

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

JOHN PAUL BEAUDOIN, SR.,

Plaintiff,

v.

MAURA T. HEALEY, in her Official Capacity as  
Governor of the Commonwealth of Massachusetts,  
et al.,

Defendants.

CIVIL ACTION  
NO. 1:22-cv-11356-NMG

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS’  
MOTION TO DISMISS FIRST AMENDED COMPLAINT**

Defendants, eight Massachusetts officials who were named in both their official and individual capacities (“Defendants”)<sup>1</sup> respectfully submit this memorandum of law in support of their motion to dismiss the First Amended Complaint filed by plaintiff John Paul Beaudoin, Sr. (“Mr. Beaudoin”).

**Introduction**

The gravamen of the First Amended Complaint (“Am. Compl.”) is that Mr. Beaudoin “was unenrolled from law school [the Massachusetts School of Law, a private entity] because he refused to get the covid vaccine.” Am. Compl. at 1.

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<sup>1</sup> At the time that this action was filed, Charles D. Baker was Governor, and he was sued in his individual and official capacities. Pursuant to Fed. R. Civ. P. 25(d), Governor Maura T. Healey, who became Governor in January 2023, is automatically substituted as a defendant for former Governor Baker, with respect to the official-capacity claims against Governor Baker. Former Governor Baker also continues to be sued in his individual capacity. Defendant Julie Hull no longer is employed at the Office of Chief Medical Examiner, having left that office in July 2021, prior to the filing of this action.

With that single event as his starting point, Mr. Beaudoin sets forth a narrative in which he contends that Defendants are somehow indirectly to blame for his unenrollment from law school. Specifically, he believes that, in recording the causes of death of Massachusetts residents during the course of the COVID-19 pandemic, Defendants overstated the number of deaths attributable to the COVID-19 virus and understated other deaths that were caused, in whole or in part, by the decedents' reaction to the COVID-19 vaccine itself. From that premise, he further alleges that Defendants provided data reflecting deaths from COVID-19 to the Centers for Disease Control and Prevention and that the CDC recommended vaccine mandates in reliance on the information transmitted by Massachusetts officials, among others. Mr. Beaudoin contends that the CDC's recommendation in turn led to the adoption of vaccine requirements by private businesses and universities, including the Massachusetts School of Law, the private law school where Mr. Beaudoin was previously enrolled. He then alleges that the law school cancelled his enrollment based on his failure to comply with its vaccine requirement, and he asserts claims against Defendants under the First and Fourteenth Amendments of the United States Constitution based on the harm that he allegedly suffered as a consequence of the law school's actions.

The Court should dismiss the First Amended Complaint for lack of jurisdiction, pursuant to Fed. R. Civ. P. 12(b)(1), because Mr. Beaudoin lacks standing to assert any of his claims. The fact that the Massachusetts School of Law – a private law school – cancelled Mr. Beaudoin's enrollment is insufficient to confer standing for his claims against Defendants, as it is not "fairly . . . trace[able]" to any action by Defendants, and it is not redressable by this action. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992) (internal quotation marks and citation omitted). For similar reasons, Mr. Beaudoin's claims under the First and Fourteenth Amendment should be dismissed for failure to state a claim upon which relief may be based, pursuant to Fed. R. Civ. P. 12(b)(6), because the only harm that he alleges to have personally suffered – that he

was “deprived of the right to attain a legal education at a law school” due to his refusal to obtain a COVID-19 vaccination – was not the result of any action taken by Defendants.

The Court accordingly should dismiss the First Amended Complaint in its entirety.

### **Factual and Procedural Background**

The facts set forth in the First Amended Complaint, which Defendants accept as true solely for the purposes of this motion to dismiss, are as follows.

Mr. Beaudoin, who has a degree in engineering and has worked in the semiconductor industry, was accepted as a law student in the JD program at the Massachusetts School of Law (the “Law School”), a private law school in Andover, Massachusetts, in 2020. Am. Compl. at ¶¶ 12, 15. In June 2021, after Mr. Beaudoin had completed his first year of law school, the Law School, relying on data furnished by the CDC and in Massachusetts vital records, adopted a policy requiring all students to obtain vaccination against COVID-19 as a pre-condition of continued enrollment. *Id.* ¶¶ 15-16. The Law School’s vaccine policy permitted students to apply for an exemption from the vaccination requirement on the basis of religious beliefs. *Id.* ¶ 17.

