

No. 21-1511

In the
Supreme Court of the United States

JOY GARNER, INDIVIDUALLY AND ON BEHALF OF THE
CONTROL GROUP, ET AL.,
PETITIONERS,

V.

JOSEPH R. BIDEN, JR. IN HIS OFFICIAL CAPACITY AS
PRESIDENT OF THE UNITED STATES OF AMERICA,
RESPONDENT.

*On Petition for a Writ of Certiorari to the United
States Court of Appeals for the Ninth Circuit*

**Motion of FOUNDATION FOR MORAL LAW for
leave to file and Amicus Curiae Brief In
Support of Petitioners**

JOHN A. EIDSMOE*
**Counsel of Record*
TALMADGE BUTTS
FOUNDATION FOR
MORAL LAW
One Dexter Avenue
Montgomery, AL 36104
(334) 262-1245
eidsmoeja@juno.com
talmadge@morallaw.org
*Counsel for Amicus
Curiae*

MOTION FOR LEAVE TO FILE AN AMICUS BRIEF

The Foundation for Moral Law (the Foundation) respectfully moves for (1) leave to file the attached brief as *amicus curie* in support of Petitioners.

Amicus has given more than ten (10) days advance notice to all parties of *Amicus's* intent to file this brief and has requested consent of the parties. Petitioners have consented but Respondent has not yet responded.

Amicus Foundation is a 501(c)(3) nonprofit organization dedicated to the strict interpretation of the Constitution according to the intent of its Framers, to the preservation of limited government, and to the defense of the religious liberties and other liberties guaranteed by the Constitution. The Foundation believes the President's efforts to force the COVID vaccination upon everyone and to coerce other governmental agencies to impose the vaccination requirement, violate the Constitution and will cause irreparable harm to the Petitioners, to jobs, to the economy, to civil liberties, and to America as a whole.

Amicus believes the attached Brief, drafted in large part by a professor of constitutional law, will be useful to the Court in demonstrating the limited relevance of *Jacobson v. Massachusetts*, 197 U.S. 11 (1905) to the case at hand, the nonexistence of a federal police power, the limited governmental interest in compulsory vaccination because the

vaccine only reduces symptoms but does not prevent the transmission of the COVID-19 virus, the limits on the power of government at all levels to regulate for the good of the individual, rather than for others affected by the individual person's actions, the ways compulsory vaccination violates not only religious liberty but other civil liberties as well, and the fact that the power to delegate legislative authority narrows when civil liberties are affected.

For the foregoing reasons, the Foundation respectfully requests that the Court grant its motion to file the attached *amicus* brief.

Respectfully submitted,

John A. Eidsmoe
Counsel of Record
Talmadge Butts
Foundation for Moral Law
One Dexter Avenue
Montgomery, AL 36104
(334) 262-1245
eidsmoeja@juno.com

Counsel for Amicus Curiae

July 5, 2022

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES..... iii

INTEREST OF *AMICUS CURIAE*..... 1

SUMMARY OF ARGUMENT 1

ARGUMENT 2

Introduction 2

I. The Biden Administration’s COVID vaccine policies violate the constitutional rights of Garner and The Control Group 4

 A. The Constitution does not delegate a police power to the federal government 4

 B. Reliance on *Jacobson v. Massachusetts* is misplaced 5

 C. Neither the General Welfare Clause, the Commerce Clause, nor the Necessary and Proper Clause gives the federal government power to force vaccination 7

 D. The federal interest in vaccination is minimal 8

 E. The power to delegate legislative authority narrows on matters that affect civil liberties

..... 11

F. Vaccination violates other rights 19

II. The Biden Administration has coerced or
pressured state and local governments and
private employers to violate the constitutional
rights of Petitioners 20

