No. 25-1070

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Michael Brock, et al.,
Plaintiffs-Appellants,

v.

City of Bellingham and Seth Fleetwood, Mayor,
City of Bellingham, Washington
Defendants-Appellees

Amici Curiae Brief of America's Frontline Doctors and Dr. Simone Gold, M.D., J.D. In Support of Plaintiffs-Appellants for Reversal

Respectfully Submitted,

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CORPORATE DISCLOSURE STATEMENT, CERTIFICATE OF INTERESTED PERSONS

Proposed *Amici Curiae* are the Free Speech Foundation, d/b/a America's Frontline Doctors ("AFLDS") and Dr. Simone Gold, M.D., J.D., a non-partisan, not-for-profit organization of hundreds of member physicians, and the founder and physician member, who come from all across the nation, representing a range of medical disciplines and practical experience on the front lines of medicine. AFLDS' programs focus on a number of critical issues discussed below. No publicly held company has a ten percent or greater ownership interest in America's Frontline Doctors.

Pursuant to FRAP 26.1-1, counsel for proposed *Amici Curiae* certifies that, to the best of their knowledge, the Certificate of Interested Persons filed by the parties herein contain a correct complete list of the people and entities that have an interest in the outcome of this appeal, other than the following additions from AFLDS:

Sheriff Richard Mack and Dr. Simone Gold, M.D., J.D.

No counsel for any party authored this brief in whole or in part and no such counsel made any monetary contribution intended to fund this brief.

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A MATTER OF GREAT PUBLIC IMPORTANCE AND FRAP 29 DISCLOSURES

Coercively mandating dangerous and possibly fatal experimental drugs cannot be countenanced. This is about saving lives.

The Free Speech Foundation, d/b/a America's Frontline Doctors, and Dr. Simone Gold, M.D., J.D., the founder and physician member ("*Amici Curiae*" or "AFLDS") respectfully file this *amici curiae* brief in support of the Plaintiffs-Appellants for reversal in *Brock, et al. v City of Bellingham, et al.,* 24-cv-850 (WDWA), 25-1070 (9th Cir. 2025).

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

These unconstitutional, illegal and irrational coercive mandates should be rejected.

INTERESTS OF *AMICI CURIAE*

Amici Curiae are the Free Speech Foundation, d/b/a America's

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

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

• Providing Americans with science-based facts about 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.

More information regarding AFLDS can be found in the Motion for Leave accompanying this *amici curiae* brief.

Dr. Gold and AFLDS publicly supported the position as early as October,

2020 that experimental mRNA injections are not "vaccines", because they do not prevent infection or transmission, and they are neither "safe", nor "effective"[1]. They are personal medical treatments only. This view is now known to be correct, and is highly relevant to this case.

The proven lack of efficacy of experimental mRNA injections is an important point, as previous decisions which are not yet final, and which relied upon the false assumption of efficacy, were also relied upon by the *Brock* trial court in finding a "compelling" governmental interest in justifying a coercive mandate for a dangerous drug that does not protect other people.[2]

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

Any decision to illegally "mandate" a dangerous experimental medical treatment which does not prevent infection or transmission, and which also has severe side effects including death, which are undisclosed to the patient, while simultaneously violating numerous well-established civil and criminal laws, under

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

[2] *Bridges* Memorandum Opinion and Order, 9/30/2024, pg. 16, 543 F. Supp. 3rd at 528; *Sweeney* Memorandum Opinion and Order, 7/12/2024, Doc. 58, pg. 27.

the coercive threat of the loss of one's employment, is irrational and bad public policy.

SUMMARY OF ARGUMENT

Coercively mandating dangerous and possibly fatal experimental drugs cannot be countenanced. This is about saving lives. Any decision to illegally "mandate" a dangerous experimental medical treatment which does not prevent infection or transmission, and which also has severe side effects including death, which are undisclosed to the patient, while simultaneously violating numerous well-established civil and criminal laws, under the coercive threat of the loss of one's employment, is completely irrational and against public policy. See *Cooper v Roswell Park Comprehensive Cancer Center*, No. 805274/2023, 81 Misc. 3d 324, 196 N.Y.S.3d 325, 2023 N.Y. Slip Op. 23265, 2023 WL 5660095 (Sup Ct, Aug. 17, 2023), finding that the decision to terminate a nurse because of her refusal to take a COVID-19 injection was "irrational".[3]

