

**CIVIL DISTRICT COURT  
FOR THE PARISH OF ORLEANS  
STATE OF LOUISIANA**

DOCKET NO. : 2022-00866

DIVISION " G-11 "

**CHYNA ANDREWS, ET. AL.**

**VS.**

**LaTOYA CANTRELL, in her official capacity as Mayor of the  
City of New Orleans; NEW ORLEANS HEALTH DEPARTMENT; and  
JENNIFER AVEGNO, M.D., in her official capacity as Director of Health of the  
New Orleans Health Department**

FILED: \_\_\_\_\_

\_\_\_\_\_  
DEPUTY CLERK

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**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND  
BRIEF OF AMERICA’S FRONTLINE DOCTORS  
AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS**

**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF**

America’s Frontline Doctors (“*Amicus*” or “AFLDS”) respectfully moves for leave to file the incorporated *amicus curiae* brief<sup>1</sup> as *amicus curiae* in support of the plaintiffs’ request for injunctive and declaratory relief in *Andrews, et al. v. LaToya Cantrell, in her official capacity as Mayor of the City of New Orleans; New Orleans Health Department; and Jennifer Avegno, M.D., in her official capacity as Director of Health of the New Orleans Health Department*, 2022-00866, “G-11”, CDC Orleans, filed on January 31<sup>st</sup>, 2022. The preliminary injunction hearing was originally scheduled for February 14<sup>th</sup>, 2022, and has now been moved to March 3<sup>rd</sup>, 2022. The United States Supreme Court accepted the filing of the *amicus* brief from AFLDS as well in *Nat’l Fed’n of Indep. Bus. v. OSHA*, 595 U.S. \_\_\_, 142 S. Ct. 661 (2022). See footnote 1. Consent for the filing of this motion was sought from the parties on February 10<sup>th</sup>, 2022.

Permitting the filing of the proposed brief would offer an important perspective to this

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<sup>1</sup> This *amicus curiae* brief is largely drawn from the successful AFLDS *amicus curiae* brief recently filed in *Nat’l Fed’n of Indep. Bus. v. OSHA*, 595 U.S. \_\_\_, 142 S. Ct. 661 (2022), authored by George R. Wentz, Jr. of the Davillier Law Group, LLC, New Orleans, Louisiana, and by Gregory J. Glaser, Copperopolis, California, which position prevailed in that case.

Court on a matter of great public importance: **It is the consensus of the medical community that the currently available Covid-19 vaccine injections do not prevent the spread of SARS-CoV-2.** Relevant federal agencies have repeatedly acknowledged this consensus. Therefore, there is no scientific or legal justification for segregating injected and un-injected people. Indeed, since the Covid-19 injections do not confer immunity upon the recipients, but are claimed to merely reduce the symptoms of the disease, they do not fall within the long-established definition of a vaccine at all. They are instead treatments and must be analyzed as such under the law.

Even if the Mayor possessed the statutory and constitutional authority to issue the challenged provisions of the “Mayoral Proclamation to Further Promulgate Emergency Orders During the State of Emergency Due to Covid-19” (“Mayoral Proclamation”) now challenged before the Court, which the Mayor does not, the substantive due process clauses of our state and federal Constitutions would require the government to establish that the Mayoral Proclamation is narrowly tailored to meet a compelling state interest. This is a standard it cannot meet. This is particularly true in light of the United States Supreme Court’s decision in *Nat’l Fed’n of Indep. Bus. v. OSHA*, 595 U.S. \_\_\_, 142 S. Ct. 661 (2022), which struck down the OSHA’s ETS vaccine mandate due to lack of legislative authorization. Similarly, the Mayoral Proclamation also lacks legislative authorization, and therefore must fail as well under *Nat’l Fed’n of Indep. Bus. v. OSHA*.

#### **INTEREST OF *AMICUS CURIAE***

*Amicus Curiae* is America’s Frontline Doctors (“AFLDS”), a non-partisan, not-for-profit organization of hundreds of member physicians who come from across the country, representing a range of medical disciplines and practical experience on the front lines of medicine. AFLDS’s programs focus on a number of critical issues including:

- Providing Americans with science-based facts about Covid-19;
- Protecting physician independence from government overreach;
- Combating Covid-19 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 Covid-19 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, co-morbidities and circumstances.