III. This Court, like the lower courts, could fashion
relief that would redress Petitioners' injuries . 22

CONCLUSION 23

TABLE OF AUTHORITIES

Cases

<i>Air Force Officer v. Austin</i> , Civil Action No. 5:22-cv-00009-TES	17
<i>Cruzan v. Director, Missouri Department of Health</i> , 497 U.S. 261 (1990)	18
<i>Elrod v. Burns</i> , 427 U.S. 347 (1976)	16-17
<i>Furman v. Georgia</i> , 408 U.S. 238 (1972)	9-10
<i>In Re: MCP No. 16, Occupational Safety and Health Administration</i> ,	4
<i>Jacobson v. Massachusetts</i> , 197 U.S. 11 (1905)	5-6
<i>J.W. Hampton, Jr., & Co. v. United States</i> , 276 U.S. 394 (1928)	12
<i>Marshall Field & Co. v. Clark</i> , 143 U.S. 649 (1892)	11
<i>Mistretta v. United States</i> , 488 U.S. 361 (1989)	11
<i>Orloff v. Willoughby</i> , 345 U.S. 83 (1953)	16

<i>Panama Refining Co. v. Ryan</i> , 293 U.S. 388 (1935)	12
<i>Prince v. Massachusetts</i> , 321 U.S. 158 (1944)	5
<i>Thomas v. Review Board</i> , 450 U.S. 707 (1980)	14-15
<i>United States v. Robel</i> , 389 U.S. 258 (1967)	12, 18
<i>United States v. Ballard</i> , 322 U.S. 78 (1944)	14
<i>U.S. Navy Seals v. Biden</i> , __ F.Supp.3d __ (N.D. Tex. F.W. 2022)	16
<i>Uzuegbunam v. Preczewski</i> , 592 U.S. __ (2021)	21-22
<i>Washington v. Harper</i> , 494 U.S. 210 (1990)	18
<i>Wayman v. Southard</i> , 23 U.S. (10 Wheat.) 1 (1825)	11
Constitution and Statutes	
OSHA Emergency Temporary Standard, November 5, 2021	<i>passim</i>

Occupational Safety and Health Act, Public Law
91-596, 84 Stat. 1590..... *passim*

United States Constitution *passim*

Other

Biden Admin Increases Pressure on Airlines to Force Employees to Get Covid Vaccine, The Western Journal, October 1, 2021,
<https://www.westernjournal.com/biden-admin-increases-pressure-airlines-force-employees-get-covid-vaccine/>..... 19

Biden calls on states to implement vaccine requirements in schools. Erica L. Green, New York Times, September 9, 2021 19

Frontline Doctors, *Amicus Brief, In. Re. MCP No. 165, Occupational Safety and Health Administration*, Filed December 30, 2021..... 8

Holy Bible, Revelation 13..... 13

Joe Biden Is Putting Pressure on Nursing Homes to Vaccinate Employees, Kadia Goba, August 18, 2021,
<https://www.buzzfeednews.com/article/kadiagoba/biden-nursing-homes-vaccine-mandate>..... 20

"Limiting the State's Police Power: Judicial Reaction to John Stuart Mill," *University of Chicago Law Review*: Vol. 37 : Iss. 3 , Article 9 (1970) 9

Madison, James, Summary of Madison's Remarks
(10 January 1794), Annals of Congress, House of
Representatives, 3rd Congress, 1st Session..... 7

Mill, John Stuart, *On Liberty* 8-9

*Why President Biden can't make states vaccinate
teachers -- or anyone else*, Alex Seitz-Wald, NBC
News, February 23, 2021,
[https://www.nbcnews.com/politics/joe-biden/why-
president-biden-can-t-make-states-vaccinate-
teachers-or-n1258565](https://www.nbcnews.com/politics/joe-biden/why-president-biden-can-t-make-states-vaccinate-teachers-or-n1258565)..... 19

INTEREST OF *AMICUS CURIAE*¹

Amicus Foundation for Moral Law is a 5019c)(3) nonprofit organization dedicated to the strict interpretation of the Constitution as intended by its Framers, to keeping government within its constitutional limits, and to the defense of religious liberty and other liberties guaranteed by the Constitution. The Foundation believes the OSHA ETS at issue in this case has been issued without constitutional authority and is an unconstitutional violation of religious liberties and other fundamental rights.

