. Durkin
Sept. 10, 2024

**AMENDED MEMORANDUM OPINION AND
ORDER¹**

The Seventh Circuit affirmed the Court’s denial of a preliminary injunction in this case filed by Chicago Fire Department personnel regarding the City’s and the State’s COVID-19 vaccine mandates. On remand, the Court granted motions to dismiss by the City and the Governor, but granted Plaintiffs leave to amend their claims against the City under the First Amendment and the Illinois Religious Freedom Restoration Act (“IRFRA”). Scott Troogstad is the only plaintiff to file an amended complaint, adding a retaliation claim to his federal and state claims for violation of his freedom to practice religion. In a separate case, he has also filed a Title VII claim against in the City regarding the same underlying operative facts. The City has separately moved to dismiss the claims in both cases, but the Court address them together in this opinion because they

can be disposed on the same grounds. Both motions are granted and Troogstad's claims in both cases are dismissed with prejudice.

I. Retaliation

As an initial matter, the City argues that Troogstad's new retaliation claim in case No. 21 C 5600 is time-barred because it does not relate back to his original complaint. Claims for constitutional violations brought under 42 U.S.C. § 1983 in Illinois are subject to a two-year statute of limitations. *See Gekas v. Vasiliades*, 814 F.3d 890, 894 (7th Cir. 2016). It has been more than two years since Troogstad filed case No. 21 C 5600, let alone since the underlying occurrence. Troogstad does not dispute that his retaliation claim must relate back to the earlier complaint to be timely.

Whether a new claim "relates" back to an earlier pleading under Federal Rule of Civil Procedure 15(c) depends on whether "the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading[.]" The Seventh Circuit has explained that a claim relates back to the original complaint if "the original complaint gave the defendant enough notice of the nature and scope of the plaintiff's claim that he shouldn't have been surprised by the amplification of the allegations of the original complaint in the amended one."

Santamarina v. Sears, Roebuck & Co., 466 F.3d 570, 573 (7th Cir. 2006).

In his current complaint, Troogstaad alleges that he “was among the City’s most vocal opponents of the vaccination mandates,” and he was “singled out for [punishment] after advocating against the vaccine mandates.” These allegations are new and were not present in the prior versions of the complaint.

Despite these new factual allegations, Troogstad argues that his “claim has not changed” because he continues to allege “a violation of the First Amendment leading to the loss of his employment.” But the First Amendment has six clauses: (1) freedom of speech; (2) freedom of the press; (3) freedom of religion; (4) freedom from the government establishment of religion; (5) freedom of assembly; and (6) freedom to petition. Just because Troogstad’s original complaint included a claim for violation of his First Amendment freedom of religion, does not mean that he also included claims under all the other clauses of the First Amendment by reference. Without factual allegations supporting a retaliation (i.e., free speech) claim in the original complaint, Troogstad’s new retaliation claim does not relate back to that complaint simply because the new claim also alleges a violation of the First Amendment. Therefore, Troogstad’s retaliation claim does not relate back to the original complaint and is dismissed as time-barred.

II. Religious Belief

In both cases, Troogstad brings claims for an impermissible burden on his free exercise of his religious beliefs and for discrimination based on his religious beliefs. All of his claims—whether stated as a violation of the First Amendment, violation of the IRFRA, or violation of Title VII—must be based on a plausible allegation that the “beliefs” in question are “religious” and not mere secular personal convictions. The Seventh Circuit test for whether a belief qualifies as “religious” is whether the belief “occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God.” *Adeyeye v. Heartland Sweeteners, LLC*, 721 F.3d 444, 448 (7th Cir. 2013). The Court “must distinguish between religious belief and other matters of personal conviction, because only religious beliefs warrant [legal protection].” *Snyder v. Chicago Transit Auth.*, 2023 WL 7298943, at *7 (N.D. Ill. Nov. 6, 2023). The “controlling inquiry at the pleading stage is whether the employee plausibly based [his] vaccination exemption request at least in part on an aspect of [his] religious belief or practice.” *Passarella v. Aspirus, Inc.*, 108 F.4th 1005, 1009 (7th Cir. 2024); *Bube v. Aspirus Hosp., Inc.*, 108 F.4th 1017, 1019 (7th Cir. 2024).

