No. 25-9

In the Supreme Court of the United States

KEITH M. WILKNS,
Petitioner,

v.

STEVE HERRON, *ET AL.*,
Respondents.

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

BRIEF OF SENATOR KIM THATCHER AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

Kim Thatcher is a Senator in the Oregon legislature, representing Oregon's District 11. She has served on the Oregon Senate Judiciary committee since 2015 and since 2017 has been its vice-chair. Throughout her legislative career, she has focused on preserving medical transparency, personal autonomy, and the rights of Oregonians to make their own healthcare decisions. She believes that medical decisions should be made freely and with full, informed understanding of risks, benefits, and alternatives—without coercion or undue pressure.

Her policy work has both supported and authored legislation to ensure consent is respected in all medical contexts, particularly those involving public institutions and experimental interventions. The case of Keith Wilkins reflects the concerns she has long raised: when institutions such as public employers overstep, individual rights are placed in jeopardy. For that reason, she submits this brief in support of Petitioner Wilkins.

SUMMARY OF ARGUMENT

Petitioner Wilkins was employed by an Oregon school district, Bend LaPine Administrative School

[1] It is hereby certified that counsel of record for all parties received notice of the intention to file this brief at least 10 days prior to filing, pursuant to Supreme Court Rule 37.2. Under Rule 37.6, *Amicus* certifies that no person or entity other than *Amicus* or her counsel has authored or prepared this brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of this brief.

District 1, from August, 2007 through February, 2021. In late 2020, the district imposed requirements that teachers wear face masks while at work, and also be vaccinated against COVID-19. Wilkins objected to these requirements and refused to wear masks or get vaccinated. Because of these refusals, the district and the named Respondents informed Wilkins not to report for work. As a consequence, the district ceased payment of Wilkins' salary.

Wilkins was entitled to a due process hearing regarding his discharge, but this was refused. Further, Wilkins' constitutionally protected rights to work and to bodily integrity were violated by the requirements imposed by the district and Respondents. As a result, Wilkins sued Respondents for violating 42 U.S.C. § 1983. The district court's dismissal of his complaint was erroneous, as was the affirmance by the Ninth Circuit.

The constitutional authority of state and local government agencies to impose mask and vaccine mandates is the "police power," which this Court has described as the authority of local governments to impose measures for "[p]ublic safety, public health, morality, peace and quiet, law and order." *Berman v. Parker*, 348 U.S. 26, 32 (1954). But the police power cannot be exercised or used to inflict harm on citizens or to accomplish something which is utterly useless. Here, Wilkins alleges in his amended complaint that face masks were inadequate in stopping the spread of COVID-19. He further alleges that the "vaccines" then commonly being used were not only useless, but were in fact incredibly harmful to those receiving them. In essence, Wilkins offers to prove that the actions of Oregon officials (including Respondents) were *harming* citizens and thus these

measures were violative of Wilkins' federally protected constitutional rights, including the right to work and to bodily integrity.

There is much evidence, both available when Wilkins was confronted with the mandates, and now increasingly revealed to the public, that face masks were ineffective and harmful, and that the COVID-19 "vaccines" authorized for emergency use were ineffective and harmful. Moreover, the history of the pharmaceutical giants who manufactured the vaccines demonstrates clearly that there is good reason to believe that they frequently misbrand and misrepresent the efficacy and safety of drugs they manufacture.

As a consequence, Wilkins' complaint is founded in factual allegations which are not only plausible, but eminently provable against the officials subjecting him to these mandates. His complaint should not have been dismissed, and this Court should reverse the dismissals of the courts below.

ARGUMENT

I. Allegations in Wilkins' amended complaint are sufficient to demonstrate that Respondents' actions exceeded the State's police powers

Wilkins' amended complaint asserted eight separate claims for relief; all claims were related to his opposition to Respondents' requirements that he wear face masks at work and be subjected to the school district's vaccine mandate.

Paragraphs 35 through 62 of Wilkins' complaint, spanning some seven pages, alleged that face masks fail to prevent the transmission of any diseases, including COVID-19. Paragraph 40 alleged that a letter from a FDA official stated that "[n]o descriptive printed matter, including advertising or promotional materials, relating to the use of the authorized surgical mask may represent or suggest that such product is safe or effective for the prevention or treatment of COVID-19." Paragraph 41 of the complaint even provided a photograph of a typical box that manufacturers used to distribute masks, which box disclaimed in print that masks "will not provide any protection against COVID-19 (coronovirus) or other viruses or contaminants."

