No. 22-55908

In the United States Court of Appeals for the Ninth Circuit

HEALTH FREEDOM DEFENSE FUND, INC.,

Plaintiffs-Appellants,

v.

ALBERTO CARVALHO, in his official capacity as Superintendent of the Los Angeles Unified School District, *et al.*,

Defendants-Appellees.

On Appeal from the United States District Court for the Central District of California, No. 2:21cv-08688

BRIEF OF THE NEW CIVIL LIBERTIES ALLIANCE AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLANTS AND REVERSAL

March 11, 2025

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *amicus curiae* the New Civil Liberties Alliance certifies that it is a nonprofit organization, has no parent corporation, and has no shares or securities that are publicly traded.

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INTRODUCTION AND INTERESTS OF *AMICUS CURIAE*[1]

The New Civil Liberties Alliance ("NCLA") is a nonpartisan, nonprofit civil-rights organization and public-interest law firm devoted to defending constitutional freedoms from the administrative state's depredations. Professor Philip Hamburger founded NCLA to challenge multiple constitutional defects in the modern administrative state through original litigation, *amicus curiae* briefs, and other advocacy.

The "civil liberties" referenced in the organization's name include rights at least as old as the U.S. Constitution itself, such as jury trial, due process of law, and freedom of speech. Yet these selfsame civil rights are also very contemporary—and in dire need of renewed vindication—precisely because legislators, executive branch officials, administrative agencies, and even some courts have neglected them for so long.

NCLA aims to defend civil liberties—primarily by asserting constitutional constraints on the administrative state. Although the American people still enjoy the shell of their Republic, there has developed within it a very different sort of government—a type, in fact, that the Constitution was designed to prevent. This unconstitutional state within the Constitution's United States is the focus of NCLA's concern.

[1] No party counsel authored any portion of this brief, and no party, party counsel, or person other than *amicus* paid for this brief's preparation or submission. All parties have consented to filing of this brief.

NCLA has defended the rights to medical choice and bodily autonomy, safeguarded by the Fourteenth Amendment's Due Process Clause, particularly in the context of Covid-19 vaccine mandates. NCLA was among the first organizations to bring cases challenging mandates for government employees, including in *Zywicki v. George Mason University*, No. 1:21-cv-00894 (E.D. Va. Aug. 8, 2021) (voluntarily dismissed) and *Norris v. Stanley*, No. 1:21-cv-756, 2022 WL 557306 (Feb. 22, 2022), *aff'd*, 73 F.4th 431 (6th Cir. 2023). NCLA also challenged former President Joseph Biden's executive orders requiring Covid-19 vaccines for federal contractors and employees, and millions of private company employees subject to the Occupational Health and Safety Act (OSH Act), through original litigation and *amicus* support.

The three-judge panel's decision in this case correctly interpreted and applied *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), in the context of Covid-19 vaccine mandates. The panel properly held that *Jacobson* does not—contrary to the misguided reasoning of some other lower courts—stand for the proposition that any mandate of a medical treatment labeled a "vaccine" is constitutional. Rather, the panel's decision wisely recognized that *Jacobson* controls *only* in certain circumstances, namely where the mandated medical intervention provides an articulable benefit to third parties, by, for example, reducing their likelihood of contracting the infection. *See Health Freedom Def. Fund v. Carvalho*, 104 F.4th 715 (9th Cir. 2024), *reh'g en banc granted*, 127 F.4th 750 (9th Cir. 2025).

For years, NCLA has taken the position that *Jacobson* does not mean courts should rubber-stamp anything a governmental body labels a vaccine mandate. Rather, NCLA has pointed out that *Jacobson* contains within it the above-recited crucial limiting principle. Only in this way can *Jacobson* be reconciled with Americans' fundamental rights to bodily autonomy and medical choice. Accordingly, NCLA has a strong, ongoing interest in seeing the panel's decision, which finally correctly applied *Jacobson* in the context of Covid-19 vaccine mandates, reaffirmed by the *en banc* Court.

STATEMENT OF THE CASE AND SUMMARY OF ARGUMENT

On March 4, 2021, the Los Angeles Unified School District (LAUSD) promulgated a requirement that employees receive a Covid-19 vaccine or lose their jobs.[2] After the Plaintiffs sued (and following several procedural steps that are not pertinent here), the District Court granted the Defendants' motion for judgment on the pleadings. A three-judge panel of this Court reversed and subsequently, rehearing *en banc* was granted.

