

EXCLUSIVE

Resistance to vaccine mandates is building. A powerful network is helping.

A New York firm has filed suit or sent letters to employers in several states as part of an effort spearheaded by one of the largest anti-vaccination groups in the country.

By [Isaac Stanley-Becker](#)

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The Americans lodging complaints against coronavirus vaccine mandates are a diverse lot — a sheriff's deputy in North Carolina, nursing home employees in Wisconsin and students at the largest university in New Jersey.

But their resistance is woven together by a common thread: the involvement of a law firm closely tied to the anti-vaccine movement.

Attorneys from Siri & Glimstad — a New York firm that has done millions of dollars of legal work for one of the nation's foremost anti-vaccination groups — are co-counsel in a case against the Durham County Sheriff's Office. They've sent warning letters to officials in Rock County, Wis., as well as to the president of Rutgers University and other schools.

The legal salvos show that a groundswell against compulsory immunization is being coordinated, at least in part, from a law office on Park Avenue in midtown Manhattan. And they offer a window into a wide-ranging and well-resourced effort to contest vaccine requirements in workplaces and other settings critical to the country's reopening — a dispute with sweeping implications for public health, state authority and individual rights.

"The message is, 'Maybe you should reconsider because you don't want to end up in court,'" said Dorit Rubinstein Reiss, a professor at the University of California's Hastings College of the Law. "I think that works."

The Informed Consent Action Network, a Texas-based nonprofit group founded by former daytime television producer Del Bigtree that campaigns against requiring vaccines, in part by citing unsubstantiated or debunked claims about their dangers, has advertised Siri & Glimstad's services and sought plaintiffs for challenges to mandates.

"If you or anyone you know is being required by an employer or school to receive a covid-19 vaccine, ICAN is offering to support legal action on your behalf to challenge the requirement," reads an advertisement on a blog run by Children's Health Defense, a group founded by Robert F. Kennedy Jr. that spreads what Kennedy's family members say is anti-vaccine misinformation.

Even before the pandemic, legal services were core to these advocacy efforts. The nearly \$1.3 million paid by ICAN to Siri & Glimstad in 2019 — the most recent year for which a tax filing is publicly available — was the nonprofit's single largest reported expenditure.

At stake in this latest contest is whether hospitals, law enforcement agencies and others can require employees to take a vaccine that was made available in an expedited process permitted during a public health emergency — and, likewise, whether schools may require the shots for students, faculty and staff members in the same way many require familiar vaccines for measles and chickenpox. There is little case law on the matter, with only one vaccine, for anthrax exposure, previously cleared in a similar way.

Employers are expected to cite the expansive evidence supporting the safety and efficacy of the coronavirus vaccines, as well as the extraordinary health risks created by the current emergency, said Kerry A. Scanlon, a former Department of Justice official who oversees labor and employment litigation at Chicago-based law firm McDermott Will & Emery.

Scanlon believes employers are in a strong position to defend compulsory vaccination, but he said many might shy away from it simply to avoid costly litigation.

ICAN is already claiming victory, thanks to the work of a legal team led by Siri & Glimstad's managing partner, Aaron Siri. "Employers and schools that previously required the covid-19 vaccine have dropped those requirements," the group declares in its ad on the Children's Health Defense blog. "This includes an employer that did so on the heels of ICAN's legal team challenging its mandate in court."

Neither Siri nor his co-counsel in the North Carolina case, Elizabeth A. Brehm, responded to emailed questions. Bigtree did not respond to telephone messages. Kennedy said his organization is "working with firms all over the country" to challenge vaccine mandates and estimated that he receives "many hundreds" of inquiries each week about potential litigation.

In legal filings and letters to employers and universities, attorneys from Siri & Glimstad focus on the expedited process known as an emergency use authorization used to clear the shots during a public health emergency. Mandating a vaccine cleared that way, they argue in a complaint filed against the Durham County Sheriff's Department, is "illegal and unenforceable."

Their arguments go further. Pointing to the principle of informed consent, a tenet of medical ethics addressing human experimentation enshrined in the Nuremberg Code after World War II, their letter to the president of Rutgers University contends a mandate under these circumstances violates not just federal law, but also "international laws, civil and individual rights, and public policy." Failure to rescind a requirement in Rock County, Wis., the firm informed officials there, "will result in legal action being filed against you."

