

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

MICHAEL CORRIN STRONG, Plaintiff,

vs.

HOWARD ZUCKER, MD in his official capacity as Commissioner of the New York State  
Department of Health. Defendant.

Case No. 21-CV-6532

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, MICHAEL CORRIN STRONG, acting PRO SE, sues Defendant, Howard Zucker, or his successor, in his official capacity as the Commissioner of the New York State Department of Health, and alleges as follows:

1. On Aug 10, 2021 Plaintiff filed a Sec. 1983 complaint against “emergency” regulations promulgated by Defendant Howard Zucker, M.D., acting in his official capacity as the Commissioner of the New York State Department of Health (“NYSDOH”).

2. In his original complaint, Plaintiff claimed that his right to Equal Protection of the Law under the 14th Amendment of the United States Constitution was violated by these regulations as well as the Department of Health’s operation of an “Excelsior Pass” program that is only available to those who are “Fully Vaccinated” for Covid 19.

3. The emergency regulations, published in the New York State Register on July 14, 2021, amended Part 66 of Title 10 NYCRR to add a new subpart, 10 NYCRR 66-3, entitled “COVID-19 Emergency Regulations.” Similar language was added to 10 NYCRR Sec. 2.60. (These emergency regulations are hereinafter referred to as the “Mask Mandate”).

4. The Mask Mandate provided that: “any person who is over age two and able to medically tolerate a face-covering shall be required to cover their nose and mouth with a mask or face-covering when in a public place and unable to maintain, or when not maintaining, social distance, unless such person is fully vaccinated.” 10 NYCRR § 66-3.1(a).

5. Among other things, it further required that, “Business operators and building owners, and those authorized on their behalf or otherwise authorized to use the building shall require unvaccinated patrons to wear face coverings consistent with this section, may require all patrons to wear a face covering, and may deny admittance to any person who fails to comply.” 10 NYCRR §66-3.2(c)(i).

6. Non-compliant individuals and businesses employing them faced extensive fines, and other penalties such as criminal prosecution, jail time and forced closures or suspension of privileges to conduct business. 10 NYCRR § 66-3.2; see also N.Y. Pub. Health Law (“PBL”) § 229 and § 12-b.

7. On Aug. 27, 2021, 17 days after the filing of Plaintiff’s suit, The NYS Department of Health repealed all of 10 NYCRR 66-3. At the same time they repealed and replaced 10 NYCRR § 2.60. The effect of these changes was to eliminate any distinction between the Vaccinated and the Unvaccinated with respect to face mask rules, except that Sec. 2.60 did authorize the Commissioner of Health to make such distinctions in future regulations of certain “settings” such as “schools, public transit, homeless shelters, correctional facilities, nursing homes, and health care settings.”

8. As of the date of the filing of this amended complaint, the Commissioner has adopted special rules for some of those “settings,” however, they do not appear to make any distinctions between Vaccinated and Unvaccinated people.

9. As a result of the repeal of the complained about regulations, Plaintiff agreed to a stipulation with the NYS Attorney General’s office to amend his complaint. This amended complaint completely replaces the original complaint.

10. Plaintiff agrees to drop his objection to all the regulations concerning the “Mask Mandate” that have been repealed, however, Plaintiff reasserts his complaint against the NYS Health Departments continued operation of the Excelsior Pass and other programs that continue to discriminate against the Unvaccinated. He also objects to the language in the new 10 NYCRR Sec. 2.60 allowing the Commissioner to make distinctions between Vaccinated and Unvaccinated people in certain “settings”, as such distinctions have no scientific or rational basis and would represent further violations of the right to Equal Protection under the 14th Amendment.

11. The Excelsior Pass is a mobile phone app developed by the state to allow people to prove that they are “Vaccinated” and thus gain entry to certain businesses and events that may require Vaccination.

12. Through this program, the state continues to encourage businesses to discriminate against people who are “Unvaccinated,” without any rational or scientific basis, as outlined below.

13 Further, since Plaintiff has already had Covid and carries “Natural Immunity” to the virus, there is even less scientific basis for making him, and other Covid survivors, ineligible to obtain a Pass.

14. Plaintiff asks the court to require the State to either discontinue the Excelsior Pass program altogether or changes the rules to make the Pass available to people who have acquired

“Natural Immunity” through previous Covid infection.