SUMMARY OF ARGUMENT

The Covid-19 vaccinations are probably the most controversial medical treatment in world history. To enforce universal compliance with its vaccine mandate, President Biden ordered the Occupational Safety and Health Administration (OSHA) to impose an Emergency Temporary Standard (ETS) that was neither emergency nor temporary. It was withdrawn after a preliminary injunction, thus avoiding a precedent empowering the executive branch of the

¹ Pursuant to Rule 37.6, no party or party's counsel authored this brief in whole or in part, or contributed money that was intended to fund its preparation or submission; and no person other than *amicus curiae*, its members, or its counsel, contributed money that was intended to fund the preparation or submission of this brief. *Amicus* has provided timely notice to all parties of its intent to file this brief and has requested consent of all parties. Petitioners have granted consent but Respondent has not yet responded.

federal government to regulate all aspects of American life.

The Biden Administration has also tried to force vaccination upon airlines and other mass transit companies, upon the military, upon nursing homes and medical personnel, and upon myriad others, all in violation of the United States Constitution.

Petitioners' very existence as The Control Group is threatened by the Biden Administration. By granting this Petition, this court has an opportunity to protect minority rights and restore the Executive Branch to its proper constitutional role.

ARGUMENT

In America today, anyone who wants a COVID-19 vaccine can get one.

But some choose not to get the vaccine. Some make that choice for medical reasons, others for religious and moral reasons, others for political reasons, still others for reasons known only to them.

Despite an unparalleled media campaign, vilifying their critics, ridiculing those who question their conclusions, rewarding those who capitulate, and de-platforming those who dissent, a substantial portion of the American public remains unpersuaded that vaccination is a good idea. Having failed to persuade, vaccine proponents are resorting to coercion instead.

And that's the underlying reason behind this case.

The Biden Administration's COVID policies are a deliberate attempt to eradicate The Control Group, eliminating their very existence. That may seem a drastic statement, but if the Biden Administration could succeed in vaccinating everyone, The Control Group (unvaccinated persons) would cease to exist. This is especially strange when we recognize that The Control Group serves an important public function.

In support of this contention, *Amicus* defers to Petitioners' Certiorari Brief, in which Petitioners explain and document in meticulous detail the medical studies and scientific findings concerning the effects of COVID vaccines and the need for ongoing studies now and in the future. Such studies are vitally necessary for the future health of the nation, so scientists can determine the long-term effects of vaccination upon various segments of the population.

As Petitioners explain in detail, in many instances it is impossible to conduct a study without a control group for comparison. For example, if a study is to accurately measure the long-term effects of vaccination upon children, adults, senior citizens, or others, it is virtually impossible to measure those effects without having a control group of non-vaccinated persons for purposes of comparison.

And yet, the policies of the Biden Administration threaten the very existence of any persons who might constitute such a control group.

That is why this case is of vital importance, and why this Court should grant certiorari.

To be entitled to injunctive relief, Petitioners must establish that (1) they have suffered an injury; (2) the injury is traceable to the Respondent's actions; and (3) the relief requested from the Court could redress the Petitioners' injuries.

The lower courts held that Petitioners failed to establish at least (2) and (3) of these elements. *Amicus* will argue that Petitioners in fact established all three elements and are therefore entitled to relief.

I. The Biden Administration's COVID vaccine policies violate the constitutional rights of Garner and The Control Group.

A. The Constitution does not delegate a police power to the federal government.

In the *In Re: MCP No. 165, Occupational Safety and Health Administration* case, this Court concluded that Applicants were likely to succeed in their claim that the Biden-imposed OSHA Emergency Temporary Standard (ETS) that certain employers must force their employees to either undergo COVID vaccination or test regularly, were unconstitutional because, although OSHA has the power to regulate workplace safety standards, it does not have the power to regulate public health more broadly. The case did not proceed to a final

resolution by this Court because, twelve days after the decision, OSHA withdrew its ETS.