"Govern yourself accordingly," the Feb. 2 letter advised.

Unsettled law

No reference to these communications with Rock County appears in a Feb. 23 opinion column written by Siri for Stat, the health-focused news website.

The headline asserted, "Federal law prohibits employers and others from requiring vaccination with a Covid-19 vaccine distributed under an EUA." The piece picked up significant traffic, according to the social media analysis tool CrowdTangle, gaining more than 100,000 interactions on Facebook, meaning likes, comments and shares. It drew attention across a wide range of anti-vaccine groups, as well as in forums devoted to conspiracy theories, including ones about 5G and the death toll from covid-19, CrowdTangle showed.

Framed as a legal overview offered for the benefit of employers, schools and other organizations "grappling with whether to require Covid-19 vaccination," the piece warned of "costly and time-consuming litigation."

Left unsaid was the fact that Siri and a law partner were representing a Wisconsin nursing home employee objecting to one such requirement. The piece also did not note significant disagreement over what the law allows.

The fact sheet issued by the Food and Drug Administration for coronavirus vaccine recipients and caregivers says it is "your choice to receive or not receive" the shots. The language echoes a provision of federal law governing the emergency authorization of medicines that stipulates people must be informed "of the option to accept or refuse" the product, but also "of the consequences, if any, of refusing."

Michelle M. Mello, a professor of law and medicine at Stanford University, said it's not clear whether the statute was meant to address making the shots compulsory for work or school.

An employer can't hold you down to get the shots against your will, said experts in health and employment law, but some believe a permissible consequence of refusal to vaccinate could, in some circumstances, be losing your job. In December, the U.S. Equal Employment Opportunity Commission said employers requiring the vaccine would comply with federal disability law and anti-discrimination statutes so long as they make exceptions for an individual's disability or religious beliefs.

Still, most employers have avoided mandates. There are notable exceptions, including many universities, several hospitals and Delta Air Lines, which said this month that new employees must be vaccinated.

Employers will have more confidence about requiring vaccination, some experts said, once the products gain the FDA's full approval, which U.S. pharmaceutical firm Pfizer and its German partner, BioNTech, are seeking for their coronavirus vaccine. A decision from regulators could come as soon as the fall, and other coronavirus vaccine makers are expected to apply for full approval soon.

Likewise, Kennedy said full approval will make the legal opposition to mandates more difficult. "You'd need to go to the Supreme Court and get a reversal of 'Jacobson,'" he said, referring to the 1905 Supreme Court decision that found states could force residents to be inoculated against smallpox or pay a fine.

Others said the hurdle created by the emergency use authorization, or EUA, is more rhetorical than legal. “The FDA required as much for this EUA as it requires for full approval,” said Dan Troy, a former chief counsel to the agency.

But the issue has never been tested, Mello said. “Even legal scholars disagree about how to read these regulations,” she said. “There’s a great deal of uncertainty.”

A legal warning

One of Siri & Glimstad’s earliest challenges was brought against a county-owned skilled-nursing facility that has served the southern Wisconsin community for more than 160 years.

The 128-bed Rock Haven nursing home had 15 cases of the coronavirus and two deaths, said Rock County Administrator Josh Smith, prompting leaders to require staff vaccinations. A memorandum issued shortly before Christmas noted that failure to comply would “result in the employee being laid off,” not eligible to return until vaccinated.

Of nearly 200 workers, 16 are on layoff status, Smith said.

Representing a Rock Haven employee, Brehm, one of the firm’s New York attorneys, wrote to county officials that they were “deliberately taking away each employee’s statutorily guaranteed right to decide for him or herself whether to accept or refuse administration of the covid-19 vaccines.”

The Feb. 2 letter arrived on the same day as another from a Wisconsin law firm. “It is our firm belief that ... Rock County’s perhaps well-intentioned but heavy-handed policy concerning mandatory vaccination of county employees violates ... constitutional rights,” wrote Michael J. Anderson of MJA Law, located near Madison.

The following week, Brehm wrote again on behalf of the same client, while noting 15 additional employees represented separately by Anderson. “We hereby demand that Rock Haven withdraw its covid-19 vaccine mandate forthwith since requiring an unlicensed and unapproved product violates federal law and, likely, numerous state laws,” she wrote, this time with Siri also signing the letter.

