No. 21-295

IN THE

Supreme Court of the United States

In re AMERICA'S FRONTLINE DOCTORS, *et al.*,
Petitioners.

On Petition for a Writ of Mandamus
to the United States District Court
for the Central District of California

BRIEF FOR *AMICUS CURIAE*
NATURAL SOLUTIONS FOUNDATION
IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*

This *amicus* brief is filed on behalf of a non-governmental private association representing over one hundred thousand individuals who seek natural solutions for their health concerns and who reject the use of "unavoidably unsafe"[1] vaccination.[2]

Amicus curiae is the Natural Solutions Foundation, a private association originally organized in Nevada, by its Trustee and Legal Director Ralph Fucetola J.D., and its Trustee and Medical Director Rima E. Laibow, M.D. Our associates are nongovernmental organizations and individuals who advocate for recognition of the value of 'natural immunity' in achieving and maintaining viable public health.

Moreover, the associates of the Natural Solutions Foundation have what this Court has determined to be a protected privacy interest in preventing agents of the government, including private parties acting under color of law, from "piercing the skin" without their informed consent.[3]

Amicus Natural Solutions Foundation supports Petitioners because the fundamental rights of

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[1] See Justice Sotomayor's 2011 dissent in *Bruesewitz vs Wyeth LLC,* 562 U.S. 223 (2011) discussing the history of "unavoidably unsafe."

[2] It is hereby certified that *Amicus Curiae* has received written permission from the parties to file this brief; that the parties received notice of the intention to file this brief at least 10 days prior to the filing of it; that neither counsel for a party nor any person not associated with *Amicus* authored this brief in whole or in part; and neither did any such counsel or party make any monetary contribution intended to fund the preparation or submission of this brief (Rule 37(6)).

[3] See *Missouri vs McNeely*, 569 US 141 (2013).

informed consent and bodily integrity are at stake. If these rights are trampled upon, Amicus' associates are at high probability of being forced to suffer irreparable damage to their health, livelihoods, and indeed, their lives.

SUMMARY OF ARGUMENT

Petitioner's case involves matters of immediate concern regarding the preservation of bodily integrity, informed consent, and natural immunity for *Amicus* and its associates, as well as approximately one-third of the adult population who have refused to accept Emergency Use Authorization (EUA) COVID "vaccines." The underlying case asserts protected fundamental interests, the confirmation of which is now made all the more urgent by the rapid imposition of vaccine mandates via Presidential Executive Orders and OSHA plans to mandate all private employers with more than 100 employees to require the inoculation of all employees. These "mandates," under color of law only, deprive those threatened with them of their livelihood, if they assert their right of informed consent and refuse the experimental injections.

Further, many of *Amicus*' associates assert that they have natural immunity to the alleged COVID virus. As Petitioners point out,, Joseph A. Ladapo, M.D., Ph.D., an associate professor with UCLA School of Medicine, has stated: "The indisputable scientific facts are that natural immunity exists and is not arbitrarily limited to 90 days, and current COVID-19 vaccines are a medical intervention that carry both known and unknown risks of injury."

Bodily integrity and informed consent as fundamental liberty rights have long been recognized by this Court's jurisprudence. Natural immunity has

also been recognized by the Courts, and recently, several prisoner cases have confirmed that natural immunity is a factor to be considered with respect to protection from disease. At the same time, mis-information from the FDA and the government regarding federal legal authority and the true outcomes and status of the experimental COVID-19 inoculations leads to panic and widespread disregard of these fundamental privacy concerns. Accordingly, District Courts are split on allowing inoculation mandates to go forward, and clarity and instruction from this Court is needed.

Where fundamental rights are implicated, strict scrutiny is required of all government encroachments upon them. Here, the District Court below insisted upon using a rational basis review; even under such a review, it must first be established that legal authority and legitimate governmental interests are involved, which must in turn be based on all evidence available. The District Court failed on this score.

If they ignore the law regarding natural immunity, informed consent and bodily integrity, the Courts below will fail to defend the protected interests of Petitioners, *Amicus*, and all Americans, and this Court ought to intervene to preserve the liberty rights of all.