It is important to understand the limited nature of the panel's decision. The court did *not* hold that *Jacobson* is irrelevant to the analysis of a vaccine mandate's constitutionality or even that *Jacobson* definitively did not govern the inquiry in this case. Rather, the panel merely held that the allegations in the Plaintiffs' complaint survived a

[2] The policy went through several iterations while it lasted, but the precise details are not relevant to the legal issue at hand.

motion to dismiss because, when taken as true (as they must be at this stage), the case is distinguishable from *Jacobson*. *See Health Freedom Def. Fund*, 104 F.4th at 725 ("Plaintiffs have plausibly alleged that the Covid-19 vaccine does not effectively 'prevent the spread' of Covid-19. Thus, *Jacobson* does not apply[.]"). *See also id.* at 728 (Collins, J., concurring) ("Plaintiffs' allegations here are sufficient to invoke that fundamental right [to refuse medical treatment.]"). The panel correctly cabined *Jacobson*'s application to mandatory vaccinations that stop transmission and therefore provide a benefit to the public. In contrast, when vaccinations (or other medical interventions) benefit primarily the recipient, mandates implicate a fundamental liberty interest in bodily autonomy that tends to outweigh the State's interest. *See Cruzan ex rel. Cruzan v. Director, Mo. Dep't of Health*, 497 U.S. 261, 278-79 (1990). The panel decision not only correctly interpreted *Jacobson*, but also—and in contrast to other courts addressing the issue—reconciled that case with "a distinct and more recent line of Supreme Court authority" which has been more protective of bodily autonomy. *Health Freedom Def. Fund*, 104 F.4th at 728 (Collins, J., concurring). For these reasons, the *en banc* Court should reaffirm the panel's decision.

ARGUMENT

Throughout the Covid-19 era, courts have wrongly, often with little, no, or misguided analyses, held that under *Jacobson*, virtually any public-health measure adopted during a pandemic warrants rational basis review only, effectively rubber-

stamping all vaccine mandates. *See, e.g.*, *Norris v. Stanley*, 73 F.4th 431 (6th Cir. 2023); *Kheriaty v. Regents of the Univ. of Cal.*, No. 22-55001, 2022 WL 17175070 (9th Cir. Nov. 23, 2022). But even a cursory examination of *Jacobson* shows that this broad reading was always erroneous, and it is especially problematic in light of subsequent Supreme Court authority. In contrast, the panel correctly held that "the district court misapplied the Supreme Court's decision in *Jacobson* …, stretching it beyond its public health rationale." *Health Freedom Def. Fund*, 104 F.4th at 718. Though *Jacobson* has never been overruled and thus remains binding on this Court, there are several reasons why the *en banc* panel should not blindly rely on that case to uphold LAUSD's challenged mandate, and it ought to uphold the three-judge panel's initial determination instead.

I. *JACOBSON* DID NOT, IN FACT, APPLY RATIONAL BASIS REVIEW TO MASSACHUSETTS' SMALLPOX VACCINE MANDATE

Jacobson was decided before the Supreme Court adopted the tiers of review with which modern lawyers are familiar. *See Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 23 (2020) (Gorsuch, J., concurring) (noting that "*Jacobson* pre-dated the modern tiers of scrutiny."). *See also* Josh Blackman, *The Irrepressible Myth of Jacobson v. Massachusetts*, 70 BUFF. L. REV. 131, 141 (2022) ("At the time [*Jacobson* was decided], there were no tiers

of scrutiny, the Supreme Court did not distinguish between fundamental and nonfundamental rights, and the Bill of Rights had not yet been incorporated").[3]

Second, contrary to the flawed Covid-era decisions of several courts, were one to overlay the modern tiers of scrutiny on *Jacobson*, the conclusion is inescapable that the Court engaged in something more robust than mere rational-basis review. *Jacobson* explicitly required the government to demonstrate a "substantial relation" between its articulated goal and the law in question and recognized the "inherent right of every freeman to care for his own body and health in such way as to him seems best[.]" 197 U.S. at 26. That is a far more exacting standard than rational basis, which requires only that the government posit some interest and a rational connection between the challenged law and the alleged interest. Put otherwise, a "substantial relation" is a higher bar than a "rational connection." *See generally FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307 (1993); *Williamson v. Lee Optical*, 348 U.S. 483 (1955).