Troogstad’s complaint contains no detail about his beliefs or how they conflict with the City’s COVID vaccination policy. Troogstad alleges only that “the genealtering aspect of mRNA vaccinations violates

his beliefs as a Christian.” R. 89 at 5 (¶ 28). But he fails to explain how his convictions regarding mRNA vaccinations are an “aspect of his religious belief or practice.” *Passarella*, 108 F.4th at 1009; *Bube*, 108 F.4th at 1019. And as another court in this district has found, “there is no self-evident connection between Christianity” and a vaccination requirement. *See Hassett v. United Airlines, Inc.*, 2024 WL 1556300, at *3 (N.D. Ill. Apr. 10, 2024). That court and others have dismissed similar claims under similar circumstances where plaintiffs allege that a policy conflicts with their religious beliefs but do not include any detail about “any religious tenet which is offended” or “the nature of the conflict” in the complaint. *See Hassett*, 2024 WL 1556300, at *3 (citing cases). Troogstad’s bare allegation that he is a Christian is insufficient to plausibly allege that his opposition to the COVID vaccines is based in his Christian beliefs. Troogstaad argues that finding that he has insufficiently alleged the religious nature of his opposition to the COVID vaccine is tantamount to passing judgment on the validity of his religious beliefs, which the Supreme Court has held is not the province of the courts. He cites Supreme Court holdings that “it is no business of courts to say that what is a religious practice or activity for one group is not religion under the protection of the First Amendment,” *see Fowler v. Rhode Island*, 345 U.S. 67, 70 (1953); and that “a government may not make someone’s employment contingent upon any test of the sufficiency, consistency, or acceptance by a given

member of any clergy, of their religious beliefs,” *see Epperson v. Arkansas*, 393 U.S. 97, 106 (1968).

But these holdings are beside the point because they do not address the Court’s obligation to determine whether Troogstad has plausibly alleged the religious nature of his opposition to the vaccine. Contrary to Troogstad’s argument, the Court makes no findings regarding the merit or virtue of Troogstad’s religious beliefs, or even the merit of his personal conviction in opposition to the vaccines. Rather, the Court finds that Troogstad has not plausibly alleged a connection between his conviction regarding mRNA vaccines and his religious beliefs. And absent a plausible allegation that Troogstad’s decision to refuse vaccination was religious in nature, Troogstad cannot allege that the City’s vaccination policy infringed on his religious beliefs whether in violation of the First Amendment, Title VII, or the Illinois Religious Freedom Restoration Act.

Troogstad’s allegations are distinguished from the allegations made by the plaintiffs in *Passarella* and *Bube* where the Seventh Circuit reversed district court grants of motions to dismiss of similar claims. The plaintiffs in those cases made the following allegations:

Dottenwhy appealed and added the following: “I have prayed long and hard about this and I am fearful of the effects. The Bible says: My body is a temple of the

Holy Spirit and to present my body as a living sacrifice, Holy and acceptable to God.” *Passarella*, 108 F.4th at 1008.

Passarella explained her Christian belief that her body “is [the Lord’s] dwelling place” and that “[a]fter prayerful consideration, I don’t feel at peace about receiving the COVID vaccine” and instead “must trust God with my body (His temple) and that he will provide for me and protect me as he has already proven time and time again during my life.” She likewise stated that “God knows my body better than anyone because He is the maker of it.” Passarella “obey[s] scripture and the divine wisdom and discernment imparted to me by the Holy Spirit through prayer.” Her “conscience,” too, “act[s] as a guide to the rightness or wrongness of one’s behavior” and here “I must follow the message that God has given me not to receive the vaccine.” *Passarella*, 108 F.4th at 1007.

For her part, Bube informed [the defendant] in her initial request that she is a “baptized and a practicing Catholic” and “following my conscience of refusing the Covid vaccine at this time.” After [the defendant] denied her initial request, she

appealed and further explained that she tries to “eat healthy” and “remain active” to “keep my God-given mind, body, and soul healthy.” Citing her safety concerns about the vaccine, she then stated that receiving it “would be going against what God has intended for me.” *Bube*, 108 F.4th at 1019.