In that case, *Amicus* argued that Congress cannot delegate power it does not possess, any more than a person can give money he/she does not have. And Congress does not have power to impose compulsory vaccinations; therefore, Congress cannot delegate the power to impose compulsory vaccinations.

B. Reliance on *Jacobson v. Massachusetts* is misplaced.

Jacobson v. Massachusetts, 197 U.S. 11 (1905), is often cited as authority for the mandatory vaccination. *Amicus* believes *Jacobson* does not support either OSHA's Emergency Temporary Standard (ETS) or other attempts to force vaccination, for the following reasons:

- (1) *Jacobson* involved a state law that empowered health departments to compel vaccinations to prevent the spread of smallpox. States, it is generally agreed, have a police power to legislate for the health, safety, welfare, and morals of the people, subject to the limitations of the federal and state constitutions. But the federal government has no such police power, so *Jacobson* does not apply to OSHA's ETS or other federal actions.
- (2) Mr. Jacobson simply argued that the law violated his right to decline vaccination; he

did not raise a religious objection to vaccination.²

- (3) *Jacobson* did restrict the state’s authority to regulate in ways that are “beyond all question, a plain, palpable invasion of rights secured by the fundamental law,” i.e., constitutional guarantees in our Bill of Rights.
- (4) *Jacobson* is a 1905 case that must at least be reinterpreted in light of more recent constitutional decisions. As Justice Gorsuch wrote, concurring in *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 71 (2020),

Why have some mistaken this Court's modest decision in *Jacobson* for a towering authority that overshadows the Constitution during a pandemic? In the end, I can only surmise that

² A subsequent case, *Prince v. Massachusetts*, 321 U.S. 158 (1944), said that “The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death.” However, that was dicta, not holding. *Prince* involved a Jehovah's Witness who had her child with her while preaching in public, and no issue of disease or epidemic was present in the case. And as the Court expressly said in *Prince*, “Our ruling does not extend beyond the facts the case presents.”

much of the answer lies in a particular judicial impulse to stay out of the way in times of crisis. But if that impulse may be understandable or even admirable in other circumstances, we may not shelter in place when the Constitution is under attack. Things never go well when we do.

C. Neither the General Welfare Clause, the Commerce Clause, nor the Necessary and Proper Clause gives the federal government power to force vaccination.

In 1794, Congress considered a proposal to aid Haitian refugees, but Congressman James Madison, often called the Father of the Constitution, objected:

Mr. Madison wished to relieve the sufferers, but was afraid of establishing a dangerous precedent, which might hereafter be perverted to the countenance of purposes very different from those of charity. He acknowledged, for his own part, that he could not undertake to lay his finger on that article in the Federal Constitution which granted a right of Congress of expending,

on objects of benevolence, the money of their constituents.³

Like Madison, proponents of federal power are unable to lay their fingers upon any portion of the Constitution that gives to the federal government a police power, much less a police power that includes compulsory vaccinations. It is axiomatic that Congress cannot delegate a power it does not possess.

D. The federal interest in vaccination is minimal.

The federal interest in mandatory vaccination is not as substantial as the Biden Administration suggests. As the *Amicus* Brief of Frontline Doctors, pp. 3-9, in the *OSHA* case convincingly documents, COVID-19 injections do not create immunity; they only treat symptoms. The vaccines do not prevent people from contracting COVID-19 nor from spreading COVID-19 to others. They only make the symptoms less severe.⁴

If so, the government's interest in preventing the spread of COVID-19 is not served by mandatory vaccinations. At most, mandatory vaccinations only make the symptoms less severe for infected persons.

³ Summation of Madison's Remarks (10 January 1774), *Annals of Congress, House of Representatives, 3rd Congress, 1st Session*, p. 170.

⁴ Arguably, by making the symptoms less severe, vaccination could encourage people who do not know they are infected to interact with others, thereby facilitating rather than inhibiting the spread of COVID-19.

And that means the government interest is far more minimal.

