No. 24-173

IN THE

Supreme Court of the United States

MALCOLM JOHNSON, *et al.*,

Petitioners,

v.

TINA KOTEK, IN HER OFFICIAL CAPACITY AS GOVERNOR OF OREGON, SEJAL HAITI, IN HER OFFICIAL CAPACITY AS DIRECTOR OF THE OREGON HEALTH AUTHORITY, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Amici Curiae Brief of America's Frontline Doctors and Dr. Simone Gold, M.D., J.D., in Support of Petitioners for Reversal

DR. SIMONE GOLD, M.D., J.D.
DAVID A. DALIA
Counsel of Record
700 Camp Street
New Orleans, LA 70130
(504) 524-5541
davidadalia@gmail.com

Counsel for Amici Curiae, America's Frontline Doctors and Dr. Simone Gold, M.D., J.D.

130405

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A MATTER OF THE GREATEST PUBLIC IMPORTANCE AND RULE 37.6 DISCLOSURE*

The Free Speech Foundation, d/b/a America's Frontline Doctors, and Dr. Simone Gold, M.D., J.D., the founder and physician member ("*Amici Curiae*" or "AFLDS") respectfully file this *amici curiae* brief in support of the Plaintiff-Appellants request for damages in *Johnson et al. v. Brown et al.*, No. 3:21-cv-1494, (D. Or.), *Johnson et al. v. Kotek, et al.*, No. 22-35624, (CA9).

The United States Supreme Court recently accepted the filing of an *amici curiae* brief in the significant First Amendment case of *Murthy, et al. v. Missouri, et al.*, 23-411 (U.S. 2023), *Missouri, et al. v. Joseph R. Biden, Jr. In his capacity as President of the United States, et al.*, 22cv01213, WDLA, 23-30445, CA5, 23-411 (U.S. 2023).

The United States Supreme Court also accepted an *amicus curiae* brief from AFLDS in *Nat'l Fed'n of Indep. Bus. v. OSHA*, 595 U.S. __, 142 S. Ct. 661 (2022), which position prevailed in that case.

This *amici curiae* brief offers an important medical perspective to this Court of great public importance, by conclusively demonstrating that the Defendant-Appellees engaged in unconstitutional, illegal, and possibly criminal activity by "mandating" dangerous experimental medical treatments in violation of numerous clearly established laws and regulations enumerated herein.

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* No counsel for any party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. The parties received timely notice of the filing of this *amici curiae* brief.

Further, these violations by government officials is likely to recur in a future disease outbreak. Limits on executive authority must be urgently reinforced now by granting Plaintiff-Appellants' Petition for *Certiorari.*

INTERESTS OF *AMICI CURIAE*

Amici Curiae are the Free Speech Foundation, d/b/a America's Frontline Doctors ("AFLDS"), a non-partisan, not-for-profit organization of hundreds of member physicians from across the country, representing a range of medical disciplines and practical experience on the front lines of medicine, and its' founder and expert physician and attorney member, Dr. Simone Gold, M.D., J.D..

AFLDS' programs focus on a number of critical issues including:

- Providing Americans with science-based facts about COVID19;
- Protecting physician independence from government overreach;
- Combating COVID19 with evidence-based approaches without compromising constitutional freedoms;
- Fighting medical cancel culture and media censorship;
- Advancing healthcare policies that protect the physician/patient relationship;
- Expanding COVID19 treatment options for all Americans who need them, and;

- Strengthening the voices of frontline doctors in the national healthcare conversation.

Each of AFLDS' member physicians is deeply committed to the guiding principle of medicine: "FIRST, DO NO HARM." They gravely take their ethical obligations to their patients. It is axiomatic that a physician's duty is to his or her patient. AFLDS holds sacrosanct the relationship between doctor and patient where informed decisions are to be made, taking into consideration all of the factors relating to the patients' health, risks, comorbidities and circumstances.

For AFLDS member physicians, the practice of medicine is not simply a job or a mere career. Rather, it is a sacred trust. It is a high calling that often requires a decade or more of highly focused sacrificial dedication to achieve.

America's Frontline Doctors is committed to preserving the voluntary and fully informed doctor/patient relationship, opposes any sort of illegal interference with the doctor/patient relationship, and opposes illegal government overreach by the censorship of medical and other information, or by the "mandating" of incorrect or dangerous medical information or treatments.

Indeed, AFLDS and Dr. Simone Gold, M.D., J.D. were targeted by the governmental Defendants in *Murthy v Missouri* (US. 2023) as being among the so-called [distinguished] "Disinformation Dozen" for promoting accurate medical information, such as the benefits of HCQ and Ivermectin, and for opposing vaccine passports. AFLDS's medical information proved to be completely

correct. The censors were shown to be the ones advancing inaccurate information, even though incorrect information is also protected free speech.

Dr. Gold and AFLDS also publicly supported the position as early as October, 2021 that experimental mRNA injections are not "vaccines", because they do not prevent infection or transmission, and they are neither "safe", nor "effective".[1] They are personal medical treatments only. This view is now also known to be correct. See Headnotes 4, 5.

"Informed consent" cannot be formed if it is not fully informed. Voluntary informed consent can never be coerced, subjected to undue influence, nor distorted by censored and incomplete information.