Anderson, the local attorney, said he spoke four to six weeks ago with representatives from Siri & Glimstad about the possibility of working together. A collaboration, he said, would allow the New York attorneys to practice law in Wisconsin on a temporary basis without being formally admitted to the state bar.

“This New York firm — I believe they were interested in cases like this around the country,” he said in an interview. “Going forward, if there is litigation, they may or may not be involved. I don’t know.”

In the meantime, however, Anderson went ahead with a claim against the county earlier this month, demanding \$50,000 in lost wages and other benefits for 11 employees of the nursing home.

About a week later, the county showed signs of backing down. Its health services committee voted 4-to-1 on May 12 to recommend that officials revoke the requirement at the nursing home and reinstate employees who refused the shots. The full county board will consider the recommendation on Thursday.

A formal collaboration is underway in North Carolina, where Siri & Glimstad attorneys are co-counsel in a case brought last month in federal court against the Durham County Sheriff’s Department. The local attorney participating in the case, Jeff Dobson, declined to comment. The plaintiff in the case, Christopher Neve, directed questions to Siri & Glimstad.

After Neve refused to disclose his vaccination status in March, the sheriff confiscated his badge, gun and bulletproof vest and placed him on administrative leave, according to the complaint. He was fired later that month, the complaint alleges.

Durham County Sheriff Clarence F. Birkhead declined to be interviewed but said in a statement, “Requiring the vaccine not only protects employees from covid-19, but also provides for the protection of anyone who lives in, works in, or visits Durham County.”

The arguments set forth in the North Carolina complaint mirror those outlined in letters from Siri, both sent on April 22, to the presidents of Rutgers and Princeton University.

“ICAN has received numerous inquiries from its members regarding this mandate, including students attending your university, and has asked that we send you the following notice,” reads the letter to Rutgers University President Jonathan Holloway. It urged him to reconsider the requirement that students be vaccinated before arriving on campus this fall.

A university spokeswoman, Dory Devlin, said the policy stands. “Like the hundreds of public and private universities who have followed our lead, we are entirely confident in our legal and ethical position with respect to mandating vaccines in the fight against the global pandemic,” she said in an email to The Washington Post.

Princeton, too, was unmoved by the letter. “We conducted a careful review and are confident in our legal position,” said Ayana Gibbs, a university spokeswoman.

Putting ‘your imprint on an early area of law’

This month, ICAN updated its notice seeking plaintiffs for possible litigation, saying it is “no longer accepting cases for legal action.”

Some legal experts suggested the group may be pulling back because it has accomplished what it set out to do. Its attorneys have made their mark on the early legal contest over vaccine mandates, through commentary as well as legal communications and filings, said Reiss, the University of California professor. She noted that other lawsuits filed against coronavirus vaccine mandates “follow very closely Siri’s piece in Stat.”

Attorney-client privilege makes the extent of the role played by ICAN’s legal team difficult to determine, said James G. Hodge Jr., director of the Center for Public Health Law and Policy at Arizona State University’s Sandra Day O’Connor College of Law.

“They’re peddling specific legal arguments designed to attract anti-vaxxers and others who might be willing to listen,” Hodge said.

ICAN’s legal team remains active on other vaccine-related fronts. Earlier this month, Siri & Glimstad filed a complaint on ICAN’s behalf asking a federal court to order Health and Human Services Secretary Xavier Becerra to remove the finding that “vaccines do not cause autism” from all communication with the public.

A suit last year against Facebook and YouTube said these platforms had terminated or greatly restricted ICAN’s activities — and offered a window into the group’s communications strategy. At stake was the group’s “ability to reach billions of potential viewers,” said the complaint, filed by Siri and Brehm, along with a California attorney, in federal court in California.

Asking the court to dismiss the complaint, Facebook and YouTube said they had acted against ICAN because it was “spreading harmful misinformation about covid-19 that could exacerbate the ongoing public health crisis.”

Stripped of other platforms to press its case against vaccines, experts said, the group is turning increasingly to the courts.

“It’s a chance to put your imprint on an early area of law that hasn’t been litigated before,” Reiss said. “And to do it in a context that fits your beliefs.”