No. ____________

In the
Supreme Court of the United States

PAUL THOMAS, MD,
Petitioner,

v.

KATHLEEN HARDER, MD, *et al.,*
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This Court has been sparing in extending quasi-judicial immunity to government officials outside of the judicial branch. It has never extended quasi-judicial immunity to the functions of investigators and supervisors or to a state medical disciplinary board. Dr. Paul Thomas brought suit under 42 U.S.C. § 1983 against the members and staff of the Oregon Medical Board for intentionally persecuting him for his research and views on childhood vaccines, and for forcing him out of his medical practice.

QUESTION 1: Are members of the Oregon Medical Board entitled to absolute immunity or qualified immunity?

QUESTION 2: Are investigators and management staff of the Oregon Medical Board entitled to absolute immunity or qualified immunity?

PARTIES TO THE PROCEEDING

Petitioner is Paul Thomas, M.D.

Respondents are Kathleen Harder, MD; Saurabh Gupta, MD; Erin Cramer, PA-C; Robert Cahn, MD; James Lace, MD; Charlotte Lin, MD; Patti Louie, PhD; Jennifer Lyons, MD; Ali Mageehon, PhD; Chere Pereira; Chris Poulsen, DO; Andrew Schink, DPM; Jill Shaw, DO; Eric Brown; Jason Boemmels; and David Farris, MD.

Respondents are members or staff of the Oregon Medical Board.

CORPORATE DISCLOSURE STATEMENT

Petitioner is an individual.

LIST OF DIRECTLY RELATED CASES

Thomas v. Harder, No. 23-35456, U.S. Court of Appeals for the Ninth Circuit. Judgment was entered October 4, 2024.

Thomas v. Harder, No. 3:22-cv-994, U.S. District Court for the District of Oregon. Final order dismissing case with prejudice was entered July 6, 2023.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Paul Thomas, MD, respectfully petitions for a writ of certiorari to review a judgment of the Ninth Circuit Court of Appeals.

OPINIONS BELOW

The Ninth Circuit's unpublished opinion in 23-35456 is available at 2024 U.S. App. LEXIS 25147 (9th Cir. Oct. 4, 2024) and is reproduced at Appendix A.

Thomas v. Harder, 22-cv-994, 2024 U.S. Dist. LEXIS 115777 (D. Or. July 6, 2023) (Order adopting recommendations and denying motion for leave to amend) is reproduced at Appendix B.

Thomas v. Harder, 22-cv-994, Doc. No. 20 (D. Or. June 5, 2023) (Magistrate's findings and recommendations that motion for leave to amend be denied) is available on PACER, and is reproduced at Appendix C.

Thomas v. Harder, 22-cv-994, Doc. No. 15, 2024 U.S. Dist. LEXIS 21071 (D. Or. Feb. 8, 2023) (Order adopting Magistrate's findings and recommendations in part and permitting Thomas to file a motion for leave to amend) is reproduced at Appendix D.

Thomas v. Harder, 22-cv-994, Doc. No. 11, 2024 U.S. Dist. LEXIS 237935 (D. Or. Oct. 11, 2022) (Magistrate's findings and recommendations that motion to dismiss be granted) is reproduced at Appendix E.

JURISDICTION

The Ninth Circuit issued its opinion on October 4, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTION, Amendment I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. CONSTITUTION, Amendment XIV:

§ 1. ... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated

or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

Dr. Thomas practiced medicine in Oregon for over thirty years, serving many thousands of patients. Through his practice, he discovered how to prevent autism and many other chronic diseases. When the Oregon Medical Board ("OMB" or "Board") and its staff learned that Dr. Thomas' method was to inform parents of the potential drawbacks of childhood vaccination, they suspended his medical license on an emergency basis, and ultimately forced him to give up his license.

The Oregon Medical Board's abuse of Dr. Paul Thomas is so extraordinary it is the subject of a book. *See* Jeremy R. Hammond, *The War on Informed Consent; The Persecution of Dr. Paul Thomas by the Oregon Medical Board* (2021). Notwithstanding the extraordinary nature of this abuse, both the district court and the Ninth Circuit agreed with Respondents[1] that they were each entitled to absolute immunity, also called quasi-judicial immunity. As will expounded upon below, the Ninth Circuit's ruling is in conflict with other circuits and fails to follow this Court's practice in being "quite sparing" in its recognition of absolute immunity. *See Forrester v. White*, 484 U.S. 219, 224 (1988).