Paragraphs 63 through 136 thereof, spanning some 31 pages, contained specific allegations regarding the ineffectiveness of the COVID-19 injections ("vaccines"), such as that alleged in ¶ 81: "These products do not prevent infection by COVID-19 and do not prevent the spread of COVID-19. The CDC has acknowledged that these products do not prevent infection or transmission of COVID-19. The CDC has also acknowledged that the vaccinated and the unvaccinated are equally likely to spread COVID-19."

These factual allegations concerning the utter ineffectiveness of both masks and the vaccines as some form of remedy to COVID-19 were capable of being proved at any hearing or trial to demonstrate that these measures were beyond the police power of State governments, including Oregon's.

II. Constitutional rights to bodily integrity and to work have been violated.

When smallpox posed epidemic problems at the start of the 20th century, this Court in *Jacobson v. Massachusetts*, 197 U.S. 11, 31 (1905), determined under the facts of that case that Massachusetts could mandate vaccinations.[2] But this decision had a caveat:

> [I]f a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law, it is the duty of courts to so adjudge, and thereby give effect to the Constitution.

See also Robinson v. Attorney General, 957 F.3d 1171, 1178 (11th Cir. 2020) ("just as constitutional rights have limits, so too does a state's power to issue executive orders limiting such rights in times of emergency.") It must be noted that *Jacobson* is of the genre of *Plessy v. Ferguson*, 163 U.S. 537 (1896) (upholding state segregation laws); *Buck v. Bell*, 274 U.S. 200 (1927) (upholding involuntary sterilization); and *Korematsu v. United States*, 323 U.S. 214 (1944) (upholding removal of Japanese Americans from their homes during World War II).

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[2] But there is a history of human experimentation in our country. *See, e.g.,* https://en.wikipedia.org/wiki/Unethical_human_experimentation_in_the_United_States

Since *Jacobson*, however, this Court has repeatedly recognized the constitutional right to "bodily integrity," which constitutes a limit to the authority to compel citizens to be vaccinated. See *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942) (invasive medical procedure of sterilization performed without the consent of the patient, "forever deprived [the individual] of a basic liberty."); *Winston v. Lee*, 470 U.S. 753, 755 (1985); *Washington v. Harper*, 494 U.S. 210, 221-222 (1990) ("respondent possesses a significant liberty interest in avoiding the unwanted administration of antipsychotic drugs"); *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261, 278 (1990) ("competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment"); *Albright v. Oliver*, 510 U.S. 266, 272 (1994) ("[t]he protections of substantive due process have for the most part been accorded to matters relating to marriage, family, procreation, and the right to bodily integrity."); *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) ("the 'liberty' protected by the Due Process Clause [of the Fourteenth Amendment] includes the right[] . . . to bodily integrity"); *Missouri v. McNeely*, 569 U.S. 141, 148 (2013) ("any compelled intrusion into the human body implicates significant, constitutionally protected privacy interests."); *Frances-Colon v. Ramirez*, 107 F.3d 62, 63 (1st Cir. 1997) (substantive due process interest in "bodily integrity" or "adequate medical care" can support a personal injury claim under § 1983 "against the provider of a governmental service."); *Phillips v. County of Allegheny*, 515 F.3d 224, 235 (3d Cir. 2008) ("[I]ndividuals have a constitutional liberty interest in personal bodily integrity"); *Shillingford v. Holmes*, 634 F.2d 263, 265 (5th Cir.1981) ("the right to be free

of state-occasioned damage to a person's bodily integrity is protected by the fourteenth amendment guarantee of due process."); *Doe v. Taylor Indep. Sch. Dist.*, 15 F.3d 443 (5th Cir. 1994) (right to be free of state-occasioned damage to a person's bodily integrity is protected by U.S. Const. amend. XIV's guarantee of due process); *Guertin v. Michigan*, 912 F.3d 907 (6th Cir. 2019) ("invasion of one's body 'is an indignity, an assault, and a trespass' prohibited at common law."); *Rogers v. City of Little Rock*, 152 F.3d 790, 797 (8th Cir. 1998) (rape by police officer of woman stopped for traffic violation violated her Due Process right to intimate bodily integrity); *Plumeau v. Sch. Dist. # 40*, 130 F.3d 432, 438 (9th Cir. 1997) (janitor whose touching of elementary school children constituted criminal sexual abuse also violated the children's Due Process right to bodily integrity); *Hovater v. Robinson*, 1 F.3d 1063, 1068 (10th Cir. 1993) ("inmate has a constitutional right to be secure in her bodily integrity"); *Jurasek v. Utah State Hosp.*, 158 F.3d 506, 510 (10th Cir. 1998) ("an individual has a liberty interest in 'avoiding the unwanted administration of antipsychotic drugs'"); *Fortner v. Thomas*, 983 F.2d 1024, 1029-30 (11th Cir. 1993) (inmates "retain certain fundamental rights of privacy[,]" including a "constitutional right to bodily privacy."); *Doe v. Moore*, 410 F.3d 1337, 1343 (11th Cir. 2005) ("The Supreme Court has recognized that fundamental rights include those guaranteed by the Bill of Rights as well as certain 'liberty' and privacy interests implicit in the due process clause and the penumbra of constitutional rights. * * * These special 'liberty' interests include 'the rights to marry, to have children, to direct the education and upbringing of one's children, to marital privacy, to use contraception, to bodily integrity...'"); and *Canterbury v.*