SUMMARY OF ARGUMENT

The Defendant-Appellee Oregon Governor and Health Authority Director are not entitled to qualified immunity from Plaintiff-Appellants' damages claims. These Defendant-Appellees willfully violated numerous well-established constitutional principles, federal statutes, federal regulations, and the Nuremberg Code, all enumerated herein, by "mandating" via executive fiat the injection into the bodies of all of Oregon's state employees, school employees, and health care workers, dangerous experimental mRNA drugs which have numerous serious

1. https://aflds.org/about-us/press-releases/americas-frontline-doctors-supports-the-filing-of-a-petition-for-preliminary-injunction-to-prevent-kaiser-permanente-from-enforcing-their-vaccine-mandate

adverse reactions including death, under the coercive threat of these state employees losing their jobs. This illegal and unconstitutional Oregon "mandate" caused these employees grave harms. Defendant-Appellees are not entitled to qualified immunity, because of their numerous violations of well-established laws, including arguable violations of federal and state criminal laws such as 18 U.S.C. §241, 18 U.S.C. §242 and others. See Headnote 8.

Further, the Oregon mandate is irrational and serves no legitimate state purpose. Any decision to illegally "mandate" a dangerous experimental medical treatment which does not prevent infection or transmission, and which also has severe side effects including death, while simultaneously violating numerous well-established civil and criminal laws, under the coercive threat of the loss of one's employment, is completely irrational.

ARGUMENT

A. It is "beyond debate" that the Defendant-Appellee Oregon Governor and Health Authority Director are not entitled to qualified immunity from Plaintiff-Appellants' damages claims. These Defendant-Appellees willfully violated numerous well-established constitutional principles including the constitutional rights to refuse medical treatment, of personal bodily integrity, civil and criminal federal statutes, federal regulations, voluntary informed consent and full disclosure provisions, the Nuremberg Code, 21 U.S.C. §360bbb-3, 21 C.F.R. §50:20, 21 C.F.R. '50:25, 45 C.F.R. '46.116, ORS 677.085, ORS 677.080, and many others

enumerated herein. These well-established laws were violated by "mandating" by executive fiat the injection of dangerous experimental mRNA drugs with serious side effects including death, which drugs do not prevent infection or transmission, into the bodies of all of Oregon's state employees, school employees, and health care workers, under the coercive threat of these executive employees losing their jobs. This illegal and unconstitutional Oregon "mandate" caused these employees grave harms and was irrational. Because of these gross violations of the well-established rights protecting Plaintiff-Appellants, the Defendant-Appellees are not entitled to qualified immunity

This Oregon state government overreach through its illegal mandate must be urgently stopped now. Otherwise, illegal and dangerous mandates are likely to recur.

The Ninth Circuit panel in its unpublished opinion held that the Oregon government officials were protected by qualified immunity:

> "Qualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *RivasVillegas v. Cortesluna*, 595 U.S. 1, 5 (2021) (citation omitted). For a constitutional right to be clearly established, "existing precedent must have placed the . . . constitutional question *beyond debate*." *Mullenix v. Luna*, 577 U.S. 7, 12 (2015)" (*emphasis added in original Kotek opinion*)

Johnson v. Kotek, 2024 WL 747022, 22-35624, February 23, 2024 (CA9)

The numerous well-established federal and state civil and criminal laws willfully violated by Defendant-Appellees herein render it "beyond debate" that Defendant-Appellees are not entitled to qualified immunity. These laws are well known to this Honorable Court and to any reasonable government administrator. Further, there is no rational basis nor any legitimate state purpose for issuing this illegal, dangerous, and irrational mandate.

1. **It is well-established that experimental drugs which are only available under a Food and Drug Administration (FDA) experimental use authorization (EUA) can only be offered on a strictly voluntary basis to human subjects, upon "informed consent", and after full disclosure, under 21 U.S.C. § 360bbb-3, which mandates that all "experimental use authorization ("EUA")" experimental biological agents are strictly voluntary, subject to informed consent, and with "the option to accept or refuse administration of the product"**

Federal law, incorporating most of the Nuremberg Code, guarantees that experimental drugs must only be offered on a voluntary basis after full disclosure of risks, and with voluntary informed consent free from coercion. See 21 U.S.C. §360bbb-3, 21 C.F.R. §50:20, 21 C.F.R. §50:25, and 45 C.F.R. §46.116.

Even assuming the Ninth Circuit's argument in their unpublished opinion is correct, that there is no private

right of action under 21 U.S.C. §360bbb-3, it remains well-established that federal law mandates that the administration of experimental biological agents are strictly voluntary, requiring informed consent and after the full disclosure of risks. The existence or non-existence of a private right of action does not nullify this important law. That this federal law remains fully binding upon Defendant-Appellees is beyond debate. The Defendant-Appellees cannot argue that they can evade, violate, or willfully ignore this law with impunity, just because Plaintiff-Appellants might have difficulty enforcing it. As they say, no one is above the law.

Indeed, the Nuremberg Code, an international code of ethical principles adopted in the aftermath of war crimes committed by the German Nazis during WWII, was expressly intended to prohibit involuntary medical experimentation upon humans. The "informed consent" Nuremberg principles have been largely codified domestically through the adoption of 21 C.F.R. §50:20, 21 C.F.R. §50:25, and 45 C.F.R. 46, entitled "Protection of Human Subjects.", also known as the "Common Rule".[2] See the "informed consent" Headnote 6, which details how Defendant-Appellees violated these mandatory federal regulations.