ARGUMENT

I.
Recent cases and studies demonstrate natural immunity is greater than injected "immunity."

It has recently been shown, via a retrospective study from Israel,[4] that natural immunity is significantly more beneficial than any immunity potentially expected from the EUA inoculations now employed across America.[5] Government-funded institutions (many colleges and universities) are imposing COVID-19 vaccination while excluding the role of natural immunity in addressing the declared pandemic. This is happening while courts are simultaneously applying this principle to prisoners in other government-funded institutions: prisons.

In several recent cases, courts have been petitioned by prisoners with various health issues seeking early release due to the threat of COVID-19 in the prison system. In some cases, these prisoners have been noted by the court to have already contracted and recovered from the disease, and this experience has generally been counted as weighing against early release. These courts have thus taken judicial notice of thousands of years' human experience with a fundamental scientific principle now revalidated by the study just cited: natural immunity exists, and it protects individuals from contracting and transmitting disease.

For example, in the January 2021 decision in *United States v. Tuitele*, CR. NO. 13-00593 JMS (D. Haw., Jan. 6, 2021) the court noted that the prisoner was "64 years old, and suffers from a number of medical issues," but deemed her prior recovery from COVID-19 to be "a fact that counsels

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[4] Israel has one of the highest COVID-19 inoculation rates in the world, and employs Pfizer BioNTech shots exclusively.

[5] "A prior infection from COVID-19 was more protective than vaccine-induced immunity in reducing the risk of infection and symptomatic illness from the Delta variant, according to a retrospective observational study from Israel." www.medpagetoday.com/infectiousdisease/covid19/94258

heavily against a finding of extraordinary or compelling reasons to warrant release." *Id.* at *9-10.

The February 2021 decision in *United States v. Carter,* Crim. Act. No. 15-228-1 (E.D. Pa., Feb. 8, 2021), regarding an overweight and mildly asthmatic prisoner, similarly recited the evidence that reinfection was uncommon, and found this to be a factor militating against the grant of the request.

By contrast, in the June 2021 case of *United States v. Saunders*, 2:07-cr-00294 (W.D. Pa., June 23, 2021), the court noted the state's contention that the prisoner was "'afforded at least some protection' from COVID-19 'due to antibodies he likely developed when he contracted and recovered from the virus,'" *Id.* at *4, but found that reinfection was "plausible given the inherent risks of infection in a congregate prison setting and past COVID-19 infection rates" in specified prisons. *Id.* at *12.

As increasing knowledge develops in understanding the relative strength of antibody responses to the disease, it may eventually be the case that tests will be able to pinpoint with greater accuracy the robustness of the antibody response of a given individual. But even as courts have recognized, candidates for vaccination undoubtedly already have an immune response to the disease comparable or superior to what vaccination would provide, rendering vaccination superfluous.

Moreover, it is already acknowledged on many fronts that COVID-19 injections do *not* prevent the experimentally vaccinated from any 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.[6]

A question arises as to whether governments or private entities can continue to have any legitimate interest in requiring a medical procedure that can confer only marginal, or no, benefits to its recipients. If risk from adverse reactions outweigh potential benefits, then injections are better termed weapons rather than medical treatments.

Ignoring the fundamental principle of naturally acquired immunity and speculating that experimental and nearly untried novel vaccines can be required for attendance at a federally-funded post-secondary institution without any scientific proof that the novel vaccines even prevent the targeted infection and transmission, was a clear abuse of discretion. Assuming, *arguendo*, that the District Court's determination that matters involving the fundamental right of bodily integrity should be decided on a rational, rather than a strict scrutiny basis, it is clear that no rational basis can exist for requiring an injection which does not benefit the recipient, nor the population in general (and especially not over the strength of natural immunity).