Dr. Thomas is a hero to many in his practice; through observation and scientific inquiry, he has

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[1] Each Respondent is a member of the Oregon Medical Board or an employee of the Oregon Medical Board.

succeeded in significantly reducing autism, ADHD, asthma, eczema, anemia, behavioral issues and numerous infections in his patients.

Autism used to be very rare, about 2–4 per 10,000 children in the 1980s. Today, for children who are injected with childhood vaccines according to the CDC recommended schedule, 1 in 36 is diagnosed with autism.

Dr. Thomas does what doctors are supposed to do—give his patients informed consent. He tells his patients the benefits and risks of childhood vaccines and lets the patients decide.[2] In 2016, Dr. Thomas published a book explaining his recommendations. *See* Paul Thomas and Jennifer Margulis, Ph.D., *The Vaccine-Friendly Plan; Dr. Paul's Safe amd Effective Approach to Immunity and Health—from Pregnancy Through Your Child's Teen Years* (2016). None of the 1,000 patients who followed Dr. Thomas' recommendations developed autism. *Id*. at 5.

Through later investigation, Dr. Thomas discovered that those children in his practice who took absolutely no vaccines were much healthier than moderately vaccinated children. Dr. Thomas published these results in a peer-reviewed paper on November 22, 2020. James Lyons-Weiler and Paul

[2] A myth about vaccine safety and efficacy has permeated the public mind. The public is generally unaware that vaccines only received absolute immunity because they were understood by Congress to be *unavoidably dangerous*. The 1986 National Childhood Vaccine Injury Act ("NCVIA") prominently uses the word "unavoidable" and "expressly *eliminates liability* for a vaccine's *unavoidable* adverse side effects." *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 230 (2011) (emphasis added). In other words, contrary to the public's perception, the courts understand that vaccines cannot be made to be safe.

Thomas, "Relative Incidence of Office Visits and Cumulative Rates of Billed Diagnoses Along the Axis of Vaccination," *Int. J. Environ. Public Health* 2020 Nov. 22; 17(22):8974. Eleven days later, on December 3, 2020, the Oregon Medical Board suspended Dr. Thomas' license on an emergency basis because he was a "danger to the public."

The CDC recommended vaccine schedule is a sacred cow of the medical establishment. Pharmaceutical companies rake in billions of dollars from the sale of childhood vaccines. Pediatricians derive much of their income from administering vaccines. Powerful and secretive forces, financed by the pharmaceutical companies, have great influence on the Oregon Medical Board and the minds of many doctors. To protect the sacred cow, the Oregon Medical Board targeted Dr. Thomas, suspending his license, isolating him, discrediting him, and making him an example so that no other doctor would dare question the sacred cow. Dr. Thomas is not a danger to the public—he is a danger to the golden calf.

To take down Dr. Thomas, Respondents exercised unauthorized and unprecedented power to concoct an unwritten rule, investigate, judge, and punish Dr. Thomas. The unwritten rule concocted by the Oregon Medical Board was that pediatricians had the duty to vaccinate their patients. The Oregon Medical Board's order, emergently suspending Dr. Thomas' license, literally stated: "*his failure* to adequately vaccinate children is grossly negligent," and "[l]icensee failed to *ensure* these patients were given the required second dose of MMR as soon as he obtained the test results." Respondents doubled down in their motion to dismiss stating: "OMB suspended plaintiff's license because he was not meeting the basic standard of care relating to

administering vaccinations to protect the health and safety of his patients."

The Oregon Medical Board's imaginary rule is contrary to Oregon law which states that Oregon has no power to interfere with an individual's right to choose what medical treatment they receive. ORS 431.180. Individuals have the absolute right to make their own healthcare decisions. *See* ORS 127.649(1)(a)(A). Parents have the absolute right to refuse to immunize their child. *See* ORS 433.267(1)(c). Individuals have a fundamental right to refuse medical treatment. *See Washington v. Glucksberg*, 521 U.S. 702, 720 (1990) (the Due Process Clause protects the traditional right to refuse unwanted lifesaving medical treatment).

