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November 23, 2022

The Honorable Ken Paxton  
Attorney General of Texas  
Office of the Attorney General  
PO Box 12548  
Austin, TX 78711-2548

**RE State criminal investigation of Centers for Disease Control (CDC) officials for  
deadly conduct under Tex. Penal Code § 22.05**

Dear Mr. Paxton:

I support your signing 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 deadly conduct committed against Texans, 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.<sup>1</sup>

If that assertion is correct,<sup>2</sup> that level of omission may provide reasonable suspicion to investigate CDC officials for "recklessly engag[ing] in conduct [omitting to warn of the safety signal] that place[d] [Texans] in imminent danger of serious bodily injury[.]" under Tex. Penal Code § 22.05, because Texans may have acted in reliance on CDC information, either directly or vicariously via state and county health agency recommendations (also made in reliance on CDC), getting

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<sup>1</sup> 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).

<sup>2</sup> 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.

vaccinated unaware of the risk already known to CDC. This is especially problematic considering emerging data about post-Covid-19 vaccination myocarditis.<sup>3</sup>

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

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

While Texas's statute of limitations for deadly conduct may expire in February 2023, 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,<sup>4</sup> similarly may give rise to reasonable suspicion to investigate, because Texans may (again?) directly or vicariously rely on CDC's recommendation and get their children vaccinated without full data.<sup>5</sup>

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").<sup>6 7</sup>

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. While there is discussion of more comprehensive prosecutions related to the pandemic, there may be value in thinking smaller and starting somewhere.

I've recently sent similar letters 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.

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<sup>3</sup> 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.

<sup>4</sup> CDC recommends Covid omicron booster shots for kids as young as 5 years old (cnbc.com) (accessed 11/16/2022).

<sup>5</sup> 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).

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

<sup>7</sup> 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.