No rational basis can exist for denying Americans their fundamental right to informed refusal of medical treatment when the vaccinated "protection" against COVID-19 fails in just six

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[6] See https://www.cdc.gov/mmwr/volumes/70/wr/mm70 31e2.htm?s_cid=mm7031e2_w

months, as shown by the recent emergency use authorization of six-month booster shots for the Pfizer-BioNTech vaccine.[7]

II.
Bodily integrity is a fundamental right.

Petitioners and *Amicus*' associates have a protected interest in asserting informed consent with regard to mandated vaccinations. The basis of this interest arises from the fundamental liberty and right of controlling one's own body. *Amicus* advocates recognition of bodily integrity as a significant privacy interest. A brief review of a representative sampling of the numerous cases relating to bodily integrity and medical treatment mandates indicates that this Court takes these fundamental rights seriously, and that strict scrutiny is required whenever they are threatened by governmental action.

In *Union Pacific Railway Co. v. Botsford*, 141 U.S. 250, 251 (1891), a plaintiff in a personal injury suit could not be ordered "to submit to a surgical examination as to the extent of the injury sued for." Holding the judge to be without authority under the common law to require such an invasion, the Court famously stated, "No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law."

Skinner v. Oklahoma, 316 U.S. 535, 541 (1942) struck down a statute that mandated the sterilization of habitual criminals convicted of crimes of moral turpitude. Although this Court's analysis

[7] https://www.fda.gov/nedua/151731/download

was couched in equal protection terms, the Court nevertheless observed that the invasive medical procedure of sterilization performed without the consent of the patient, "forever deprived [the individual] of a basic liberty."

Rochin v. California, 342 U.S. 165 (1952) found that forced stomach pumping of an arrested person to obtain evidence of illegal drug possession violated the Due Process Clause. See also *Vitek v. Jones*, 445 U.S. 480, 494 (1980) (transfer to mental hospital coupled with mandatory behavior modification treatment implicated liberty interests); *Parham v. J.R.*, 442 U.S. 584, 600 (1979) ("[A] child, in common with adults, has a substantial liberty interest in not being confined unnecessarily for medical treatment").

Winston v. Lee, 470 U.S. 753, 755 (1985) held that compelled surgical intrusion into an individual's body for evidence would violate that individual's "right to be secure in his person" and be "unreasonable" under the Fourth Amendment.

In *Washington v. Harper*, 494 U.S. 210, 221-222 (1990) a prison inmate with a serious mental illness was treated with antipsychotic drugs against his will:

> We have no doubt that, in addition to the liberty interest created by the State's Policy, respondent possesses a significant liberty interest in avoiding the unwanted administration of antipsychotic drugs under the Due Process Clause of the Fourteenth Amendment. *Id*.

In *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261, 278 (1990), this Court stated:

The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." The principle that a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment may be inferred from our prior decisions. In *Jacobson v. Massachusetts*, 197 U.S. 11, 24-30 (1905), for instance, the Court balanced an individual's liberty interest in declining an unwanted smallpox vaccine against the State's interest in preventing disease. Decisions prior to the incorporation of the Fourth Amendment into the Fourteenth Amendment analyzed searches and seizures involving the body under the Due Process Clause and were thought to implicate substantial liberty interests. See, *e.g., Breithaupt v. Abram*, 352 U.S. 432, 439, 77 S.Ct. 408, 412, 1 L.Ed.2d 448 (1957) ("As against the right of an individual that his person be held inviolable . . . must be set the interests of society . . .").

Just this Term, in the course of holding that a State's procedures for administering antipsychotic medication to prisoners were sufficient to satisfy due process concerns, we recognized that prisoners possess "a significant liberty interest in avoiding the unwanted administration of antipsychotic drugs under the Due Process Clause of the Fourteenth Amendment." *Washington v. Harper*, 494 U.S. 210, 221-222, 110 S.Ct. 1028 1036, 108 L.Ed.2d 178 (1990); see also *id*., at 229, 110 S.Ct., at 1041 ("The forcible injection of medication into a nonconsenting person's

> body represents a substantial interference with that person's liberty"). Still other cases support the recognition of a general liberty interest in refusing medical treatment. *Vitek v. Jones*, 445 U.S. 480, 494 (1980) (transfer to mental hospital coupled with mandatory behavior modification treatment implicated liberty interests).

