

Edward A. Berkovich
[REDACTED]
West Jordan, Utah 84084
Mobile: [REDACTED]
Email: [REDACTED]

December 27, 2022

Christopher F. Allred
Weber County Attorney
2380 Washington Blvd. #230
Ogden, UT 84401

Jeffrey S. Gray
Utah County Attorney – Elect
c/o Utah County Clerk
100 East Center St. #3100
Provo, Utah 84606

Eric W. Clarke
Washington County Attorney
33 North 100 West
St. George, UT 84770

Troy S. Rawlings
Davis County Attorney
800 West State St.
Farmington, Utah 84025

Simarjit S. Gill
Salt Lake County District Attorney
35 East 500 South
Salt Lake City, UT 84111

RE Screening for state prosecution of Centers for Disease Control (CDC) officials for reckless endangerment of county residents under Utah Code § 76-5-112.

Dear County or District Attorney:

There may be reasonable suspicion to investigate CDC officials for recklessly endangering residents of the county you serve (see further below for jurisdiction). 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

¹ Karl Jablonowski & Brian S. 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).

If that assertion is correct,² such a level of neglect and omission may have violated Utah's reckless endangerment criminal code section: CDC officials "recklessly engaging in conduct [omitting to alert the public of the myocarditis signal] that create[d] a substantial risk of death or seriously bodily injury to [county residents]." *See* Utah Code § 76-5-112(2) and related definitional section for "organ[.]" which includes the human heart.

County residents acting in reliance on CDC information or lack thereof, either directly or vicariously via state and county health agency recommendations (agencies that likely rely on CDC), may have decided not to get vaccinated if CDC had warned of the myocarditis signal. This is especially concerning in light of emerging, worrying studies about post-Covid-19-vaccination myocarditis.³

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

Also, 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 county residents may (again?) directly or vicariously rely on CDC's recommendation and get or have gotten 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"). For jurisdiction, *see* Utah Code § 76-1-201(1)(a), -201(2). For criminal recklessness, *see* Utah Code § 76-2-103(3). For statute of limitations for reckless endangerment, a class A misdemeanor, time is of the essence. Also, *Livingston* provides precedent for a county attorney prosecuting federal officials, albeit with a less attenuated jurisdictional notion.

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.

³ Sitaroo 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 (accessed 12/25/2022). *See also*, Suzanne Burdick, *Too Little Too Late? Pfizer, Moderna to Study Long-Term Risk of Myocarditis After COVID Vaccines*, Children's Health Defense (childrenshealthdefense.org) (accessed 11/24/2022); *Petition for Order to Impanel a Statewide Grand Jury*, Supreme Court of Florida, SC22-1710, filed 12/15/2022, granted 12/22/2022, providing citations regarding post-Covid-19-vaccination myocarditis and pericarditis, at pp. 11-14, footnotes 32-41.

⁴ [CDC recommends Covid omicron booster shots for kids as young as 5 years old](https://www.cnn.com/2022/11/16/health/cdc-omicron-boosters/index.html) (cnbc.com) (accessed 11/16/2022).

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](https://www.inquirer.com/news/2022/11/19/paul-offit-phillys-most-vocal-vaccine-advocate-on-science-truth-and-why-hes-not-a-fan-of-the-latest-covid-boosters/) (inquirer.com) (accessed 11/19/2022).

While reckless endangerment is "only" a class A misdemeanor, it carries 364 days in jail per conviction, which would deter white collar federal officials, if investigation and prosecution are supported.

I encourage your office to consider whether investigating federal officials for state law offenses is warranted for either the actions above or other pandemic response actions. While there is discussion of more comprehensive pandemic-related investigations and prosecutions, there may be value in thinking smaller and starting somewhere.

Saying "oh well" in this situation does not seem right.

I'm sending this letter to you as county or district attorneys (or county attorney elect) for our state's five most populous counties. A similar letter was sent to selected state attorneys general, including Mr. Reyes, and the county attorney in Wyoming who prosecuted the case(s) resulting in *Livingston*.

This is an open letter.

Sincerely,

/s/ Edward A. Berkovich
Attorney at Law

Enc.