

CHD Rutgers Lawsuit Moves Forward, as Rutgers Announces Trial with Pfizer on COVID Vaccines for Kids Under 5

By [The Defender](#)

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Children's Health Defense on Monday filed a summary of its appeal in a lawsuit against Rutgers University over the university's COVID-19 vaccine mandate. Last week, Rutgers announced it will recruit children under age 5 for a joint trial with Pfizer for its pediatric COVID-19 bivalent vaccine.

The attorney representing [Children's Health Defense](#) (CHD) and 13 Rutgers University students in a lawsuit challenging Rutgers' COVID-19 vaccine mandate policy said the District Court of New Jersey didn't follow the legal standard when it dismissed CHD's case.

In an interview this week with The Defender, Julio C. Gomez of Gomez LLC, lead counsel in the case, said U.S. District Judge Zahid N. Quraishi's argument for granting the university's motion to dismiss "failed to accept the facts as alleged in the plaintiffs' complaint as true," as required under the [legal standard on a motion to dismiss](#).

CHD on Oct. 19 [appealed the decision](#) and on Monday filed a [summary of its appeal](#).

Gomez also spoke with The Defender about Rutgers' Nov. 4 announcement that it is [partnering with Pfizer](#) on a new clinical trial to evaluate the safety and efficacy of the bivalent [COVID-19](#) vaccine in children under age 5.

"Rutgers should be keenly aware that so far, the studies that are being used to support [COVID-19 vaccination of children](#) are deeply flawed and that the [risks of experimental vaccination](#) are too great for children who face negligible risks from COVID-19, especially when so many are [already naturally immune](#)," Gomez said.

The new clinical trial is the latest evidence of Rutgers' conflicts of interest related to its

[COVID-19 vaccine policies](#), Gomez said.

“As we alleged in our [lawsuit](#) [filed in August 2021], Rutgers was selected by all three vaccine manufacturers — Pfizer, Moderna, and Johnson & Johnson — to run clinical trials. Rutgers knew or should have known none of these studies showed that these vaccines prevent transmission, yet Rutgers rushed to be one of the first universities in the country to mandate COVID-19 vaccines on its students.”

History of the case

On Aug. 16, 2021, [CHD sued Rutgers University](#), its board of governors, Rutgers President Jonathan Holloway and others over the university’s decision to mandate COVID-19 vaccines for students attending school in the fall.

At the time, the mandate applied only to students. Faculty and staff were exempt. The policy was since updated to include faculty and staff. The updated policy also requires all eligible faculty, staff and students to provide proof of receiving a COVID-19 booster shot.

CHD’s lawsuit alleged Rutgers’ policy is a violation of the [right to informed consent](#) and the right to refuse unwanted medical treatments.

The complaint also alleged the policy is a breach of contract because, in January 2021, Rutgers assured students COVID-19 vaccines would not be required in order to attend school — but just two months later, the university flip-flopped and [issued new requirements](#) for taking the shot prior to attending classes.

Mary Holland, CHD president and general counsel, and Ray Flores, special counsel to CHD, provided legal support to Gomez LLC.

On Aug. 30, 2020, CHD filed a [temporary restraining order](#) against Rutgers seeking to prevent the university from coercing students, including those attending class remotely, to get the vaccine by [blocking the email accounts](#) of unvaccinated students. Judge Quraishi denied the request.

More than a year after CHD sued the university — on Sept. 9 of this year — Judge Quraishi [granted Rutgers’ motion to dismiss](#).

At the time, [Gomez told Law360](#):

“Colleges and universities do not and should not possess the legal authority to mandate experimental vaccines, especially those colleges and universities like Rutgers that have financial skin in the game and are working with the vaccine manufacturers to develop and test these experimental products with no liability and no accountability.”

Judge Quraishi had previously refused [CHD’s request to recuse himself](#) from the case on the basis that as a former Rutgers University law professor, he would not be impartial.

Rutgers ‘crossed a line it shouldn’t have crossed’

CHD’s appeal of [appeal](#) of Judge Quraishi’s dismissal of the case means the case will now go to the 3rd U.S. Circuit Court of Appeals in Philadelphia.

According to Monday's filing of a [summary of appeal](#), CHD's appeal will address:

(1) Whether the District Court committed legal errors, including misapplying the motion to dismiss standard.

(2) Whether Rutgers University had the legal authority to mandate COVID-19 vaccination and other unsafe and ineffective measures as a condition of attendance ("COVID-19 Policy"), or whether Rutgers' COVID-19 Policy was preempted by federal law, 21 U.S.C. Section 360bbb-3, or is ultra vires under state law.

(3) Whether Plaintiffs adequately pled causes of action:

(a) That Rutgers' COVID-19 Policy violated the right to informed consent and to refuse unwanted medical treatment guaranteed by the due process clause of the Fourteenth Amendment and the New Jersey Constitution.

(b) That Rutgers' COVID-19 Policy violated the right to equal protection of the law guaranteed by the Fourteenth Amendment and New Jersey Constitution.

(c) That Rutgers' COVID-19 Policy violated [42 U.S.C. Section 1983](#) and/or the New Jersey Civil Rights Act.

Gomez told The Defender he believes the case is strong and that, as evidence mounts that COVID-19 vaccines don't prevent infection or transmission, the tide is turning against mandates.

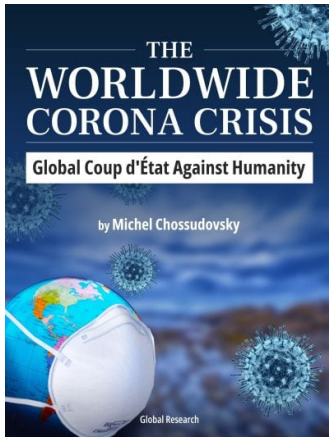
Rutgers "crossed a line it shouldn't have crossed," he said.

[According to Best Colleges](#), a "still-expanding group of U.S. colleges and universities say students must receive a COVID-19 vaccine before arriving on campus." The Best Colleges website provides a [list of U.S. colleges and universities](#) that, as of Sept. 9, still require the vaccines.

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