See also *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").

In Winters v. Miller, 446 F.2d 65 (2nd Cir. 1971), a committed patient sued under 42 U.S.C. § 1983, claiming her first amendment right to freedom of religion had been violated by forcible medication. The patient had never been found mentally incompetent and there was no presumption of incompetence under New York law. The circuit court refused to recognize any public policy argument that because of the nature of the illness as mental, the patient should be denied the right to give an informed consent to the treatment.

*Schneider v. Rivic*i, 817 F.2d 987, 995 (2nd Cir. 1987), described informed consent thusly: "While a patient should be encouraged to exercise care for his own safety, we believe that an informed decision to avoid surgery and conventional chemotherapy is within the patient's right 'to determine what shall be done with his own body.'"

In considering the applications of the Petitioners herein, *Amicus* urges the Court to judge according to this Court's bodily integrity jurisprudence. We see from the cases cited *supra* that the Courts below erred in failing to give due weight to this jurisprudence and in ruling against Petitioners.

Amicus urges this Court to take control of the lower Courts in order to ensure that the proper standard — strict scrutiny — is applied to Petitioners' application for a TRO and preliminary injunction. Because once the COVID-19 injection enters a body, the bodily integrity it destroys is irreparable by modern medicine. This is now evident in the permanent disability and death reports surfacing in the VAERS database, where deaths following COVID-19 injection now represent two-thirds of all deaths following vaccination ever reported (over 31 years) to the CDC (for the States and Territories) — and this has occurred in just nine months.[8] So much evidence of the danger and ineffectiveness of these unnatural shots now exists that even rational review would weigh in favor of Petitioners and thousands of others who rely on natural immunity, including *Amicus*' associates.

III.
Unavoidably unsafe vaccines and informed consent.

The protected privacy interest of "informed consent" includes the Petitioners and Amicus' associates' right to refuse such consent for

[8] VAERS, the Vaccine Adverse Events Reporting System, is managed by the FDA and the CDC to monitor adverse events related to vaccination. It can be searched through the portal at https://www.wonder.cdc.gov/vaers.html.

"emergency use authorization" (EUA) COVID inoculation. Yet they are faced with a federal executive administration which insists that everyone be inoculated, without regard to standing law and constitutional safeguards. The very law which allows for EUA interventions, however, makes such interventions "optional."

The FDA acknowledges that EUA interventions may be refused under law:

> 21 U.S.C. § 360bbb-3(e)(1)(A)(ii). Appropriate conditions designed to ensure that individuals to whom the product is administered are informed— that the Secretary has authorized the emergency use of the product; of the significant known and potential benefits and risks of such use, and of the extent to which such benefits and risks are unknown; and of the option to accept or refuse administration of the product, of the consequences, if any, of refusing administration of the product, and of the alternatives to the product that are available and of their benefits and risks.[9]

The right of refusal is especially critical considering that our Courts have held that vaccines are "unavoidably unsafe"[10] regardless of how they are designed, and may therefore be reasonably assumed to increase risk of harm. As this Court indicated in *Jacobson v. Massachusetts*, 197 U.S. 11, 39 (1905) the Courts are "competent to interfere and protect

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[9] https://www.fda.gov/vaccines-blood-biologics/vaccines/emergency-use-authorization-vaccines-explained

[10] See Justice Sotomayor's dissent in *Bruesewitz vs Wyeth*, 562 U.S. 223 (2011), where she discusses the history of "unavoidably unsafe."

thehealth and life of the individual concerned" where necessary. Indeed, the law is clear, courts must intervene,

> …if it be apparent or can be shown with reasonable certainty that he is not at the time a fit subject of vaccination or that vaccination, by reason of his then condition, would seriously impair his health or probably cause his death. *Id.*, at 39.