For AFLDS member physicians, the practice of medicine is not simply a job. Neither is it merely a 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.

#### SUMMARY OF ARGUMENT

**It is the consensus of the medical community that the currently available Covid-19 vaccine injections ("Covid-19 injections") do not prevent the spread of Covid-19. Relevant federal agencies have repeatedly acknowledged this consensus. Therefore, there is no scientific or legal justification for segregating injected and un-injected people.** Indeed, since

the Covid-19 injections do not confer immunity upon the recipients, but are claimed to merely reduce the symptoms of the disease, they do not fall within the long-established definition of a vaccine at all. They are instead treatments and must be analyzed as such under the law.

Even if the Mayor possessed the statutory and constitutional authority to issue the challenged provisions of the Mayoral Proclamation now before the Court, which the Mayor does not, the substantive due process clauses of our Constitutions would require the government to establish that the Mayoral Proclamation is narrowly tailored to meet a compelling state interest. This is a standard it cannot meet.

The challenged provisions of the Mayoral Proclamation are completely unsupported by any local, state or federal legislation or legislative action, as required by our Constitutions. Further, the

challenged provisions of the Mayoral Proclamation which seek to segregate the public based upon their private medical histories violate the clear public accommodation provisions built into our Constitutions and of La. R.S. 49:146, which expressly prohibits discrimination in all public accommodations in our state. The challenged provisions of the Mayoral Proclamation are unconstitutional and illegal. They are also irrational, because there is no rational basis whatsoever in segregating injected and un-injected groups of people on the basis of their private medical histories, where both groups can still acquire the virus, as well as can still transmit the virus. So such illegal segregation on the basis of medical histories is completely pointless.

## **ARGUMENT**

### **A. Covid-19 injections do not create immunity. They are treatments, not vaccines.**

The uncontroverted medical consensus is that existing Covid-19 injections do *not* prevent infection or transmission of the coronavirus; *i.e., they do not create immunity in the recipients*. This is admitted openly today, including by U.S. Health Agencies, which is why the CDC Director stated on CNN, “What the vaccines can’t do anymore is prevent transmission.”<sup>2</sup>

Examples abound:

a. NIAID Director Dr. Anthony Fauci to NPR: “We know now as a fact that [vaccinated people with Covid-19] are capable of transmitting the infection to someone else.”<sup>3</sup>

b. Dr. Anthony Fauci on November 12, 2021, referring to the experience of health officials regarding the injections:

They are seeing a waning of immunity not only against infection but against hospitalization and to some extent death, which is starting to now involve all age groups. It isn't just the elderly. It's waning to the point that you're seeing more and more people getting breakthrough infections, and more and more of those people who are getting breakthrough infections are winding up in the hospital.<sup>4</sup>

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<sup>2</sup> CNN. *The Situation Room, interview with CDC Director Walensky*. (August 5, 2021). <https://twitter.com/CNNSitRoom/status/1423422301882748929>

<sup>3</sup> 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>

<sup>4</sup> 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>

c. WHO Chief Scientist Dr. Soumya Swaminathan: “At the moment I don't believe we have the evidence of any of the vaccines to be confident that it's going to prevent people from actually getting the infection and therefore being able to pass it on.”<sup>5</sup>

d. Chief Medical Officer of Moderna Dr. Tal Zaks: “There's no hard evidence that it stops [the Covid-19 vaccinated] from carrying the virus transiently and potentially infecting others who haven't been vaccinated.”<sup>6</sup>

e. The Surgeon General of the State of Florida, Dr. Joseph Ladapo, MD, PhD: “... the infections can still happen whether people are vaccinated or not. That's very obvious.”<sup>7</sup>

f. Professor Sir Andrew Pollard who led the Oxford vaccine team: “We don't have anything that will stop transmission, so I think we are in a situation where herd immunity is not a possibility and I suspect the virus will throw up a new variant that is *even better* at infecting vaccinated individuals.”<sup>8</sup>

g. Dr. Jay Bhattacharya, MD, PhD, Professor of Health Policy, Stanford University: “Based on my analysis of the existing medical and scientific literature, any exemption policy that does not recognize natural immunity is irrational, arbitrary, and counterproductive to community health.”<sup>9</sup>

h. 2008 Nobel Prize winner in Medicine Dr. Luc Montagnier (also winner of the French National Order of Merit and 20 other major international awards):

