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November 20, 2022

The Honorable Jonathan Skrmetti
Office of the Attorney General and Reporter
State of Tennessee
P.O. Box 20207
Nashville, TN 37202-0207

RE State criminal investigation of Centers for Disease Control (CDC) officials for reckless endangerment under Tenn. Code Ann. § 39-13-103(a)

Dear Mr. Skrmetti:

I support your signing of the Section 553(e) Petition for Rulemaking sent to Secretary Becerra & Administrator Brooks-LaSure on November 17, 2022.

There may be reasonable suspicion to investigate CDC officials for reckless endangerment of Tennesseans, as follows:

The enclosed article asserts:

[T]he CDC delayed reporting the incidence of myocarditis to the general public for three months after the first statistically significant signal appeared in the VAERS database. The delay kept about 120,000,000 Americans in the dark until after they had already unknowingly exposed themselves to one or more doses of the COVID-19 injections that were, according to the analysis presented here, in all probability, the proximate cause of the increased incidence of myocarditis, especially in young male Americans from 8 to 21 years of age.¹

If that assertion is correct,² that level of omission may have provided reasonable suspicion to investigate CDC officials for "recklessly engag[ing] in conduct that place[d] or may have place[d] [Tennesseans] in imminent danger of death or serious bodily injury" under Tenn. Code Ann. § 39-13-103(a) (2021), because Tennesseans may have acted in reliance on CDC information, either directly or vicariously via state and county health agency recommendations, getting vaccinated

¹ Karl Jablonski & Brian Hooker, *Delayed Vigilance: A Comment on Myocarditis in Association with the COVID-19 Injections*, International Journal of Vaccine Theory, Practice, and Research 2(2), October 17, 2022 (quotation from abstract).

² On information and belief, at least one health freedom advocacy organization has filed, or will soon file, a Freedom of Information Act (FOIA) request for relevant internal CDC emails.

unaware of risk already known to CDC. This is especially problematic considering emerging data about post-Covid-19 vaccination myocarditis.³

I believe CDC should have timely reported the myocarditis safety signal to both the general public and state health agencies and its omission may have provided reasonable suspicion to investigate.

There cannot be "informed consent" without being "informed."

While Tennessee's statute of limitations appears to have run for a reckless endangerment act committed from February through May 2021, CDC's recent decision to recommend new omicron boosters for children as young as five years old, a recommendation reportedly made without even convening a meeting of CDC's panel of vaccine experts,⁴ similarly may give rise to reasonable suspicion to investigate for reckless endangerment, because Tennesseans may (again?) directly or vicariously rely on CDC's recommendation and get their children vaccinated without full data.⁵

As you are aware, federal officials do not have absolute Supremacy Clause immunity from state law prosecution. *See, e.g., Wyoming v. Livingston*, 443 F.3d 1211 (10th Cir. 2006) (discussing Supremacy Clause, removal, and "reasonable and necessary").^{6 7}

I encourage your office to consider whether investigating federal officials for state law prosecutions is warranted for either their actions mentioned herein or other pandemic response activities.

I recently sent a similar letter to my home state's attorney general, some other state attorneys general, and a county prosecutor in Wyoming.

Sincerely,

/s/ Edward A. Berkovich
Attorney at Law, Utah Bar. No. 6180

Enc.

³ Sintaroo Watanabe & Rokuro Hama, *SARS-CoV-2 Vaccine and Increased Myocarditis Risk: A Population Based Comparative Study in Japan*, <https://www.medrxiv.org/content/10.1101/2022.10.13.22281036v1> (preprint) (accessed 11/05/2022), and citations therein to already-published studies.

⁴ CDC recommends Covid omicron booster shots for kids as young as 5 years old (cnbc.com) (accessed 11/16/2022). I have filed a FOIA request for the document memorializing that recommendation.

⁵ This CDC recommendation is further problematic, since it reportedly was made in reliance on the Food and Drug Administration (FDA)'s authorizing those shots for kids without direct human data on their effectiveness. *Id.* Relatedly, even an FDA panel member questioned a recent, separate FDA decision. Paul Offit, Philly's most vocal vaccine advocate, on science, truth, and why he's not a fan of the latest COVID boosters (inquirer.com) (accessed 11/19/2022).

⁶ This is a separate issue from the civil law realm where vaccine manufacturers enjoy broad products liability immunity.

⁷ Regarding jurisdiction, that would be a matter for staff to research. In Utah, if an offense is committed outside our state, but one of the resulting elements occurs within our state, a state court could possibly have jurisdiction.