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Matthew J. Clark, Esq.
President

September 10, 2021

Mr. Sid J. Trant
General Counsel, University of Alabama System
500 University Blvd. East
Tuscaloosa, AL 35401

Sent via email and certified mail

RE: Violation of Alabama's Vaccine Passport Ban

Mr. Trant,

I am writing on behalf of the Alabama Center for Law and Liberty, a conservative public-interest firm based in Birmingham dedicated to the defense of limited government, free markets, and strong families. Recently, ACLL was informed that UAB Hospital is requiring its healthcare workers to be fully vaccinated by November 12 and that the deadline to apply for an exemption is September 21. We have been asked whether this complies with Act 2021-493, commonly referred to as Alabama's Vaccine Passport Ban.

The law states, in relevant part, "A state or local government entity, or any of its officers or agents, may not ... require the publication or sharing of immunization records or similar health information for an individual" Act 2021-493 § 1(a). As the Supreme Court of Alabama has recognized, UAB Hospital is a state-run hospital.¹ Consequently, UAB Hospital may not require its employees to disclose whether they have been vaccinated or not. Likewise, the Alabama Attorney General has examined the law and concluded that "no government, school, or business in Alabama may demand that a constituent, or customer, respectively, be vaccinated for COVID-19 or show proof of his or her vaccination for COVID-19."²

Consequently, UAB Hospital must immediately cease and desist from forcing its employees to disclose their vaccination status and requiring unvaccinated employees to receive the vaccine. If UAB Hospital continues this course of action, then ACLL will file a suit for injunctive relief before the September 21 deadline.

¹ See, e.g., *Liberty Nat'l Life Ins. Co. v. Univ. of Ala. Health Servs. Found.*, 881 So. 2d 1013, 1027-28 (Ala. 2003).

² Steve Marshall, Public Notice, *COVID-19 Vaccinations & Act 2021-493*, Office of the Attorney General, July 26, 2021, <https://www.alabamaag.gov/Documents/news/AL%20COVID%2019%20Vaccine%20Guidance.pdf> (emphasis deleted).

President Biden announced yesterday that he will be requiring all healthcare workers to get fully vaccinated. This does not change the analysis for two reasons. First, because there is currently no rule or order in place making the President's position official, UAB Hospital cannot argue that Alabama law is preempted by federal law. The fact is that UAB Hospital is currently breaking the law. Second, the President's unprecedented decision will face immediate legal challenges, and the federal judiciary is not likely to uphold his decision.

Finally, ACLL has received questions about whether exemptions will be provided for employees with religious objections. Assuming that UAB Hospital may somehow require its employees to disclose their vaccination status—and it cannot—it is bound by both the Free Exercise Clause of the First Amendment and Title VII of the Civil Rights Act in making its decision. And even if the President implements the orders of which he spoke, his orders do not take precedence over the Constitution or Title VII. We commend UAB Hospital for realizing that the religious liberty of its employees must be respected and for inviting its employees to apply for religious exemptions. Please be aware that under the Supreme Court's decision in *Fulton v. City of Philadelphia*, 141 S.Ct. 1868, 1872 (2021), if a government entity has the power to grant individualized exemptions but fails to grant one to a religious institution, then that decision must survive strict-scrutiny review.

ACLL understands that COVID-19 is real and deadly, and it does not wish to hinder UAB Hospital from taking reasonable steps to protect the lives of its staff and patients. However, as we attempt to protect lives and preserve civil liberties at the same time, the law has already answered some of the questions on how to do that. UAB Hospital may not require employees to disclose their vaccination status, and even if it can, it may not deny requests for religious exemptions without satisfying strict scrutiny.

Please respond no later than close of business on Monday, September 13. If ACLL does not hear from you by that time, then it will be forced to bring a suit for injunctive relief to protect the rights of your healthcare workers.

Sincerely,

A handwritten signature in black ink that reads "Matthew J. Clark". The signature is written in a cursive, flowing style.

Matthew J. Clark
President, Alabama Center for Law and Liberty