Furthermore, rational basis does not entail *any* assessment of the individual's liberty rights. But the *Jacobson* Court took into account the significant liberty interests at stake, explaining that it was balancing Jacobson's liberty interest in declining the unwanted vaccine against the State's interest in preventing smallpox from spreading. *Jacobson*, 197 U.S. at 38. It was only because "the spread of smallpox" "imperiled an

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[3] In this article, Blackman convincingly argues that for over a century, the Supreme Court has misconstrued *Jacobson* for multiple reasons. *See* Blackman, *The Irrepressible Myth*, 131-270.

entire population," that the State's interest in "stamp[ing] out the disease of smallpox" outweighed Rev. Jacobson's liberty interests. *Id.* at 30-32. *See also In re Cincinnati Radiation Litigation*, 874 F. Supp. 796, 813 (S.D. Ohio 1995) (explaining that, although *Jacobson* upheld compulsory vaccination, it had done so while "acknowledg[ing] that an aspect of fundamental liberty was at stake and that the government's burden was to provide more than minimal justification for its action."). Thus, *Jacobson* did not employ the equivalent of rational basis analysis.

Properly read then, *Jacobson* requires that *at a minimum*, the Government articulate a "substantial relation" (rather than merely a "rational" one) between the Covid vaccine mandate and "protection of the public health and the public safety." 197 U.S. at 31. That standard is beyond debate, since the Court used this precise language in its decision.

II. SUBSEQUENT SUPREME COURT CASE LAW HEIGHTENED PROTECTIONS FOR BODILY AUTONOMY THAT ORIGINATED IN THE COMMON LAW

Though the *Jacobson* Court permitted Massachusetts to impose the vaccination requirement on individuals "residing or remaining in any city or town where smallpox is prevalent," 197 U.S. at 37, it also recognized "the inherent right of every freeman to care for his own body and health in such way as to him seems best." *Id.* at 26. This concession is not surprising because this idea long pre-dates the Constitution. *See, e.g.*, John Locke, *Second Treatise of Government* § 27 (1690) ("[E]very man has a property in his own person: this nobody has any right to but himself.").

The Court was surely cognizant of the fact that at common law, even the touching of one person by another without consent and a legal justification was a battery. *Cruzan*, 497 U.S. at 269. *See also Mills v. Rogers*, 457 U.S. 291, 294 n.4 (1982) ("Under the common law of torts, the right to refuse any medical treatment emerged from the doctrines of trespass and battery, which were applied to unauthorized touchings by a physician."); *Schloendorff v. Soc'y of N.Y. Hosp.*, 211 N.Y. 125, 129-30 (1914) (Cardozo, J.) ("Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent commits an assault, for which he is liable in damages."). Over the subsequent century, the Supreme Court has reaffirmed this principle on numerous occasions. It is beyond dispute, then, that Americans possess a constitutionally protected liberty interest in consenting to treatment and refusing unwanted medication. *See, e.g.*, *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997); *Vacco v. Quill*, 521 U.S. 793, 807 (1997); *Washington v. Harper*, 494 U.S. 210, 229 (1990); *Mills*, 457 U.S. at 299.

Assuming *arguendo* that the *Jacobson* Court applied only the equivalent of rational basis scrutiny (which it did not), subsequent case law recognized that vaccine mandates implicate the fundamental, constitutional right to refuse medical treatment derived from the "well-established, traditional rights to bodily integrity and freedom from unwanted touching." *Vacco*, 521 U.S. at 807. This right is also "implicit in the concept of ordered liberty," *Glucksberg*, 521 U.S. at 721, and it has been recognized as universal in *United*

States v. Brandt (Nuremberg Military Tribunal, Case 1). In that case, also known as the Doctors' Trial, American military judges wrote that when evaluating the propriety of a medical procedure, "[t]he voluntary consent of the human subject is absolutely essential." Judgment at 181 (Aug. 19, 1947), *available at* https://tinyurl.com/3zvjmrdy (last visited March 10, 2025).