Further, the lower court ruling improperly failed to accept Plaintiffs-Appellants' allegations as true on a Rule 12 (b) 6 motion, and then improperly

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[3] 33 nurses "died suddenly" in the US this past week
[No causes of death were listed.]
https://markcrispinmiller.substack.com/p/33-nurses-died-suddenly-in-the-us

relied upon incorrect factual findings in previous cases still on appeal which were also founded on the false "safe and effective" narrative, dismissing Plaintiffs-Appellants' case. At minimum, this efficacy issue is properly in dispute, as evidenced by Plaintiffs-Appellants well-pleaded Complaint. See esp. Paras. 56-64, Plaintiffs' Complaint, 24-cv-00850. At this juncture any doubt should be resolved in favor of voluntary patient freedom of choice, and against coercing unwanted and dangerous experimental medical treatments upon anyone. This is good public policy.

The Ninth Circuit should reverse this dangerous decision of the lower court.

ARGUMENT

A. Any decision to illegally "mandate" a dangerous experimental medical treatment which does not prevent infection or transmission, and which also has severe side effects including death, which are undisclosed to the patient, while simultaneously violating numerous well-established civil and criminal laws under the coercive threat of the loss of employment, is completely irrational, bad public policy, and cannot be sustained.

It is now becoming widely known that the experimental mRNA injections introduced to treat COVID-19 are neither "safe", on account of their terrible safety profiles, (see Section "B"), nor "effective", (see footnotes 1-20,26,27) because they do not stop transmission of the virus. Therefore, these experimental drugs offer no protection for other people. They are personal medical treatments only.

In response to these facts, government policies and recommendations are changing accordingly.

Florida state Surgeon General Dr. Joseph A. Ladapo called for a complete halt in the use of COVID-19 mRNA "vaccines", citing contamination concerns[4].

Louisiana health officials are shifting away from the policy of promoting COVID-19 and flu vaccinations, citing concerns about the efficacy and safety of these vaccines[5]. The Louisiana Health Department stated that medicine is not "one

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[4] Florida State Surgeon General Calls for Halt in the Use of COVID-19 mRNA Vaccines

"The Surgeon General outlined concerns regarding nucleic acid contaminants in the approved Pfizer and Moderna COVID-19 mRNA vaccines, particularly in the presence of lipid nanoparticle complexes, and Simian Virus 40 (SV40) promoter/enhancer DNA.**"**
https://www.floridahealth.gov/newsroom/2024/01/20240103-halt-use-covid19-mrna-vaccines.pr.html

[5] Louisiana health officials 'shifting away' from policy of promoting COVID, flu vaccinations
"Citing concerns about the efficacy and safety of vaccines, state officials will instead encourage residents to consult their doctor about vaccination, Louisiana Department of Health spokesperson Emma Herrock said in a statement.

"In general, the department is shifting away from one-size-fits-all paternalistic guidance to a more informative approach aimed at enabling individuals, in consultation with their doctor, to make better decisions for themselves," the statement said."
https://www.nola.com/news/politics/vaccine-louisiana-policy-covid-flu/article_3e0521bc-c096-11ef-bfd3-fb389831770e.html

size fits all". All patients are different, with different medical needs. Therefore, it is inappropriate and possibly medical malpractice to issue blanket medical treatment recommendations or requirements to broad categories of patients, without first assessing and examining each patient individually, and without diagnosing their unique medical conditions by a qualified medical professional.

There has been a wave of bills introduced in state legislatures recently, including Iowa, Kentucky, Montana, Minnesota, Idaho and others, which seek to limit or ban entirely the administration of these experimental mRNA injections, or gene therapy, due to the terrible safety profiles of these experimental drugs.[6] [7]

Many other European countries, including Finland, Sweden, Denmark, the United Kingdom and Slovakia have taken similar actions in limiting or eliminating

[6] Iowa: House File 712, Bill SF360; Kentucky: House Bill 469; Montana: House Bill 371; Idaho: Senate Bill 1036, Minnesota: HF 3152, HF 3219.