This was the situation even prior to the development of the doctrine of informed consent. In 1914, Judge (later Supreme Court Justice) Benjamin Cardozo validated the concept of voluntary consent in *Schloendorff v. Society of New York Hosp*.,105 N.E. 92, 93 (N.Y. 1914) when he deemed any medical intervention without informed consent an unlawful trespass:

> Every human being of adult years and sound mind has a right to determine what shall be donewith his own body; and a surgeon who performs an operation without his patient's consent commits an assault for which he is liable in damages.

The law of informed consent was further developed through the Nuremberg Trials and customary international law[11] and acknowledged by this Court as recently as 2013 in the case of *Missouri vs McNeely*, 569 US 141, 15 (2013):

> Even a "… diminished expectation of privacy does not diminish the … privacy interest in

[11] https://jme.bmj.com/content/31/3/173.full

> preventing a government agent from piercing the … skin. And though a blood test conducted in a medical setting by trained personnel is less intrusive than other bodily invasions, this Court has never retreated from its recognition that any compelled intrusion into the human body implicates significant, constitutionally protected privacy interests…"

Restrictions on such privacy interests clearly ought to be subject to strict scrutiny.

Unchanged since its issuance in June 2020 is EEOC guidance finding that an antibody test "constitutes a medical examination under the ADA" (which prohibits such examinations of employees absent a demonstration of business necessity),[12] and therefore that the ADA "does not allow employers to require antibody testing before allowing employees to re-enter the workplace."[13]

This guidance may come to be overridden by State laws, as it has been for several other diseases. For example, Maryland law requires hospital workers to provide evidence of rubella vaccination, but provides as an alternative "proof of immunity by blood test for antibody to rubella."[14] Massachusetts requires personnel assigned to hospital maternal-

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[12] EEOC, What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws (May 28, 2021), https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws

[13] EEOC, "EEOC Issues Updated COVID-19 Technical Assistance Publication Addressing Antibody Testing" (June 17, 2020), https://www.eeoc.gov/newsroom/eeoc-issues-updated-covid-19-technical-assistance-publication-addressing-antibody-testing

[14] Md. Code Regs. 10.06.01.15 (2018).

newborn areas to demonstrate immunity to both measles and rubella, but allows both to be done with antibody tests.[15] California,[16] Michigan,[17] and Washington[18] each have provisions requiring employers to offer hepatitis B vaccination to employees, but lifting this requirement with respect to employees who are able to demonstrate the presence of relevant antibodies. New Jersey has a unique provision for students, the New Jersey Antibody Titer Law, which allows those who have received a first MMR dose to have an antibody test in lieu of receiving the second dose.[19] These laws are reasonable, given the inherently unsafe nature of vaccination, as recognized by this Court.

The Courts below failed to analyze the relationship between "unavoidably unsafe" vaccines and the law of informed consent. The principle of that law is clear, and the Courts have asserted their authority to intervene in such matters. All vaccines remain suspect because they are necessarily unsafe, and thus all must be subject to individuals' refusals to give informed consent.

IV.
FDA's alleged 'vaccine approvals' obscure legal reality.

Recent developments in the Food and Drug Administration (FDA) purported approval of Pfizer COVID injections give rise to significant issues which ought to be addressed by this Court. By letter dated

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[15] 105 Mass. Code Regs. § 130.626 (2017).
[16] Cal. Code Regs. Tit. 8, §5193 (2018)
[17] Mich. Admin. Code R. 325.70013 (2018)
[18] Wash. Admin. Code §296-823-13005, 296-823-130 (2018).
[19] NJSA 26:2N-8-11 (2018).

August 23, 2021 the FDA granted partial approval for *future* production of the Pfizer injection under a new name, CORMIRNATY. At the same time, the FDA extended existing EUAs for the three inoculations that are actually available to the public and which are being mandated by various governments and private entities acting under color of law.

Reading the actual letters that the FDA sent to Pfizer makes clear that no full FDA approval (the grant of a business license to market a drug) is in place. All available COVID inoculations are still under EUA. They are still experimental drugs subject to informed consent and not subject to "mandates" by governmental agencies or private entities (*e.g.,* employers and educational institutions) acting under color of law.

