

Nos. 21A243, 21A244, 21A245, 21A246, 21A247, 21A248, 21A249, 21A250, 21A251, 21A252, 21A258,  
21A259, 21A260, and 21A267

---

In the  
**Supreme Court of the United States**

---

IN RE: MCP NO. 165, OCCUPATIONAL SAFETY AND HEALTH  
ADMINISTRATION, ITERIM FINAL RULE: COVID-19 VACCINATION AND  
TESTING; EMERGENCY TEMPORARY STANDARD 86 FED. REG. 61402,  
ISSUED ON NOVEMBER 4, 2021

[CASE CAPTIONS ON FOLLOWING PAGES]

*On Applications for Stay or Injunction Pending Review of Petition for Writ of  
Certiorari to the United States Court of Appeals for the Sixth Circuit*

---

**MOTION OF FOUNDATION FOR MORAL LAW FOR LEAVE TO FILE ATTACHED *AMICUS  
CURIAE* BRIEF IN SUPPORT OF APPLICANTS; FOR LEAVE TO FILE WITHOUT 10-DAYS  
NOTICE; AND FOR LEAVE TO FILE IN PAPER FORMAT**

---

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

*Counsel for Amicus Curiae*

JOB CREATORS NETWORK, ET AL.,

*Applicants,*

v.

DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, ET  
AL.,

*Respondents.*

---

NATIONAL FEDERATION OF INDEPENDENT BUSINESS, ET AL.,

*Applicants,*

v.

DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, ET  
AL.,

*Respondents.*

---

PHILLIPS MANUFACTURING & TOWER COMPANY, ET AL.,

*Applicants,*

v.

DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, ET  
AL.,

*Respondents.*

---

THE SOUTHERN BAPTIST THEOLOGICAL SEMINARY, ET AL.,

*Applicants,*

v.

DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, ET  
AL.,

*Respondents.*

---

STATE OF OHIO, ET AL.,

*Applicants,*

v.

DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, ET  
AL.,

*Respondents.*

---

BST HOLDINGS, LLC, ET AL.,

*Applicants,*

v.

DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, ET AL.,

*Respondents.*

---

HERITAGE FOUNDATION, ET AL.,

*Applicants,*

v.

DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, ET AL.,

*Respondents.*

---

WORD OF GOD FELLOWSHIP, INC. D/B/A DAYSTAR TELEVISION NETWORK, ET AL.,

*Applicants,*

v.

DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, ET AL.,

*Respondents.*

---

ASSOCIATED BUILDERS AND CONTRACTORS, INC., ET AL.,

*Applicants,*

v.

DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, ET AL.,

*Respondents.*

---

SCOTT BEDKE, IN HIS OFFICIAL CAPACITY AS SPEAKER OF THE IDAHO HOUSE OF REPRESENTATIVES, ET AL.,

*Applicants,*

v.

DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, ET AL.,

*Respondents.*

---

REPUBLICAN NATIONAL COMMITTEE,

*Applicant,*

v.

DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, ET  
AL.,

*Respondents.*

---

BETTEN CHEVROLET, INC.,

*Applicant,*

v.

DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, ET  
AL.,

*Respondents.*

---

BENTKEY SERVICES, LLC, DBA THE DAILY WIRE,

*Applicant,*

v.

DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, ET  
AL.,

*Respondents.*

---

FABARC STEEL SUPPLY, INC., ET AL.,

*Applicants,*

v.

DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, ET  
AL.,

*Respondents.*

---

## 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 to the Emergency Applications for Administrative Stays and Stays of Administrative Action, and Alternative Petitions for Writ of Certiorari Before Judgment, filed between December 17 and December 22, 2021, (2) to file without providing 10 days' advance notice to the parties of the Foundation's intent to file; and (3) to file in unbound format on 8 1/2 - by - 11 inch paper rather than in booklet form.

Because of expedited briefing schedule ordered by the Court and the announcement of the January 7, 2022 hearing, the Foundation did not seek consent of the parties to file.

*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 OSHA's ETS violates the Constitution and will cause irreparable harm to the Applicants, 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. The Brief also examines the January 3, 2022 Order on Preliminary Injunction issued by the U.S. District Court for the Northern District of Texas in *U.S. Navy Seals v. Biden*, Civil Action No. 4:21-cv-01236-O, and its relevance to the case at hand.

For the foregoing reasons, the Foundation respectfully requests that the Court grant its motion to file the attached *amicus* brief. The Foundation further requests leave to file the brief in unbound format on

8 1/2- by - 11 inch paper rather than in booklet form, and to file the brief without providing the 10 days' advance notice because of the expedited briefing ordered by the Court.