In *Harper*, the Supreme Court reaffirmed that "forcible injection of medication into a nonconsenting person's body represents a substantial interference with that person's liberty." 494 U.S. at 229. *See also id.* at 221-22 ("We have no doubt that, in addition to the liberty interest created by the State's Policy, respondent possesses a significant liberty interest in avoiding the unwanted administration of antipsychotic drugs under the Due Process Clause of the *222 Fourteenth Amendment."). And although the Court applied rational basis scrutiny to evaluate a policy that required forced medication in prisons, it did so in the context of "inmate [who was because of his mental illness] *dangerous to himself or others*." *Id.* at 227 (emphasis added). Plaintiffs' interests in avoiding unwanted medical treatment are no less weighty than those of the inmate in *Harper*, but unlike in *Harper*, the LAUSD has no corresponding and countervailing interest in requiring vaccination because Covid vaccines do not benefit third parties. *See post*, Part III.

In short, the governing jurisprudence that has evolved over the course of this country's history instructs courts to assess the medical propriety of treatment by weighing the public health benefit against the individual liberty interests at stake.

Government employers cannot simply require (on pain of termination) their employees to take any medication, regardless of consent, medical necessity, or various other circumstances, merely because it asserts that the treatment may be beneficial to the employee. Rather, the means chosen to accomplish the government interest must be *both* (1) efficacious in achieving the articulated goal, and (2) balanced against individuals' constitutional rights to bodily autonomy. *See Schmerber v. California*, 384 U.S. 757, 772 (1966) ("The integrity of an individual's person is a cherished value of our society. That we today hold that the Constitution does not forbid the States minor intrusions into an individual's body under stringently limited conditions in no way indicates that it permits more substantial intrusions, or intrusions under other conditions."). There is no reason to evaluate the claims of the Plaintiffs here under a different standard. Because the district court did not give due weight (indeed any weight at all) to Plaintiffs' personal liberty interests, it necessarily erred.

Finally, it should not go unsaid that *Jacobson*, to the extent it cannot be reconciled with subsequent case law (though it easily can be), has not withstood the test of time. Indeed, *Jacobson*'s direct progeny is part of the Supreme Court's notorious "anti-canon." *See* Richard A. Primus, *Canon, Anti-Canon, and Judicial Dissent*, 48 Duke L.J. 243, 303 (1998). The Supreme Court has relied on *Jacobson*'s reasoning exactly once—to justify its decision in *Buck v. Bell*, which infamously upheld the forced sterilization of mentally ill women. 274 U.S. 200, 207 (1927) ("It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility,

society can prevent those who are manifestly unfit from continuing their kind."). While that abhorrent ruling alone does not invalidate the logic in *Jacobson*, that we now recognize forced sterilization to cross *Jacobson*'s line into the "cruel and inhuman," 197 U.S. at 39, certainly should give pause to those advocating for a broader reading of *Jacobson* or, worse yet, to those who imagine *Jacobson* to have resolved for all time mandatory-vaccination legal disputes.

Given *Jacobson*'s unsavory progeny and the Court's subsequent explicit recognition of a robust right to bodily autonomy, the panel's cabining of *Jacobson* to its facts was the morally justified and legally correct approach.

III. *JACOBSON*'S REASONING RENDERS IT INAPPLICABLE TO MANDATES FOR MEDICAL PROCEDURES THAT PRIMARILY BENEFIT THE RECIPIENT

As the panel correctly noted, *Jacobson*'s rationale was the protection of public health, *i.e.*, "government's power to mandate prophylactic measures aimed at preventing the recipient from spreading disease *to others*." *Health Freedom Def. Fund*, 104 F.4th at 725 (emphasis added). But *Jacobson* said nothing about "'forced medical treatment' for the recipient's benefit." *Id.*

Irrespective of the level of scrutiny applied, *Jacobson* itself made clear that the result in that case did not automatically vindicate every vaccine mandate. *See* 197 U.S. at 28 ("[I]t might be that an acknowledged power of a local community to protect itself against an epidemic threatening the safety of all might be exercised in particular circumstances and in reference to particular persons in such an arbitrary, unreasonable

manner, or might go so far beyond what was reasonably required for the safety of the public, as to authorize or compel the courts to interfere for the protection of such persons."). In fact, the Court eschewed the broad interpretation of its holding, confining it to the specific facts of that case when it wrote that it was "decid[ing] *only* that the statute covers the present case, and that nothing clearly appears that would justify this court in holding it to be unconstitutional and inoperative in its application to the plaintiff in error." *Id.* at 39 (emphasis added).