In or around June 2021, Mr. Beaudoin applied to the Law School for a religious exemption from the vaccination policy. Am. Compl. ¶ 18. According to Mr. Beaudoin, the Law School neither allowed nor denied his application for a religious exemption. *Id.* Instead, the Law School informed him, in a letter that he received in late August 2021, that he had been “unenrolled” without notice and prior to the close of registration for the fall 2021 semester. *Id.* ¶ 19. The Law School’s notice directed him to begin repayment of his student loans. *Id.* Several months later, in November 2021, Mr. Beaudoin sent a demand letter to the Law School pursuant to Mass. Gen. Laws c. 93A (providing a remedy for unfair or deceptive trade practices), requesting relief. *Id.* ¶ 20. The Law School responded to his letter, citing CDC and Johns

Hopkins statements that, according to Mr. Beaudoin, were based in part on “falsified” death certificates furnished by the Massachusetts Department of Public Health (“DPH”). *Id.* ¶ 21 and Am. Compl. Ex. E.<sup>2</sup> The First Amended Complaint does not reflect whether Mr. Beaudoin took further legal action against the Law School, which is not a party to this case.

Based on his apparent belief that the Law School’s vaccination policy was implemented, at least indirectly and in part, in reliance on data compiled by DPH, *see* Am. Compl. ¶ 65, Mr. Beaudoin undertook his own independent investigation of (a) the number of deaths proximately attributable to COVID-19 in Massachusetts during the course of the pandemic; and (b) the efficacy, and attendant risks, of the COVID-19 vaccines made available to the public. A summary of his review of data is set forth in the First Amended Complaint at ¶¶ 22-52, which describes Mr. Beaudoin’s consideration of Massachusetts death certificates, DPH press releases, and the federal Department of Health and Human Services’ “Vaccine Adverse Event Reporting System,” as well as his consultation with an analyst in the United Kingdom. *See id.* ¶¶ 23-29. Based on that research, and as reflected in the “many ground-breaking analyses” of the death certificates that Mr. Beaudoin allegedly published and presented to doctors and “research scientists, among others, *see id.* at ¶¶ 28-29, Mr. Beaudoin concluded that Defendants both knowingly over-counted the number of Massachusetts deaths caused by the COVID-19 virus and

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<sup>2</sup> Although Mr. Beaudoin alleges that the Law School “has neither allowed nor denied” his application for a religious exemption, *see* Am. Compl. ¶ 18, the Law School’s response to Mr. Beaudoin’s chapter 93A demand letter explained that, while the Law School “has granted both religious and medical exemptions to students who have properly supported them,” “[t]his you have not done,” as “neither your application nor your emails supplied any specific Christian doctrine to support a religious exemption” and, indeed, “the only evidence of Christian doctrine that you provided [a letter from a Roman Catholic Deacon] . . . refutes your contention.” *Id.* Ex. E at 8. The Law School’s response further observed that “the whole of your application was little more than an attack on accepted medicine and science, and a nose thumbing at MSL’s attempts to protect its community from a virus that is highly contagious and has killed 800,000 Americans.” *Id.*

knowingly under-counted the number of Massachusetts deaths caused by COVID-19 vaccines. *Id.* ¶¶ 58-62.

On August 23, 2022, Mr. Beaudoin filed the original Complaint in this action, alleging that Defendants committed various fraudulent acts within the meaning of several federal criminal statutes, as well as under state law. *See* Compl. ¶¶ 38-64. The original Complaint contained five counts, all premised on Mr. Beaudoin's contention that the defendant Massachusetts officials had intentionally recorded inaccurate causes of death of Massachusetts residents on death certificates and then transmitted such information to various federal agencies, ostensibly for the purpose of entitling the Commonwealth and its health care providers to a higher percentage of federal pandemic-mitigation funding.<sup>3</sup> The original Complaint was premised on Mr. Beaudoin's claim that he was harmed as a result of Defendants' actions insofar as the allegedly inaccurate data that Massachusetts officials transmitted to federal officials led to the CDC's recommendation that universities and other entities adopt vaccine requirements, which in turn led to the adoption of the Law School's vaccine policy and, ultimately, to the Law School's unenrollment of Mr. Beaudoin, based on his unvaccinated status. *See* Compl. at 1-4.