15. The continued operation of the Excelsior Pass program is irrational and discriminatory and violates Plaintiff’s equal protection rights as it excludes Unvaccinated people but similarly situated Vaccinated people are allowed to get a “Pass.” There is no rational or scientific reason to discriminate between the two classes.

16. It is now well established by evidence-based science that the vaccines available to protect against SARS-CoV-2 are not able to provide sterilizing immunity. From the beginning, public health officials acknowledged that SARS-CoV-2 vaccines would likely provide personal protection from serious symptomatic disease but the vaccines were not designed to stop infection and transmission of the virus.

17. The Centers for Disease Control (“CDC”) recently released the findings of a study that confirms the Vaccinated are as infectious as the Unvaccinated. The study also showed the Vaccinated are as likely to contract COVID-19 as the Unvaccinated.

18. Further, a study recently published in Israel, which exclusively uses the same Pfizer vaccine used in the US, found that the Unvaccinated who were Covid survivors were 13 times less likely to get Covid than those who were “fully Vaccinated” and not Covid survivors.

19. To date, no peer reviewed study supports the assumption that the Vaccinated are not able to spread SARS-CoV-2 or are less infectious than Unvaccinated people. On the contrary, because the vaccine may reduce symptoms of Covid, those who are vaccinated may represent a greater threat to spread the disease, since they may not realize that they are infected, and thus are less likely to isolate themselves.

20. Defendant is not operating the discriminatory Excelsior Pass program based on any science that showed it was necessary or appropriate to impose burdens on the Unvaccinated but not the Vaccinated.

21. Rather, in his official capacity, it appears that Defendant has promulgated a number of discriminatory programs as part of a political strategy to coerce people into participating in an experimental vaccine program. His apparent motivation is that by encouraging businesses and other organizations to discriminate in favor of the Vaccinated, the Unvaccinated would be shamed, burdened, or coerced into getting vaccinated as well.

22. It is interesting to note, that despite the state's repeal of the Mask Mandate, the Health Department has not issued any press releases announcing those changes and there has been virtually no press coverage of the changes. It appears that the state, and their lackeys in the press, would like to continue to put coercive pressure on Unvaccinated people without the burden of having to defend a clearly discriminatory policy in court. In fact, if Plaintiff had not been informed by attorneys from the State Attorney General's office, he would not of even known that the changes had been made.

23. As a result of the lack of publicity, many businesses and government agencies have still not heard of the changes, and as of early October, 2021, signs remain on many doors and venues requiring "unvaccinated" people to wear masks, over a month after the rules were officially eliminated.

24. In addition, no doubt with the tacit encouragement of the State Health Department, many private businesses continue to announce new discriminatory policies against Unvaccinated people. Most notoriously in Western New York, is the recently announced requirement that all fans must show proof of vaccination to attend home games of the Buffalo Bills football team. It is worth noting that displaying an Excelsior Pass is one way football fans can gain access to the stadium.

25. Some businesses, schools and other institutions have also imposed additional rules on the Unvaccinated, requiring them to provide proof of a recent negative test for Covid as a condition of entry. For this reason, test results can also be uploaded to the Excelsior Pass. This is another discriminatory burden that is placed on Unvaccinated people without any scientific or

rational basis. Since both Vaccinated and Unvaccinated people can contract and spread the virus equally, there should be no difference in the testing requirements.

26. Despite any claim that coercing people into getting an emergency authorized vaccine is “for the public good,” this is clearly not an acceptable reason to maintain a system of coercion. The most basic and well protected international human right is the right to uncoerced informed consent, which the Supreme Court has recognized as a fundamental right subject to strict scrutiny.

27. This right is nearly absolute in the context of an experimental medical product. After World War II, physicians were found by U.S. Military Tribunals to have committed war crimes and hanged for having forced or even coerced subjects into participating in vaccine trials with experimental vaccines. Arguments that vaccine trials advance the greater good were unavailing. Without meaningful consent, it is a war crime to force a medical experiment on subjects. The fundamental right of informed consent is so widely adopted and accepted as to establish jus cogens.

28. As part of its final judgment, the tribunal promulgated the Nuremberg Code on Permissible Medical Experiments. Point One of the Nuremberg Code states: “The voluntary consent of the human subject is absolutely essential.”