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<sup>5</sup> 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>

<sup>6</sup> Manskar, N. “Moderna boss says COVID-19 vaccine not proven to stop spread of virus.” *New York Post*. (November 24, 2020). <https://nypost.com/2020/11/24/moderna-boss-says-covid-shot-not-proven-to-stop-virus-spread/>.

<sup>7</sup> WFLA News. “Desantis, Moody Speak Out Against Vaccine Mandates in Clearwater.” Twitter Repost. (October 24, 2021). <https://twitter.com/4patrick7/status/1452309002021388296?s=21>

<sup>8</sup> 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/ar-AAN9O4p>

<sup>9</sup> Bhattacharya, J., *et al.* “The beauty of vaccines and natural immunity.” *Smerconish Newsletter*. (June 4, 2021). <https://www.smerconish.com/exclusive-content/the-beauty-of-vaccines-and-natural-immunity>

The vaccines don't stop the virus, they do the opposite – they 'feed the virus,' and facilitate its development into stronger and more transmissible variants... You see it in each country, it's the same: the curve of vaccination is followed by the curve of deaths ... the vaccines Pfizer, Moderna, Astra Zeneca do not prevent the transmission of the virus person-to-person and the vaccinated are just as transmissible as the unvaccinated.<sup>10</sup>

i. A study of a Covid-19 outbreak in July 2021 published in *Eurosurveillance* observed that 100% of severe, critical, and fatal cases of Covid-19 occurred in injected individuals. The authors stated that the study “challenges the assumption that high universal vaccination rates will lead to herd immunity and prevent Covid-19 outbreaks.”<sup>11</sup>

j. Dr. Martin Kulldorff, Professor of Medicine at Harvard Medical School: “The bottom line is that these vaccines do not prevent transmission.”<sup>12</sup>

k. Dr. Sunetra Gupta, Infectious Disease Epidemiologist and Professor of Theoretical Epidemiology at the University of Oxford:

[I]t is really not logical to use[these] vaccines to protect other people ... I don't think they should be forced[ ] on the understanding simply because this vaccine does not prevent transmission. So if you just think of the logic of it, what is the point of requiring a vaccine to protect others if that vaccine does not durably prevent onward transmission of a virus?<sup>13</sup>

The Court may already be aware of the countless news reports of outbreaks on fully “vaccinated” sports teams<sup>14</sup>, and cruise ships<sup>15</sup>, and in the fully “vaccinated” White

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<sup>10</sup>RAIR Foundation USA video with Nobel Laureate Luc Montagnier. <https://rairfoundation.com/bombshell-nobel-prize-winner-reveals-covid-vaccine-is-creating-variants/>. (May 18, 2021).

<sup>11</sup>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). <https://doi.org/10.2807/1560-7917.ES.2021.26.39.2100822>

<sup>12</sup>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](https://www.theepochtimes.com/who-are-these-covid-19-vaccine-skeptics-and-what-do-they-believe_4043094.html)

<sup>13</sup>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/>

<sup>14</sup>Associated Press. “US sports leagues cope with COVID-19 outbreaks amid variants.” (December 15, 2021). <https://www.foxnews.com/sports/us-sports-leagues-cope-with-covid-19-outbreaks-amid-variants>

<sup>15</sup>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>

House.<sup>16</sup> There is simply no question that the Covid-19 injections do not create immunity. This was summed up quite nicely by Moderna Chief Medical Officer Tal Zaks, who “warned that the trial results show that the vaccine can prevent someone from getting sick or ‘severely sick,’ from COVID-19, however, the results don't show that the vaccine prevents transmission of the virus.”<sup>17</sup>