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<sup>3</sup> Specifically, the original Complaint alleged that Massachusetts medical examiners issued death certificates that they knew, or should have known, were false, as a result of which Massachusetts and its health care providers received benefits from the federal government under the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act"), in violation of 18 U.S.C. § 1035 (making it a crime to make false statements in connection with payment for health care benefits) (Count I); that such actions violated 18 U.S.C. § 1040 (criminalizing false statements made in connection with the procurement of property or services related to an emergency or disaster declaration) (Count II); that Defendants' actions constituted criminal wire fraud under 18 U.S.C. § 1343, insofar as information from the allegedly false death certificates was transmitted electronically to federal regulators (Count III); that Defendants committed state-law fraud by inducing federal regulators to rely to their detriment on false information to pay unduly high benefits to Massachusetts entities under the CARES Act and other pandemic-mitigation programs (Count IV); and that Defendants deprived Mr. Beaudoin of his right to pursue a legal education, in violation of his rights under the Equal Protection Clauses (Count V). *See* Compl. ¶¶ 38-64.

After Defendants filed a motion seeking to dismiss the original Complaint, *see* Docket No. 15, Mr. Beaudoin moved to amend his complaint, and the Court allowed the motion. *See* Docket Nos. 22, 23. In the First Amended Complaint, Mr. Beaudoin explicitly withdrew Counts I, II, III, and IV in the original Complaint, *i.e.*, the counts in which Mr. Beaudoin alleged that Defendants had made false statements and committed fraud in violation of federal criminal statutes and state law. *See* Plaintiff’s Motion for Leave to File Amended Complaint (Docket No. 22) at 1, 4; *see also* footnote 3 above. His now-sole claim, set forth in Count I in the First Amended Complaint, alleges that Defendants violated his rights to free exercise of religion under the First Amendment and his rights to due process and equal protection under the Fourteenth Amendment, and he seeks relief pursuant to 42 U.S.C. § 1983. *See* Am. Compl. ¶¶ 53-72.

As in the original Complaint, Mr. Beaudoin’s assertion of claims against Defendants is based on the following theory: he contends that Massachusetts officials prepared inaccurate (and indeed, deliberately falsified) death certificates and then transmitted the data from such certificates to federal agencies, including the CDC; that the CDC, drawing on that data, recommended that universities and other entities adopt vaccine requirements; and that the Law School followed such recommendation and, in reliance on the Massachusetts data, adopted a vaccine requirement, ultimately leading to Mr. Beaudoin’s unenrollment for failure to comply with the requirement. *See* Am. Comp. ¶¶ 38-39, 58-65. He seeks various forms of wide-ranging declaratory and injunctive relief, including an order requiring Defendants to provide Mr. Beaudoin with access to Massachusetts autopsy reports, medical files, and vaccination records of specifically-named persons (the cause of whose deaths Mr. Beaudoin believes were inaccurately recorded, *see* Am. Compl. at 4 and ¶¶ 30-50); allowing Mr. Beaudoin to perform an independent audit of Massachusetts public health records; enjoining “all persons” within Massachusetts from administering COVID-19 vaccinations until the DPH Commissioner assures the Court that the

benefits of such vaccines outweigh the risks; enjoining Defendants from continuing to engage in “fraudulent conduct”; requiring Defendants to provide Mr. Beaudoin’s expert witnesses with COVID-19 vaccine vials so that those experts can perform testing; requiring Defendants to correct Massachusetts death certificates to reflect the true causes of death; and requiring Defendants to publicly declare that Massachusetts officials committed fraud, that deaths from COVID-19 have been “grossly exaggerated,” and “that the COVID-19 vaccine killed far more people than previously known.” *See* Am. Compl., Prayer for Relief ¶¶ A-H.