[7] https://openvaers.com/covid-data

their previous blanket mRNA injection recommendations.[8] [9]

Unfortunately, the trial court in this case also relied upon decisions based on this now-disproven "safe and effective" narrative in upholding the forced experimental mRNA injection mandate, several of which decisions are still on appeal.[10] This was the same trial court mistake rejected by the Ninth Circuit in *Health Freedom Defense Fund, et al. v Carvalho, et al.*, June 7, 2024, 22-55908 (9th Cir. 2024), which is indistinguishable. Plaintiffs-Appellants Complaint properly places this controversial issue in dispute, inappropriate for a Rule 12 (b) 6 dismissal. See Section "D", below. The Ninth Circuit should also correct this mistake again by reversing the ruling below.

The ruling below failed to follow the lead of *Nat'l Fed'n of Indep. Bus. v.*

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[8] Finland joins Sweden and Denmark in limiting Moderna COVID-19 vaccine
https://www.reuters.com/world/europe/finland-pauses-use-moderna-covid-19-vaccine-young-men-2021-10-07/
England Refuses to Offer COVID Shots to Kids Under 12, While US Cities Mandate Them. Who's Right?
"the UKHSA's decision puts England in line with several other European countries—including Sweden, Finland, Norway, and Denmark—that do not offer or recommend mRNA vaccines to healthy young children."
https://fee.org/articles/england-refuses-to-offer-covid-shots-to-kids-under-12-while-us-cities-mandate-them-who-s-right/

[9] Slovak Government Report Calls for Ban of 'Dangerous' mRNA Vaccines
https://publichealthpolicyjournal.com/slovak-government-report-calls-for-ban-of-dangerous-mrna-vaccines/

[10] *Bridges* Memorandum Opinion and Order, 9/30/2024, pg. 16, 543 F. Supp. 3rd at 528; *Sweeney*, *et al. v. University of Colorado Health Authority, et al,* 23-cv-2451, (DCDC), Memorandum Opinion and Order, 7/12/2024, Doc. 58, pg. 27.

Dep't of Lab., Occupational Safety & Health Admin., No. 21A244, 2022 WL 120952 (U.S. 2022), United States Supreme Court stayed the OSHA emergency nationwide employee vaccine mandate, and *Georgia, et al v. Biden*, 21-14269 (11th Cir. Dec. 17, 2021), which upheld the nationwide injunction pausing the federal contractor vaccine mandate.

See *Texas v. Becerra*, 577 F.Supp. 3d 527 (N.D.Tex., 2021), 23-10246 (5th Cir. 2024), finding that HHS lacked authority to mandate any specific type of medical treatments, and upheld the injunction in favor of a group of medical professionals.

In *Medical Professionals for Informed Consent v Bassett*, No. 008575/2022, 78 Misc. 3d 482, 185 N.Y.S.3d 578, 2023 N.Y. Slip Op. 23020, 2023 WL 367202 (Sup Ct, Jan. 13, 2023), the lower court granted a declaratory judgment to a group of doctors and nurses which held that the hospital and other "covered entities" vaccine mandate ordered by the New York State Department of Health (DOH) was null, void, and of no effect. The vaccine mandate was then dropped by the NY DOH.

In all good conscience, how can anyone coercively "mandate" any drug that might kill a patient, without voluntary, coercion-free consent, and without being fully informed of the risks?

B. It is undisputed that these mandated experimental mRNA injectable drugs were never approved by the FDA, despite erroneous media reports to the contrary, and have shockingly high fatality rates. The CDC's own Vaccine Adverse Event Reports System (VAERS) has recorded a tragic 38,541 fatalities attributable by medical professionals to these experimental mRNA injections through March 28th , 2025. Previously, a vaccine would have been pulled from the market after only a few deaths. VAERS has also documented a terrible safety profile attributed to these experimental mRNA injections, with millions of adverse reactions and hospitalizations.

The CDC's Vaccine Adverse Event Reporting System (VAERS) data show that as of March 28th, 2025, there have been **38,541 deaths in America alone,** which thousands of medical professionals have independently attributed to fatal adverse reactions to the mandated experimental mRNA injections, a.k.a. "vaccines"[11]. This cannot reasonably be considered "safe" or "effective". Additionally, VAERS recorded 220,494 hospitalizations, 156,527 urgent care visits, 247,437 doctor visits, 73,311 permanently disabled persons, 17,913 cases of Bell's Palsy, 5,175 miscarriages, 22,247 heart attacks, 28,908 Myocarditis/Pericarditis cases, and 10,961 cases of Anaphylaxis.