Recognition of this fact 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.”<sup>18</sup>

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. . .*” (emphasis added). Clearly, from both a public health standpoint as well as from a legal standpoint, immunization is the intended *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.<sup>19</sup> Even the FDA has

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<sup>16</sup>Chasmar, J. “Psaki doesn’t deny White House COVID-19 outbreak.” *Yahoo News*. (Dec. 20, 2021). <https://news.yahoo.com/psaki-doesn-apos-t-deny-210029232.html><sup>18</sup> Al-Arshani

<sup>17</sup>Al-Arshani, S. “Moderna’s chief medical officer says that vaccine trial results only show that they prevent people from getting sick—not necessarily that recipients won’t still be able to transmit the virus.” *Business Insider*. (Nov. 2020). <https://www.businessinsider.com/moderna-chief-medical-officer-vaccines-interview-2020-11>

<sup>18</sup>Attkisson, S. “CDC changes definition of “vaccines” to fit Covid-19 vaccine limitations.” (Sept. 8, 2021). <https://sharylattkisson.com/2021/09/read-cdc-changes-definition-of-vaccines-to-fit-covid-19-vaccine-limitations/>

<sup>19</sup>See, e.g., Moderna *Program Patents*. (Dec. 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.” *Int Immunol*. 33(10):521-527. (September 25, 2021). <https://pubmed.ncbi.nlm.nih.gov/33772572/>.

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

classified them as “CBER-Regulated Biologics”, otherwise known as “therapeutics” which fall under the “Coronavirus Treatment Acceleration Program.”<sup>20</sup>

**B. The Government’s attempt to mandate treatments is subject to strict scrutiny.**

The judiciary has too often assumed without analysis that requiring individuals to submit to Covid-19 injections is permissible under the determination made in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905). However, because these injections do not confer immunity, but are instead merely treatments that may reduce the severity of symptoms, the proper analysis stems from *Cruzan v. Dir., Mo. Dep’t of Health*, 497 U. S. 261 (1990). In *Cruzan*, the Court addressed whether the parents of a young woman severely brain damaged in a car wreck could compel the hospital to remove her from life support in the absence of any clear directive memorializing her intent. Missouri required clear and convincing evidence of intent to remove a patient from life support, and the parents argued this violated both their and their daughter’s Fourteenth Amendment substantive due process rights. Significantly for the issue at hand, the Court began by recognizing a fundamental human right of informed consent to medical treatment stemming from the right of self-determination, stating:

At common law, even the touching of one person by another without consent and without legal justification was a battery. Before the turn of the century, this Court observed that “no right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference from others, unless by clear and unquestionable authority of law.” This notion of bodily integrity has been embodied in the requirement that informed consent is generally required for medical treatment. Justice Cardozo, while on the Court of Appeals of New York, aptly described this doctrine: “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.” The informed consent doctrine has become firmly entrenched in American tort law. 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.

497 U.S. at 269-270 (citations omitted).

The Court went on to state that “[t]he principle that a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment may be inferred from our prior decisions” citing three cases pertinent to our analysis here. First, the *Cruzan* Court

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<sup>20</sup> FDA. “Coronavirus (COVID-19) / CBER-Regulated Biologics” (2021), <https://www.fda.gov/drugs/coronavirus-covid-19-drugs/coronavirus-treatment-acceleration-program-ctap>.

cited *Washington v. Harper*, 494 U.S. 210, 221-222 (1990), where the Court recognized that prisoners possess “a significant liberty interest in avoiding the unwanted administration of antipsychotic drugs under the Due Process Clause of the Fourteenth Amendment.” The Court in *Harper* stated that “[t]he forcible injection of medication into a nonconsenting person’s body represents a substantial interference with that person’s liberty.” 494 U.S. at 229. Second, the *Cruzan* Court cited *Vitek v. Jones*, 445 U.S. 480, 494 (1980), where the Court recognized that a transfer to a mental hospital coupled with mandatory behavior modification treatment implicated liberty interests. Third, the Court cited *Parham v. J.R.*, 442 U.S. 584 (1979) where the Court recognized that “a child, in common with adults, has a substantial liberty interest in not being confined unnecessarily for medical treatment.”