## ARGUMENT

### **I. THE COURT SHOULD DISMISS THE FIRST AMENDED COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION, BECAUSE MR. BEAUDOIN LACKS STANDING TO ASSERT HIS CLAIMS.**

Where, as here, a defendant challenges the Court’s subject-matter jurisdiction to adjudicate a plaintiff’s claim, the plaintiff bears the burden of establishing that the Court has jurisdiction. *Lujan v. Defs. of Wildlife*, 504 U.S. at 561. In a case such as this, in which Defendants mount a “facial” or “sufficiency” challenge to jurisdiction (as distinguished from a factual challenge that controverts the accuracy, rather than the sufficiency, of the alleged jurisdictional facts), the Court will assess the sufficiency of the plaintiff’s jurisdictional allegations by treating all well-pled facts as true and drawing all reasonable inferences in the plaintiff’s favor. *Cebollero-Bertran v. Puerto Rico Aqueduct and Sewer Authority*, 4 F.4th 63, 69 (1st Cir. 2021); *Valentin v. Hospital Bella Vista*, 254 F.3d 358, 363 (1st Cir. 2001). In the present case, and even treating all of Mr. Beaudoin’s factual allegations as true for the purposes of this motion to dismiss, Mr. Beaudoin has not set forth a plausible theory to establish that the Court has subject-matter jurisdiction to adjudicate his claims.

Article III standing is “a constitutional precondition to a federal court’s power to adjudicate a case.” *Wine and Spirits Retailers, Inc. v. Rhode Island*, 418 F.3d 36, 44 (1st Cir.

2005); accord *Osediacz v. City of Cranston*, 414 F.3d 136, 139 (1st Cir. 2005); *Rhode Island Association of Realtors, Inc. v. Whitehouse*, 199 F.3d 26, 30 (1st Cir. 1999). In order to establish standing, Mr. Beaudoin must show that (1) he suffered “an ‘injury in fact;” (2) the injury is “‘fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court;” and (3) it is “‘likely,’ as opposed to merely ‘speculative,’ that the injury will be ‘redressed by a favorable decision.” *Lujan*, 504 U.S. at 560-61 (internal citations omitted). “A mere interest in an event – no matter how passionate or sincere the interest and no matter how charged with public import the event – will not substitute for an actual injury.” *United States v. AVX Corp.*, 962 F.2d 108, 114 (1st Cir. 1992). The constitutional case-or-controversy requirement ensures that Article III courts do not decide matters which should properly be handled by the legislative or executive branches instead. *Lujan*, 504 U.S. at 559-60.

The First Amended Complaint fails to establish Article III standing because it does not allege a cognizable injury that can be fairly traced to any alleged action of Defendants. Indeed, the only harm that Mr. Beaudoin claims to have personally borne – his inability to register for second-year classes at the Law School because he did not obtain a religious exemption from the Law School’s vaccination requirement, *see* Am. Compl. ¶¶ 15-21, 64-65 – was not a consequence, either directly or indirectly, of the alleged actions by Defendants. Mr. Beaudoin was denied enrollment because he fell afoul of the private Law School’s vaccination policy by personally failing to be vaccinated and then evidently failing to satisfy the Law School’s religious-exemption process – acts that may give him recourse against the Law School, but not against Defendants. Mr. Beaudoin fails to establish a concrete nexus between the Law School’s actions and that of Defendants. He alleges only that in adopting its vaccination policy, the Law School cited information from the CDC, *see* Am. Comp. ¶ 21, and that the CDC’s information in



turn was based “in part” on DPH’s “falsified death certificates.” *See* Am. Compl. ¶ 21. These conclusory allegations do not plausibly establish a concrete nexus between the actions of Defendants and that of the Law School in cancelling his enrollment. The chain of causation is far too attenuated – encompassing, among other things, Defendants’ collection and reporting of cause-of-death data, the CDC’s guidance recommending vaccine mandates, the private Law School’s independent decision to establish a vaccine requirement subject to a religious exemption, and Mr. Beaudoin’s own personal choice not to be vaccinated and his ensuing failure to establish entitlement to an exemption from the Law School’s requirement – to constitute cognizable harm that is fairly traceable to the Defendants.