The American death toll has now risen to an astonishing 38,541 deaths[12]. This shocks the conscience. Even if only a certain percentage of these adverse reaction reports are accurate, the death toll and the accompanying risks remain

[11] https://openvaers.com/covid-data

[12] https://openvaers.com/covid-data

unacceptably high. Full disclosure is necessary for informed consent. How can anyone mandate anything that might kill you?

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

This conservatively estimated 38,541 American deaths indeed shock the conscience. While in stark contrast, in 1976, after only 32 deaths were attributable to the swine flu vaccine, the United States government halted the mass vaccination campaign[13]. The New York Times reported on October 13, 1976 that the swine flu program was halted in nine states after only 3 deaths were attributed to the vaccine shots[14].

It is very dangerous to fail to disclose to patients, as required, this truthful and accurate medical information in an ill-conceived and coercively mandatory vaccination campaign.

Japanese researchers have linked these experimental mRNA injection side

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[13]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

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

effects to 201 types of diseases[15].

In another recent Japanese study, researchers found on autopsy multiple micro-scars (MMS) in the hearts of mRNA-vaccinated patients who had died suddenly of unexplained cardiac arrest, thus raising the question of a link between the experimental mRNA injections and sudden cardiac arrest.[16]

Further, an alarming new Yale study shows that COVID vaccines may cause T-cell exhaustion, leading to an acquired immune deficiency. Could this be "...a vaccine that weakens immunity instead of strengthening it?"[17]

An authoritative new study examining the link between the COVID-19 vaccine and Myocarditis was just published this year. The study's conclusion: "We urge governments to remove the COVID-19 mRNA products from the market due to the well-documented risk of myocardial damage".[18]

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

[16] *Cardiac Multiple Micro-Scars: An Autopsy Study* https://www.jacc.org/doi/10.1016/j.jaccas.2024.103083

[17] A new Yale study shows that COVID vaccines may cause T-cell exhaustion, leading to an acquired immune deficiency. "...a vaccine that weakens immunity instead of strengthening it?" https://x.com/drsimonegold/status/1892626222250639592

[18] *Myocarditis after SARS-CoV-2 infection and COVID-19 vaccination: Epidemiology, outcomes, and new perspectives*

M. Nathaniel Mead, Jessica Rose, William Makis, Kirk Milhoan, Nicolas Hulscher and Peter A.

In another recent study, "Pfizer's post-marketing surveillance analysis showed a miscarriage rate of 81%, a 5-fold increase in stillbirths, an 8-fold increase in neonatal deaths, and a 13% incidence of breast-feeding complications in newborns whose mothers received the COVID shots.":

> "Results: The CDC/FDA's safety signals were breached for all 37 AEs following COVID-19 vaccination in pregnancy including miscarriage, chromosomal abnormalities, fetal malformations, cervical insufficiency, fetal arrhythmia, hemorrhage in pregnancy, premature labor/delivery, preeclampsia, preterm rupture of membranes, placental abnormalities, fetal growth restriction, stillbirth, newborn asphyxia and newborn death. Conclusions: We found unacceptably high breaches in safety signals for 37 AEs after COVID-19 vaccination in pregnant women. An immediate global moratorium on COVID-19 vaccination during pregnancy is warranted."[19] *Emphasis added.*

Further, a massive new study was released in March, 2025 which found among 1.7 million people, COVID-19 "vaccination" increased the risk of: Inner Ear Disorders by 237%, Menstrual Disorders by 216%, Glaucoma by 186%,

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McCullough, INTERNATIONAL JOURNAL OF CARDIOVASCULAR RESEARCH & INNOVATION,Jan-Mar 2025, VOL. 3, ISSUE 1, pp. 1-43.

https://cardiovascular-research-and-innovation.reseaprojournals.com/Articles/myocarditis-after-sars-cov-2-infection-and-covid-19-vaccination-epidemiology-outcomes-and-new-perspectives

[19]Are COVID-19 Vaccines in Pregnancy as Safe and Effective as the Medical Industrial Complex Claim? Part I

https://publichealthpolicyjournal.com/are-covid-19-vaccines-in-pregnancy-as-safe-and-effective-as-the-medical-industrial-complex-claim-part-i/
https://x.com/MdBreathe/status/1903576773469835573,

and Endometriosis by 150%, along with many other negative side effects."[20]

It is unconscionable to attempt to coercively mandate such a dangerous experimental drug which does not protect other people.

