



Written by [Selwyn Duke](#) on July 13, 2024

9th Circuit Reopens Anti-Covid-vax Suit; Accepts Claim: NOT a “Traditional Vaccine”

In a ruling that has recently received some more attention, quite deservedly, the United States Court of Appeals for the 9th Circuit has reopened a lawsuit contending that Covid-shot mandates are unconstitutional.

It’s a victory for medical freedom and the proper understanding of “My body, my choice.”

Original Lawsuit

Providing some background, the Kelly Chang law offices [write](#):



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The underlying lawsuit against LAUSD [Los Angeles Unified School District] (2nd largest school district in the nation) was filed by Health Freedom Defense Fund in November 2021, challenging the constitutionality of the district’s March 2021 policy requiring employees to obtain the COVID vaccine (show proof) or be terminated.

... The legality of vaccine mandates is based on an old case from 1905 ... [Jacobson v Commonwealth of Massachusetts](#).

The ... court established that it is within the police power of a state to provide for compulsory vaccination. The Supreme Court in Jacobson upheld the constitutionality of a state compulsory vaccination law enacted to combat a smallpox outbreak.

The Court found that the vaccine mandate was rational in “protect[ing] the public health and public safety”. However, the Jacobson case does not stand for the proposition that anything goes in mandating vaccines.



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9th Circuit's Finding

The United States District Court for the Central District of California, perhaps uninformed on Covid shots' nature or agenda driven, nonetheless dismissed Health Freedom Defense Fund's (HFDF's) suit. On June 7, however, the 9th Circuit found that the lower court erred in rejecting the case without letting it proceed to fact-finding. As the appeals court [explained in its decision](#), the

district court misapplied the Supreme Court's decision in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), in concluding that the Policy survived rational basis review. *Jacobson* held that mandatory vaccinations were rationally related to preventing the spread of smallpox. Here, however, plaintiffs allege that the vaccine does not effectively prevent spread but only mitigates symptoms for the recipient and therefore is akin to a medical treatment, not a "traditional" vaccine. Taking plaintiffs' allegations as true at this stage of litigation, plaintiffs plausibly alleged that the COVID-19 vaccine does not effectively "prevent the spread" of COVID-19. Thus, *Jacobson* does not apply.

What Is a Vaccine?

Put simply, *Jacobson* was predicated on the drug in question being a preventative, not just a supposed *therapeutic*. (Of course, why anyone should be threatened by the infectious if a vaccine they took truly protects against the infection is a good question. But that's a topic for a different day.)

Yet the 9th Circuit addressed this and more, as American Thinker's Pete Colan [reported](#) Friday:

Further, the Ninth Circuit Court observed [that] "Pursuant to more recent Supreme Court authority, compulsory treatment for the health benefit of the person treated — as opposed to compulsory treatment for the health benefit of others — implicates the fundamental right to refuse medical treatment."

LAUSD argued, basically, (my words) "we didn't know any better so" (their words) "[t]he science [on vaccines] has not changed" and they are still "safe and effective."

In its final ruling, the court decided [that] "At this stage, we must accept Plaintiffs' allegations that the vaccine does not prevent the spread of COVID-19 as true... And, because of this, *Jacobson* does not apply. LAUSD cannot get around this standard by stating that Plaintiffs' allegations are wrong. Nor can LAUSD do so by providing facts that do not contradict Plaintiffs' allegations... But even if the materials offered by LAUSD are subject to judicial notice, they do not support rejecting Plaintiffs' allegations. LAUSD only provides a CDC [U.S. Centers for Disease Control and Prevention] publication that says "COVID-19 vaccines are safe and effective." But "safe and effective" for what? LAUSD implies that it is for preventing transmission of COVID-19 but does not adduce judicially noticeable facts that prove this."

It also didn't help the LAUSD's cause that it played games and, as the appeals court noted, "reversed course several times" on its Covid-vax mandate.

"LAUSD's pattern of withdrawing and then reinstating its vaccination policies is enough to keep this case alive," the court [wrote](#).

The 9th Circuit did *not* rule in favor of the plaintiffs, as some outlets have mistakenly reported, only that



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the lower court erred in not allowing their case to proceed. If the HFDF ultimately prevails, however, it could be groundbreaking. Why?

Colan further relates:

According to [America's Frontline Doctors](#) ... "Liability protection under U.S. law is granted only to valid vaccines. The CDC and pharmaceutical companies were fully aware of this critical distinction when they changed the definition of 'vaccine' in 2021 to include mRNA shots."

As to this, The Gateway Pundit [wrote](#) last month:

Here's the definition the CDC used on 26 August 2021:

- Vaccine- "a product that stimulates a person's immune system to produce immunity to a specific disease."
- Vaccination- "the act of introducing a vaccine into the body to produce immunity to a specific disease."

Rather than admit the COVID-19 vaccine is not working as advertised, the CDC took a page out of Orwell's 1984 and opted for new spin language.

Here is the new definition:

- Vaccine- "a preparation that is used to stimulate the body's immune response against diseases."

"Orwellian" is the right characterization. When terms [are redefined suddenly and tendentiously](#), know you're being confronted by evil, by those who use lies because their agenda is contradicted by Truth. The Left [does this continually](#), too, [as it attempted](#) with the term "court-packing" some years back.

And if the courts are packed, with common sense, the HFDF may prevail in its suit — and those tyrannized by the Branch COVIDians may finally receive justice.





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