*Cruzan* was followed in 1997 by *Washington v. Glucksberg*, 521 U.S. 702 (1997), where the issue before the Court was whether the substantive due process right to refuse medical treatment included the right to assisted suicide. The following language of the Court is particularly significant to the issue presently before the Court:

The Due Process Clause guarantees more than fair process, and the “liberty” it protects includes more than the absence of physical restraint. *Collins v. Harker Heights*, 503 U. S. 115, 125 (1992) (Due Process Clause “protects individual liberty against ‘certain government actions regardless of the fairness of the procedures used to implement them’”) (quoting *Daniels v. Williams*, 474 U.S. 327, 331 (1986)). The Clause also provides heightened protection against government interference with certain fundamental rights and liberty interests. ... We have also assumed, and strongly suggested, that the Due Process Clause protects the traditional right to refuse unwanted lifesaving medical treatment. *Cruzan*, 497 U.S. at 278-279.

521 U.S. at 719-720 (internal citations omitted).

The fact that the *Glucksberg* Court identified the right to refuse unwanted lifesaving medical treatment as one in a long list of traditional fundamental human rights and liberty interests is extremely important because once a right is so identified, any governmental action infringing upon it is subjected to the “strict scrutiny” test. As stated by the Court in *Glucksberg*, “the Fourteenth Amendment forbids the government to infringe fundamental liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest.” *Glucksberg*, 521 U.S. at 721 (internal quotations omitted, emphasis in original).

The Court’s analysis in both *Cruzan* and *Glucksberg* was based upon a sick person asserting a right to deny treatment. The Mayoral Proclamation, on the other hand, forces

treatment on perfectly healthy people in order to access public accommodations without discrimination or segregation prohibited by our Constitutions and by La. R.S. 49:146, and in order to fully participate in society. All of the arguments in favor of self-determination reviewed by the Court in *Cruzan* and *Glucksberg* are even stronger when applied to a perfectly healthy person's right to refuse a treatment on the basis that it *may* make symptoms of a disease that a healthy person *may never contract* less severe. And we remember here the uncontroverted medical consensus that Covid-19 injections do not prevent infection or transmission of the coronavirus; i.e., *they do not create immunity in the recipients*. The bar should be even higher to force a healthy person to accept "treatment" than to force a sick person to accept critical care. As stated by the Court in *Harper*, where a physically healthy prisoner objected to the administration of antipsychotic drugs, "[t]he forcible injection of medication into a nonconsenting person's body represents a substantial interference with that person's liberty." 494 U.S. at 229.

**C. The Mayoral Proclamation is not narrowly tailored to meet a compelling state interest.**

**1. There is no compelling state interest in mandating Covid-19 injections that do not confer immunity.**

The traditional public health justification for mandating a vaccine was set forth in *Jacobson, supra*. There the Court stated:

[I]n every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, *under the pressure of great dangers*, be subjected to such restraint, to be enforced by reasonable regulations, *as the safety of the general public may demand*.

197 U.S. at 30 (emphasis added).

Thus, it is the safety of the general public that *Jacobson* cited to justify a vaccine mandate. The *Jacobson* Court also stated it in another manner, but again emphasized the public safety underpinning of the policy: "There are manifold restraints to which every person is necessarily subject for the *common good*. On any other basis, organized society could not exist with *safety to its members*." 197 U.S. at 29 (emphasis added).

*Jacobson*, to the extent that it is still good law (a point neither contested nor conceded by *amicus* at this time), established that only in the protection of the public from harm does any possible legitimate state interest in compelling vaccines arise. However, since the injections at

issue here do not confer immunity upon recipients, they in no way protect the public from acquiring the infection. Unlike in Jacobson, where the prevailing and long-held common belief was that the smallpox vaccine would confer immunity with an approximately 98% success rate, and prevent the public from being infected with a deadly disease from which approximately 30% of the infected would die, the Covid-19 injections do nothing of the sort. As noted above, it is universally accepted that the Covid-19 injections do not stop the transmission or acquisition of the virus between persons<sup>21</sup>, and for those under 80 years of age - those generally in the workplace, the percent of infected persons who may die is readily acknowledged as far less than one percent. Accordingly, requiring Covid-19 “vaccination” serves no compelling governmental interest at all, and fails the fundamental prong of the strict scrutiny test.