Amici Curiae maintain, supported by voluminous scientific research, that early COVID-19 treatments with hydroxychloroquine ("HCQ") and Ivermectin are in fact quite safe and effective, contrary to the incessant government "narratives"[21],[22],[23] against such treatment options. These are reasonable

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[20] *Broad-Spectrum Adverse Events of Special Interests Based on Immune Response Following COVID-19 Vaccination: A Large-Scale Population-Based Cohort Study*
Journal of Clinical Medicine, March 2025.
https://x.com/NicHulscher/status/1903517111886266733

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

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

[23] As of July 25, 2023, a global, real-time meta-analysis includes 214 Ivermectin COVID-19 studies; 165 that are peer reviewed, with 99 comparing treatment and control groups. The studies indicate Ivermectin reduces risk for COVID-19 with very high confidence for mortality, ventilation, ICU admission, hospitalization, recovery, cases, and viral clearance. No

alternatives to more dangerous experimental mRNA injections as determined within each protected doctor/patient relationship.

Amici Curiae maintain, supported by voluminous scientific research, that experimental mRNA injections are neither "safe" nor "effective". See ftnts 1-20, 26,27.

> C. "Mandating" such a dangerous experimental drug absent voluntary, coercion-free informed consent violates numerous well-established constitutional principles and laws including the constitutional right to refuse medical treatment and of personal bodily integrity, as well as civil and criminal federal and state criminal laws binding upon both public and private actors prohibiting medical battery, negligent injuring, assault, and negligent homicide, federal regulations, voluntary informed consent and full disclosure provisions, the Nuremberg Code, 21 U.S.C. §360bbb-3, 21 C.F.R. §50:20, 21 C.F.R. §50:25, 45 C.F.R. §46.116, and many others enumerated herein. These well-established laws were violated by coercively mandating as a condition of employment the injection of dangerous experimental mRNA drugs with serious side effects including death into the bodies of Plaintiffs-Appellants herein. These experimental drugs do not prevent infection or transmission, and therefore give no protection to others. They are personal medical treatments only.

Defendants-Appellees did not comply with the well-established regulations governing the necessity of informed and voluntary patient consent, completely free from coercion and undue influence, and with full disclosure of the risks. See 21

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treatment, vaccine, or intervention is 100% effective and available. Thus all practical, effective, and safe means should be used based on risk/benefit analysis. Over 20 countries adopted Ivermectin for COVID-19. Ivermectin may now be purchased over the counter in the state of Tennessee, Arkansas, and several other states. Source: https://c19ivm.org/

C.F.R. §50:20, 21 C.F.R. §50:25, and 45 C.F.R. §46.116, also known as the longstanding "Common Rule"[24].

These federal regulations are mandatory for both public and private actors, embody most of the Nuremberg principles, and apply to all experimental drugs issued under an experimental use authorization "EUA" pursuant to 21 U.S.C.§ 360bbb-3. These mandated experimental injections were always only offered under an EUA, and were never approved by the FDA.[25] The controversial approval of Comirnaty, a legally distinct drug with somewhat differing formulations, different manufacturing oversight, and with differing adverse reactions, did not change the experimental Emergency Use Authorization (EUA) nature of the different COVID-19 gene therapy injections actually in use in the United States and still under EUA.

Recent studies have demonstrated differences between Comirnaty and the

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

[25] On August 23, 2021, the F.D.A. issued an approval for a COVID-19 drug called "Comirnaty", with a long list of required future safety studies, however, Comirnaty was not in use in the United States. On the same day, the F.D.A. extended the E.U.A. for the experimental mRNA COVID-19 drugs which were actually in use in America. This created a great deal of confusion. It was erroneously reported that the mRNA injections actually in use had now been approved by the F.D.A.. However, this was not true. The E.U.A. for these experimental mRNA injections was only extended. Therefore, all of the laws and regulations applicable to experimental drugs discussed herein were still in full force and effect at the time of the mandate.
https://www.fda.gov/media/151710/download

mandated EUA COVID-19 injections. The mandated EUA COVID-19 injections have been found to have higher rates of Myocarditis, which can be fatal.[2627] The approval of Comirnaty did not nullify the applicability of 21 U.S.C. § 360bbb-3, the informed consent regulations, or the constitutional and statutory provisions.

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

These detailed regulations mirror the Nuremberg Code. Excerpts from 21 C.F.R. §50:25 provide:

21 C.F.R. § 50.25 Elements of informed consent.

(a) Basic elements of informed consent...:

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[26] Carli L shows that Spikevax-Moderna mRNA induces higher spike protein expression per dose than Comirnaty. And that this higher dose correlates with increased myocarditis risk compared to Comirnaty.