29. This universal acceptance of informed consent as the most basic and fundamental human right has since been repeatedly ratified and adopted around the globe, in laws, treaties, regulations, and ethical guidelines for medical research. For example, in 1964, the World Medical Association adopted the Declaration of Helsinki, which provides that human subjects “must be volunteers and informed participants in the research project.” Declaration of Helsinki at Art. 20.

30. Although themselves non-binding, the principles underlying the Declaration of Helsinki and the Nuremberg Code have been incorporated into international conventions, as

well as the laws and regulations of countries around the world, including the United States of America, which are binding in United States courts.

31. The International Covenant on Civil and Political Rights of the United Nations, which went into effect in 1976, provides in Article I that “all peoples have the right of self-determination” and in Article 7 that “no one shall be subjected without his free consent to medical or scientific experimentation.”

32. In 2005, the General Conference of UNESCO adopted the Universal Declaration on Bioethics and Human Rights, requiring prior, free, and informed consent for participation in medical treatments and research.

33. The United States clearly regards itself as bound by the provisions of the Nuremberg Code and the Declaration of Helsinki. The highest courts in the United States recognize that the right to informed consent codified in the Nuremberg Code is a fundamental right guaranteed by the U.S. Constitution.

34. These principles have been adopted by statutes and regulations in the United States as well as in case law.

35. In 1979, the Department of Health, Education and Welfare issued the Belmont Report, which addressed the issue of informed consent in the human experimentation setting. The Report, prompted in part by problems arising from the Tuskegee Syphilis Study (1932-1972), identified respect for self-determination by “autonomous persons” as the first of three “basic ethical principles” which “demands that subjects enter into the research voluntarily and with adequate information.”

36. Ultimately, the principles of the Belmont Report, which itself was guided by the Nuremberg Code and the Declaration of Helsinki, were adopted by the FDA in its regulations requiring the informed consent of human subjects for medical research. See 21 C.F.R. § 50.20.

37. The Department of Health and Human Services has similarly adopted this standard in its regulations governing grants for medical research. See 45 C.F.R. § 46.116.

38. The State of New York has also adopted the principle of informed consent for all medical treatment. See § 2805-d NY Pub Health L § 2440 (2012) of the New York Public Health Law (requiring informed consent for medical treatment). Additionally, New York recognizes a common law right to informed consent, under which, forced medical interventions are batteries.

39. For these and other reasons, the prohibition against nonconsensual human experimentation must be regarded not only as established by U.S. law and regulations, but also as so broadly recognized by all nations as to constitute a jus cogens norm under international law.

40. The federal law by which the Food and Drug Administration (“FDA”) issued the Emergency Use Authorization (“EUA”) for the SARS-CoV-2 vaccine provides that EUA products must be optional.

41. Pursuant to Title 21 of the United States Code, products and devices authorized under an EUA must be optional to the user as the basic standards for testing, evaluation, and approval have been bypassed by the FDA due to an emergency. Title 21 United States Code, Section 360bbb-3(e)(1)(A)(ii).

42. Vaccines are regulated by the FDA.

43. The FDA has not approved any existing vaccine intended to be used against SARS-CoV-2 other than through an EUA. Although the FDA recently rushed through approval of a prospective COVID-19 vaccine, it is not actually one of the vaccines that are currently publicly available. The vaccines in general use remain under a EUA. If there were an approved vaccine available, the use of the vaccines approved under EUAs would have to be discontinued, as EUAs can be only be granted when there is no other approved treatment.

44. There has been a great deal of misinformation and lack of proper reporting of these facts by the press. Large headlines and multiple stories were published claiming that the Pfizer vaccine was given full approval by the FDA on Aug. 23, 2021. In fact, that approval was for a vaccine called Comirnaty, which is not yet available to the public. All the vaccines currently available to the public remain only approved under EUAs.

45. It is unlawful under a EUA to even represent that the vaccines are safe or effective, leave aside to mandate or coerce them. All these vaccines, whether approved or available, are still in the experimental phase and will be for many years to come and cannot be mandated. For example, the clinical trial of the Pfizer Covid vaccine now approved under a EUA is not scheduled for final completion until July 30, 2023.

46. There has never been a vaccine produced and brought to market as rapidly as the COVID-19 vaccines currently authorized under EUA. Typically even the most hasty vaccines take years or decades to properly develop and test.