Both LAUSD and a number of states (led by the State of Oregon) in an *amicus* brief argue that *Jacobson* permits mandatory vaccination for reasons other than inhibiting transmission to third parties, such as for the benefit of the recipient or ensuring the hospitals are not overwhelmed. *See* Brief of *Amicus Curiae* States of Oregon *et al.* at 16 and Brief of Los Angeles Unified School District at 26, *Health Freedom Def. Fund*, (9th Cir. 2025) (No. 22-55908) ("Appellants attempt to distinguish *Jacobson* by arguing that the COVID-19 vaccine is different from the smallpox vaccine because it is designed to reduce symptoms rather than to prevent transmission is a distinction without a meaningful difference."). This interpretation of *Jacobson* is simply wrong, and LAUSD and the States point to nothing from *Jacobson* to support their claim—which is unsurprising because nothing in *Jacobson* supports it. *Cf. Health Freedom Def. Fund*, 104 F.4th at 725 ("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 recipient's benefit.").

As discussed, *Jacobson* limited its own applicability to vaccines that prevent transmission of a particularly deadly contagious disease. The smallpox vaccine is a sterilizing vaccine, meaning that it stops transmission to third parties. The Covid-19 vaccines are not sterilizing vaccines, so they do not stop transmission to third parties. Hence, *Jacobson* may not be read to allow government to require health measures that benefit only the recipient himself or herself. *See Jacobson*, 197 U.S. at 35 ("[T]he legislature has the right to pass laws which, according to the common belief of the people, are adapted to *prevent the spread of contagious diseases*.") (emphasis added); *id.* at 35 (noting that "vaccination [is] a means of *protecting a community* against smallpox.") (emphasis added); *id.* at 31-32 ("vaccination [is] a means to *prevent the spread* of smallpox.") (emphasis added).

Indeed, if ensuring the medical system is not overburdened (and with no showing of an emergency on that front) constituted a valid reason to mandate health measures, the government could mandate alcohol abstention, staying within a certain weight range, and exercising regularly. LAUSD's and *amici*'s approach would eviscerate all limits on governmental powers to intrude on medical and bodily autonomy recognized in *Cruzan*, *Glucksberg*, *Harper*, and other cases. After all, if the government's mere representation that it needs to mandate certain medical treatments to prevent "overburdening" the hospital system sufficed to show a substantial state interest, it

would follow that the government *could* force anyone to submit to *any* preventative medical intervention.[4] This cannot be (and is not) the law. Such a holding would not only radically depart from the current understanding of the limits on government's power to force medical treatments, it would obliterate those limits.

The *en banc* Court should adhere to the limiting principle that the government may mandate medical interventions only where submission to the mandate provides a significant benefit to third parties. In the case of vaccines, that means that the government must show that the disease in question is particularly dangerous *and* that the vaccine is effective in preventing transmission to other members of the community *before* its use can be mandated. Whatever may be said of Covid's dangerousness, it is beyond dispute that Covid vaccines do not prevent transmission and thus provide no benefits to third parties, because they do not protect them from contracting the disease.

The States also argue erroneously that "*Jacobson* … did not turn on factfinding about the efficacy of the vaccine. … [T]he Court expressly held that '[t]he fact that the belief [in effectiveness] is not universal is not controlling, for there is scarcely any belief that is accepted by everyone.'" Brief of *Amicus Curiae* States of Oregon, *et al.* at 9, *Health Freedom Def. Fund* (9th Cir. 2025) (No. 22-55908) (quoting *Jacobson*, 197 U.S. at 35). This argument, applied to the facts here, does not favor Defendants, because when it came

[4] There are additional problems with this argument. For example, it is not at all obvious why it is even rational for a *school district's* policies to concern themselves with *hospital* capacities. School officials have neither the expertise nor any legal authority to govern local hospitals. Thus, this argument cannot survive even rational basis scrutiny.