2. https://www.hhs.gov/ohrp/regulations-and-policy/regulations/common-rule/index.html

2. It is beyond debate that these mandated experimental mRNA injectable drugs were never approved by the FDA despite erroneous media reports to the contrary, and have shockingly high fatality rates. The CDC's Vaccine Adverse Event Reports System (VAERS) has recorded a tragic 37,910 fatalities attributable by medical professionals to these experimental mRNA injections through September 6th, 2024. Previously, a vaccine would have been pulled from the market after only a few deaths. VAERS also documented a terrible safety profile with millions of adverse reactions attributed to these experimental mRNA injections.

The CDC's Vaccine Adverse Event Reporting System (VAERS) data show that as of September 6th, 2024, there have been 37,910 deaths in America alone, which thousands of medical professionals have attributed to fatal adverse reactions to the mandated experimental mRNA injections, a.k.a. "vaccines".[3] This cannot reasonably be considered "safe". Additionally, VAERS recorded 217,931 hospitalizations, 155,197 urgent care visits, 17,801 cases of Bell's Palsy, 5,154 miscarriages, 21,917 heart attacks, and 28,602 myocarditis cases.

When this Oregon mandate was issued in early August, 2021, the reported VAERS death toll caused by these experimental injections was already an unacceptable 11,405 deaths through July 16th, 2021.[4] These high adverse

3. https://openvaers.com/covid-data

4. https://openvaers.com/images/files/FridayOpenVAERSAlert07-23-21.pdf

reaction statistics can form a reasonable basis for some patients to avoid risky experimental mRNA injections in favor of safer alternatives, in the exercise of voluntary consent, free of coercion, and after full disclosure of these medical risks.

This conservatively estimated 37,910 American deaths indeed shock the conscience. While in stark contrast, in 1976, after only 32 deaths were attributable to the swine flu vaccine, the United States government halted the mass vaccination campaign.[5] The New York Times reported on October 13, 1976 that the swine flu program was halted in nine states after only 3 deaths were attributed to the vaccine shots.[6] Regrettably, the U.S. government continues its mass mRNA "vaccine" campaign in the face of so many deaths. The Oregon governor sadly mandated it.

It is very dangerous to fail to disclose to patients, as required, truthful and accurate medical information in an ill-conceived but mandatory government vaccination campaign. Further, we know that these experimental mRNA injections, a.k.a. "vaccines", do not prevent acquisition or transmission of COVID-19 at all. See Headnote 4. Thus, they cannot reasonably be considered "effective" either.

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5. CDC data signaling vaccine catastrophe. It took only 32 deaths to halt 1976 shot campaign. Free Republic, 2/15/2022 https://freerepublic.com/focus/f-news/4038460/posts

6. "Swine Flu Program is Halted in Three States After Shots" https://www.nytimes.com/1976/10/13/archives/swine-flu-prograrm-is-halted-in-9-states-as-3-die-after-shots.html

Japanese researchers have linked these experimental mRNA injection side effects to 201 types of diseases.[7]

Amici Curiae maintain, supported by voluminous scientific research, that early COVID-19 treatments with hydroxychloroquine ("HCQ") and Ivermectin are in fact quite safe and effective, contrary to the incessant government "narratives"[8],[9],[10] against such treatment

7. https://www.westernstandard.news/news/japanese-researchers-say-side-effects-of-covid-vaccines-linked-to-201-types-of-diseases/51661

8. As of July 24, 2023, a global, real-time metaanalysis includes 499 Hydroxychloroquine (HCQ) COVID-19 studies, from 8,467 scientists and 522,536 patients in 58 countries, 406 studies are peer reviewed, with 402 comparing treatment and control groups. The studies indicate a statistically significant improvement for mortality, hospitalization, recovery, cases, and viral clearance, and there is 72% less death in 16 early treatment trials. Source: https://c19hcq.org/

9. A white paper is to draw the reader's attention to the indisputable safety of hydroxychloroquine ("HCQ"), an analog of the same quinine found in tree barks that George Washington used to protect his troops. A "White Paper on Hydroxychloroquine" by Dr. Simone Gold, M.D., J.D., is the culmination of months-long research from all sources. It explains how Americans have come to be in the grip of fear. All the myths and all the misconceptions about a safe, generic drug that has been FDA approved for 65 years, given to pregnant women, breast-feeding women, children, the elderly, and the immune-compromised for years and decades without complication, are finally put to rest. Source: 6076fe1361cd5d631ecb0a32_White-Paper-on-HCQ-2020.2%20(3).pdf

https://americasfrontlinedoctors.org/index/covid/hydroxychloroquine/science-of-hcq/

10. As of July 25, 2023, a global, real-time metaanalysis includes 214 Ivermectin COVID-19 studies; 165 that are peer

options. These are reasonable alternatives to more dangerous experimental mRNA injections, as determined within each protected doctor/patient relationship.

Amici Curiae maintain, supported by voluminous scientific research, that experimental mRNA injections are neither "safe" nor "effective". See footnotes 3-7, and Headnotes 4,5.