Hedrington’s request invoked similar themes. In her appeal to the hospital, for example, she cited her belief that God is her “creator” and that God “made me in his image and has given me life. He created me perfectly!” As a result, “I trust in God completely and cannot accept this vaccine in my body.” *Bube*, 108 F.4th at 1019.

As discussed, Troogstad does not make any similar allegations regarding the aspects of his religious beliefs that were violated by the City’s COVID vaccination requirement. His bare invocation of Christianity is insufficient to state a claim, because the First Amendment does not protect his identity as a Christian, but rather his right to maintain his religious beliefs. So, as the Seventh Circuit explained in *Bube* and *Passarella*, in order to state a claim for violation of his religious beliefs, Troogstad must allege what religious beliefs were violated by the City’s policy. But Troogstad has not identified any of

his religious beliefs at all in his complaint. This total failure takes his claims out of the realm of allegations the Seventh Circuit held to be sufficient in *Bube* and *Passarella*. Because Troogstad has not identified the beliefs that were violated, his claims that his beliefs were violated are not plausible and must be dismissed.

Conclusion

Therefore, the City's motions to dismiss—[93] in case No. 21 C 5600, and [12] in case No. 23 C 14881—are granted, and Troogstad's claims are dismissed with prejudice. The claims are dismissed with prejudice because Troogstad has already had the opportunity to file five complaints among his two cases, along with the benefit of a Seventh Circuit opinion regarding merits of his claims. No further opportunities to amend are warranted.

United States Court of Appeals
For the Seventh Circuit

Scott Troogstad, et al,

v.

City of Chicago,

Decided: Dec. 9, 2025

No: 25-1575

ORDER

In this successive appeal, we consider whether the district court correctly dismissed claims that the City of Chicago's COVID-19 vaccination policy violated certain constitutional rights and a state religious freedom law, as well as whether the court abused its discretion by denying plaintiffs leave to file a fourth amended complaint. We affirm the district court's decisions in each respect.

I. Background

Scott Troogstad was an employee of the City of Chicago Fire Department who previously tested positive for COVID-19. The City promulgated a COVID-19 vaccination policy (1). Troogstad and more than 130 other plaintiffs (all City employees of the

Fire, Water, and Transportation Departments, whom we call “the Troogstad plaintiffs”) filed suit in October 2021 challenging the policy. Although that policy provided a religious exemption, the Troogstad plaintiffs alleged that the denial or lack of approval of their religious exemptions violated the Free Exercise Clause of the First Amendment and the Illinois Religious Freedom Restoration Act (IRFRA), 775 ILCS 35/1 et seq. They also alleged that the policy violated the constitutional right to substantive due process by interfering with their fundamental rights to bodily autonomy and privacy.

This case returns to us for a second time. In *Lukaszczyk v. Cook County*, 47 F.4th 587 (7th Cir. 2022), the Troogstad plaintiffs sued the City of Chicago and the Illinois Governor challenging state and local policies requiring them to be tested for and vaccinated against the COVID-19 virus. The Troogstad case was combined with two others, and we affirmed the denial of preliminary injunctions against those policies. *Id.* at 599–608.(2) After remand, the district court granted the Troogstad plaintiffs’ motion for leave to file a second amended complaint, in which they alleged various constitutional and state law violations. The City and the Governor moved to dismiss the second amended complaint with prejudice.(3) In January 2024 the district court dismissed most of the claims against the City (including for violation of substantive due process) with prejudice, but it dismissed without

prejudice those claims alleging the City violated the Free Exercise Clause and IRFRA.

In March 2024, the Troogstad plaintiffs filed a third amended complaint against the City. That pleading included claims of violation of the Free Exercise Clause and IRFRA. The third amended complaint alleged:

Troogstad's request for an accommodation stated that he was a Christian and that he opposed the vaccination on the basis of his religion. He further elaborated that the gene-altering aspect of mRNA vaccinations violates his beliefs as a Christian.

DE 89 at 5, ¶ 28.

The City again moved to dismiss. In a September 9, 2024 memorandum opinion and order the district court granted the motion with prejudice. Judgment was entered the same day. The next day the court amended its decision to discuss two then-recent decisions of this court, *Passarella v. Aspirus, Inc.*, 108 F.4th 1005, 1009 (7th Cir. 2024), and *Bube v. Aspirus Hosp., Inc.*, 108 F.4th 1017, 1019 (7th Cir. 2024).