to the smallpox vaccine there was nearly universal agreement that it effectively arrested the spread of smallpox, *see* 197 U.S. at 31 (recounting "experience of this and other countries whose authorities have dealt with the disease of smallpox"), whereas there is nearly universal agreement that the Covid vaccines do *not* affect the disease's propagation. *See* Madeline Holcomb and Christina Maxouris, *Fully Vaccinated People Who Get a Covid-19 Breakthrough Infection Transmit the Virus, CDC Chief Says*, CNN Health (Aug. 6, 2021), https://tinyurl.com/458au9c7 (last visited Mar. 11, 2025); CM Brown, *et al.*, *Outbreak of SARS-CoV-2 Infections, Including COVID 19 Vaccine Breakthrough Infections, Associated with Large Public Gatherings—Barnstable County, Massachusetts, July 2021*, MMWR Morb. Mortal. Wkly. Rep. 2021; 70:1059-62 (Aug. 6, 2021), https://tinyurl.com/mtxznktc (last visited Mar. 11, 2025).[5]

Finally, not only did LAUSD know (or should have known) that Covid-19 vaccines were non-sterilizing (did not stop transmission), but it has also become clear that the vaccines have side effects, sometimes serious and even deadly. For example, recent studies have demonstrated that the Covid-19 vaccines appear to increase other infections, Covid-19 reinfection rates, appendicitis, abnormal menses, and myopericarditis (inflammation of the heart tissue and/or lining of the heart), and reduce

[5] It is particularly noteworthy that the CDC's acknowledgments were available by July-August 2021, *i.e.*, at or before the time that LAUSD adopted the version of the policy that is being challenged here. *See* 104 F.4th at 719-20 (noting that the policy was adopted on August 13, 2021 and required full vaccination by October 15, 2021).

white blood cell and platelet counts.[6] That does not mean the risks of the vaccine are not outweighed by the benefits for many or even most people (though that might indeed be the case for children enrolled in the LAUSD). But it *does* elucidate the problems with mandating a new or experimental vaccine, and it further corroborates the Plaintiffs' position that *Jacobson* cannot be read to automatically greenlight any mandate of a medical treatment labeled a vaccine—as the three-judge panel of this Court wisely recognized. *See Health Freedom Def. Fund*, 104 F.4th at 724-25. Indeed, according to *Jacobson*'s own reasoning, courts should take particular care to examine vaccine mandates when the vaccine's administration might well be injurious to the subject. *See* 197 U.S. at 38-39.

CONCLUSION

In sum, *Jacobson* does not compel the conclusion that any vaccine mandate is subject only to rational basis review and courts should effectively just rubber stamp it. Rather, *Jacobson* instructs courts to balance the individual rights at stake against the State's interest in imposing the public health requirement in question. That inquiry should be informed by the efficacy of the vaccine in stopping transmission, as well as

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[6] *See, e.g.*, Hui-Lee Wong, *et al.*, *Surveillance of COVID-19 vaccine safety among elderly persons aged 65 years and older*, ScienceDirect (Jan. 9, 2023), *available at* https://tinyurl.com/mufm2r3v (last visited Mar. 11, 2025); Guy Witberg, *et al.*, *Myocarditis after Covid-19 Vaccination in a Large Health Care Organization*, New England J. of Med. (Oct. 6, 2021), *available at* https://tinyurl.com/yv2wk486 (last visited Mar. 11, 2025); Naoki Hoshino, *et al.*, *An autopsy case report of fulminant myocarditis: Following mRNA COVID-19 vaccination*, PubMed (Jul. 4, 2022), *available at* https://tinyurl.com/3e4mm9th (last visited Mar. 11, 2025).

the dangerousness of the disease in question. When a vaccine—especially a relatively new one with unknown long-term effects—has not been shown to stop transmission and the disease at issue presents a minimal risk to most, the individual's liberty interest will generally surmount the State's interest in mandatory vaccination, unless the government demonstrates some other significant interest in imposing the requirement beyond the benefit to the individual recipient.

For these reasons, this Court should reaffirm the panel's holding that the Plaintiffs had alleged facts that, if true, meant the LAUSD's vaccine mandate was unlawful, reverse the district court's dismissal of the case, and remand to the district court for further proceedings consistent with this outcome.

March 11, 2025

Respectfully submitted,

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