Spence, 464 F.2d 772, 780 (D.C. Cir. 1972) (it is "fundamental in American jurisprudence, that the individual may control what shall be done with his own body.").

Moreover, this Court has recognized the constitutional right to work. *See Dent v. West Virginia*, 129 U.S. 114, 121 (1889) ("It is undoubtedly the right of every citizen of the United States to follow any lawful calling, business, or profession he may choose, subject only to such restrictions as are imposed upon all persons of like age, sex and condition."). *See also Allgeyer v. Louisiana*, 165 U.S. 578, 589-90 (1897), *Truax v. Raich*, 239 U.S. 33, 41 (1915).

These constitutional rights can be protected via a lawsuit authorized by 42 U.S.C. §1983, which is exactly what Wilkins' suit sought.

III. The police power of the States has limits.

The "police power" refers to "the whole sum of inherent sovereign power which the state possesses, and, within constitutional limitations, [are] exercise[d] for the promotion of the order, safety, health, morals, and general welfare of the public." *Union Fishermen's Co. v. Shoemaker*, 98 Ore. 659, 674, 193 P. 476 (1920). This court has decided that imposing quarantines are within this power. *See Gibbons v. Ogden*, 22 U.S. 1, 203 (1824). "Public safety, public health, morality, peace and quiet, law and order — these are some of the more conspicuous examples of the traditional application of the police power to municipal affairs." *Berman v. Parker*, 348 U.S. 26, 32 (1954).

However, there are many examples of State laws that are outside the scope of this police power. In *Smith v. Texas*, 233 U.S. 630, 638 (1914), this Court found a State law void that required freight conductors to have experience as brakemen. Also void was a State law prohibiting employment agencies in *Adams v. Tanner*, 244 U.S. 590 (1917). A law forbidding teaching foreign languages in school was held void in *Meyer v. Nebraska*, 262 U.S. 390 (1923). Bread weight restrictions were held void as beyond the police power in *Jay Burns Baking Co. v. Bryan*, 264 U.S. 504 (1924). A law preventing use of "shoddy" in mattresses was held void in *Weaver v. Palmer Bros. Co.*, 270 U.S. 402 (1926), as was a ticket broker price restriction in *Tyson & Bro.-United Theatre Ticket Offices v. Banton*, 273 U.S. 418 (1927). This Court held that a state law which restricted ownership of pharmacies to licensed pharmacists was beyond the police power in *Louis K. Liggett Co. v. Baldridge*, 278 U.S. 105 (1928). See also *State of Washington ex rel Seattle Title Trust Co. v. Roberge*, 278 U.S. 116 (1928) (finding unlawful a law requiring consent of neighbors just to build a home); and *New State Ice Co. v. Liebmann*, 285 U.S. 262 (1932) (holding unlawful a law restricting a new ice business).

IV. Some evidence that face masks and vaccine mandates are beyond the police power.

A. Face Masks

When COVID-19 "mandates" were being adopted by many States at the start of the outbreak, the case of Maggie Williams was the subject of many national media reports. Maggie participated in a track meet

while required to wear a face mask, and she collapsed just as she crossed the finish line at the end of her race. Afterwards, she commented that "her lack of oxygen was the result of the mask she's been required to wear while running in competitions under OHA guidelines for outdoor sports."[3] The school Maggie attended was in the Bend-LaPine district. Paragraph 62 in Wilkins' amended complaint recounted this fact.

Paragraph 47 of that Wilkins' complaint noted that there were "[m]ore than 150 studies [that] prove the ineffectiveness of masks."[4] A fair reading of the allegations in the amended complaint regarding the utter inadequacies of face masks to stop the transmission of viruses reveals that it most likely will be impossible for any state official to ever demonstrate that face masks are helpful in stopping viruses from spreading.

If face masks are inadequate in this regard, then the mask mandate imposed by Oregon officials was beyond the police power of the State, and therefore unconstitutional.