As the Supreme Court explained in *Lujan*, when a plaintiff challenges action or inaction by the government, the standing inquiry “depends considerably upon whether the plaintiff is himself an object of action (or foregone action) at issue.” 504 U.S. at 561. If he is not, as here, then standing is “ordinarily substantially more difficult to establish.” *Id.* at 562 (citations and internal quotation marks omitted). That is because, in such circumstances, “causation and redressability ordinarily hinge on the response of the regulated (or regulable) third part[ies] to the government action or inaction – and perhaps on the response of others as well. The existence of one or more of the essential elements of standing depends on the unfettered choices made by independent actors not before the courts and whose exercise of broad and legitimate discretion the courts cannot presume either to control or to predict.” *Id.* (citations and internal quotation marks omitted). The Law School’s adoption of a vaccine requirement, and its application to Mr. Beaudoin, are simply not the type of injury that “fairly can be traced” to the alleged conduct of the Defendants, as it would have to be to create standing within the meaning of *Lujan*. *See also Allen v. Wright*, 468 U.S. 737, 752 (1984) (Article III standing defeated where “line of causation between the illegal conduct and injury too attenuated” or where “prospect of obtaining relief

from the injury as a result of a favorable ruling too speculative”); *Clapper v. Amnesty Intern. USA*, 568 U.S. 398, 410 (2013) (A “theory of standing [that] relies on a highly attenuated chain of possibilities . . . does not satisfy the requirement that threatened injury must be certainly impending.”).

Nor would a favorable decision in this case entitle Mr. Beaudoin to redress of the harm he allegedly suffered as a consequence of the Law School’s cancellation of his enrollment. In his Prayers for Relief, Mr. Beaudoin does not ask for an order reinstating him as a student at the Law School or altering the Law School’s vaccination policy in any way. (Nor could he, as the Law School is not a party to this action.) Indeed, he seeks only declaratory and injunctive relief that, among other things, would alter medical examiners’ methodology in issuing death certificates and would grant Mr. Beaudoin access to additional data in furtherance of his research efforts. Even if Defendants were to change their COVID-related reporting in the manner sought by Mr. Beaudoin, it is pure speculation whether the Law School would in turn change its own vaccination policy, or (if the policy remained unchanged) whether Mr. Beaudoin would qualify for an exemption from it. In short, even attaining all of the relief he seeks in his complaint would not redress the harm that Mr. Beaudoin alleges that he personally suffered as a result of Defendants’ actions. This, too, defeats his claim of standing. *See Clapper v. Amnesty Intern. USA*, 568 U.S. at 409.

Beyond his claim about his disenrollment by the Law School, Mr. Beaudoin also asserts a broader complaint, which he appears to make on behalf of all “citizens of the Commonwealth,” *see* Am. Compl. at 4, and the essence of which is that the COVID-19 vaccine is ineffective in preventing transmission of disease, *see id.* at 3 and ¶ 70, and indeed, that the vaccine is a “deadly medical procedure” that caused the deaths of some Massachusetts residents. *Id.* at 4 and ¶¶ 30-42, 52. Relatedly, he contends that Defendants’ alleged “fraudulent” certification of death

certificates, to understate the number of deaths attributable to the COVID-19 vaccine, caused residents to “endanger themselves” by choosing to be vaccinated without being fully informed about the dangers of the vaccine. *Id.* at 1-2 and ¶¶ 38, 63.

