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NCLA Asks en Banc Ninth Circuit to Allow Suit Against Vaccine Mandate that Did Not Stop the Spread

Health Freedom Defense Fund, Inc. v. Alberto Carvalho, in his capacity as Superintendent of the Los Angeles Unified School District, et al.

Washington, DC (March 11, 2025) – The New Civil Liberties Alliance filed an *amicus curiae* [brief](#) today urging the *en banc* U.S. Court of Appeals for the Ninth Circuit to allow the Plaintiffs’ lawsuit in *Health Freedom Defense Fund v. Carvalho* to proceed. The Plaintiffs launched a lawsuit against the Los Angeles Unified School District’s Covid-19 vaccine mandate for employees in 2021. A three-judge panel of the Ninth Circuit reversed the U.S. District Court for the Central District of California’s dismissal of the lawsuit, holding that the U.S. Supreme Court’s 1905 *Jacobson v. Massachusetts* decision only applies where vaccines prevent a disease from spreading. The panel found the Plaintiffs had alleged facts that, if true, established that the Covid-19 vaccines do not stop third-party transmission and so are not governed by *Jacobson*. NCLA asks the *en banc* Ninth Circuit to affirm this correct interpretation of *Jacobson*, which accords with prior and subsequent Supreme Court jurisprudence.

The district court wrongly assumed that *Jacobson*, which upheld a Cambridge, Massachusetts smallpox vaccination mandate during a 1902 outbreak, requires following any government medical order labeled a vaccine mandate. The Ninth Circuit panel overturned that judgment, holding that the *Health Freedom Defense Fund* Plaintiffs’ Complaint survived the government’s motion to dismiss because its allegations were “sufficient to invoke the fundamental right” against compulsory health measures. The panel correctly limited *Jacobson*’s application to mandatory vaccinations that stop a virus’s transmission to third parties and thereby benefit the public, not just the recipient. The government must demonstrate that there is a substantial public-health rationale for overriding individuals’ liberty interests when mandating an invasive medical treatment like a vaccine.

The Supreme Court has not directly addressed how *Jacobson* applies to Covid-19 vaccine mandates. During the Covid pandemic, some lower courts incorrectly interpreted the decision to uphold any policy labelled a vaccine mandate, effectively rubber-stamping any such government-imposed requirement as constitutional. But *Jacobson* balanced the plaintiff’s liberty interest in declining the unwanted smallpox vaccine against the State’s interest in preventing that disease from spreading. Covid vaccines have not been shown to prevent transmission. Indeed, evidence shows the manufacturers of Covid-19 vaccines never claimed the vaccines prevented transmission, so the Los Angeles Unified School District knew or should have known that requiring its employees to be vaccinated would not keep them from spreading the virus. Defendants in this case had no legal justification for overriding their employees’ right to refuse medical treatment by firing them for refusing to comply with the vaccine mandate.

NCLA released the following statements:

“The three-judge panel of the Ninth Circuit correctly limited *Jacobson*’s application to vaccines that stop transmission. Too many courts succumbed to panic in the midst of the Covid-19 pandemic. Allowing the government to mandate medical treatments for the benefit of the recipient alone is a slippery slope that would

grant government control over all sorts of personal health decisions. It is crucial that the *en banc* court adopt the panel’s determination, which appropriately balanced individual liberty interests against the interests of the state.”

— **Jenin Younes, Litigation Counsel, NCLA**

“For too long, various courts have misread *Jacobson v. Massachusetts* as authorizing any vaccines for essentially any reason. The panel of the Ninth Circuit got it right—while under *Jacobson* the Government can take measures to protect public health, it has no power to force citizens to submit to medical intervention simply because the government believes such intervention is good for them. The *en banc* Court should reaffirm the panel’s holding.”

— **Greg Dolin, Senior Litigation Counsel, NCLA**

For more information visit the *amicus* page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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