B. The COVID-19 "vaccines"

1. The vaccine manufacturers

In 1849, two German immigrants, Charles Pfizer and his cousin Charles F. Erhart formed a company that eventually became Pfizer, Inc., which currently is an American multinational pharmaceutical and

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[3] *See* https://dailycitizen.focusonthefamily.com/oregon-revises-mask-rule-after-female-athlete-running-with-a-mask-collapses-at-finish-line/ (all internet cites herein were last visited on July 30, 3025).

[4] See https://brownstone.org/tag/masks/

biotechnology corporation with headquarters in New York City. Its annual revenues exceed that of small countries like New Zealand.

When developing vaccines, Pfizer has engaged in harmful conduct which has resulted in lawsuits. During 1996 in Nigeria, its vaccine experiments resulted in the death and severe injuries to a number of Nigerian children. As a result, Pfizer was sued and determined to be liable for those injuries in *Abdullahi v. Pfizer, Inc.*, 562 F.3d 163, 169 (2d Cir. 2009). This case was later settled.[5]

In 2002, Pharmacia & Upjohn Company, a Pfizer subsidiary, developed a drug named Bextra, and started vigorously promoting its sale to its sale force. The start of this sales program was described as follows in the sentencing memorandum of the AUSA who brought criminal charges against Pfizer:

> Bextra was officially launched at a national meeting for sales representatives in Atlanta, Georgia, from April 9-12, 2002. During this meeting, the sales force was given a vivid message of how to promote Bextra for the "power" position. They were inundated with displays of music, light shows, acrobats and dancers. The marketing managers led the entire audience in thrusting their fists into the air (the marketing symbol of Bextra) and pounding them against their upraised hands in unison to symbolize the power of Bextra and to "Power Up" the sales force. Ultimately, simulated large steel doors crash down on the stage, and the Bextra fist symbol crashed through the doors. The

[5] *See* https://www.law.com/almID/1202482854504/

> events from the launch demonstrates the sales frenzy that accompanied Bextra, as the company strove to make the drug reach "blockbuster" (billion dollar a year sales) status.[6]

Condensing this sordid story, Pharmacia sales representatives promoted Bextra using false and misleading claims, eventually leading to civil actions being filed by the United States as well as federal criminal charges in several districts. These civil and criminal charges were ultimately settled by Pfizer, which paid $2.3 billion, which was the largest health care fraud settlement in the history of the Department of Justice.

It is reported that since 2000, Pfizer has paid $11,261,560,400 in penalties.[7] Pfizer has been criminally prosecuted a number of times for the crime of misbranding in violation of 21 U.S.C. § 352(j).

Johnson & Johnson/Janssen Pharmaceuticals, Inc., have had similar problems. In April, 2010, the Department of Justice announced two "Johnson & Johnson Subsidiaries to Pay Over $81 Million to Resolve Allegations of Off-Label Promotion of Topamax Epilepsy Drug Approved by FDA Promoted for Psychiatric Uses."[8] In 2012, 37 State Attorneys General reached a similar settlement regarding the promotion and sale of the drug, Risperdal. Janssen Pharmaceuticals agreed to pay $181 million to settle

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[6] *See* https://www.cbsnews.com/news/doj-blames-pfizer-management-for-bextra-mess-the-goal-was-to-avoid-getting-caught/

[7] *See* https://violationtracker.goodjobsfirst.org/parent/pfizer

[8] *See* https://www.justice.gov/opa/pr/two-johnson-johnson-subsidiaries-pay-over-81-million-resolve-allegations-label-promotion

claims brought against it by Oregon Attorney General Ellen F. Rosenblum and 36 other Attorneys General alleging that the drug company used unfair and deceptive practices in marketing Risperdal and three related anti-psychotic drugs.[9] In November, 2013, the Department of Justice announced that "Johnson & Johnson [agreed] to Pay More Than $2.2 Billion to Resolve Criminal and Civil Investigations."[10] More recently to address its role in assisting the Opioid crisis that has recently plagued a number of States in this Union, the New York Attorney General announced a $230,000,000 settlement with the company.[11] The company has paid a total of $25,117,910,922 in penalties since 2000.[12]

2. The uselessness and concealed risks of the COVID-19 vaccines

"On February 4, 2020, the Secretary [of Health and Human Services] determined pursuant to his authority under section 564 of the FD&C Act that there is a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad and that involves a novel (new) coronavirus (nCoV) first detected in Wuhan City, Hubei Province, China in 2019 (2019-nCoV)." 85 Fed. Reg. 7316, February 7, 2020. Thereafter, various vaccine manufacturers such as Pfizer, Inc., Johnson and

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[9] *See* https://www.doj.state.or.us/media-home/news-media-releases/oregon-attorney-general-and-36-others-reach-181-million-risperdal-settlement/

[10] *See* https://www.justice.gov/opa/pr/johnson-johnson-pay-more-22-billion-resolve-criminal-and-civil-investigations

[11] *See* https://ag.ny.gov/press-release/2021/attorney-general-james-reaches-230-million-settlement-treatment-and-prevention

[12] *See* https://violationtracker.goodjobsfirst.org/parent/johnson-and-johnson

Johnson, and Moderna, Inc., commenced at "warp speed" research on vaccines to treat COVID-19, and these efforts were reaching fruition by early December, 2020.