Later in September 2024, the Troogstad plaintiffs asked the district court to vacate or reconsider its dismissal decision under Federal Rule of Civil Procedure 59(e), and they again sought leave to amend their complaint. In March 2025 the court ruled that the Troogstad plaintiffs could amend their complaint in a separate case arising out of the same

facts as here (N.D. Ill. 23 C 14881), which alleges violations of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e et seq. But the court denied their motion to amend the complaint in this case.

The Troogstad plaintiffs then appealed the dismissal of three claims: (1) that the denial or lack of approval of their religious exemptions violated the Free Exercise Clause of the First Amendment, (2) violation of IRFRA, and (3) violation of their constitutional right to substantive due process. They also appealed the denial of their motion to amend.

II. Discussion

A. Free Exercise Claim

To state a claim that the Free Exercise Clause of the First Amendment has been violated, a plaintiff must plausibly allege that a government entity burdened a sincere religious practice pursuant to a policy that was not neutral or generally applicable. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525 (2022). Our court has held that to plead a religion-based claim related to a vaccination requirement, plaintiffs must plead some facts about their religious beliefs and how those beliefs conflict with the vaccine requirement. *See Passarella*, 108 F.4th at 1005, 1009 (connecting Christian beliefs of sanctity of the human body with objection to potentially harmful effects vaccination), *and Bube*, 108 F.4th at 1019 (connecting belief that God created the human body

and that taking vaccine would violate those religious beliefs).

Troogstad alleges “the gene-altering aspect of mRNA vaccinations violates his beliefs as a Christian.” But he failed to allege facts about *how* taking the vaccine violated his religious beliefs. He misses that step. This distinguishes his third amended complaint from the pleadings in cases that permit a religious claim to advance. *Passarella*, 108 F.4th at 1009 (“Passarella’s statement connects her objection to vaccination with her Christian beliefs regarding the sanctity of the human body.”); *Bube*, 108 F.4th at 1019 (“We have no trouble concluding that ... these requests are based at least in part on an aspect of the plaintiffs’ religious beliefs.”).

This is not a high standard, but Troogstad has failed to meet it. While the pleading of a violation of the Free Exercise Clause need not be overly exacting, in numerous rounds of pleading, including in the third amended complaint, Troogstad did not move beyond conclusory statements. A complaint need not provide detailed factual allegations; mere conclusions generally will not suffice. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Troogstad’s failure to allege facts about how his religious beliefs as a Christian conflict with the vaccine requirement—after numerous opportunities to satisfy this pleading standard—dooms his Free Exercise claim.

B. IRFRA Claim

Under IRFRA, a government may not substantially burden someone's exercise of religion unless the government shows that burden furthers a compelling governmental interest and is the least restrictive means to further that interest. 775 ILCS 35/15. This statute's language mirrors the federal Religious Freedom Restoration Act (RFRA). *See* 42 U.S.C. § 2000bb et seq.

To state such a claim, a plaintiff must identify the religious belief that would be violated if the plaintiff complied with the contested requirement. *Soc'y of the Divine Word v. U.S. Citizenship and Immigr. Servs.*, 129 F.4th 437, 450 (7th Cir. 2025) (RFRA claim). This follows because “we must know what beliefs the claimant contends the regulation offends” in order to evaluate whether that requirement substantially burdens a religious belief. *Id.*

Under the same reasoning as in II.A., Troogstad has not alleged specific beliefs related to his Christian faith offended by the COVID-19 policy. Mere conclusory statements are not enough to survive a motion to dismiss. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Federal Rule of Civil Procedure 8 “does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions.” *Id.* at 678–79. A plaintiff must also include some factual

support to articulate a religious component to an objection. *See Passarella*, 108 F.4th at 1011. As detailed above, Troogstad’s pleading failed to provide specific facts to support his claim. So, the district court correctly dismissed the IRFRA claim.