Although American jurisprudence has not fully accepted the libertarian principles of John Stuart Mill, his observations in *On Liberty* continue to resonate with many:

...the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinion of others, to do so would be wise, or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him, or visiting him with any evil in case he do otherwise. To justify that, the conduct from which it is desired to deter him must be calculated to produce evil to some one else. The only part of the conduct of any one, for which he is amenable to society, is that which

concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.⁵

Justice Rehnquist, joined by Chief Justice Burger and Justices Blackmun and Powell, wrote in dissent in *Furman v. Georgia*, 408 U.S. 238, 467 (1972):

The Framers of the Constitution would doubtless have agreed with the great English political philosopher John Stuart Mill when he observed:

The disposition of mankind, whether as rulers or as fellow citizens, to impose their own opinions and inclinations as a rule of conduct on others, is so energetically supported by some of the best and by some of the worst feelings incident to human nature, that it is hardly ever kept under restraint by anything but want of power. *On Liberty* 28 (1885).

⁵Editors, Law Review (1970) "Limiting the State's Police Power: Judicial Reaction to John Stuart Mill," *University of Chicago Law Review*: Vol. 37 : Iss. 3 , Article 9.

Available at:
<https://chicagounbound.uchicago.edu/uclrev/vol37/iss3/9>

Even for state governments, which have a police power, that power may only be exercised to regulate an individual's conduct that affects the rights and interests of other people. The state's power to regulate an individual's conduct that affects only himself/herself is much more limited.

And the federal government does not have even this limited police power.

E. The power to delegate legislative authority narrows on matters that affect civil liberties.

The doctrine, *delegata potestas non potest delegari*, simply means that no delegated powers can be further delegated. Powers that the people of the United States through the U.S. Constitution have delegated to one branch of government may not be re-delegated by that branch to another branch of government. One purpose of the rule is to respect the wishes of the people when they determined that that power should vest, or reside permanently, with one branch of government. Another is to preserve accountability, so that a branch of government may not evade responsibility and accountability by passing its duties to another branch.

Propounded by Chief Justice Marshall in *Wayman v. Southard*, 23 U.S. (10 Wheat.) 1, 41-43 (1825), the doctrine was articulated by the U.S. Supreme Court in *Marshall Field & Co. v. Clark*, 143 U.S. 649, 692 (1892): "That [C]ongress cannot

delegate legislative power to the president is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution."

As the administrative state grew in the 1900s, the courts rejected numerous challenges based on the nondelegation doctrine, so much so that some have considered nondelegation an outmoded doctrine. But the courts never rejected or overruled the doctrine itself. Rather, the Court has interpreted the doctrine to mean that although the legislature may not delegate legislative authority, it may delegate "rule-making authority," giving executive agencies the authority to adopt rules that interpret the laws adopted by the legislature. But as the Court recognized in *Mistretta v. United States*, 488 U.S. 361 (1989) and other cases, the fine line between legislative authority and rule-making authority is sometimes difficult to draw. Generally, the courts will uphold a legislature's delegation as "rule-making authority" if the legislature has given the executive agency reasonably clear guidelines or criteria by which to make the rules, which rules are expected to be interpretations of the law the legislature has adopted. This is the "intelligible principle" rule articulated in *J.W. Hampton, Jr., & Co. v. United States*, 276 US. 394, 409 (1928); see also, *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935), in which the Court struck down regulations on petroleum shipping because the statute authorizing such regulations did not specify circumstances or conditions that would allow regulation, criteria to guide the President's course of regulation, or

required findings enabling the President to regulate petroleum transportation. Rather, the Court said, the statute gave "the President an unlimited authority to determine the policy and to lay down the prohibition, or not to lay it down, as he may see fit." *Id.* at 415. Since that time, the courts have usually upheld delegations, not because they rejected the nondelegation doctrine, but because they found that in each of these cases the doctrine was not violated.