47. In late May 2020, President Trump initiated Operation Warp Speed, a controversial federal program to rush the development of vaccines to combat SARS-CoV-2 in record time.

48. The COVID-19 vaccines were pushed through various hasty iterations of unfinished clinical trials, skipped even the more common basic steps normally employed before those trials, and were rushed to market in a matter of months not decades.

49. This is particularly significant as the COVID-19 vaccines employ a novel mRNA technology that has not previously ever been able to pass the trial phase and become licensed for use in human beings due to significant safety problems identified in animal and other trials. These “vaccines” are in fact not traditional vaccines at all, but a variety of gene therapy.

50. Long term effects, effects on vulnerable subpopulations and general adverse effects for the COVID-19 vaccines are still largely unknown.

51. While some people may have valid reasons to take a leap of faith and hope the benefits outweigh the risks, there are also valid reasons to exercise caution and not be coerced into taking an experimental vaccine that has not had a full clinical trial.

52. The Excelsior Pass program assumes that there is no valid medical reason not to take the vaccine. In fact there are many. Some people may have pre-existing conditions that make them at higher risk of having a bad reaction to the vaccine. Some may have been shown by prior reactions to be allergic to some of the ingredients in the vaccine.

53. Decisions as to whether to take the vaccine under these circumstances should be made by the individual in consultation with their personal physician, free of any coercion by the state.

54. Some individuals may have religious objections to taking these vaccines. All of the vaccines currently available have relied on tissue from aborted fetuses at some point in their production. Some may have other moral or religious objections to vaccines in general. The Excelsior Pass program makes no allowance for these kinds of objections, making the program further in violation of the 1st Amendment protection of Freedom of Religion.

55. Other individuals may choose not to take the vaccine based on their age or physical condition. It is well established that the more severe cases of Covid are almost exclusively found in those of advanced years or among those who have pre-existing medical morbidities such as obesity, diabetes, heart disease or a compromised immune system. In fact, studies have estimated that the survival rate from Covid for people under Age 50 who don't have any of those co-morbidities is over 99.9%, less deadly than the common flu for that cohort.

56. Young and healthy people generally have much milder cases and in some cases don't even realize that they have had the virus. Such people may reasonably conclude that considering their much lower risk profile and the known risks of the vaccine, which include serious side effects such as blood clots, pericarditis and myocarditis, or even death, they would prefer to avoid the vaccine.

57. This is not an unreasonable position since some studies have estimated that among young healthy people, the chances of dying from the vaccine are higher than the risk of dying from Covid, not to mention the possibility of long-term debilitating side effects.

58. As of Sept. 10, 2021, VAERS (the Vaccine Adverse Event Reporting System) run by the CDC has had 559,462 adverse events including 6,756 deaths from the Covid vaccines reported in the United States alone.

60. Scientists such as Dr. Jessica Rose, PhD, MSc, Bsc who have studied the VAERS system estimate that these numbers may be underreported by a factor of 30 or more. This means over 200,000 people may have died in this country so far from the vaccine.

61. Health care providers are required to report any “severe adverse events” to the VAERS registry under the National Childhood Vaccine Injury Act of 1986. This requirement is reiterated in the Pfizer Fact Sheet for Health Care Providers for the Covid EUA vaccine, as well as in the advice for other EUA Covid vaccines.

62. Despite this, the system has been historically under-utilized for a number of reasons including: Complexity of reporting requirements; Bugs in the online reporting software; Lack of training in the system; and Lack of emphasis put on the importance of filing the reports. In the case of EUA Covid Vaccines, which should have the highest priority for reporting, many doctors and medical institutions are being actively discouraged from filing reports because of the fear that it may increase “Vaccine hesitancy.”

63. Included in the “adverse events” from the EUA Covid vaccines reported to VAERS as of Sept. 10, 2021 in the U.S. were over 250,000 cardiac and circulatory events including blood clots, stroke, pericarditis, myocarditis and heart attack. There were also over 200,000 neurological events reported including headaches, vertigo, seizures, tremors, paralysis, Bell’s Palsy and Guillain-Barre Syndrome. Multiplying these by the under-reporting estimate of 30Xs, shows the devastating toll the vaccine has taken on the health of the American people, with millions of people severely affected.