**D. Similar vaccine, testing and mask mandates are being invalidated nationwide by recent jurisprudence, emerging data, changing circumstances and milder variants.**

The United States Supreme Court recently decided *Nat’l Fed’n of Indep. Bus. v. OSHA*, 595 U.S. \_\_\_, 142 S. Ct. 661 (2022), striking down the OSHA’s ETS vaccine mandate due to lack of legislative authorization. Similarly, the Mayoral Proclamation also lacks all legislative authorization, and therefore must fail as well under *Nat’l Fed’n of Indep. Bus. v. OSHA*.

In a consolidated case, *Biden v. Missouri*, 142 S. Ct. 647 (2022), the United States Supreme Court allowed the CMS vaccine mandate for healthcare workers to stand, citing the urgency of addressing the Delta variant. However, the original fourteen states, led by Louisiana and joined by two new states, Tennessee and Virginia, are now relitigating *Biden v Missouri* in the related case of *The State of Louisiana, by and through its AG Jeff Landry, etc, et al v Becerra, etc, et al*, 21-cv-03970, WDLA.

Sixteen Attorneys General in *The State of Louisiana, by and through its AG Jeff Landry, etc, et al v Becerra, etc, et al*, 21-cv-03970, WDLA, are relitigating the CMS mandate for healthcare workers in *Biden v Missouri* due to the waning of the “Delta variant” and the rise of the more harmless "Omicron variant" by their filing on February 4, 2022 of their Second

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<sup>21</sup> Subramanian SV, et. al. Increases in COVID-19 are unrelated to levels of vaccination across 68 countries and 2947 counties in the United States. *Eur J Epidemiol.* 2021;1-4. (Sept. 30, 2021). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8481107/>

Amended and Supplemental Complaint. This Complaint highlights the continuous nationwide legal losses in current vaccine mandate litigation trends.

The Second Amended and Supplemental Complaint succinctly summarizes the crumbling vaccine mandate jurisprudence as follows:

The President’s scheme to federalize vaccination policy has hit the skids. The OSHA vaccine mandate was struck down for lack of authorization, *Nat’l Fed’n of Indep. Bus. v. OSHA*, 595 U.S. \_\_\_, 142 S. Ct. 661 (2022), and the remnants shelved. See Stephen Dinan, OSHA cancels business vaccine mandate after Supreme Court loss, Wash. Times (Jan. 25, 2022), <https://www.washingtontimes.com/news/2022/jan/25/>. The federal contractor vaccine mandate is enjoined. see *Georgia v. Biden*, No. 1:21-cv-163 (S.D. Ga. Dec. 7, 2021); as is the federal employee vaccine mandate. see *Feds for Med. Freedom v. Biden*, No. 3:21-CV-356, \_\_\_ F. Supp. 3d \_\_\_, 2022 WL 188329 (S.D. Tex. Jan. 21, 2022). All that remains is the Interim Final Rule (“IFR”) establishing the Centers for Medicare and Medicaid Services (“CMS”) mandate (“Vaccine Mandate”), which survived certain challenges on appeal and was remanded.

But things have dramatically changed. First and foremost, the Secretary’s rationale for the rule and for avoiding public comment no longer exists. The Delta variant has run its full course. *See Biden v. Missouri*, 142 S. Ct. 647, 651 (2022) (“Th[e] good cause was, in short, the Secretary’s belief that any ‘further delay’ would endanger patient health and safety given the spread of the Delta variant and the upcoming winter season.”); *see also* Centers for Disease Control and Prevention (“CDC”) COVID Data Tracker, *Variant Proportions* (Updated Jan. 25, 2022), <https://covid.cdc.gov/covid-data-tracker/#variant-proportions> (identifying the Delta variant as responsible for 98.7% of all cases as of November 6, 2021, the week the Interim Final Rule was implemented).