On December 3, 2020, the HHS Secretary granted immunity for "covered countermeasures" to vaccine manufacturers ("covered persons") that he might thereafter authorize to produce and distribute a vaccine. 85 Fed. Reg. 79190, Dec. 9, 2020. On December 11, 2020, the Pfizer-BioNTech COVID-19 Vaccine was granted Emergency Use Authorization ("EUA"). 86 Fed. Reg. 5200, Jan. 19, 2021.

Once the EUA injections were distributed, however, it became obvious that these COVID-19 vaccines were useless or ineffective from a public health perspective, *i.e.,* they did *not* prevent COVID-19 transmission or infection. Indeed, the vaccinated can catch, spread, and have serious illness from COVID-19 even when fully vaccinated, as the CDC revealed in an August 6, 2021 Morbidity and Mortality Weekly Report (MMWR). In its report, the CDC identified a cluster of COVID-19 cases in Barnstable County, Mass., in which 74 percent of all cases occurred in "fully vaccinated" persons, *i.e.,* those who had received a single dose of Janssen, or two doses of Pfizer or Moderna inoculations. Further, "[a]mong five COVID-19 patients who were hospitalized, four were fully vaccinated." And this in a population where "vaccination coverage" was 69 percent.[13]

As another example of ineffectiveness, a 2021 study indicated that COVID-19 vaccines only provide

[13] See https://www.cdc.gov/mmwr/volumes/70/wr/mm7031e2.htm?s _cid=mm7031e2_w

12 percent effectiveness in limiting the already miniscule risk of COVID to children ages 5 to 11 after a 7-week observation period.[14]

Moreover, the EUA for these vaccines imposed various requirements on the manufacturers which included providing critical information about adverse reactions to the vaccine to VAERS. For example, Pfizer was required to report as follows:

> F. Pfizer Inc. will report to Vaccine Adverse Event Reporting System (VAERS):
>
> • Vaccine administration errors whether or not associated with an adverse event;
> • Serious adverse events (irrespective of attribution to vaccination);
> • Cases of Multisystem Inflammatory Syndrome in children and adults; and
> • Cases of COVID-19 that result in hospitalization or death, that are reported to Pfizer Inc.[15]

A few days after the grant of EUA for the Pfizer vaccine, ModernaTX, Inc., was granted an EUA for its vaccine, Moderna COVID-19 Vaccine, on December 18, 2020. 86 Fed. Reg. 5211, Jan. 19, 2021. The Secretary made the essential findings that "it is reasonable to believe" that this vaccine "may be effective" and that the "potential benefits of Moderna COVID-19 Vaccine outweigh the known and potential risks." 86 Fed. Reg. at 5212. Further, a

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[14] Vajeera Dorabawila *et al*., "Effectiveness of the BNT162b2 vaccine among children 5-11 and 12-17 years in New York after the Emergence of the Omicron Variant," *MEDRXIV* (Feb. 28, 2022).https://www.medrxiv.org/content/10.1101/2022.02.25.22271454 v1.full.pdf

[15] 86 Fed. Reg. at 5207

duty was also imposed on ModernaTX, Inc., to make reports to VAERS similar to that for Pfizer. 86 Fed. Reg. at 5216.

On February 27, 2021, Janssen Biotech, Inc., was granted an EUA for its vaccine, Janssen COVID-19 Vaccine, 86 Fed. Reg. 28608, May 27, 2021. Again, the FDA made the essential findings that this vaccine "may be effective" and that the "potential benefits of Janssen COVID-19 Vaccine ... outweigh its known and potential risks." 86 Fed. Reg. at 28620. Finally, a duty was also imposed on Janssen Biotech, Inc., to make reports to VAERS similar to that for Pfizer, 86 Fed. Reg. at 28624.