Cari L, Naghavi Alhosseini M, Mencacci A, Migliorati G, Nocentini G. Differences in the Expression Levels of SARS-CoV-2 Spike Protein in Cells Treated with mRNA-Based COVID-19 Vaccines: A Study on Vaccines from the Real World. Vaccines (Basel). 2023 Apr 21;11(4):879. doi: 10.3390/vaccines11040879. PMID: 37112792; PMCID: PMC10144021.

Hermosilla J, Alonso-García A, Salmerón-García A, Cabeza-Barrera J, Medina-Castillo AL, Pérez-Robles R, Navas N. Analysing the In-Use Stability of mRNA-LNP COVID-19 Vaccines Comirnaty™ (Pfizer) and Spikevax™ (Moderna): A Comparative Study of the Particulate. Vaccines (Basel). 2023 Oct 25;11(11):1635. doi: 10.3390/vaccines11111635. PMID: 38005967; PMCID: PMC10675537. Zhang, L., More, K.R., Ojha, A. et al. Effect of mRNA-LNP components of two globally-marketed COVID-19 vaccines on efficacy and stability. npj Vaccines 8, 156 (2023)

[27] Effect of mRNA Vaccine Manufacturing Processes on Efficacy and Safety Still an Open Question
https://www.bmj.com/content/378/bmj.o1731/rr-2

(1) ...identification of any procedures which are experimental.

(2) A description of any reasonably foreseeable risks or discomforts...

(3) A description of any benefits to the subject...

(4) A disclosure of appropriate alternative procedures or courses of treatment...

(5)-(7)

(8) A statement that participation is voluntary, that refusal to participate will involve no penalty or loss of benefits...

(b) Additional elements of informed consent:

(1)-(6)

21 C.F.R. §50:25.

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

The death toll as recorded by VAERS during the time that these mandates were issued were unacceptably high. The employee/patients were entitled to be informed of these "substantial" risks. See also *Grimes, etc., et al. v. Kennedy Krieger Institute*, 362 Md. 623, 766 A. 2d 147 (2001 Md), enforcing principles of

informed consent and Nuremberg in a Maryland poisoning case.

Federal law, incorporating most of the Nuremberg Code, guarantees that experimental drugs must only be offered on a voluntary basis after full disclosure of risks, and with voluntary informed consent free from coercion. 21 U.S.C. § 360bbb-3, 21 C.F.R. §50:20, 21 C.F.R. §50:25, and 45 C.F.R. §46.116. Consent can never be coerced.

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

Indeed, the Nuremberg Code, an international code of ethical principles adopted in the aftermath of war crimes committed by the German Nazis during WWII, was expressly intended to prohibit involuntary medical experimentation

upon humans. The "informed consent" Nuremberg principles have been largely codified domestically through the adoption of 21 C.F.R. §50:20, 21 C.F.R. §50:25, and 45 C.F.R. 46, entitled "Protection of Human Subjects", also known as the "Common Rule"[28]. Defendants-Appellees violated these mandatory federal regulations.

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

See *Cruzan by Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261, 110 S.Ct. 2841, 111 L.Ed.2d 224 (1990), "the logical corollary of the doctrine of informed consent is that the patient generally possesses the right not to consent, that is, to refuse treatment."

See *Washington v. Harper*, 494 U.S. 210, 110 S.Ct. 1028, 108 L.Ed.2d 178 (1990), "the forcible injection of medication into a nonconsenting person's body represents a substantial interference with that person's liberty.", *Schloendorff v Society of New York Hospital*, 211 N.Y. 125, 105 N.E. 92 (1914), "[e]very human being of adult years and sound mind has a right to determine what shall be done

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

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

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

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

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

Washington state criminal laws prohibiting assault, battery, and negligent homicide are implicated. Federal criminal laws prohibiting the violation of

constitutional rights are implicated. See 18 U.S.C. §241.

Preservation of the absolute right of voluntary, informed patient consent and medical freedom, and the constitutional right to refuse medical treatment are paramount considerations here. Informed and voluntary consent to medical treatments can never be coerced under the threat of losing one's livelihood.

Therefore, these constitutional principles, and the other federal and state laws cited herein were fully binding upon these state actors. The Defendants-Appellees could not "mandate" **any** involuntary medical treatment for Plaintiffs-Appellant employees, even if the treatment wasn't experimental, and even if the refusal was not religious.