Notwithstanding Oregon law, Respondents, armed with the imaginary rule imposing on pediatricians the *obligation* to vaccinate their patents, targeted Dr. Thomas, suspending his license.

Dr. Thomas sued members of the Oregon Medical Board for violation of his free speech and due process rights. He brought his lawsuit for damages caused by the OMB's emergency suspension of his medical license. Dr. Thomas' substantive rights have never been addressed because the litigation has been subsumed by the question of whether Respondents are absolutely immune to suit. The central question in this appeal related to the extent of Respondents' immunity to suit.

REASONS FOR GRANTING THE WRIT

"Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction." *Cleavinger v. Saxner*, 474 U.S.

193 (1985), quoting *Pierson v. Ray*, 386 U.S. 547, 553-54 (1967). The notion of absolute immunity for the function of judging has been extended by this Court to administrative law judges and prosecutors in the Executive Branch. *Butz v. Economou*, 438 U.S. 478, 511–12 (1978). The "functional comparability" of an administrative law judge in the Executive Branch to a judicial officer justifies the extension of absolute immunity beyond judicial officers to what are termed "quasi-judicial" officers with an absolute immunity called "quasi-judicial" immunity. *Id*. at 512.

The factors used by a court to assess whether a government official is entitled to absolute quasi-judicial immunity have become known as the *Butz* factors: "(a) the need to assure that the individual can perform his functions without harassment or intimidation; (b) the presence of safeguards that reduce the need for private damages actions as a means of controlling unconstitutional conduct; (c) insulation from political influence; (d) the importance of precedent; (e) the adversary nature of the process; and (f) the correctability of error on appeal." *Cleavinger* 474 U.S. at 202. Applying these factors in the context of § 1983 actions, this Court has been "quite sparing" in recognizing quasi-judicial immunity for state officials. *See Buckley v. Fitzsimmons*, 509 U.S. 259, 269 (1993).

This Court has never determined whether a state medical board that regulates doctors in a state qualifies for quasi-judicial immunity. However, a number of circuits have found that state medical disciplinary boards are entitled to quasi-judicial immunity for performing judicial or prosecutorial functions. *See e.g.*, *Buser v. Raymond*, 476 F.3d 565, 568-69 (8th Cir. 2007) (collecting cases). However, the circuit courts have extended quasi-judicial immunity for state medical disciplinary boards far

beyond what this Court has contemplated.

In this case, Dr. Thomas sued members of the Oregon Medical Board[3] and employees of the Oregon Medical Board.[4] Exemplifying the unlawful extension of absolute immunity, the district court judge in this case concluded that *all* board members and *all* employees of the Oregon Medical Board are entitled to absolute immunity for *every* function that they perform: "Oregon has by statute imbued OMB investigators and staff with absolute immunity. ... Judges in this district have applied this statute to provide absolute immunity to employees other than OMB members. Thus, all Defendants are entitled to absolute immunity." App. 17a.

In a conclusory fashion, the Ninth Circuit affirmed the district court. App. 1a. As to the members of the Oregon Medical Board, the Ninth Circuit simply cited to previous opinions finding that state medical board members were entitled to absolute immunity. *See, e.g.,* App. 2a. The Ninth Circuit ignored all of Dr. Thomas' arguments concerning the *Butz* factors.

As to the employees, the Ninth Circuit did not comment on the district court's determination that they were entitled to quasi-judicial immunity. Instead, the Ninth Circuit concluded that Dr. Thomas had not asserted sufficient facts to state a claim. App. 3a-4a.

Thirdly, the Ninth Circuit affirmed the denial of Dr. Thomas' motion for leave to amend on different

[3] Respondents Kathleen Harder, MD, Saurabh Gupta, MD, Erin Cramer, PA-C, Robert Cahn, MD, James Lace, MD, Charlotte Lin, MD, Patti Louie, PhD, Jennifer Lyons, MD, Ali Mageehon, PhD, Chere Pereira, Chris Poulsen, DO, Andrew Schink, DPM, and Jill Shaw, DO.