The FDA sent two letters on August 23, 2021. The first was a letter of BLA (Biologics License Application) approval for CORMIRNATY, and the second was a letter of EUA extension to the existing Pfizer-BioNTech COVID-19 Vaccine.[20] The second letter was updated on September 22, 2021 to include EUA extension to certain booster shots.

The first letter approves Pfizer's application for a license to label its COVID-19 drug with the brand name COMIRNATY. It also states the terms and requirements for nine additional clinical trials over five years, with yearly status reports, to study the acknowledged occurrences of myocarditis and pericarditis following administration of the Pfizer drug. The license to label and manufacture is not a full approval of the drug, which is still subject to years of clinical trials.

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[20] BLA Approval: https://www.fda.gov/media/151710/download; EUA Extension: https://www.fda.gov/media/150386/download

The EUA extension letter extends the term of the EUA for the current drug and licenses the experimental use of the brand-name drug COMIRNATY.

The Agency commanded the manufacturer to continue to study the adverse events that are to be expected from this class of drugs, stating on page 6:

> We have determined that an analysis of spontaneous postmarketing adverse events reported under section 505(k)(1) of the FDCA will not be sufficient to assess known serious risks of myocarditis and pericarditis and identify an unexpected serious risk of subclinical myocarditis.
>
> Furthermore, the pharmacovigilance system that FDA is required to maintain under section 505(k)(3) of the FDCA is not sufficient to assess these serious risks. Therefore, based on appropriate scientific data, we have determined that you are required to conduct the following studies: [Redacted]"[21]

Thus the COVID injections which various government agencies and private entities acting under color of law threaten to mandate against Petitioners and *Amicus*' associates remain either subject to the EUA, which is specifically conditioned upon respect for informed consent or, when produced, at some future time, under the new approval, will remain in an experimental state still subject to informed consent. The use of sanitary masks and certain medical tests also remain under EUA. In

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[21]www.fda.gov/media/151710/download?fbclid=IwAR3v2QYh_j__z4VFzDPfG_3szyq3OZxYYePbYj_F4DSlOd9oywMXivlGzP8

sum, the lower Courts erred in failing to consider the EUA provisions, which do not allow for inoculation mandates. Any true rational basis review would, at a minimum, have to take these legal facts into account, and discover that no legal authority exists for mandates of EUA experimental inoculations.

V.
Government agencies misinform the public.

Amicus seeks to promote honest health information from public health authorities. During the current declared pandemic, public health authorities have engaged in distorted misinformation, reaching as far as to call into doubt the existence of any true pandemic. Accurate information is still, however, often hidden in plain sight, as is demonstrated in the following footnote to a government report. In considering the trustworthiness of various government agency pronouncements regarding the existence of a pandemic, *Amicus* urges the Court to take judicial notice of the Morbidity and Mortality Weekly Report of August 27, 2021.[22] At page 4, the second footnote reads:

> † Persons were considered fully vaccinated ≥14 days after receipt of the second dose in a 2-dose series (Pfizer-BioNTech or Moderna COVID-19 vaccines) or after 1 dose of the single-dose Janssen (Johnson & Johnson) COVID-19 vaccine; partially vaccinated ≥14 days after receipt of the first dose and <14 days after the second dose in a 2-dose series;

[22] MMWR, Vol. 70, No. 34. (August 27, 2021), U.S. Department of Health and Human Services, CDC.

> and unvaccinated <14 days receipt of the first dose of a 2-dose series or 1 dose of the single-dose vaccine or if no vaccination registry data were available.

This means that persons who contract COVID, or have an adverse reaction to the EUA inoculations within 14 days of the inoculation, are deemed to be *unvaccinated*, thereby skewing the statistical record to misinform the public regarding both the number of COVID cases among the vaccinated, and the number of adverse reactions among them as well.