Before these vaccines had even been authorized for emergency use, the FDA had already engaged in efforts to determine the effectiveness of any COVID-19 vaccine. On October 22, 2020, the FDA's Vaccines and Related Biological Products Advisory Committee conducted a meeting for various attendees to discuss sundry matters related to the COVID-19 pandemic. During this meeting, a slide presentation was given wherein one slide disclosed the following possible "risks" of the vaccines:[16]

- Guillain-Barré syndrome
- Acute disseminated encephalomyelitis
- Transverse myelitis
- Encephalitis/myelitis/encephalo-myelitis/meningoencephalitis/ meningitis/encepholapathy
- Convulsions/seizures
- Stroke
- Narcolepsy and cataplexy

[16] See page 17 of the document at https://www.fda.gov/media/143557/download

- Anaphylaxis
- Acute myocardial infarction
- Myocarditis/pericarditis
- Autoimmune disease
- Deaths
- Pregnancy and birth outcomes
- Other acute demyelinating diseases
- Non-anaphylactic allergic reactions
- Thrombocytopenia
- Disseminated intravascular coagulation
- Venous thromboembolism
- Arthritis and arthralgia/joint pain
- Kawasaki disease
- Multisystem Inflammatory Syndrome in Children
- Vaccine enhanced disease

However, a few months later when Pfizer, Moderna and Jansen published "Fact Sheets" where they were obligated to provide vaccine recipients specific information about the "benefits and risks" of each vaccine, these risks were not mentioned, but instead carefully concealed. Fact sheets published by Pfizer[17] dated May 10, 2021,[18] by Janssen Biotech dated April 23, 2021,[19] and by Moderna dated March 26, 2021[20] all provide the mandated statements of

[17] *See Abdullahi v. Pfizer, Inc.*, *supra,* and *Showers v. Pfizer, Inc. (In re Pfizer Inc. Sec. Litig.)*, 819 F.3d 642 (2d Cir. 2016), which discuss Pfizer's past misrepresentations in fact sheets.

[18] *See* https://www.childrensmedgroup.com/cmg-media/uploads/2021/05/Covid-Fact-Sheet-for-patient-Pfizer-COVID-19-Vac-5-21.pdf

[19] *See* https://omh.ny.gov/omhweb/o-lov-covid19-vaccine/janssen-cv-19-fact-sheet.pdf

[20] *See* https://www.pullmanregional.org/hubfs/Moderna%20Fact%20Sheet-Mar2021.pdf

these "benefits and risks," which included statements regarding the risk of severe allergic reaction:

> WHAT ARE THE RISKS OF THE [Moderna, Pfizer, or Janssen] COVID-19 VACCINE?
>
> There is a remote chance that the ... COVID-19 Vaccine could cause a severe allergic reaction. A severe allergic reaction would usually occur within a few minutes to one hour after getting a dose of the ... COVID-19 Vaccine. For this reason, your vaccination provider may ask you to stay at the place where you received your vaccine for monitoring after vaccination. Signs of a severe allergic reaction can include:
>
> • Difficulty breathing
> • Swelling of your face and throat
> • A fast heartbeat
> • A bad rash all over your body
> • Dizziness and weakness

Pfizer's fact sheet reported further side effects as follows:

> Side effects that have been reported with the Pfizer-BioNTech COVID-19 Vaccine include:
>
> • severe allergic reactions
> • non-severe allergic reactions such as rash, itching, hives, or swelling of the face
> • injection site pain
> • tiredness
> • headache
> • muscle pain
> • chills
> • joint pain

- fever
- injection site swelling
- injection site redness
- nausea
- feeling unwell
- swollen lymph nodes (lymphadenopathy)
- diarrhea
- vomiting
- arm pain

These may not be all the possible side effects of the Pfizer-BioNTech COVID-19 Vaccine. Serious and unexpected side effects may occur. Pfizer-BioNTech COVID-19 Vaccine is still being studied in clinical trials.

Janssen's fact sheet reported further side effects as follows:

Side effects that have been reported with the Janssen COVID-19 Vaccine include:

- Injection site reactions: pain, redness of the skin and swelling.
- General side effects: headache, feeling very tired, muscle aches, nausea, and fever. ...

Blood clots involving blood vessels in the brain, abdomen, and legs along with low levels of platelets (blood cells that help your body stop bleeding), have occurred in some people who have received the Janssen COVID-19 Vaccine. In people who developed these blood clots and low levels of platelets, symptoms began approximately one to two-weeks following vaccination. Most people who developed these blood clots and low levels of platelets were females ages 18

> through 49 years. The chance of having this occur is remote. You should seek medical attention right away if you have any of the following symptoms after receiving Janssen COVID-19 Vaccine:
>
> • Shortness of breath,
> • Chest pain,
> • Leg swelling,
> • Persistent abdominal pain,
> • Severe or persistent headaches or blurred vision,
> • Easy bruising or tiny blood spots under the skin beyond the site of the injection.
>
> These may not be all the possible side effects of the Janssen COVID-19 Vaccine. Serious and unexpected effects may occur. The Janssen COVID-19 Vaccine is still being studied in clinical trials.