[4] Respondents David Farris, MD (Executive Director) and investigators Eric Brown and Jason Boemmels.

grounds than the district court. The district court found that the amendment was futile because the OMB employees were absolutely immune. App. 18a. ("the remaining claims against the non-OMB staffers is also futile given the absolute immunity.") Instead, the Ninth Circuit found that the amendment was futile because the Oregon Medical Board staff were entitled to qualified immunity.

Hence, the Stalinist-style persecution of Dr. Thomas is nearly complete. The Oregon Medical Board targeted a dissident for destruction, fabricated a rule that he violated, investigated him for two years, wrote up phony charges, and summarily suspended his medical license. Dr. Thomas' life was turned upside down. He lost his medical practice and his marriage. Patients lost a doctor who would tell them the truth about childhood vaccines. Today, Dr. Thomas has lost his license in every state he was licensed (Oregon, Washington, and Hawaii). This Court is Dr. Thomas' last chance for justice.

The Court should grant Dr. Thomas' petition because (1) the Ninth Circuit's law on quasi-judicial immunity conflicts with other circuits' application of quasi-judicial immunity to state medical boards; (2) the expansion of absolute immunity principles to the members and employees of the Oregon State Medical Board fails to follow this Court's precedence; and (3) application of qualified immunity to protect the corrupt actions of the Oregon Medical Board cannot be tolerated.

I. Conflict between the Ninth and Second Circuits.

The law in the Second Circuit is that the individuals involved in a summary suspension of a medical license are not entitled to quasi-judicial

immunity. *DiBlasio v. Novello*, 344 F.3d 292, 296-302 (2d Cir. 2003). The Second Circuit examined the functions performed by the state officials under the *Butz* factors, determining that the process did not have the characteristics of a judicial process, and the officials were not functioning in a manner sufficiently analogous to a judge or prosecutor. *Id*. 297-302.

The action taken by the Oregon Medical Board was the same—a summary suspension of Dr. Thomas' license. In contrast to *DiBlasio*, the Ninth Circuit waved its hands at the *Butz* factors. Instead, the Ninth Circuit relied heavily on its own precedent that state medical board members are absolutely immune, failing to address Dr. Thomas' *Butz* factor arguments.

While New York and Oregon laws governing state medical boards differ, the bottom line is that decision makers who summarily suspend a doctor in the Second Circuit are not entitled to absolute immunity, whereas decision makers who issue a summary suspension in the Ninth Circuit are considered absolutely immune. This conflict is not due to distinctions in state laws. It is due to conflicting applications of this Court's quasi-judicial immunity doctrine.

II. Conflict between the Ninth and Fifth Circuits.

The holding in the Fifth Circuit is that state medical board investigators are not entitled to quasi-judicial immunity. *Morgan v. Chapman*, 969 F.3d 238, 244 (5th Cir. 2020).

In contrast, the District of Oregon found that the Oregon Medical Board investigators were absolutely immune. The Ninth Circuit did not affirm the District of Oregon on the same ground, but it also did

not reject the District's conclusion of law. The failure of the Ninth Circuit to address whether OMB staffers are entitled to absolute immunity leaves in place Ninth Circuit precedent that *every* staff member of state medical boards in the Ninth Circuit's jurisdiction is entitled to absolute immunity, no matter their job function. This precedent in the Ninth Circuit is antithetical to the law established by this Court and needs to be corrected.

III. Sixth Circuit immunity decisions.

The law in the Sixth Circuit was, for a time, that members of state medical boards were *not* entitled to absolute immunity. *Manion v. Michigan Bd. of Medicine*, 765 F.2d 590, 596 (6th Cir. 1985). But seven years later, *Manion* was overruled by the Sixth Circuit sitting en banc. *Watts v. Burkhart*, 978 F.2d 269, 271 (6th Cir. 1992) (en banc).