In determining whether the delegation guidelines or criteria are reasonably clear, the Court said in *United States v. Robel*, 389 U.S. 258 274-75 (1967) that while legislatures "ordinarily may delegate power under broad standards..., [the] area of permissible indefiniteness narrows ... when the regulation ... potentially affects fundamental rights."

Clearly, the issue of compulsory vaccination affects fundamental rights. Thousands, probably millions,⁶ of Americans object to the COVID-19 vaccine for religious reasons, including the following:

(1) That the body is the temple of the Holy Spirit and therefore should not be defiled with an experimental drug that could be dangerous. Some Roman Catholic theologians have articulated an ethical position called "therapeutic proportionality" which means that because the human body is the creation of God and the temple of the Holy Spirit, a person has a duty to God to weigh the possible benefits of medicine against the possible risks and

⁶ A constitutional violation is worthy of this Court's attention even if only one person's rights are affected.

adverse consequences and to refuse medical treatment if the risks and adverse consequences outweigh the benefits. See <https://catholic-factchecking.com/2021/07/vaccine-exemption-resource-for-individuals/>; <https://academic.oup.com/jlb/article/7/1/ljaa058/5878809>.

(2) That some COVID vaccines are made from, or were developed from, cells or cell lines from aborted fetuses, and taking the vaccine makes the recipient an accessory to abortion, which many believe to be against God's laws.

(3) That a believer should rely upon God, not vaccines, to heal or prevent disease. (If you raise this objection, be prepared to explain whether your objection is to all medical care or just to some kinds of medical care, and how you distinguish between them.)

(4) That when the vaccine is imposed so strongly that a vaccination passport or the equivalent becomes necessary for being allowed to fly, enter stores, obtain food or other necessities, or participate in public events, it becomes what some believe is the “mark of the beast” of Revelation 13.

(5) That God has established civil government and has given civil government certain limited authority; that when government exceeds its God-given authority, it becomes tyrannical, and the individual has a duty before God to resist the unlawful mandates of a tyrannical government.

At least two members of The Control Group, Michael and Nicole Harris (see Petition for Certiorari, B3), have religious objections to vaccination.

Religious beliefs are protected by the First Amendment and the Civil Rights Act of 1964 whether others agree with them or not. As the Supreme Court said in *United States v. Ballard*, 322 U.S. 78 at 87 (1944),

Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. yet the fact that they may be beyond the ken of mere mortals does not mean they can be made suspect before the law.

Nor must religious beliefs be part of the official doctrine of a church to merit First Amendment protection. As the Court said in *Thomas v. Review Board*, 450 U.S. 707 at 715-16 (1980),

In reaching its conclusion, the Indiana court seems to have placed considerable reliance on the facts that Thomas was "struggling" with his beliefs and that he was not able to "articulate" his belief precisely. It noted, for example, that Thomas admitted before the referee that he would not object to "working for United States Steel or Inland Steel . . .

produc[ing] the raw product necessary for the production of any kind of tank . . . [because I] would not be a direct party to whoever they shipped it to [and] would not be . . . chargeable in . . . conscience. . . ." Ind., 391 N.E.2d, at 1131.

The court found this position inconsistent with Thomas' stated opposition to participation in the production of armaments. But Thomas' statements reveal no more than that he found work in the roll foundry sufficiently insulated from producing weapons of war. We see, therefore, that Thomas drew a line, and it is not for us to say that the line he drew was an unreasonable one. Courts should not undertake to dissect religious beliefs because the believer admits that he is "struggling" with his position or because his beliefs are not articulated with the clarity and precision that a more sophisticated person might employ.

The Indiana court also appears to have given significant weight to the fact that another Jehovah's Witness had no scruples about working on tank turrets; for that other Witness, at least, such work was "scripturally" acceptable. Intrafaith differences of that kind are not uncommon among followers of a particular creed, and the judicial

process is singularly ill equipped to resolve such differences in relation to the Religion Clauses. One can, of course, imagine an asserted claim so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause; but that is not the case here, and the guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect. Particularly in this sensitive area, it is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation.