64. The court may be shocked by the claimed dimensions of this unreported silent holocaust. The CDC takes the position that, despite all the reported deaths and serious vaccine injuries from the EUA Covid vaccines, that there is no actual proof of a causal connection. You would have to be willfully blind, or controlled by a strong political motive, to believe that all these reported problems, mostly manifesting within 48 hours of the jab, are merely coincidental.

65. The CDC's position is held despite the testimony of many pathologist who have done autopsies on suspected vaccine victims and reported that there was no other possible cause for the deaths than the EUA vaccines.

66. More deaths have been reported to the VAERS system from the EUA Covid vaccines than from all previous vaccines added together since the VAERS system began in 1990. That's an impossibly large number of coincidences.

67. The CDC's official position that the vaccines are "safe and effective," even though they are legally not allowed to make such claims for an experimental treatment, is reinforced by a conspiracy of silence in the major media outlets who continually parrot that message, but refuse to publish any information that challenges the official narrative.

68. In addition, social media and other high tech companies are engaged in active campaigns to censor dissenting views. Facebook, Twitter, YouTube and others have removed posts that challenge any part of the narrative and have banned users and groups who raise any questions about the EUA vaccines

69. That this censorship is being actively encouraged, and even ordered, at the highest levels of government raises grave concerns about Freedom of Speech, but that is beyond the reach of this lawsuit.

70. This withholding of critical information from the American public has only been tolerated because citizens have been bombarded with a continuous media campaign of fear and

misinformation for over a year and a half.

71. Sensationalized news stories about the deadliness of this virus have succeeded in convincing many that everyone is in equal danger when, in fact, the average age of death is around 80 years old and the victims usually have a host of co-morbidities.

72. Official statistics have been corrupted to increase the public fear in two main ways. First, deaths “from” the virus have been compounded with deaths “with” the virus. This inflates the total number of alleged deaths because people who have died of other causes are counted as “Covid” deaths.

73. Second, the PCR tests which were touted as the “gold standard” for confirming infection with Covid were misused to create a large number of false positives, adding to the fear factor. The CDC has acknowledged this and recently modified the number of “PCR cycles” recommended to be used in the test.

74. Many people who get all their information from main stream media sources and/or heavily censored social media services will have a great deal of trouble accepting the facts outlined in the last 16 paragraphs (#57-73). They have been brainwashed by one of the most successful propaganda campaigns in history.

75. In addition, since a majority of people have already taken the vaccine, it is hard for many to accept that they may have been misled. As Mark Twain has been credited with saying, “It is easier to fool people than to convince them that they have been fooled.”

76. Given these risks, it is wise for every Unvaccinated person to make a risk/reward analysis based on their own age, physical condition and medical history, with the advice of their personal physician. Despite what public health officials, celebrities and politicians from the President on down exhort, the vaccine is not a one-size-fits-all treatment.

77. Entering into this risk reward calculation are two further factors. First, the vaccines have been shown to lose their effectiveness over time. That is why the federal government is now pushing for “booster shots” for those who were previously assured that they were “Fully Vaccinated.” Also, as the virus mutates, it is being discovered that vaccines developed for the original strain may no longer be as effective against new strains

78. This is to be expected from a “leaky” vaccine that does not provide sterilizing immunity. In a situation similar to bacteria that develop immunity to certain antibiotics, viruses will also evolve that are resistant to a vaccine that does not kill them.

79. As additional shots or boosters are being recommended or mandated, the chances for an adverse side effect also increase. People in good health may reasonably decide not to get on that roller coaster.

80. Additionally, because the large number of people who have already survived Covid continues to increase, it is likely that the United States population may be approaching “herd immunity.” This is the natural course of all pandemics. As the percentage of people who have recovered increases, there are fewer people who do not have “Natural Immunity” from their antibodies to catch and spread the virus.

81. In 1840, Dr. William Farr, a British epidemiologist, developed what is known as Farr’s Law after observations of a small pox epidemic. He showed that all epidemics take the shape of a Bell Curve. As herd immunity is obtained towards the end of the curve, the number of cases rapidly falls off. There is no reason to think that Covid will not follow a similar pattern.

82. The reported number of confirmed Covid cases in the United State is currently over 44 million, however, this does not include those who may have had the infection without being tested for it. The CDC has estimated that less than 1 in 4 actual Covid infections are officially reported. This would mean that the true number of Covid cases in the country is over 175 million, which is more than half the current US population of about 333 million.