Plaintiff-Appellants correctly point out in their Petition for *Certiorari* on pgs 12-13 that on August 23, 2021, the F.D.A. issued an approval for a COVID-19 drug called "Comirnaty", however, Comirnaty was never available in the United States. The same day, the F.D.A. extended the E.U.A. for the experimental mRNA drugs which were actually in use in America. This created a great deal of confusion. It was erroneously reported that the mRNA injections actually in use had now been approved by the F.D.A.. However, this was not true. The E.U.A. for these experimental mRNA injections was only extended. Therefore, all of the laws and regulations applicable to experimental drugs discussed herein were still in full force and effect at the time of the mandate.

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reviewed, with 99 comparing treatment and control groups. The studies indicate Ivermectin reduces risk for COVID-19 with very high confidence for mortality, ventilation, ICU admission, hospitalization, recovery, cases, and viral clearance. No treatment, vaccine, or intervention is 100% effective and available. Thus all practical, effective, and safe means should be used based on risk/benefit analysis. Over 20 countries adopted Ivermectin for COVID-19. Ivermectin may now be purchased over the counter in the state of Tennessee. Source: https://c19ivm.org/

3. The practice of medicine is not "one size fits all". This precludes non-doctors' mandating dangerous medical treatments wholesale to thousands of patients simultaneously. The Defendant-Appellees are not licensed physicians who have individually examined each state employee patient, yet they coercively mandated dangerous medical treatments for all, and without voluntary patient informed consent after full disclosure of the risks. It is well-established that non-doctor government employees cannot practice medicine without a license. It is beyond debate that no one can legally "mandate" dangerous experimental drugs under coercion and duress, absent informed consent, that may potentially kill the human patient, under any rationale whatsoever.

In all good conscience, how can anyone coercively "mandate" any drug that might kill a patient, without voluntary consent, and without being fully informed of the risks? Defendant-Appellees required all Oregon state employees, school employees, and health care workers to undergo dangerous and experimental mRNA injections under the threat of those employees losing their jobs. In so doing no attempt was made by Defendant-Appellees to abide by the voluntary informed consent regulations, or the full disclosure of the risks, thus violating well-established 21 C.F.R. §50:20, 21 C.F.R. §50:25, 45 C.F.R. §46.116, and the Nuremberg Code. See Headnote 6.

"Exemptions" were rarely given, despite the patients' well-established rights to refuse medical treatment.

Cruzan by Cruzan v. Director, Missouri Dept. of Health, 497 U.S. 261 (1990), and see Headnote 7. So, no "exemptions" for any reason were needed at all. Patients at all times enjoyed their well-established constitutional right to refuse the personal and risky medical treatments coerced by Defendant-Appellees.

In addition to being "deliberately indifferent" to prevailing laws, Defendant-Appellees' actions rise to the level of practicing medicine without a license. See Headnote 8.

4. It is now well-established and beyond debate that these experimental mRNA injections do not prevent infection or transmission. They are neither "safe", nor "effective". They are personal medical treatments only. Because it is an undisputed fact that these experimental mRNA injections are personal medical treatments only, *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), erroneously relied upon by the Ninth Circuit panel below, does not apply.

Experimental COVID-19 mRNA injections do not create immunity. They are personal medical treatments only, not vaccines.

The uncontroverted medical consensus is that existing COVID-19 injections do not prevent infection or transmission of the coronavirus. They do not create immunity in the recipients. This is openly admitted. The CDC Director stated on CNN, "What the vaccines can't do anymore is prevent transmission."[11]

11. CNN. The Situation Room, interview with CDC Director Walensky. (August 5, 2021). https://twitter.com/CNNSitRoom/status/1423422301882748929

Examples abound:

a. CDC states that vaccinated and unvaccinated persons should be treated the same, underscoring the pointlessness of "vaccine mandates".[12]

b. NIAID Director Dr. Fauci: "[vaccinated people with COVID19] are capable of transmitting the infection to someone else."[13]

c. See Dr. Fauci on "breakthrough infections among the vaccinated".[14]

d. Other authorities finding that COVID-19 injections do not prevent infection or transmission are: WHO Chief Scientist Dr. Swaminathann,[15] Moderna CMO Dr. Tal Zaks,[16] and Florida Surgeon General, Dr. Joseph Ladapo,

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12. https://www.cdc.gov/media/releases/2022/p0811-covid-guidance.html

13. Stieg, C. "Dr. Fauci on CDC mask guidelines: 'We are dealing with a different virus now.'" (July 28, 2021). https://www.cnbc.com/2021/07/28/dr-fauci-on-why-cdc-changed-guidelines-delta-is-a-different-virus.html

14. Coleman, K (November 12, 2021). Dr. Fauci Just Issued This Urgent Warning to Vaccinated People. Yahoo News. https://www.yahoo.com/lifestyle/dr-fauci-just-issued-urgent-201846228.html

15. Colson, T. "Top WHO scientist says vaccinated travelers should still quarantine, citing lack of evidence that COVID-19 vaccines prevent transmission." Business Insider. (December 29, 2020). https://www.businessinsider.com/who-says-no-evidence-coronavirus-vaccine-prevent-transmissions-2020-12?op=1

16. Manskar, N. "Moderna boss says COVID-19 vaccine not proven to stop spread of virus." New York Post. (November 24,

M.D., Ph.D: "the infections can still happen whether people are vaccinated or not. That's very obvious."[17]

e. On January 3rd, 2024, Surgeon General Lapado called for a complete halt in the use of experimental mRNA injections, citing concerns regarding a long list of contaminants.[18]

f. Other authorities confirming that the experimental COVID-19 drugs do not stop infection or transmission are: Oxford's Professor Pollard,[19] Stanford's Dr. Jay Bhattacharya, MD, PhD,[20] Nobel Prize winner Dr. Luc Montagnier,[21] a July 2021 Eurosurveillance study finding that 100% of severe, critical, and fatal cases of

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2020). https://nypost.com/2020/11/24/modernaboss-says-covid-shot-not-proven-to-stop-virus-spread/.