The example of the Sixth Circuit, and the law across the circuits in general, reflect a gradual enlargement of the application of quasi-judicial immunity over time. This is sharply reflected in the Ninth Circuit, where judges no longer bother to expressly address the *Butz* factors. If a state medical board is involved, the courts have an automatic, knee jerk reaction—absolute immunity if presumed. As shown in Dr. Thomas' case, the misapplication of absolute immunity to state medical boards, and the associated lack of accountability, is a contributing factor to an obscene level of arbitrary decisions by medical boards, which in turn has contributed to a growing collapse in public opinion of the medical establishment.

The Court should grant this petition to address the conflict of law between the circuits and reaffirm the narrow application of quasi-judicial immunity.

IV. The Ninth Circuit fails to follow this Court's immunity doctrines.

A. Board members' actions were not judicial in nature.

Two kinds of immunity are recognized under § 1983 cases. *Buckley v. Fitzsimmons*, 509 U.S. 259, 268 (1993). "Most public officials are entitled to only qualified immunity." *Id*. Only some officials perform special functions that deserve absolute protection from damages liability. *Id*. Such officials bear the burden of showing that absolute immunity is justified for the function that they performed. *Id*. at 268–69. "Not surprisingly, we have been *quite sparing* in recognizing absolute immunity for state actors in this context." *Id*. at 269 (emphasis added). The analysis is functional. *Id*.

Whether a member of the Oregon Medical Board is entitled to absolute immunity for the function that each performed in a particular fact scenario depends on analysis of the *Butz* factors. *Butz*, 438 U.S. at 512. The non-exclusive factors are:

> (a) the need to assure that the individual can perform his functions without harassment or intimidation; (b) the presence of safeguards that reduce the need for private damages actions as a means of controlling unconstitutional conduct; (c) the [agency's] insulation from political influence; (d) the importance of precedent; (e) the adversary nature of the process; and (f) the correctability of error on appeal.

Cleavinger, 474 U.S. at 202. To determine whether the Board is entitled to absolute immunity under the

facts of this case requires analysis of these factors, which the district court failed to perform.

1. The need to perform functions without harassment.

The function exercised by Respondents in this case is not a classic adjudicatory one. *See id.* at 203. Respondents invented an imaginary *de facto* rule, investigated Dr. Thomas, then summarily suspended Dr. Thomas' license for violating their imaginary rule. Respondents were not functioning solely in a quasi-judicial role when they issued the suspension. They were behaving like a legislature, investigator, adverse litigant, judge, and jury rolled up into one. They exercised unauthorized and unprecedented power to summarily legislate, investigate, judge, and punish.

No judge has such power and such power is not adjudicatory. No judge—or any other entity—can legislate a rule, investigate violation of said rule, and then summarily pronounce punishment. Such power is not entitled to the benefit of the doubt or to be exercised without question. There is no "overriding consideration of public policy" in favor of absolute immunity to legislate, judge and punish. *See Forrester*, 484 U.S. at 224. Under these circumstances, there is no need to protect Respondents from harassment and intimidation because the function that the Respondents exercised was not judicial. Indeed, the wielding of such unauthorized and unprecedented power begs for accountability and court intervention. No entity in our system of government can be allowed to have the power to legislate, investigate, judge, and punish. Victims need to have every possible mechanism to challenge such abuses in the courts.

The first *Butz* factor weighs in favor of Dr. Thomas.

2. There are no adequate safeguards.

An administrative process is not an adequate safeguard for what Respondents did to Dr. Thomas. The damage done to him is not correctable in the administrative process. For example, Dr. Thomas cannot obtain damages in any administrative process. At best, Respondents would lose Dr. Thomas' appeal in an administrative process, and he would retain his license, but lose reputation, patients, time, and money. Even losing, Respondents would still successfully send a message to every other doctor: do not dare step out of line on our dictates, or your lives and professions will be destroyed too.

Oregon's administrative process also does not provide for a trial by jury. Thomas Jefferson identified the jury "as the only anchor, ever yet imagined by man, by which a government can be held to the principles of its constitution." *Jarkesy v. SEC*, 34 F.4th 446, 451 (5th Cir. 2022), *aff'd*, 144 S. Ct. 2117 (2024). "The right to trial by jury is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right has always been and should be scrutinized with the utmost care." *Jarkesy* at 2128 (cleaned up).