Although portions of the OSH Act and the ETS appear to give lip service to religious exemptions, it is far from clear that officials and employers will give religious objections the deferential consideration the Constitution and this Court require. *Amicus* notes that, as Judge O'Connor of the Northern District of Texas observed in his January 3, 2022 ruling in *U.S. Navy SEALs, et. al. v. Biden*, Civil Action No. 4:21-cv-01236-O, "The Navy provides a religious accommodation process, but by all accounts, it is theater. The Navy has not granted a religious exemption to any vaccine in recent memory. It merely rubber stamps each denial." The fact that this case involves the military is very significant, because the courts commonly give more deference to decisions

of military authorities than to those of other government agencies, *Orloff v. Willoughby*, 345 U.S. 83, 93 (1953). The case also involved the denial of religious exemptions, but the District Court's citation of *Elrod v. Burns*, 427 U.S. 347, 373 (1976), "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury" equally applies to other constitutional rights.

The District Court made a very significant observation: The Navy had refused to grant religious exemptions from the vaccination requirement but had rather freely granted medical exemptions from the requirement. By granting medical exemptions, the Court said, the Navy had effectively forfeited the argument that military necessity prohibited the granting of religious exemptions.

This undercuts the whole argument that mandatory universal vaccination is necessary.^{7 8} The U.S. District Court for the Middle District of Georgia issued a similar ruling in *Air Force Officer v. Austin*, Civil Action No. 5:22-cv-00009-TES, on February 15, 2022, and a Federal District Court for the Middle District of Florida, granted similar relief to Navy and

⁷ At least one member of The Control Group, Traci Music, is a military spouse and therefore affected by the Biden-imposed policies that affect her husband and dependent children.

⁸ On March 26, 2022, this Court blocked the Texas court's order in this case, but only "insofar as it precludes the Navy from making deployment, assignment, and other operational decisions."

Marine personnel against restrictive vaccination policies.⁹

Other government agencies have similarly taken a negative or skeptical view of religious objections.

F. Vaccination violates other rights.

And vaccination violates many other rights. In *Washington v. Harper*, 494 U.S. 210, 221-22 (1990), this Court recognized that prisoners have “a significant liberty interest in avoiding the unwanted administration of antipsychotic drugs under the Due Process Clause of the Fourteenth Amendment,” adding at 229, “[t]he forcible injection of medication into a nonconsenting person’s body represents a substantial interference with that person’s liberty.” In *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261 (1990), this Court stated at 269-70, “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.”

These cases recognize the rights of prisoners and terminally-ill persons to refuse injections and other forms of treatment. The Biden Administration would force injections upon free healthy persons. This clearly involves fundamental rights, so as this Court

⁹ *Navy SEAL 1, et al., v. Secretary of the United States Department of Defense*, Case No. 8:21-cv-02429-SDM-TGW. This case is currently on appeal before the United States Court of Appeals for the Eleventh Circuit, No. 22-10645-DD.

said in *Robel*, the nondelegation doctrine is considerably narrowed and delegation of legislative authority must take place, if at all, with far more specific criteria or guidelines as to how that authority is to be exercised.

Petitioners' constitutional rights have therefore been violated. This satisfies the first requirement for a preliminary injunction.

II. The Biden Administration has coerced or pressured state and local governments and private employers to violate the constitutional rights of Petitioners.

State, local, and nonpublic efforts to force people to vaccinate have been under pressure or influence of the Biden Administration. For example:

- The Biden Administration placed pressure upon airlines to force employees and passengers to undergo vaccination.¹⁰
- The Biden Administration has pressured state and local governments to force vaccination upon public school teachers.¹¹

¹⁰ *Biden Admin Increases Pressure on Airlines to Force Employees to Get Covid Vaccine*, The Western Journal, October 1, 2021, <https://www.westernjournal.com/biden-admin-increases-pressure-airlines-force-employees-get-covid-vaccine/>