17. WFLA News. "Desantis, Moody Speak Out Against Vaccine Mandates in Clearwater." Twitter Repost. (October 24, 2021). https://twitter.com/4patrick7/status/ 1452309002021388296?s=21

18. https://www.floridahealth.gov/newsroom/2024/01/20240103-halt-use-covid19-mrna-vaccines.pr.html

19. Knapton, S. "Delta variant has wrecked hopes of herd immunity, warn scientists." The Telegraph. (October 8, 2021). https://www.msn.com/en-gb/health/medical/delta-variant-has-wrecked-hopes-of-herd-immunity-warn-scientists/arAAN9O4p

20. Bhattacharya, J., et al. "The beauty of vaccines and natural immunity." Smerconish Newsletter. (June 4, 2021). https://www.smerconish.com/exclusivecontent/the-beauty-of-vaccines-and-natural-immunity

21. RAIR Foundation USA video with Nobel Laureate Luc Montagnier. (May 18, 2021). https://rairfoundation.com/bombshell-nobel-prize-winner-reveals-covid-vaccine-is-creating-variants/

COVID19 occurred in injected individuals,[22] Harvard's Dr. Kulldorff[23], and Oxford's Dr. Sunetra Gupta.[24]

There are countless news reports of outbreaks on fully "vaccinated" sports teams,[25] cruise ships,[26] and in the fully "vaccinated" White House.[27]

The COVID-19 injections do not create immunity. Moderna CMO Tal Zaks warned that the vaccine does not prevent transmission of the virus."[28]

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22. Pnina, S. et al. "Nosocomial outbreak caused by the SARS-CoV-2 Delta variant in a highly vaccinated population, Israel, July 2021." EuroSurveill. 26:39. (September 23, 2021). ttps://doi.org/10.2807/1560-7917.ES.2021.26.39.2100822

23. Adams, P, et al. "Who Are These COVID-19 Vaccine Skeptics and What Do They Believe?"EpochTimes.(October 20,2021). https://www.theepochtimes.com/who-are-these-covid-19-vaccine-skeptics-and-what-do-they-believe_4043094.html

24. Allen, R. "Oxford Scientist 'It's Illogical & Unethical To Force Jab On NHS Staff." The Richie Allen Radio Show. (September 9, 2021). https://richieallen.co.uk/oxford-scientist-its-illogical-unethical-to-force-jab-on-nhs-staff/

25. Associated Press. "US sports leagues cope with COVID-19 outbreaks amid variants." (December 15, 2021). https://www.foxnews.com/sports/us-sports-leagues-cope-withcovid-19-outbreaks-amid-variants

26. Lemos, G. et al. "17 Covid-19 cases identified on New Orleans-bound cruise ship." CNN. (December 5, 2021). https://www.cnn.com/2021/12/05/us/cruise-ship-norwegian-breakaway-covid-cases/index.html

27. Chasmar, J. "Psaki doesn't deny White House COVID-19 outbreak." Yahoo News. (December 20, 2021). https://news.yahoo.com/psaki-doesn-apos-t-deny-210029232.html

28. Al-Arshani, S. "Moderna's chief medical officer says that vaccine trial results only show that they prevent people

This may explain why, in August of 2021, the CDC changed the definition of "vaccination" from "the act of introducing a vaccine into the body to produce immunity to a specific disease" to "the act of introducing a vaccine into the body to produce protection to a specific disease."[29]

However, this newly created CDC definition conflicts with the statutory criteria for a vaccine, which focuses solely upon immunity. In 1986, Congress passed 42 U.S.C. § 300aa-1, which established "a National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization. From a public health and legal standpoint, immunization is the *sine qua non* of vaccination. Since they do not create immunity but are claimed to merely reduce the symptoms of the disease, the so called COVID-19 "vaccines" are treatments, not vaccines.[30]

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from getting sick, not necessarily that recipients won't still be able to transmit the virus." BusinessInsider. (November 2020) https://www.businessinsider.com/moderna-chief-medical-officer-vaccines-interview-2020-11

29. Attkisson, S. "CDC changes definition of "vaccines" to fit Covid19 vaccine limitations." (September 8,2021). https://sharylattkisson.com/2021/09/read-cdc-changesdefinition-of-vaccines-to-fit-covid-19-vaccinelimitations/

30. *See*, *e.g.*, Moderna *Program Patents.*(December 2021). https://www.modernatx.com/patents United States Securities and Exchange Commission, *Moderna Form 10Q.* (August 6, 2020). https://www.sec.gov/Archives/edgar/data/1682852/000168285220000017/mrna-20200630.htm

Nakagami, H. "Development of COVID-19 vaccines utilizing gene therapy technology."