Moderna's fact sheet reported further side effects as follows:

> Side effects that have been reported in a clinical trial with the Moderna COVID-19 Vaccine include:
>
> • Injection site reactions: pain, tenderness and swelling of the lymph nodes in the same arm of the injection, swelling (hardness), and redness
> • General side effects: fatigue, headache, muscle pain, joint pain, chills, nausea and vomiting, and fever
>
> Side effects that have been reported during post-authorization use of the Moderna COVID-19 Vaccine include:

> • Severe allergic reactions
>
> These may not be all the possible side effects of the Moderna COVID-19 Vaccine. Serious and unexpected side effects may occur. The Moderna COVID-19 Vaccine is still being studied in clinical trials.

It must be noted that a number of serious health problems acknowledged by the FDA, or even ***death*** were not mentioned in these fact sheets, which federal law mandates be made available to vaccine recipients. See 21 U.S.C. § 360bbb-3(e).

3. The COVID-19 vaccines are misbranded

Vaccines have proven to be dangerous and harmful to health. An early case of a party awarded workmen's compensation as a result of death caused by the vaccines offered during the 1918 Spanish flu epidemic was *Freedman v. Spicer Mfg. Corp.*, 97 N.J.L. 325, 116 A. 427 (1922). Since then, workmen's compensation laws have been enacted nationwide and injuries caused by vaccines are typically compensated. Congress has also created a vaccine court to handle such cases. See *Camerlin v. Sec'y of the HHS*, 2003 U.S. Claims LEXIS 362. After all, vaccines are unavoidably unsafe. See *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 234 (2011).

Without doubt, Pfizer and Johnson & Johnson are large pharmaceutical companies engaged in interstate commerce. The federal laws regulating the manufacture, sale and distribution of vaccines are predicated on Congress's power to regulate interstate commerce. See 21 U.S.C. § 331. Further, the crime of "misbranding" is the subject of 21 U.S.C. § 352(j), and it provides that a vaccine is misbranded "[i]f it is

dangerous to health when used in the dosage or manner, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof." Thus, if there has been concealment of the harms of these vaccines, such constitutes "misbranding." *United States v. Dotterweich*, 320 U.S. 277 (1943), *Kordel v. United States*, 335 U.S. 345 (1948), and *United States v. Marschall*, 82 F.4th 774 (9th Cir. 2023),

In a study published on September 22, 2022, titled "Serious adverse events of special interest following mRNA COVID-19 vaccination in randomized trials in adults," the authors concluded:

> Pfizer and Moderna mRNA COVID-19 vaccines were associated with an excess risk of serious adverse events of special interest of 10.1 and 15.1 per 10,000 vaccinated over placebo baselines of 17.6 and 42.2 (95% CI −0.4 to 20.6 and −3.6 to 33.8), respectively. Combined, the mRNA vaccines were associated with an excess risk of serious adverse events of special interest of 12.5 per 10,000 vaccinated (95% CI 2.1 to 22.9); risk ratio 1.43 (95 % CI 1.07 to 1.92). The Pfizer trial exhibited a 36% higher risk of serious adverse events in the vaccine group; risk difference 18.0 per 10,000 vaccinated (95% CI 1.2 to 34.9); risk ratio 1.36 (95% CI 1.02 to 1.83). The Moderna trial exhibited a 6% higher risk of serious adverse events in the vaccine group: risk difference 7.1 per 10,000 (95% CI –23.2 to 37.4); risk ratio 1.06 (95% CI 0.84 to 1.33). Combined, there was a 16% higher risk of serious adverse events in mRNA vaccine recipients: risk difference

> 13.2 (9 % CI −3.2 to 29.6); risk ratio 1.16 (95% CI 0.97 to 1.39).[21]

The results of another study styled "Serious harms of the COVID-19 vaccines: a systematic review," dated March 22, 2023, stated:

> Results: We included 18 systematic reviews, 14 randomised trials, and 34 other studies with a control group. Most studies were of poor quality. The most reliable one was a systematic review of regulatory data on the two pivotal randomised trials of the mRNA vaccines. It found significantly more SAEs [serious adverse events] of special interest with the vaccines than with placebo, and the excess risk was considerably larger than the benefit, measured as the risk of hospitalisation. The adenovirus vector vaccines increased the risk of venous thrombosis and thrombocytopenia, and the mRNA based vaccines increased the risk of myocarditis, with a mortality of about 1–2 per 200 cases. We also found evidence of serious neurological harms, including Bell's palsy, Guillain-Barre syndrome, myasthenic disorder and stroke, which are likely due to an autoimmune reaction, as has been suggested also for the HPV vaccines. Severe harms, *i.e.* those that prevent daily