The Supreme Court has repeatedly affirmed that such a “generalized grievance” is insufficient to create Article III standing. *See Lujan*, 504 U.S. 575, quoting *United States v. Richardson*, 418 U.S. 166, 171, 176-77 (1974) (plaintiff lacked standing to challenge federal funding of the Central Intelligence Agency where “impact on [plaintiff] is plainly undifferentiated and common to all members of the public”) (internal quotation marks omitted). *Accord Allen*, 468 U.S. at 754 (“assertion of a right to a particular kind of Government conduct, which the Government has violated by acting differently, cannot alone satisfy the requirements of Article III without draining those requirements of meaning.”) (internal quotation marks and citation omitted). As the Court held in *Lujan*, “a plaintiff raising only a generally available grievance about government – claiming only harm to his and every citizen’s interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large – does not state an Article III case or controversy.” 504 U.S. at 573-74. As such, Mr. Beaudoin’s generalized grievance about the alleged injury that Covid-19 vaccines have caused to the public at large does not establish an injury-in-fact to confer standing.<sup>4</sup>

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<sup>4</sup> Mr. Beaudoin also vaguely suggests that Defendants’ actions in “purposely” recording false information on Massachusetts death certificates was undertaken to obtain enhanced federal funding under the CARES Act. *See Am. Compl.* ¶¶ 48, 58-63. To the extent that this allegation arguably could be read to suggest (albeit only in the vaguest of terms) that the federal agencies that administer pandemic-mitigation programs were fraudulently induced to make unwarranted payments to Massachusetts entities, indirectly affecting taxpayers, Mr. Beaudoin lacks standing to prosecute claims of this nature since, even if the pleaded facts were true, he fails to allege any personal, particularized injury as a result of the challenged conduct. Any impact on Mr. Beaudoin as a taxpayer, allegedly flowing from Defendants’ conduct in connection to pandemic (footnote continued)

In short, because Mr. Beaudoin has failed to articulate a causal link between Defendants' conduct and any individualized harm to himself – one that could be redressed by a ruling in his favor – he fails to establish standing, and his claims accordingly must be dismissed.

**II. THE FIRST AMENDED COMPLAINT SHOULD ALSO BE DISMISSED FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED, PURSUANT TO FED. R. CIV. P. 12(b)(6).**

“To survive a motion to dismiss for failure to state a claim under Rule 12(b)(6), the factual allegations in a complaint must ‘possess enough heft’ to set forth ‘a plausible entitlement to relief.’” *Gagliardi v. Sullivan*, 513 F.3d 301, 305 (1st Cir. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557, 559 (2007)). The complaint therefore must “set forth ‘factual allegations, either direct or inferential, respecting each material element necessary to sustain recovery under some actionable legal theory,’” or else be dismissed. *Id.* (citation omitted). Although the court “construe[s] all well-pleaded allegations liberally” in resolving a motion to dismiss, it “do[es] not credit conclusory assertions, subjective characterizations or ‘outright vituperation.’” *Barrington Cove Ltd. Partnership v. Rhode Island Housing and Mortg. Finance Corp.*, 246 F.3d 1, 5 (1st Cir. 2001) (citation omitted).

In the sole Count set forth in the First Amended Complaint, Mr. Beaudoin alleges that Defendants violated his rights under the Free Exercise Clause of the First Amendment and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, and he seeks relief under 42 U.S.C. § 1983. *See* Am. Compl. at 16-24, ¶¶ 38-55, and Count I. For reasons similar

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funding, is “common to all members of the public,” *see Richardson*, 418 U.S. at 177 (internal quotation marks and citation omitted), and thus would be insufficient to confer standing. This case is not the first before this Court in which Mr. Beaudoin has attempted to bring a generalized claim for which he lacks standing. *See Beaudoin v. Baker*, 530 F.Supp.3d 169, 175 (D. Mass. 2021) (granting motion to dismiss, for lack of standing, plaintiff’s challenge to Governor’s order imposing mask requirement, where, among other defects, “plaintiff’s contentions amount to a generalized grievance” about the government’s response to the COVID-19 pandemic).

to those requiring dismissal of the First Amended Complaint for lack of standing, the Court should dismiss Mr. Beaudoin’s constitutional claims for failure to state a claim for relief, because the only alleged basis for these claims – namely, the cancellation of his enrollment at the Massachusetts School of Law – is not attributable to conduct by the Defendants.