*IntImmunol.*33(10):521-527. (September 25, 2021). https://pubmed.ncbi.nlm.nih.gov/33772572/

Even the FDA classified them as "CBER-Regulated Biologics" otherwise known as "therapeutics", under the "Coronavirus Treatment Acceleration Program."[31]

The vast majority of this research existed prior to the Oregon mandate. It is beyond debate that the so-called COVID-19 "vaccines" are treatments, not vaccines. The Ninth Circuit distinguished *Jacobson*:

> 5. **That *Jacobson* does not apply was recently recognized by the Ninth Circuit in *Health Freedom Defense Fund, et al. v Carvalho, et al.,* June 7, 2024, 22-55908 (CA9). The Ninth Circuit recognized that because the experimental mRNA injections do not prevent infection or transmission of COVID-19, they should be considered as personal medical treatments only, thus making *Jacobson* inapplicable. This identical argument was also supported by *Amici Curiae* herein in the earlier October, 2021 *Kaiser Permanente* case.**

The same panel of the Ninth Circuit that decided *Johnson v. Kotek* later distinguished *Jacobson* in *Health Freedom Defense Fund, et al. v Carvalho, et al.*, June 7, 2024, 22-55908 (CA9).

FDA. "Comirnaty.Vaccines, Blood, and Biologics." (December 2021). https://www.fda.gov/vaccines-blood-biologics/comirnaty

31. FDA. "Coronavirus (COVID-19) |CBER-Regulated Biologics." (2021). https://www.fda.gov/vaccinesbloodbiologics/industry-biologics/coronavirus-covid-19-cber-regulatedbiologic FDA. "Coronavirus Treatment Acceleration Program (CTAP)." (2021). https://www.fda.gov/drugs/coronaviruscovid19drugs/coronavirus-treatment-acceleration-program-ctap

In *Health Freedom Defense Fund*, the Ninth Circuit held, because plaintiffs had plausibly alleged that mRNA injections did not stop infection or transmission, the "protection of the public" rationale of *Jacobson* was inapplicable. Thus, "forced medical treatment" for the patient's personal benefit only could not be justified by *Jacobson*.

This same reasoning was supported by *Amici Curiae* in the earlier case of *United KP Freedom Alliance et al. v. Kaiser Permanente, et al.*, October 7th, 2021, 21cv07894, NDCA.[32] See Headnote 4 discussing the medical fact that this experimental drug does not prevent infection or transmission like a traditional vaccine.

The Ninth Circuit panel distinguished *Jacobson* in this passage from *Health Freedom Defense Fund*:

> "*Jacobson*, however, did not involve a claim in which the compelled vaccine was "designed to reduce symptoms in the infected vaccine recipient rather than to prevent transmission and infection." *Reilly*, 2022 WL 5442479, at *5. The district court thus erred in holding that *Jacobson* extends beyond its public health rationale—government's power to mandate prophylactic measures aimed at preventing the recipient from spreading disease to others—to also govern "forced medical treatment" for the

32. https://aflds.org/about-us/press-releases/americas-frontline-doctors-supports-the-filing-of-a-petition-for-preliminary-injunction-to-prevent-kaiser-permanente-from-enforcing-their-vaccine-mandate

> recipient's benefit. Id. at *5.
>
> At this stage, we must accept Plaintiffs' allegations that the vaccine does not prevent the spread of COVID-19 as true. *Twombly*, 550 U.S. at 556. And, because of this, *Jacobson* does not apply."

Health Freedom Defense Fund, et al. v Carvalho, et al., June 7, 2024, 18, 19, 22-55908 (CA9).

Thus, the Ninth Circuit recognized that personal medical treatment could not be forcibly mandated upon employee/patients by the government. The Oregon mandate violates this fundamental principle.

Amici Curiae Dr. Gold and AFLDS supported this position as early as October, 2021 in *Kaiser Permanente* that experimental mRNA injections are not "vaccines", because they did not prevent infection or transmission, and were personal medical treatments only.

Unfortunately, the *Kaiser* judge in a scant three page opinion refused to invalidate the *Kaiser* medical mandate and dismissed the case. In a short paragraph, the *Kaiser* judge erroneously accepted the false "narrative" that the experimental mRNA injections prevented infection and transmission.[33] They do not. Thankfully, the Ninth Circuit correctly found in *Health Freedom Defense Fund* that the experimental mRNA injections were medical treatments only, as originally alleged by Paragraph 106 in the *Kaiser* complaint.

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33. *United KP Freedom Alliance et al. v. Kaiser Permanente, et al.*, Order, 11-18-2021, 21cv07894, NDCA.

The three page court opinion in *Kaiser* is now seen as clearly wrong, as it relied upon incorrect assumptions. The supposed efficacy of the *Jacobson* smallpox vaccine doesn't apply to these COVID-19 drugs, which do not prevent infection and transmission. See *Health Freedom Defense Fund* and Headnote 4.

Health Freedom Defense Fund was decided on June 7, 2024. UCLA promptly changed its vaccination policy to permit religious exemptions effective June 26, 2024.[34]

6. It is beyond debate that Defendant-Appellees' coercive medical mandate egregiously violated well-established, mandatory, and detailed patient rights of voluntary informed consent after full disclosure, under 21 C.F.R. §50:20, 21 C.F.R. §50:25, 45 C.F.R. §46.116, and the Nuremberg Code. Defendant-Appellees ignored these mandatory informed consent federal regulations and international principles. No attempts to comply with these mandatory regulations, which specifically require, *inter alia,* full disclosure of possible adverse reactions to the patients, and only under circumstances that minimize coercion and undue influence, were made by Defendant-Appellees. Coercive threats of job loss completely nullify voluntary consent.