Instead, the Delta variant effectively disappeared within weeks of the passage of the IFR, replaced by the milder Omicron variant, which now accounts for 99.9% of all COVID cases in the United States. *Id.* Omicron’s transmission is largely undeterred by the vaccines. See Mark G. Thompson, et al. *Effectiveness of a Third Dose of mRNA Vaccines Against COVID-19–Associated Emergency Department and Urgent Care Encounters and Hospitalizations Among Adults During Periods of Delta and Omicron Variant Predominance — VISION Network, 10 States, August 2021–January 2022*. CDC MMWR Morb Mortal Wkly Rep 2022; 71:139–145, (Jan. 21, 2022), <http://dx.doi.org/10.15585/mmwr.mm7104e3...>

Simply put, the situation has changed. And that reveals a fundamental, structural defect in the rule—its one-size-fits-all approach doesn’t account for developing data and circumstances. In recent weeks, federal authorities have begun to walk back prior claims about the efficacy of the three domestically available vaccines against the now dominant Omicron variant. CDC, *Omicron Variant: What You Need to Know* (Dec. 20, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html>. And that comes amid increasing warnings about the risks and side effects posed by the vaccines. E.g., CDC, *Selected Adverse Events Reported after COVID-19 Vaccination* (Jan. 24, 2022), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/safety/adverse-events.html> (“CDC has also identified nine deaths that have been caused by or were directly attributed to [thrombosis with thrombocytopenia syndrome] following J&J/Janssen COVID-19 vaccination.”); Matthew E. Oster et al., *Myocarditis Cases Reported After mRNA-Based COVID-19 Vaccination in the US From December 2020 to August 2021*, 327(4) J. Am. Med. Ass’n 331 (Jan. 25, 2022), <https://jamanetwork.com/journals/jama/fullarticle/2788346>; Jennifer Couzin-Frankel & Gretchen Vogel, *In rare cases, coronavirus vaccines may cause Long Covid-*

*like symptoms*, 375 Science 6579 (Jan. 20 2022), <https://www.science.org/content/article/rare-cases-coronavirus-vaccines-may-cause-long-covid-symptoms>. The IFR purports to address an emergency situation in emergency (and unprecedentedly heavy-handed) ways. But its rigid prescription—the Vaccine Mandate—utterly fails to account for the fact this emergency is continually evolving. And this structural defect renders the IFR arbitrary and capricious and otherwise unlawful under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 551–559, in multiple ways.

The CDC, under HHS, has recognized staffing shortages by issuing new guidance that permits Covid positive employees to return to work, even if they are still testing positive, while the IFR prohibits COVID-negative unvaccinated individuals from working in covered facilities at all, unless they obtain an exemption.

Despite these changed circumstances, CMS is even now pushing the Vaccine Mandate further, revealing---that the burden to implement this labyrinth of irrational rules falls upon the States.”

*The State of Louisiana, by and through its AG Jeff Landry, etc, et al v Becerra, etc, et al*, 21-cv-03970, Second Amended and Supplemental Complaint, Paras 1-6, WDLA

The mandates are falling around the country. In addition to the federal mandates blocked above, as one example, the mandate affecting the city of Gainesville, Florida was ruled illegal in *Friend, et al v City of Gainesville*, 2021-CA-2412-8th-JC-Alachua-FL. Other mandates have been dropped voluntarily, such as Mayor Muriel Bowser dropping the vaccine mandate affecting restaurants and venues in the District of Columbia effective February 15, 2022<sup>22</sup>.