83. Those who have not yet been vaccinated might reasonably take this growing amount of herd immunity into account as a factor in their risk benefit analysis. Although no one can say for sure at what point herd immunity will be achieved, the more people get infected, the less uninfected people are left to keep the pandemic going, and thus the smaller the risk.

84. As discussed above, those who have previously had Covid have a much lower risk of getting it again, and even if they do, they tend to have a much less severe case since their immune systems are already primed to fight the virus.

85. Further, studies have shown that those who have already had the virus may be as much as four times more likely to have a bad reaction to the vaccine. Again, individual decisions about whether Covid survivors should take the vaccine should be made by those individuals with the consultation of their personal physicians, and without undue state pressure.

86. By attempting to force vaccination on all citizens without allowing for any individual differences in age, medical history, physical condition or religious belief, the state, by operation of the Excelsior Pass program and other policies, is attempting to have a coercive effect on the right to refuse the EUA vaccines.

87. The state's operation of the Excelsior Pass system and other policies discriminating against the unvaccinated therefore constitutes a mandatory human experiment under which Plaintiff and other residents of New York are being coerced to take an experimental vaccine when the medical impact has not been tested, evaluated, or approved by the FDA or established to be safe and effective.

88. These coercive programs and policies are not only a clear violation of international, federal and New York law, but they also violate the Constitutional rights of Plaintiff and millions of others to Equal Protection and Freedom of Religion. They also may violate the 14th Amendment guarantee that citizens may not be deprived of "life and liberty and property without due process of law."

89. As law professor Eugene Volokov has suggested, citizens of this country may have a Constitutional right to “medical self-defense.” As he points out, the right to self-defense has been part of the common law since well before the founding of this country. The inclusion of the rights to “life and liberty” in the Declaration of Independence and later endorsed in the “Due Process” clause of the 14th amendment are in part ratifying these ageless principles.

90. If these common law principles apply to the medical field, then citizens must surely have the right to not have a dangerous medical treatment forced upon them directly or by coercion. There is a whole line of case law that supports that proposition.

91. Perhaps most famously, in the case of *Union Pacific Railway Co. vs. Botsford* 141 U.S. 250 (1891), the Supreme Court said that, “No right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraints or interference of others, unless by clear and unquestionable authority of law.”

92. Even the landmark case ostensibly in support of vaccination mandates, *Jacobson vs. Massachusetts* 197 U.S. 11 (1905), may not be all it is claimed to be. It is worth noting that the issue in that case was whether Jacobson could be forced to pay a \$5 fine for refusing the small pox vaccination. While \$5 in 1905 was worth a lot more than today, the case does not stand for the right to force a vaccine on anybody, much less coerce a dangerous experimental treatment.

93. In fact, in the majority opinion in *Jacobson*, Judge Harlan stated that there might be legitimate medical reasons for a person to resist a vaccine, saying the state could not enforce the law against a person who, “by reason of his then condition, would seriously impair his health, or probably cause his death.”

94. Despite the fact that Jacobson is still being cited by courts as supporting vaccination mandates, various legal commentators have pointed out that the issue is ripe to be revisited by the courts. See “Jacobson vs. Massachusetts: It’s Not Your Great-Great Grandfather’s Public Health Law” *Am J Public health*. 2005 April (4) :581-590 and “The Irrepressible Myth of Jacobson v. Massachusetts” by Josh Blackman, *Buffalo Law Review* Vol. 70, 2021.

95. In modern jurisprudence there have been a whole line of substantive due process cases, perhaps starting with *Griswold vs, Connecticut* 381 U.S. 479 (1965), that have recognized certain fundamental rights to privacy and medical freedom. While most of the subsequent cases have dealt with abortion and sexual matters, it is worth questioning why “My body, my choice” does not apply to vaccinations.

96. Requiring Proof of Vaccination Passes for people to participate in the most basic parts of society such as being employed, traveling, shopping, eating at a restaurant, attending a concert or a sporting event sets up a system of Second Class Citizenship that is abhorrent to the American Way of Life and more closely resemble the dictates of a totalitarian state.

97. The state is entering onto a slippery slope with the implementation of the Excelsior Pass program. While it is claimed that the current virus is so dangerous that this step is required, once established, there will no doubt be further requirements added to keep your Pass. Already there is talk of requiring booster shots for those who were previously thought to be “fully vaccinated.” If allowed to get established now, there is nothing to stop the state from continuing to add more medical requirements in the future to keep your Pass, taking more and more health decisions and freedoms away from the individual. As Thomas Jefferson observed, “the natural progress of things is for liberty to yield, and government to gain ground.”