The Board's action in this case was fundamentally tyrannical. "Civil juries in particular have long served as a critical check on government power." *Id.* at 451. Only a trial before a jury with the availability of damages will serve to check abuse by the Oregon Medical Board.

The second *Butz* factor is dispositive of the question of whether Defendants are entitled to

absolute immunity. There cannot be adequate safeguards without the right to a jury trial and other procedural protections. Oregon's entire scheme for adjudicating a medical doctor's license is unconstitutional under *Jarkesy*. Oregon does not provide a "fair trial in a fair tribunal" as required by the Constitution. *See*, *id.* at 2140 (Gorsuch, J. concurring) (quoting *In re Murchison*, 349 U. S. 133, 136 (1955)).

The second *Butz* factor weighs in favor of Dr. Thomas.

3. The Board is subject to political influence.

The Board has been captured by the Federation of State Medical Boards ("Federation") from which it receives its marching orders. The Federation is a secretive, private, and powerful organization located in Texas; it wields an enormous amount of power over the Oregon Medical Board. The Federation is funded and controlled by big pharmaceutical companies, the very entities that benefit financially through preservation of extensive childhood vaccination, and the treatment of chronic disease.

The Federation encouraged over-prescribing of Oxycontin and even pressured state medical boards to discipline doctors who were not prescribing enough Oxycontin. The Federation is thus one of the entities most responsible for the current opioid crisis.

The Federation has undue influence over the discipline of doctors by the state medical boards, encouraging medical boards to discipline doctors who share information contrary to the interests of Big Pharma. It is a priority of the Federation to discipline doctors who question the safety and efficacy of childhood vaccines, and the Federation pressured the Oregon Medical Board to take action

against Dr. Thomas.

The Oregon Medical Board is subject to the worst kind of political influence—not from government or political parties—but from a secretive, private, and unaccountable special interest acting on behalf of Big Pharma.

The third *Butz* factor weighs in favor of Dr. Thomas.

4. There is no precedent for Dr. Thomas' case.

There is no precedent for a medical board inventing an imaginary rule, investigating violation of said rule, and summarily punishing the doctor without due process. There is no precedent for a medical board attacking the very notion of informed consent. *See* Hammond, *supra.* Contrary to law, the OMB's *de facto* rule requires Dr. Thomas to vaccinate children. The Board's position is an abominable deviation from medical ethics and the rights of patients to informed consent. Dr. Thomas' job is to provide information for the purpose of informed consent. ORS 677.097. It is the parents right to decide whether their children will receive any vaccine. ORS 433.267(1)(c). There is no precedent that a medical board acting as a legislature, investigator, judge, and jury can be entitled to absolute immunity.

The fourth *Butz* factor weighs in favor of Dr. Thomas.

5. There was no adversarial process.

Respondents suspended Dr. Thomas without notice. There was no adversarial process. The Board's suspension was a unilateral decree to take Dr. Thomas' property right away from him based on a

rule they invented.

The fifth *Butz* factor weighs in favor of Dr. Thomas.

6. The error is not correctable on appeal of the administrative process.

Correction of the error requires an award of damages not available through the administrative process. The error is not correctable because even if Dr. Thomas were to prevail in an administrative appeal, the Oregon Medical Board is not made accountable. The OMB has punished Dr. Thomas by ruining his livelihood, destroying his marriage, decimating his financial assets, and shattering his peace of mind. The public loses because the OMB's leverage over doctors to compel childhood vaccination in Oregon will continue unabated.

Correction of the error requires an injunction preventing the Board from legislating its own vaccine rule. In a court of law, Dr. Thomas can try his case in front of a jury and obtain damages and an injunction against Respondents preventing them from enforcing their imaginary vaccination rule.

The sixth *Butz* factor weighs in favor of Dr. Thomas.

7. Respondents acted with malice.

The six enunciated *Butz* factors are not the only factors that the Court may consider. *Cleavinger*, 474 U.S. at 202 ("in *Butz* the Court mentioned the following factors, among others, as characteristic of the judicial process and to be considered in determining absolute as contrasted with qualified immunity"). In this case, the Court should also consider the malice against Dr. Thomas exhibited by

Respondents. Persecution of Dr. Thomas by Respondents is not a judge-like function that should be protected by absolute immunity.