Defendant-Appellees did not comply with the applicable well-established federal regulations governing

34. University of California – Policy on Vaccination Programs, June 26th, 2024.

the necessity of informed and voluntary patient consent, completely free from coercion and undue influence, as required by a reasonable government official, and with full disclosure of the risks. See 21 C.F.R. §50:20, 21 C.F.R. §50:25, and 45 C.F.R. §46.116, also known as the longstanding and well-established "Common Rule".[35]

These federal regulations embody most of the Nuremberg principles, and apply to all experimental drugs issued under an EUA pursuant to 21 U.S.C.' 360bbb-3. These Oregon-mandated experimental injections were always only offered under an EUA, and were never approved by the FDA. See Headnote 2.

Because Defendant-Appellees mandated an experimental drug, these informed consent and full disclosure regulations were mandatory.

These detailed regulations mirror the Nuremberg Code. For example, excerpts from 21 C.F.R. §50:25 provide:

> 21 C.F.R. ' 50.25 Elements of informed consent.
>
> (a) Basic elements of informed consent . . . the following information shall be provided . . . :
>
> (1) . . . identification of any procedures which are experimental.
>
> (2) A description of any reasonably foreseeable risks or discomforts . . .

35. https://www.hhs.gov/ohrp/regulations-and-policy/regulations/common-rule/index.html

> (3) A description of any benefits to the subject . . .
>
> (4) A disclosure of appropriate alternative procedures or courses of treatment . . .
>
> (5)-(7)
>
> (8) A statement that participation is voluntary, that refusal to participate will involve no penalty or loss of benefits . . .
>
> (b) Additional elements of informed consent:
>
> (1)-(6)

21 C.F.R. §50:25.

The threat of job loss nullified voluntary state employee/patient consent, free from threat and undue influence as provided for by 21 C.F.R. §50:25(a)(8). No attempt was made to advise the state employee/patients of the substantial known risks of these experimental drugs as required by 21 C.F.R. §50:25(a)(2), (4), and (6).

The death toll as recorded by VAERS at the time these mandates were issued was an unacceptable 11,405 deaths through July 16th, 2021. The employee/patients were entitled to be informed of these "substantial" risks. See also *Grimes, etc., et al. v. Kennedy Krieger Institute*, 362 Md. 623, 766 A.2d 147 (2001 Md), enforcing principles of informed consent and Nuremberg in a Maryland poisoning case.

Failure to follow these well-established regulations, along with the other violations described herein, deprive Defendant-Appellees of qualified immunity.

7. Defendant-Appellees' coercive medical mandate violates the well-established constitutional rights to refuse medical treatment and the right of bodily integrity. These are longstanding corollary rights to the right of informed consent.

The constitutional principles guaranteeing every individual the right to refuse medical treatment and the right of personal bodily integrity are similarly well-established, and were also willfully ignored by the Defendant-Appellees.

See *Cruzan by Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261, 110 S.Ct. 2841, 111 L.Ed.2d 224 (1990), "the logical corollary of the doctrine of informed consent is that the patient generally possesses the right not to consent, that is, to refuse treatment." "The Fourteenth Amendment provides that no State shall 'deprive any person of life, liberty, or property, without due process of law.' The principle that a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment may be inferred from our prior decisions." *Cruzan* also supports Plaintiff-Appellants' Privileges and Immunities argument.

See *Washington v. Harper*, 494 U.S. 210, 110 S.Ct. 1028, 108 L.Ed.2d 178 (1990), "the forcible injection of medication into a nonconsenting person's body represents a substantial interference with that person's liberty.",

Schloendorff v Society of New York Hospital, 211 N.Y. 125, 105 N.E. 92 (1914), "[e]very human being of adult years and sound mind has a right to determine what shall be done with his own body.", *Canterbury v. Spence*, 464 F.2d 772, 150 U.S. App. D.C. 263 (1972), "the root premise is the concept, fundamental in American jurisprudence, that '[e]very human being of adult years and sound mind has a right to determine what shall be done with his body. . . ' True consent to what happens to one's self is the informed exercise of a choice."

See *Doe #1 v. Rumsfeld*, 297 F. Supp. 2d 119, 134-35 (D.D.C. 2003) "United States cannot demand that members of the armed forces also serve as *guinea pigs for experimental drugs*", see also *Downer v. Veilleux*, 322 A.2d 82 (Me. 1974), *Cobbs v. Grant*, 8 Cal.3d 229, 502 P.2d 1, 104 Cal.Rptr 505 (1972).

In *Vacco v. Quill*, 521 U.S. 793, 117 S.Ct. 2293, 138 L.Ed.2d 834 (1997), the Supreme Court stated, "Everyone, regardless of physical condition, is entitled, if competent, to refuse unwanted lifesaving medical treatment."

Courts have consistently upheld the patient's well-established right to refuse unwanted medical treatments on constitutional grounds for decades. See also *Mills v. Rogers*, 457 U.S. 291, 102 S.Ct. 2442, 73 L.Ed.2d 16 (1982), *Guardianship of Roe*, 383 Mass. 415, 421 N.E.2nd 40 (1981), *Riggins v. Nevada*, 504 U.S. 127, 112 S.Ct. 1810, 118 L.Ed.2d 479 (1992), and *Sells v. United States*, 539 U.S. 166 (2003).