Respectfully submitted,

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

*Counsel for Amicus Curiae*

January 5, 2022

Nos. 21A243, 21A244, 21A245, 21A246, 21A247, 21A248, 21A249, 21A250, 21A251, 21A252, 21A258,  
21A259, 21A260, and 21A267

---

In the  
**Supreme Court of the United States**

---

IN RE: MCP NO. 165, OCCUPATIONAL SAFETY AND HEALTH  
ADMINISTRATION, ITERIM FINAL RULE: COVID-19 VACCINATION AND  
TESTING; EMERGENCY TEMPORARY STANDARD 86 FED. REG. 61402,  
ISSUED ON NOVEMBER 4, 2021

*On Applications for Stay or Injunction Pending Review of Petition for Writ of  
Certiorari to the United States Court of Appeals for the Sixth Circuit*

---

**BRIEF OF FOUNDATION FOR MORAL LAW AS *AMICUS CURIAE* BRIEF IN SUPPORT OF  
APPLICANTS FOR STAY OR INJUNCTION PENDING REVIEW**

---

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

*Counsel for Amicus Curiae*



**TABLE OF CONTENTS**

TABLE OF CONTENTS .....ii

TABLE OF AUTHORITIES.....iii

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

SUMMARY OF ARGUMENT..... 1

ARGUMENT ..... 2

    I.    The Constitution does not delegate a police power to the  
        federal government. .... 3

    II.   The power to delegate legislative authority narrows on  
        matters that affect civil liberties. .... 8

    III.  U.S. NAVY SEALs v. Biden deserves this Court’s  
        consideration. .... 15

CONCLUSION..... 17

## TABLE OF AUTHORITIES

### Cases

|  |       |
|--|-------|
| <i>Cruzan v. Director, Missouri Department of Health</i> ,<br>497 U.S. 261 (1990)..... | 14-15 |
| <i>Elrod v. Burns</i> ,<br>427 U.S. 347 (1976).....                                    | 16    |
| <i>Furman v. Georgia</i><br>408 U.S. 238 (1972).....                                   | 7     |
| <i>Jacobson v. Massachusetts</i> ,<br>197 U.S. 11 (1905).....                          | 3-4   |
| <i>J.W. Hampton, Jr., &amp; Co. v. United States</i> ,<br>276 U.S. 394 (1928).....     | 9     |
| <i>Marshall Field &amp; Co. v. Clark</i> ,<br>143 U.S. 649 (1892).....                 | 8     |
| <i>Mistretta v. United States</i> ,<br>488 U.S. 361 (1989).....                        | 9     |
| <i>Orloff v. Willoughby</i> ,<br>345 U.S. 83 (1953).....                               | 16    |
| <i>Panama Refining Co. v. Ryan</i> ,<br>293 U.S. 388 (1935).....                       | 9     |
| <i>Prince v. Massachusetts</i> ,<br>321 U.S. 158 (1944).....                           | 4     |
| <i>Thomas v. Review Board</i> ,<br>450 U.S. 707 (1980).....                            | 12-13 |

|   |               |
|---|---------------|
| <i>United States v. Robel</i> ,<br>389 U.S. 258 (1967).....   | 10, 15        |
| <i>United States v. Ballard</i> ,<br>322 U.S. 78 (1944).....  | 12            |
| <i>U.S. Navy Seals v. Biden</i> ,<br>__ F.Supp.3d __ (N.D. Tex. F.W. 2022) .....  | 14-17         |
| <i>Washington v. Harper</i> ,<br>494 U.S. 210 (1990).....   | 14            |
| <i>Wayman v. Southard</i> ,<br>23 U.S. (10 Wheat.) 1 (1825).....  | 8             |
| <b>Constitution and Statutes</b>  |               |
| Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 241.....  | 12            |
| OSHA Emergency Temporary Standard, November 5, 2021.....  | <i>passim</i> |
| Occupational Safety and Health Act, Public Law 91-596, 84 Stat.<br>1590 .....   | <i>passim</i> |
| United States Constitution .....  | <i>passim</i> |
| <b>Other</b>  |               |
| Frontline Doctors, <i>Amicus Brief, In. Re. MCP No. 165</i> ,<br><i>Occupational Safety and Health Administration</i> , Filed December<br>30, 2021.....   | 5             |
| Gerke, S. et al., <u>Applying the proportionality principle to COVID-<br/>19 antibody testing</u> , <i>Journal of Law and the Biosciences</i> , Vol. 7, Iss.<br>1, Aug. 4, 2020, <i>available at</i> :<br><a href="https://academic.oup.com/jlb/article/7/1/ljaa058/5878809">https://academic.oup.com/jlb/article/7/1/ljaa058/5878809</a> ..... | 11            |

|  |     |
|--|-----|
| <i>Holy Bible</i> , Revelation 13.....   | 12  |
| "Limiting the State's Police Power: Judicial Reaction to John Stuart Mill," <i>University of Chicago Law Review</i> : Vol. 37 : Iss. 3 , Article 9 (1970) .....  | 7   |
| Madison, James, Summary of Madison's Remarks (10 January 1794), <i>Annals of Congress</i> , House of Representatives, 3rd Congress, 1st Session .....  | 5   |
| Mill, John Stuart, <i>On Liberty</i> .....   | 6-7 |
| The National Catholic Bioethics Center, <u>Vaccine Exemption Resource for Individuals</u> , (July 7, 2021) <a href="https://catholic-factchecking.com/2021/07/vaccine-exemption-resource-for-individuals/">https://catholic-factchecking.com/2021/07/vaccine-exemption-resource-for-individuals/</a> ..... | 11  |