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[21] Joseph Fraiman, *et al.* "Serious adverse events of special interest following mRNA COVID-19 vaccination in randomized trials in adults." *Vaccine* 40:40:5798-5805 (September 22, 2022). https://www.sciencedirect.com/science/article/pii/S0264410X22010283

> activities, were hugely underreported in the randomised trials. These harms were very common in studies of booster doses after a full vaccination and in a study of vaccination of previously infected people.[22]

In yet another study dated July 19, 2024, titled "Spatiotemporal variation of excess all-cause mortality in the world (125 countries) during the Covid period 2020-2023 regarding socio-economic factors and public-health and medical interventions," the authors concluded:

> Using the median value of all-ages vDFR for 2021-2022 for the 78 countries with sufficient data gives an estimated projected global all-ages excess mortality associated with the COVID-19 vaccine rollouts up to 30 December 2022: 16.9 million COVID-19-vaccine-associated deaths.
>
> The spatiotemporal variations in national excess all-cause mortality rates allow us to conclude that the Covid-period (2020-2023) excess all-cause mortality in the world is incompatible with a pandemic viral respiratory disease as a primary cause of death.[23]

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[22] Peter C. Gotzsche and Maryanne Demasi, "Serious harms of the COVID-19 vaccines: a systematic review." Institute for Scientific Freedom, March 22, 2023. https://www.medrxiv.org/content/10.1101/2022.12.06. 22283145v2.full.pdf

[23] Denis G. Rancourt, *et al*. "Spatiotemporal variation of excess all-cause mortality in the world (125 countries) during the Covid period 2020-2023 regarding socio economic factors and public-health and medical interventions." *Correlation Research in the Public Interest,* Report, July 19, 2024. https://correlation-

Within the last year, a noteworthy cardiologist "raised the alarm after uncovering bombshell data showing that Covid mRNA shots have caused a staggering 112,000% increase in brain clots."[24,25]

Renowned oncology professor Angus Dalgleish of St. George's, University of London has stated, "[We are] now facing a tsunami of mounting evidence that the mRNA based covid vaccines not only cause cancer progression but also inhibit current treatments in controlling so-called 'turbo cancers', sudden and aggressive either first time or relapsed cancers, which are on the rise."[26] Some might contend that what the American people have experienced in the last several years regarding the pandemic borders on genocide, in violation of 18 U.S.C. § 1091.

Clearly, long established manufacturers Pfizer and Johnson & Johnson have represented in official documents submitted to government agencies that the vaccines they would produce to address the pandemic known as COVID-19 were safe and effective. Both Pfizer and Johnson & Johnson certainly know what misbranding is, because they have been prosecuted for such crimes, pled guilty

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canada.org/covid-excess-mortality-125 countries/

[24] https://dailynewsfromaolf.substack.com/p/top-cardiologist-drops-bombshell

[25] Claire Rogers, *et al*. "COVID-19 Vaccines: A Risk Factor for Cerebral Thrombotic Syndromes." *Intl. Journal of Innovative Research in Medical Science* 9:11, November 2024. https://ijirms.in/index.php/ijirms/article/view/1982/1420

[26] Dalgleisch, Angus. "This strong evidence of the link between covid vaccines and cancer can no longer be ignored." *TCW*, April 24, 2024. https://www.conservativewoman.co.uk/this-strong-evidence-of-the-link-between-covid-vaccines-and-cancer-can-no-longer-be-ignored/

and paid some of the largest fines in American history. They certainly did not learn from their experience, and have again engaged in misbranding.

V. School district's discharge of Wilkins was wrongful and actionable.

Wilkins was employed with the Respondent School District as a teacher, and he thus had a vested property right in his job. Consequently, he was entitled to a hearing when the district decided to terminate that job. However, no hearing was ever scheduled and the required hearing has been carefully avoided by the district. The district thus violated Wilkins' due process rights. See *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542-43 (1985); and *Ass'n for L.A. Deputy Sheriffs v. County of L.A.*, 648 F.3d 986 (9th Cir. 2011).

These facts were pled in Wilkins' amended complaint, yet both the district court as well as court of appeals dismissed that complaint without leave to amend. Federal Rule of Civil Procedure 15(a) provides that leave to amend a complaint should "be freely given when justice so requires." *Barry Aviation Incorporated v. Land O'Lakes Municipal Airport Commission*, 377 F.3d 682 (7th Cir. 2004).

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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