Mr. Beaudoin does not set forth any factual allegations plausibly suggesting that Defendants infringed on his right to exercise his religion; rather, he alleges only that he was deprived of his “right to exercise his religious beliefs while engaging in legal education,” a claim addressed to the Law School’s action in cancelling his enrollment – the independent act of a private entity. *See* Am. Compl. ¶ 67. Such allegations fail to state a claim under the Free Exercise Clause of the First Amendment, which applies only to governmental action. *See, e.g., Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 523 (1993) (describing Free Exercise provision of First Amendment as reflecting “[t]he principle that *government* may not enact laws that suppress religious belief or practice”) (emphasis added).<sup>5</sup>

Mr. Beaudoin’s claims under the Fourteenth Amendment fail for the same reason. To establish a violation of the Due Process Clause or Equal Protection Clause, a plaintiff first must show that governmental action deprived him of a protected interest. *See, e.g., Brentwood Acad. v. Tennessee Secondary Sch. Athletic Ass’n*, 531 U.S. 288, 295 (2001) (describing how Supreme Court jurisprudence distinguishes “between state action subject to Fourteenth Amendment

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<sup>5</sup> Mr. Beaudoin’s passing references to another First Amendment right, namely, the right to petition the government, *see* Am. Compl. ¶ 68, are too vague even to meet the pleading requirements of Fed. R. Civ. P. 8, but the allegations in any event fail to state a claim under Rule 12(b)(6), because the First Amended Complaint does not plausibly allege any manner by which Defendants’ actions vis-à-vis the death certificates had any bearing on Mr. Beaudoin’s own ability to seek redress of his grievances against the government. Indeed, Mr. Beaudoin’s filing of the instant action demonstrates that he *has* had an opportunity to air his grievances. *See generally, e.g., Maloy v. Ballori-Lage*, 744 F.3d 250, 252 (1st Cir. 2014) (“The right to petition allows citizens to express their ideas, hopes, and concerns to their government and their elected representatives . . . .”) (quoting *Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. 379, 388 (2011)).

scrutiny and private conduct . . . that is not”). Mr. Beaudoin’s claim that he was “deprived of due process of law” is based solely on the allegation that he “was unenrolled from law school without notice,” *see* Am. Compl. ¶ 69, a claim that again is based on independent action by the Law School, not by Defendants. In similar vein, his claim that he was “deprived of rights unequally” in violation of the Equal Protection Clause, rests on the allegation that the Law School treated him differently because of his unvaccinated status, not that the Defendants did so. *See* Am. Compl. ¶ 64 (“Plaintiff is deprived of the right to attain a legal education at a law school that is available to all others who chose . . . to partake of covid vaccination”; “Plaintiff was singled out and treated differently though he has a right to ‘equal protection of the laws.’”); *id.* ¶ 70.<sup>6</sup> For those reasons, Mr. Beaudoin’s Fourteenth Amendment claims should be dismissed for failure to state a claim upon which relief may be based.

Finally, Mr. Beaudoin’s claim for relief under 42 U.S.C. § 1983 fails for the same reason that his constitutional claims fail, *i.e.*, his failure to establish that the harms he alleges were the consequence of any action by Defendants. *See, e.g., Barrios-Velazquez v. Asociacion de Empleados del Estado Libre Asociado de Puerto Rico*, 84 F.3d 487, 491 (1st Cir. 1996) (“section 1983 does not reach private actions”; “The ultimate issue in determining whether a person is subject to suit under § 1983 is the same question posed in cases arising under the Fourteenth Amendment: is the alleged infringement of federal rights fairly attributable to the State?”) (quotation marks and citation omitted).

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<sup>6</sup> Mr. Beaudoin also suggests that the Law School’s action in cancelling his enrollment was based on a disability that increases his health risks if he were to obtain the COVID-19 vaccine. *See* Am. Compl. ¶ 66. Such vague allegations, even if liberally construed to assert a claim under the Americans with Disabilities Act, would fail to state a claim as against Defendants, who are not alleged to have taken any action themselves based on Mr. Beaudoin’s disability.