## INTEREST OF *AMICUS CURIAE*<sup>1</sup>

*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, the President has ordered the Occupational Safety and Health Administration (OSHA) to impose an Emergency Temporary Standard (ETS) that is neither emergency nor temporary and that, if allowed to stand, would set a precedent empowering the executive branch of the federal government to regulate all aspects of American life.

---

<sup>1</sup> Because of the expedited briefing schedule ordered by the Court, *Amicus* has neither sought nor received consent from the parties. 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.

This ETS is not authorized by the Constitution, constitutes an unconstitutional delegation of legislative power, violates religious liberty and other fundamental rights, and will not accomplish its intended goals.

If Applicants are forced to wait while the courts run their normal course, they will suffer irreparable harm including loss of their jobs, careers, and livelihood for themselves and their families. This is completely unnecessary, but only this Court's timely intervention can prevent this irreparable harm.

## **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.

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

The Briefs of Union Petitioners and the Constitutional Accountability Center argue that the Occupational Safety and Health Act (OSH Act) validly delegates to the Occupational Safety and Health Administration (OSHA) the authority to impose compulsory vaccinations.

However, 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.

*Jacobson v. Massachusetts*, 197 U.S. 11 (1905), is often cited as authority for the mandatory vaccination. The Foundation believes *Jacobson* does not support OSHA's Emergency Temporary Standard (ETS) 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.

- (2) Mr. Jacobson simply argued that the law violated his right to decline vaccination; he did not raise a religious objection to vaccination.<sup>2</sup>
- (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, decided before the courts developed the "strict scrutiny" doctrine that government can infringe fundamental rights only by demonstrating a compelling state interest that cannot be achieved by less restrictive means.

---

<sup>2</sup> 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."



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.<sup>3</sup>

Except for a misplaced reference to the commerce clause, Respondents 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.

Furthermore, 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, 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

---

<sup>3</sup> Summation of Madison's Remarks (10 January 1794), *Annals of Congress*, House of Representatives, 3<sup>rd</sup> Congress, 1<sup>st</sup> Session, p. 170.

spreading COVID-19 to others. They only make the symptoms less severe.<sup>4</sup>

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. 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

---

<sup>4</sup> 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.

himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.<sup>5</sup>

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).

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.

---

<sup>5</sup>Editors, 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>

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

## **II. 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 redelegated 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,<sup>6</sup> of Americans object to the COVID-19 vaccine for religious reasons, including the following:

---

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

(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 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.

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

And vaccination affects many other fundamental 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 OSHA would force injections upon free healthy persons. This clearly involves fundamental rights, so as this Court 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.

**III. U.S. NAVY SEALs v. Biden deserves this Court’s consideration.**

On January 3, 2022, the United States District Court for the Northern District of Texas issued a preliminary injunction enjoining the Navy from forcing Plaintiffs to undergo vaccination and enjoining the Navy from taking any adverse actions against Plaintiffs. The case involved the military rather than OSHA’s ETS, but that 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.

In the case at hand, the converse should also be true: If the OSHA ETS provides for religious exemptions, there is no reason OSHA cannot provide for other exemptions as well. In fact, this undercuts the whole argument that mandatory universal vaccination is necessary.

The Foundation had filed an *amicus* brief in support of the Navy SEALs in this case, and the Foundation respectfully invites this Court's attention to the January 3 ruling in this case.

### **CONCLUSION**

The first confirmed COVID-19 case in the United States occurred around January 20, 2020, nearly two years ago. Since then, besides vaccines, other forms of combating the virus have arisen. On September 9, 2021, President Biden announced that he was directing OSHA to draft a regulation making vaccination mandatory. OSHA announced that regulation in November 2021, with vaccination deadlines of January 4, 2022 for many. This "all deliberate speed" hardly sounds like the reaction to an emergency.

And now, Applicants and their families stand to lose their careers and their livelihoods because of the OSHA mandate. This, coupled with the violation of their constitutional rights, clearly constitutes irreparable injury.

By granting a preliminary injunction until these issues can be fully litigated and resolved, this Court can preserve Applicants, their families, and countless others from serious and irreparable injury.

The Foundation urges this Court to grant Applicants' injunction.

Respectfully submitted,

JOHN A. EIDSMOE

*Counsel of Record*

ROY S. MOORE

TALMADGE BUTTS

FOUNDATION FOR MORAL LAW

One Dexter Avenue

Montgomery, AL 36104

(334) 262-1245

eidsmoeja@juno.com

*Counsel for Amicus Curiae*

January 5, 2022