Preservation of the absolute right of voluntary, informed patient consent and medical freedom is a

paramount consideration here. Informed and voluntary consent to medical treatments can never be coerced under the threat of losing one's livelihood.

These constitutional principles were fully binding upon Defendant-Appellees. The Defendant-Appellees could not "mandate" any involuntary medical treatment for Plaintiff-Appellant employees, even if the treatment wasn't experimental.

8. **Further, the Defendant-Appellees' coercive medical mandate violated the well-established "major questions" doctrine, exhibited "deliberate indifference" to well-established law, arguably rose to the level of criminal activity, and was a calculated executive action, and not a "split-second decision", all of which also nullifies qualified immunity.**

In *National Federation of Independent Business v. OSHA*, 595 U.S. __, 142 S. Ct. 661 (2022), the United States Supreme Court held that the Occupational Safety and Health Administration (OSHA) lacked executive authority to decree COVID-19 vaccination and testing requirements for certain employees, because legislative action was necessary to decide such a workplace "major question". Since OSHA was not Congress, and could not pass laws, OSHA lacked authority to issue such a major mandate absent Congressional action. The Defendant-Appellees similarly lack legislative authority to issue such a sweeping mandate, absent action by the Oregon State Legislature.

Also see *Ala. Ass'n of Realtors v. Dep't of Health & Human Servs.*, 141 S. Ct. 2485 (2021), and *Loper Bright Enterprises v. Raimondo*, 603 U.S. __ (2024), overruling *Chevron U.S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

Plaintiff-Appellants correctly point out in their Petition, pg. 25, that there can be no qualified immunity to Defendant-Appellees on account of "split-second" decision-making, since this mandate was decreed by executive orders written by lawyers over many months. There was no "split-second" decision-making.

In ignoring such a vast weight of well-established laws as enumerated herein, Defendant-Appellees actions exhibit "deliberate indifference" to these well-settled laws of which any reasonable administrator should have been aware. "Deliberate indifference" also deprives them of qualified immunity. See *Stewart v. Aranas*, 20-15586 (9th Cir. 2022), *Taylor v. Riojas*,141 S. Ct. 52 (2020) (*per curiam*), and *Thomas-El v. Francis*, 99 F.4th 1115 (8th Cir. 2024).

The actions of Defendant-Appellees in mandating dangerous experimental drugs also arguably rise to the level of criminal activity, such as negligent injuring, negligent homicide, poisoning, and practicing medicine without a license.

See ORS 677.085 and ORS 677.080. Any non-doctor such as a non-doctor governor or agency head, who dictates experimental medical therapies to anyone other than to himself or herself, is either criminally or civilly

liable for practicing medicine without a license. This is well-established.

Other criminal violations of constitutional rights under 18 U.S.C. §241-242, as in *Schwarzer v. Wainwright*, No. 1941011 (5th Cir. 2021), *United States v. Guest*, 383 U.S. 745 (1966), *Griffin v. Breckenridge*, 403 U.S. 88 (1971), and *United States v. Price*, 383 U.S. 787 (1966) are implicated.

B. The Oregon mandate is irrational and serves no legitimate state purpose. Any decision to illegally "mandate", by executive fiat, a dangerous experimental medical treatment which has severe side effects including death, and which does not prevent infection or transmission, under the coercive threat of the loss of one's employment, and which mandate clearly violates the numerous well-established civil and criminal laws enumerated herein, is completely irrational.

Any decision by non-doctors to "mandate" a dangerous experimental personal medical treatment under the coercive threat of the loss of one's employment, which treatment does not prevent infection or transmission, which has severe side effects including death, and which mandate violates numerous well-established laws, is irrational, and lacks any legitimate state purpose whatsoever.

CONCLUSION

Amici Curiae maintain, supported by voluminous scientific research, that these experimental mRNA injections neither stop infection nor transmission. They are medical treatments only. Therefore, *Jacobson* does not apply.

Further, the Defendant-Appellees clearly violated the numerous well-established laws and regulations enumerated herein, thus depriving Defendant-Appellees of qualified immunity from Plaintiff-Appellants' damages claims.

Finally, any decision to illegally "mandate" by non-doctors, via executive fiat, a dangerous experimental personal medical treatment, under the coercive threat of the loss of one's employment, and which treatment does not prevent infection or transmission, and which treatment also has severe side effects including death, and which mandate clearly violates the numerous well-established laws enumerated herein, is irrational, and lacks any rational basis.

This harmfully mandated monstrous experiment is sadly analogous to the infamous Tuskegee experiment,[36] and must never be allowed to be repeated.

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36. https://www.history.com/news/the-infamous-40-year-tuskegee-study

This Petition for *Certiorari* filed by Plaintiff-Appellants should be granted so that these ill-advised mandates never recur.

Respectfully Submitted,

Dr. Simone Gold, M.D., J.D.
David A. Dalia
Counsel of Record
700 Camp Street
New Orleans, LA 70130
(504) 524-5541
davidadalia@gmail.com

Counsel for Amici Curiae,
America's Frontline Doctors and
Dr. Simone Gold, M.D., J.D.