¹¹ *Why President Biden can't make states vaccinate teachers -- or anyone else*, Alex Seitz-Wald, NBC News, February 23, 2021, <https://www.nbcnews.com/politics/joe-biden/why-president-biden-can-t-make-states-vaccinate-teachers-or-n1258565>

- The Biden Administration has called on states to implement testing and vaccine requirements.¹²
- The Biden Administration has pressured schools to require vaccinations.¹³
- The Biden Administration has pressured nursing homes to vaccinate employees.¹⁴

The District Court refused to issue a preliminary injunction because, it ruled, "there are no allegations in the first amended complaint to support even an inference that the injuries plaintiffs complain of are traceable to any act or omission of the President but rather result from the conduct of independent third parties not before the court." (Petition for Certiorari, B6). *Amicus* believes the above information, coupled with much other evidence, establishes at least an inference that state and local governments and private employers have acted

¹² *Biden calls on states to implement vaccine requirements in schools*. Erica L. Green, New York Times, September 9, 2021.

¹³ *Biden to Raise Pressure on Schools to Require Vaccinations*, Laura Camera, U.S. News & World Report, September 9, 2021, <https://www.msn.com/en-us/news/us/biden-to-raise-pressure-on-schools-to-require-vaccinations/ar-AAOgYeh>

¹⁴ *Joe Biden Is Putting Pressure on Nursing Homes to Vaccinate Employees*, Kadia Goba, August 18, 2021, <https://www.buzzfeednews.com/article/kadiagoba/biden-nursing-homes-vaccine-mandate>

because of, in support of, or in fear of, actions or pressures from the Biden information.

Petitioners have therefore met the second requirement for a preliminary injunction, that the harm they have suffered is traceable to the actions of the Biden Administration.

III. This Court, like the lower courts, could fashion relief that would redress Petitioners' injuries.

The District Court concluded that Petitioners failed to "sufficiently allege that their claimed injuries will be redressed by a favorable decision in this action."

The Foundation respectfully disagrees. An injunction prohibiting Respondent from engaging in actions and policies that force Petitioners and others similarly situated to undergo vaccination in violation of their constitutional rights would enable Petitioners to go about their lives without fear of coercion or pressure. A declaratory judgment that past actions which the Biden Administration engaged in or forced or pressured state and local governments and private employers to engage in, violated Petitioners' constitutional rights, would be a major milestone toward preventing such constitutional violations in the future.

The Biden Administration may argue that such relief is moot because those policies are no longer in effect. However, some of those policies, such as vaccination requirements for airline employees, are

definitely still in effect. Furthermore, as this Court recognized last year in *Uzuegbunam v. Preczewski*, 592 U.S. __ (2021), plaintiffs are entitled to injunction and damages for past constitutional violations even though the unconstitutional policies have been repealed.¹⁵

Petitioners have therefore fulfilled the third requirement for an injunction, in that they have demonstrated that the Court could fashion relief that would redress their injuries.

CONCLUSION

Petitioners have suffered numerous violations of their constitutional rights, economic hardships, inconveniences, and treatment as second-class citizens, solely for following their convictions and refusing unconstitutional mandates that they undergo vaccination. Their very existence as The Control Group, so necessary for the integrity of future scientific and medical research, is threatened.

This Court has a unique opportunity to set a precedent for constitutional liberty and preserve Petitioners, their families, and countless others from serious and irreparable injury.

¹⁵ *Uzuegbunam* and other students sued Georgia Gwinnette College for prohibiting them from talking with interested students about religious matters. The College argued that the case was moot because the College had repealed its policy, but the Supreme Court ruled that *Uzuegbunam* and his colleagues were still entitled to damages for past violations.

The Foundation urges this Court to grant this Petition for Certiorari.

Respectfully submitted,

JOHN A. EIDSMOE
Counsel of Record
TALMADGE BUTTS
FOUNDATION FOR MORAL LAW
One Dexter Avenue
Montgomery, AL 36104
(334) 262-1245
eidsmoeja@juno.com
talmadge@morallaw.org
Counsel for Amicus Curiae

July 5, 2022