D. The trial judge committed reversible error by first not accepting Plaintiffs-Appellants' well-pleaded allegations as true, and then by improperly relying upon decisions which made their own factual findings on Rule 12 (b) (6) motions, which factual findings were also completely incorrect.

The trial court dismissed Plaintiffs-Appellants case, and relied upon *Bridges, et al. v The Methodist Hospital, etc., et al*, 24-20483 (CA5) and *Sweeney, et al. v University of Colorado Health Authority; et al.*, 25-1005 (10th Cir. 2025), both of which are still on appeal.[29] In both *Bridges* and *Sweeney*, the trial court

[29] *Brock*, Order Granting Defendants' Motion to Dismiss, pgs. 13, 14, 16, 21, 23, 25, 1/21/2025, 24-cv-00850.

judges erroneously relied upon the false and discredited "safe and effective" narrative. The trial courts in *Bridges* and *Sweeney* made the same mistake that the trial court made in *United KP Freedom Alliance et al. v. Kaiser Permanente, et al.*, October 7th, 2021, 21-cv-07894, (NDCA), a mistake which was later corrected by the Ninth Circuit in *Health Freedom Defense Fund, et al. v Carvalho, et al.*, 22-55908 (9th Cir. 2024).

The trial court incorrectly found that the F.D.A. approval of Comirnaty, a different and legally distinct drug with a somewhat different formulation, with differing manufacturing oversight and with differing adverse effects, (see fn 25, 26,27), somehow removed the EUA requirement that administration of the experimental COVID-19 mRNA injections must be voluntary under 21 U.S.C. § 360bbb-3 and the informed consent regulations. This finding alone was reversible error and bad public policy.

The Ninth Circuit should also correct this mistake as they did in *Health Freedom Defense Fund* by reversing.

The Ninth Circuit later distinguished *Jacobson* in *Health Freedom Defense Fund, et al. v Carvalho, et al.*, June 7, 2024, 22-55908 (9th Cir. 2024).

In *Health Freedom Defense Fund,* the Ninth Circuit held, because plaintiffs had plausibly alleged that mRNA injections did not stop infection or transmission,

the "protection of the public" rationale of *Jacobson* was inapplicable. Thus, "forced medical treatment" for the patient's personal benefit only could not be justified by *Jacobson*. Plaintiffs-Appellees have plausibly alleged the same lack of efficacy here in their well-pleaded complaint.[30]

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

> *"Jacobson*, however, did not involve a claim in which the compelled vaccine was "designed to reduce symptoms in the infected vaccine recipient rather than to prevent transmission and infection." *Reilly*, 2022 WL 5442479, at *5. The district court thus erred in holding that *Jacobson* extends beyond its public health rationale—government's power to mandate prophylactic measures aimed at preventing the recipient from spreading disease to others—to also govern "forced medical treatment" for the recipient's benefit. Id. at *5.
>
> At this stage, we must accept Plaintiffs' allegations that the vaccine does not prevent the spread of COVID-19 as true. *Twombly*, 550 U.S. at 556. And, because of this, *Jacobson* does not apply."
>
> *Health Freedom Defense Fund, et al. v Carvalho, et al.*, June 7, 2024, 18, 19, 22-55908 (CA9).

Thus, the Ninth Circuit recognized that forcibly mandated personal medical treatments upon employee/patients could not be justified by the "protection of the public" rationale of *Jacobson*, when the personal medical treatments did not in fact afford protection for others. The Defendants-Appellees' mandate violates this

[30] See esp. Paras. 56-64, Plaintiffs' Complaint, 24-cv-00850.

fundamental principle.

Amici Curiae Dr. Gold and AFLDS supported the position as early as October, 2020, and in *Kaiser Permanente* that experimental mRNA injections are not "vaccines", because they did not prevent infection or transmission, and were personal medical treatments only.

In a scant three page opinion, the *Kaiser* trial judge erroneously accepted the false "narrative" that the experimental mRNA injections prevented infection and transmission[31]. They do not. Thankfully, the Ninth Circuit correctly found in *Health Freedom Defense Fund* that the experimental mRNA injections were medical treatments only, as originally alleged by Paragraph 106 in the *Kaiser* complaint. The Ninth Circuit should follow this sound reasoning as well.