### III. THE ELEVENTH AMENDMENT DEPRIVES THE COURT OF JURISDICTION OVER ANY STATE-LAW CLAIM BASED ON FRAUD.

Although Mr. Beaudoin does not explicitly assert a fraud claim against the Defendants – indeed, he expressly removed the fraud claims asserted in the original Complaint when he filed his First Amended Complaint, *see* page 6 and footnote 3 above – the First Amended Complaint nonetheless contains numerous allegations to the effect that Defendants committed fraud under state common law. *See, e.g.*, Am. Compl. ¶¶ 39 (“These fraudulent acts of omission in the coding of the Commonwealth’s Death Certificates led the CDC and the Commonwealth to misinform universities, schools, businesses and the public . . .”); *id.*, Prayer for Relief E (requesting that the Court enjoin Defendants “from continuing to engage in unlawful and fraudulent conduct as alleged herein”); *id.*, Prayer for Relief H (requesting a declaratory judgment “that fraud was committed”).

To the extent that the First Amended Complaint might be read as including a state-law claim based on fraud, such a claim is barred by Eleventh Amendment. *See Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 121 (1984) (federal courts lack jurisdiction over “a claim that state officials violated state law in carrying out their official responsibilities,” because such a claim “is a claim against the State that is protected by the Eleventh Amendment.”).<sup>7</sup>

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<sup>7</sup> Finally, although Mr. Beaudoin does not set forth any claim for monetary damages, *see* Am. Compl., Prayers for Relief ¶¶ A-J, he names the defendant officials in their individual (as well as official) capacities, a litigation choice that ordinarily is accompanied by a claim for damages against the defendant official individually. Even if the First Amended Complaint were construed as seeking damages against Defendants in their individual capacities, however, such a claim would fail as a matter of law because Defendants in their individual capacities are shielded by the doctrine of qualified immunity, pursuant to which “government officials are immune from damages claims unless ‘(1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was ‘clearly established at the time.’” *Eves v. LePage*, 927 F.3d 575, 582-83 (1st Cir. 2019) (en banc) (quoting *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018)). In short, and particularly in light of the second requirement, “existing precedent must have placed the statutory or constitutional question beyond debate.” *Id.* at 593 (citation and footnote continued)

**CONCLUSION**

For the foregoing reasons, this Court should dismiss the First Amended Complaint in its entirety.

Respectfully submitted,

MAURA T. HEALEY, Governor of the  
Commonwealth of Massachusetts, et al.,

By their attorneys,

ANDREA JOY CAMPBELL  
ATTORNEY GENERAL

/s/ Amy Spector  
Amy Spector (BBO No. 557611)  
Assistant Attorney General  
One Ashburton Place  
Boston, MA 02108  
(617) 963-2076  
amy.spector@mass.gov

On the memorandum:  
Charlotte Hendren Rose  
Stanford Law School Fellow

Dated: March 24, 2023

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quotation marks omitted). Mr. Beaudoin’s claims do not satisfy either part of the foregoing test, because Mr. Beaudoin lacks standing to assert any of his claims; and in any event there is no legal precedent establishing the “unlawfulness of [Defendants’] conduct” that was “clearly established” at the time. *Id.* at 582-83 (quoting *District of Columbia v. Wesby*, 138 S. Ct. at 589). At most, Mr. Beaudoin alleges that the defendant medical examiners, using their professional judgment, categorized deaths using a methodology that Mr. Beaudoin believes was improper. Even if there were a cause of action that enabled him to litigate such an abstruse, technical claim – which there is not – there is no existing precedent, then or now, that made it “clear to a reasonable official” that the conduct in question was illegal. Defendants’ qualified immunity accordingly would bar any award of damages arising out of the challenged conduct even if Mr. Beaudoin were trying to seek damages.



**CERTIFICATE OF SERVICE**

I hereby certify that I served the above Memorandum of Law on plaintiff (who is identified on the Court's Notice of Electronic Filing as a recipient of electronic notices) by filing the document through the Court's electronic filing system on March 24, 2023.

*/s/ Amy Spector* \_\_\_\_\_

Amy Spector

Assistant Attorney General