An entire book has been written debunking the Oregon Medical Board's lies and underhanded tactics in Dr. Thomas' case. *See* Hammond, *supra*. One particular circumstance serves as an example of the Oregon Medical Board's actual malice against Dr. Thomas.

In early 2019, the Oregon Medical Board asked Dr. Thomas to provide evidence that his vaccine-friendly plan was as safe as the CDC recommended schedule. The request was a loaded question because the safety of the CDC recommended schedule has never been determined by the CDC because the entire schedule has *never been tested for safety*. Nevertheless, Dr. Thomas proceeded with a study to answer the Board's question. The results were stunning, surprising even to Dr. Thomas: unvaccinated children were dramatically healthier than vaccinated children. Eleven days after Dr. Thomas' study was published, the Board issued an emergency suspension of his license on the grounds that Dr. Thomas was a danger to the public. The purported evidence relied on by the Board was from incidents that were all years old. The only event occurring in close proximity to the suspension was the publishing of Dr. Thomas' paper.

The timing of the Board's suspension shows that the real concern was protection of the sacred cow. Their response was authoritarian—they sought to isolate Dr. Thomas, discredit him, and make him an example so that other doctors would not follow in his footsteps. The Board's action was not motivated by an intent to protect the public—it was motivated by malice towards Dr. Thomas for daring to question

their sacred cow.[5]

B. Intentionally framing a doctor cannot be protected by qualified immunity.

1. Dr. Thomas was improperly blocked from amending.

Motions to amend shall be freely given when justice so requires. Fed. R. Civ. P. 15(a). The Ninth Circuit has a policy of "extreme liberality" to amendments. *See, e.g.*, *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990). But apparently not in this case.

The Ninth Circuit panel summarily concluded that Dr. Thomas did not state a plausible claim for relief in his proposed second amended complaint. It characterized Dr. Thomas' claims as conclusory. To the contrary, Dr. Thomas stated facts with extraordinary particularity.

In his proposed second amended complaint, Dr. Thomas detailed how the Oregon Medical Board opened an investigation on him two years before his suspension concerning a child that Dr. Thomas never treated. That fact supports Dr. Thomas' allegation that he was framed with fabricated evidence. Dr. Thomas pled that communications from Respondent Boemmel (an investigator) focused on Dr. Thomas' book, not on his treatment of any patient. In his proposed amended complaint, Dr. Thomas alleged

[5] There is no requirement in Oregon that pediatricians vaccinate their patients according to the CDC recommended schedule. To the contrary, Oregon explicitly allows parents to refuse any or all vaccines. Yet, the Board suspended Dr. Thomas from the practice of medicine with the preposterous claim that Dr. Thomas' vaccine advise was a "danger to the public."

Boemmels was investigating Dr. Thomas for "wrongthink," and that he had been dispatched to search for a crime to pin on Dr. Thomas. The factual allegations continue for pages, building a plausible case of the concerted effort to frame him.

As to the suspension order, Dr. Thomas alleged detailed facts of how each case study cited as reasons for the suspension was frivolous, false, and failed to meet the threshold of an imminent threat to public safety. In one example, Dr. Thomas alleged that Respondent Eric Brown wrote a false and deceptive description about Patient D:

> Patient D, a now 9-year-old male, was completely non-immunized. Patient D sustained a large, deep scalp laceration at home in a farm setting on August 8, 2017, and was treated with colloidal silver and with his parents suturing the wound independently. Patient D subsequently developed acute tetanus requiring intubation, tracheotomy, feeding tube placement and an almost two-month ICU stay at Doernbecher Children's Hospital. Patient D was then transferred to Legacy Rehabilitation. Licensee saw Patient D for follow-up in clinic on November 17, 2017. Licensee's notes documented a referral to a homeopath, recommendation of fish oil supplements, and "phosphatidyl seine." He did not document an informed consent discussion about the risk/benefit of immunization for a child who had just sustained and still had sequelae of, and remained vulnerable despite prior infection, to tetanus, a life-threatening and disabling disease that is preventable by proper

> vaccination. Licensee's care placed Patient D at serious risk of harm and constitutes gross negligence.