**E. It is not good public policy to mandate experimental injections in the face of rising adverse event reports, including mounting fatalities, by segregating injected from un-injected people based on private medical histories.**

The 102 *Andrews* plaintiffs herein note in Paragraph 24 of their petition that there is an alarming and rising number of adverse events associated with these experimental mRNA injections, including over 10,000 fatalities clinically attributable to the mandated mRNA injections. Plaintiffs draw their data from the CDC’s Vaccine Adverse Events Reporting System (VAERS). **In the past, a vaccine trial would have been halted, rather than mandated, after only a few deaths.**

For example, in 1976, after only 32 deaths were attributable to the swine flu vaccine, the

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<sup>22</sup>D.C. Mayor to Drop Indoor Vaccine Mandate for Businesses  
<https://news.yahoo.com/d-c-mayor-drop-indoor-171618749.html>

U.S. government halted the mass vaccination campaign<sup>23</sup>. The New York Times reported on October 13, 1976 that the swine flu program was halted in nine states after only 3 deaths attributed to vaccine shots<sup>24</sup>.

Likewise, in *The State of Louisiana, by and through its AG Jeff Landry, etc, et al v Becerra, etc, et al*, 21-cv-03970, Second Amended and Supplemental Complaint, Paragraph 4, WDLA, above, the increased warnings about the risks, side effects, and deaths associated with the mRNA injections are identified as a significant factor.

Indeed, combined total estimates of mRNA injection-related fatalities and other adverse events have ranged much higher. The website [openvaers.com](https://openvaers.com) compiles statistics directly from the CDC's VAERS reporting system. As of the date of this writing, [openvaers.com](https://openvaers.com) is reporting 23,615 deaths in America alone associated with these mRNA injections, along with thousands of other serious, non-fatal reactions such as 32,436 cases of myocarditis/pericarditis, 42,260 permanently disabled people, and 127,855 hospitalizations, among many others.<sup>25</sup>

We must ask, how can anyone in good conscience mandate anything that might kill you?

## CONCLUSION

The plaintiffs' claims are well-founded. The challenged provisions of the Mayoral Proclamation are unconstitutional, illegal, and violate basic laws protecting public accommodations including La. R.S. 49:146. These mandates also do not accomplish their intended purpose in light of the now-accepted facts that these mRNA injections do not confer immunity and do not prevent transmissibility of the virus. Therefore, there is no point in segregating injected and non-injected persons. Mandates are inherently coercive, and true informed consent to medical treatments can never be coerced. Indeed, emerging data regarding multiple injuries and deaths caused by these injections strongly caution against mandating them. These mandates are seen to be ill-advised and bad public policy, in light of new data emerging about milder variants such as Omicron, as well as

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<sup>23</sup>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>

<sup>24</sup> 'Swine Flu Program is Halted in Three States After Shots'  
<https://www.nytimes.com/1976/10/13/archives/swine-flu-program-is-halted-in-9-states-as-3-die-after-shots.html>

<sup>25</sup> Adverse event data summaries, [openvaers.com](https://openvaers.com), <https://openvaers.com/covid-data/>

emerging data documenting the rising toll of tens of thousands of deaths and injuries attributable to these experimental mRNA injections. Plaintiffs are on the right side of history, and are entitled to the relief they seek.

**RESPECTFULLY SUBMITTED,**

*/David A. Dalia*

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**Certificate of Service**

I hereby certify that I have faxed, mailed and emailed a copy of the foregoing to all counsel of record, on this 18<sup>th</sup> day of February, 2022.

*s/David A. Dalia*

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David A. Dalia

CIVIL DISTRICT COURT  
FOR THE PARISH OF ORLEANS  
STATE OF LOUISIANA

DOCKET NO. : 2022-00866

DIVISION " G-11 "

CHYNA ANDREWS, ET. AL.

VS.

**LaTOYA CANTRELL, in her official capacity as Mayor of the  
City of New Orleans; NEW ORLEANS HEALTH DEPARTMENT; and  
JENNIFER AVEGNO, M.D., in her official capacity as Director of Health of the  
New Orleans Health Department**

FILED: \_\_\_\_\_

\_\_\_\_\_  
DEPUTY CLERK

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**O R D E R**

CONSIDERING THE FOREGOING MOTION of America's Frontline  
Doctors to file the incorporated *amicus curiae* brief in this matter,

IT IS HEREBY ORDERED that the *amicus curiae* brief be filed.

NEW ORLEANS, LOUISIANA, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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**J U D G E**