98. Further, since Defendant has already repealed all the regulations requiring separate treatment of the Unvaccinated for purposes of masking, it makes no sense to continue to make this distinction through the Excelsior Pass and other programs.

99. For the reasons set forth in this complaint, Plaintiff respectfully seeks declaratory and injunctive relief to prevent the ongoing violation of his most basic rights, dignity, and safety. Specifically he asks the court to require the state to end the Excelsior Pass program as hopelessly discriminatory without any rational scientific basis, or in the alternative, to require the state to recognize “natural immunity” acquired from prior Covid infection as a legitimate reason to receive a Pass.

100. Further, he asks that the state be required to end any programs that discriminate against the Unvaccinated with respect to the requirement to take a Covid test or the frequency of taking such tests. Any such rules need to be applied equally to the Vaccinated and the Unvaccinated to meet Equal Protection standards

101. Further, the plaintiff asks that the NYS Health Department be required to clear the air of all the misinformation and misunderstandings their shifting policies and misleading claims have created, by issuing a press release stating unequivocally that:

A. All distinctions between Vaccinated and Unvaccinated people with respect to mask policies, issuance of Excelsior Passes, Covid testing requirements and for any other state policy are void and have no scientific basis.

B. All people who have “Natural Immunity” acquired by prior infection with the Covid should not be discriminated against in any way in terms of employment, travel, medical treatment, shopping or entertainment.

C. That all citizens have an absolute right to freely choose whether they will vaccinate with a EUA vaccine based on informed consent and their own medical situation or religious belief.

102. The plaintiff does not seek any monetary or punitive damages for himself.

103. Plaintiff has standing because the continued enforcement of special rules for Unvaccinated people by local businesses and local governments, and the use of the Excelsior Pass has limited his options for both personal activities and business opportunities.

104. Specifically, Plaintiff has for many years been a member of the 24/7 Fitness Club in his hometown of Geneseo, NY. As of the date of this filing, the Club's policy is that Vaccinated members do not have to wear masks while Unvaccinated members do. Due to medical issues the Plaintiff has, he can not medically tolerate a mask (especially while working out in a gym!), therefore he is being deprived of a convenient way to maintain his health.

105. Further, Plaintiff operates the Free Soil Farm growing vegetables for sale at local Farmer's Markets. For many years he has sold at the Fairport Farmers Market which is operated by the Village of Fairport. It is in the written policy of that market that unvaccinated vendors must wear a mask, which again he is medically incapable of tolerating for a 6-hour market.

106. For many years Plaintiff has been an admirer of the music of the Beach Boys and their genius composer Brian Wilson. Mr Wilson was scheduled to appear at the Kodak Center Theatre in Rochester on Oct. 10, 2021. Plaintiff would have attended that concert but for the requirement that people were required to show proof of vaccination or a recent Covid test to attend. Vaccinated people were not required to have a Covid test. Plaintiff chose not to go to the trouble, expense and possible medical risk of a test or to support a venue that discriminates.

107. These are just a few of many examples of discrimination against the Unvaccinated directly affecting the Plaintiff that continue to exist because of the state's misguided policies. It would be impossible for Plaintiff to bring individual actions against all the businesses and government agencies that are now or may in the future violate his right to Equal Protection. This is a mess made by the NYS State Health Department and the Department needs to clean it up.

**VI. Certification and Closing**

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

**A. For Parties Without an Attorney**

I agree to provide the Clerk’s Office with any changes to my address where case–related papers may be served. I understand that my failure to keep a current address on file with the Clerk’s Office may result in the dismissal of my case.

Date of signing: 10/13/2021

Signature of Plaintiff \_\_\_\_\_  
Printed Name of Plaintiff Michael Corrin Strong

**B. For Attorneys**

Date of signing: \_\_\_\_\_

Signature of Attorney \_\_\_\_\_  
Printed Name of Attorney \_\_\_\_\_  
Bar Number \_\_\_\_\_  
Name of Law Firm \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
*City State Zip Code*  
Telephone Number \_\_\_\_\_  
E-mail Address \_\_\_\_\_