A reader might naturally conclude that Patient D was Dr. Thomas' patient prior to his accident and hospitalization. The media certainly reached the conclusion that Dr. Thomas was responsible for Patient D's near-death experience, as Patient D was the headline used by the media for reporting on Dr. Thomas' case.

But the story about Patient D was an intentional frame of Dr. Thomas by the OMB. Patient D was not Dr. Thomas' patient prior to his injury. Dr. Thomas first saw Patient D *after* he recovered from his injury. No causal connection existed between Patient D's severe illness and Dr. Thomas' actions. Patient D's story is completely irrelevant to Dr. Thomas' competence to practice medicine. The fact that the OMB relied on Patient D's story as a reason for punishing Dr. Thomas, when there could be no possible causal connection, is an example of the extraordinary lengths that the Oregon Medical Board went to frame Dr. Thomas.

Dr. Thomas' pleadings are anything but conclusory. The proposed amended complaint is 45 pages long with over 200 paragraphs of factual pleadings. It is miles from the conclusory pleadings at issue in *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Moreover, most of the detail in how Oregon Medical Board framed Dr. Thomas is within the control of the Board. When highly pertinent facts are only known to the defendants, courts routinely give leeway in pleading requirements. *See e.g.*, *Moore v. Mars Petcare US, Inc.*, 966 F.3d 1007, 1020 (9th Cir. 2020).

Dr. Thomas' pleadings are so detailed that one

reading them could reach no other conclusion than Dr. Thomas was framed by the Board. Dr. Thomas' proposed second amended complaint far exceeds the required plausibility standard. The Ninth Circuit ignored what is plainly there.

2. False charges fabricated by the government cannot be protected by qualified immunity.

The Ninth Circuit has had no problem in finding that fabrication of evidence by the government cannot be protected by qualified immunity. *See Devereaux v. Abbey*, 263 F.3d 1070, 1074-75 (9th Cir. 2001). Indeed, the Ninth Circuit characterized that proposition as "virtually self-evident." *Id.* at 1075. The Ninth Circuit was only able to affirm the district court by pretending that Dr. Thomas had not pled facts with sufficient particularity.

3. Premeditated acts are not entitled to qualified immunity.

The common justification given for qualified immunity is that police officers need breathing room to make split-second judgments in fast-moving, high-pressure, life-and-death situations, a common fact pattern in abuse of force cases. *See, e.g., Plumhoff v. Rickard*, 572 U.S. 765, 775 (2014).

But this rationale fails to justify why deliberate calculated decisions by executives are entitled to the same level of protection as split-second decisions by police officers. *Hoggard v. Rhodes*, 141 S. Ct. 2421, 2422–23 (2021) (Thomas, J., statement respecting the denial of certiorari) ("But why should university officers, who have time to make calculated choices about enacting or enforcing unconstitutional policies, receive the same protection as a police officer who

makes a split-second decision to use force in a dangerous setting? We have never offered a satisfactory explanation to this question.")

Moreover, only 23 percent of qualified immunity appeals involve split-second decision making. *See* Jason Tiezzi *et al.*, *Unaccountable: How Qualified Immunity Shields A Wide Range of Government Abuses, Arbitrarily Thwarts Civil Rights, and Fails to Fulfill Its Promises*, Institute for Justice (Feb 2024, p. 4). The *majority* of qualified immunity cases involve premeditation of the decision and lack a valid *policy* justification for why the officals received any immunity at all.

This case is an example. The Oregon Medical Board was investigating Dr. Thomas for two years before they suspended his license on an emergency basis.

Premeditated acts by government officials should not be entitled to any degree of immunity.

CONCLUSION

The abuse of Dr. Thomas exposed in this case is one reason why the public's approval of the medical profession has plummeted. State medical boards are controlling medical treatment for the benefit of Big Pharma, contributing to the public's loss of confidence in the medical establishment.

Petitioner respectfully urges this Court to grant a writ of certiorari to vindicate Dr. Thomas' right to sue the Oregon Medical Board for damages under § 1983.

Respectfully submitted,

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