This Court, following the holding in *Jacobson*, should reverse the failures of the Courts below and intervene in the case before the Court. Modern science confirms, based upon statistical evidence available to the Court, that the EUA-based, and indeed all, vaccines must "seriously impair .. .health ..." under the *Jacobson* rationale. Furthermore, *Jacobson* was arguably squarely based on the existence of an actual threatened epidemic, as historically understood. *Amicus* make no statement here regarding the *previous* existence of a COVID pandemic, heretofore declared by the executive branch. But *Amicus* does assert that the current figures of symptomatic infection demonstrate that there is now no rational basis to find that a pandemic currently exists, by any reasonable definition of that term.

VI.
This Court should resolve the split among the lower Courts.

This Court generally intervenes where the case law developing in various federal courts is inconsistent. Such a split is developing over the

pressing public issue of inoculation mandates. Recently, District Courts among several Circuits, in Michigan, New York, and Louisiana, made decisions which support fundamental rights to informed consent and bodily integrity, while courts in Indiana and California upheld COVID 19 inoculation mandates. These cases are:

1. United States District Court for the Western District of Michigan, Southern Division

   Emily Dahl, et al., Plaintiff v. The Board of Trustees of Western Michigan University, et al., Defendants, Civil Action No. 1:221-cv-757. See Amended Order Granting Motion for Temporary Restraining Order, filed August 31, 2021, ECF No. 8, Page ID. 126.

2. United States District Court for the Western District of Louisiana, Monroe Division

   Rachel Lynn Magliulo, et al. Plaintiffs versus Edward Via College of Osteopathic Medicine, Defendant, Civil Action No. 3:21-cv-2304. See Memorandum Order (Granting TRO), Filed August 17, 2021, Page ID. 890.

3. United States District Court for the Northern District of Indiana, South Bend Division

   Ryan Klaassen et al., Plaintiffs, v. The Trustees of Indiana University, Defendant, Cause No. 1:21-CV-238. See Opinion & Order [Denying TRO], Filed July 18,2021, Document 34.

4. United States District Court for the Central District of California

America's Frontline Doctors, et al., Plaintiffs v. Kim A. Wilcox, et al., Defendants, Case No. EDCV 21-1243. See Civil Minutes - General, July 3, 2021: Order Denying Plaintiffs' Ex Parte Application for Temporary Restraining Order (Dkt. No. 8).

5. United States District Court for the Northern District of New York

Dr. A. et al., Plaintiffs v. Kathy Hochul, Governor, et al., Defendants, Case 1:21-CV-1009. See Order (Granting Temporary Restraining Order), Filed September 14, 2021, Document 7.

The novel assertion of executive authority to mandate EUA or any inoculation is meeting increasing resistance among the judges of the U.S. District Courts. Some still find these impositions are not prohibited by fundamental rights or existing law. Many more challenges to governmental overreach in the area of inoculation will be raised; this Court should take control of the lower Courts now and instruct them to scrutinize such challenges strictly in light of the fundamental liberties at stake. This question, indeed, is one of the most momentous questions facing our legal system as governments attempt to jab hundreds of millions of Americans with untried novel drugs. A division among the Courts means that some specific individuals, including parties herein, will suffer a diminishing of their legal interests. This Court should therefore take jurisdiction to vindicate these privacy and liberty interests protected by the Constitution.

CONCLUSION

Amicus draws the attention of this Court to the crucial role of natural immunity in addressing not only Petitioners' significant protected interests, but also those same interests of the public during this period of *declared* (but not currently scientifically validated) pandemic accompanied by untenable medical interventions. This Court ought to take notice, as well, that the President seeks to indirectly mandate EUA inoculations through employers, despite the settled jurisprudence that the States alone have such police power (if it exists), and the settled jurisprudence of this Court that all human beings have a right to informed consent and bodily integrity.

Shall the most serious public health challenge in several generations be resolved by executive action and by private mandates under color of law without meaningful judicial review under the strict scrutiny standard?

Amicus respectfully requests that this Court grant the Petition for a Writ of Mandamus, or in the alternative, Certification, in the public interest and to protect the interests of the Petitioners and Amicus' associates.

Respectfully submitted,

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