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

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

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[31] *United KP Freedom Alliance et al. v. Kaiser Permanente, et al.*, Order, 11-18-2021, 21-cv-07894, NDCA.

June 26, 2024.[32]

Unfortunately, the lower courts in *Bridges* and *Sweeney,* still on appeal and followed by the lower court here, made virtually the same mistake as the trial judge made in *Kaiser Permanente.* The *Sweeney* judge stated:

> ""[S]temming the spread of COVID-19 . . . is not only legitimate, but is 'unquestionably a compelling interest.'" *Legaretta v. Macias*, 603 F. Supp. 3d 1050, 1067 (D.N.M. 2022) (quoting *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 18 (2020)). Requiring those who work in a hospital or healthcare facility to take preventative measures against the spread of COVID-19 is easily rationally related to that interest. *Id.*; *see also Andre-Rodney v. Hochul*, 569 F. Supp. 3d 128, 140 (N.D.N.Y. 2021)."
>
> *Sweeney* Memorandum Opinion and Order, 7/12/2024, Doc. 58, pg. 27.

The *Bridges* judge also relied upon this false "protection of others" rationale.[33] The Ninth Circuit in *Health Freedom Defense Fund* rejected this flawed trial court reasoning based upon these false "safe and effective" assumptions, especially where no factual assumptions should be made by the trial court at all on a Rule 12 (b) (6) motion. The Ninth Circuit should reject this flawed and medically dangerous reasoning of the trial courts in *Sweeney* and *Bridges* a second time in this case.

Also see *Happel v. Guilford Cnty. Bd. of Education*, COA23-487, 86PA24,

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[32] University of California - Policy on Vaccination Programs, June 26th, 2024.

[33] *Bridges* Memorandum Opinion and Order, 9/30/2024, pg. 16, 543 F. Supp. 3rd at 528.

2025 N.C. LEXIS 191, 2025 WL 879618, March 21, 2025, in which the North Carolina Supreme Court rejected PREP Act immunity for these experimental mRNA gene therapy injections. The tide has turned.

> E. Voluntary, coercion-free and fully informed consent to medical treatments is inviolate. Unwitting and unwilling medical experimentation upon humans is abhorrent and cannot be upheld.

It is undisputed that forced or coerced experimentation upon human beings against their will is reprehensible and should never be allowed by any court, as the lessons of Nuremberg and the Tuskegee experiment teach. Fortunately, the many legal protections discussed above have been implemented against such injustices. These protections preclude the enforcement of involuntary experimental medical mandates such as those promoted by Defendants-Appellees herein, which are against public policy.

CONCLUSION

Amici Curiae maintain, supported by voluminous scientific research, that these dangerous experimental mRNA injections neither stop infection nor transmission. They are personal medical treatments only. Therefore, *Jacobson* does not apply, and there is no compelling governmental interest in mandating or coercing them.

Further, the Defendants-Appellees clearly violated the numerous well-established laws and regulations enumerated herein, thus depriving Defendants-Appellees of qualified immunity from Plaintiffs-Appellants' 42 U.S.C. §1983 damages claims.

Finally, any decision to illegally "mandate", via executive fiat, a dangerous experimental personal medical treatment, under the coercive threat of the loss of one's employment, and which treatment does not prevent infection or transmission, and which treatment also has severe side effects including death, which severe side effects are not disclosed to the employee/patients, and which mandate clearly violates the numerous well-established laws enumerated herein, is irrational and against public policy[34].

This harmfully mandated monstrous experiment is sadly analogous to the infamous Tuskegee experiment[35], and must never be allowed to be repeated.

The ruling below should be reversed.

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[34] 33 nurses "died suddenly" in the US this past week
[No causes of death were listed.]
https://markcrispinmiller.substack.com/p/33-nurses-died-suddenly-in-the-us

[35] https://www.history.com/news/the-infamous-40-year-tuskegee-study

Respectfully Submitted,

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Certificate of Compliance

I hereby certify that the foregoing *Amici Curiae* Brief contains 5,994 words as measured by Microsoft Word, and is thirty pages long.

s/ David A. Dalia
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Certificate of Service

I hereby certify that on the 9th day of May, 2025, a copy of the foregoing *Amici Curiae* Brief was filed electronically with the Clerk of Court using the CM/ECF system, and notice of this filing was sent electronically to all counsel of record using the CM/ECF system.

s/ *David A. Dalia*
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