C. Substantive Due Process Claim

In the second amended complaint, the Troogstad plaintiffs alleged the City’s COVID-19 policy violates their constitutional right to substantive due process by interfering with their right to bodily autonomy and privacy. They appeal the dismissal of that claim. We have already analyzed and rejected the contention that a vaccination policy infringes on a fundamental constitutional right, which would implicate strict scrutiny. *Lukaszcyk*, 47 F.4th at 599–602; *see also Klaasen v. Trustees of Ind. Univ.*, 7 F.4th 592, 593–94 (7th Cir. 2021). Other circuits agree. *See, e.g., Children’s Health Def., Inc. v. Rutgers, The State Univ. of N.J.*, 93 F.4th 66, 80 (3d Cir. 2024) (holding that there is no constitutional right to refuse vaccination); *Norris v. Stanley*, 73 F.4th 431, 435–36 (6th Cir. 2023) (upholding university’s COVID-19 vaccine policy under rational basis review).

And we have concluded that the Troogstad plaintiffs “have not met their burden under the rational basis standard to show that the challenged policies violate their substantive due process rights.” *Lukaszcyk*, 47

F.4th at 603. None of plaintiffs' arguments, which repeat contentions we have already denied, persuade us to revisit our previous reasoning and conclusions.

D. Leave to Amend Pleadings

The Federal Rules of Civil Procedure state that outside of one amendment as a matter of course, "a party may amend its pleading ... with the court's leave. The Court shall freely give leave when justice so requires." FED. R. CIV. P. 15(a)(2).

The Troogstad plaintiffs have had numerous opportunities to amend and supplement their pleadings, but they have not done so. In our 2022 decision resolving the appeal of the denial of a preliminary injunction, we noted that plaintiffs need to show "how the religious exemption [to the City's COVID-19 policy] is applied in practice." *Lukaszczyk*, 47 F.4th at 607. The Troogstad plaintiffs' second amended complaint was dismissed for failure to include such allegations. And the third amended complaint continued to lack information about how Troogstad's religious beliefs discovery for a plaintiff armed with nothing more than conclusions." *Id.* at 678–79. A plaintiff must also include some factual support to articulate a religious component to an objection. *See Passarella*, 108 F.4th at 1011. As detailed above, Troogstad's pleading failed to provide specific facts to support his claim. So, the district court correctly dismissed the IRFRA claim.

C. Substantive Due Process Claim

In the second amended complaint, the Troogstad plaintiffs alleged the City’s COVID-19 policy violates their constitutional right to substantive due process by interfering with their right to bodily autonomy and privacy. They appeal the dismissal of that claim. We have already analyzed and rejected the contention that a vaccination policy infringes on a fundamental constitutional right, which would implicate strict scrutiny. *Lukaszcyk*, 47 F.4th at 599–602; *see also Klaasen v. Trustees of Ind. Univ.*, 7 F.4th 592, 593–94 (7th Cir. 2021). Other circuits agree. *See, e.g., Children’s Health Def., Inc. v. Rutgers, The State Univ. of N.J.*, 93 F.4th 66, 80 (3d Cir. 2024) (holding that there is no constitutional right to refuse vaccination); *Norris v. Stanley*, 73 F.4th 431, 435–36 (6th Cir. 2023) (upholding university’s COVID-19 vaccine policy under rational basis review).

And we have concluded that the Troogstad plaintiffs “have not met their burden under the rational basis standard to show that the challenged policies violate their substantive due process rights.” *Lukaszcyk*, 47 F.4th at 603. None of plaintiffs’ arguments, which repeat contentions we have already denied, persuade us to revisit our previous reasoning and conclusions.

D. Leave to Amend Pleadings

The Federal Rules of Civil Procedure state that outside of one amendment as a matter of course, “a party may amend its pleading ... with the court’s leave. The Court shall freely give leave when justice so requires.” FED. R. CIV. P. 15(a)(2).

The Troogstad plaintiffs have had numerous opportunities to amend and supplement their pleadings, but they have not done so. In our 2022 decision resolving the appeal of the denial of a preliminary injunction, we noted that plaintiffs need to show “how the religious exemption [to the City’s COVID-19 policy] is applied in practice.” *Lukaszczyk*, 47 F.4th at 607. The Troogstad plaintiffs’ second amended complaint was dismissed for failure to include such allegations. And the third amended complaint continued to lack information about how Troogstad’s religious beliefs.

Affirmed.