No. 25-765

In the Supreme Court of the United States

HEALTH FREEDOM DEFENSE FUND, INC., A WYOMING NOT-FOR-PROFIT CORPORATION, ET AL.,

Petitioners,

v.

ALBERTO CARVALHO, IN HIS OFFICIAL CAPACITY AS SUPERINTENDENT OF THE LOS ANGELES UNITED SCHOOL DISTRICT, ET AL.

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

BRIEF FOR THE STATES OF TEXAS, ALABAMA, ALASKA, ARKANSAS, IDAHO, IOWA, KANSAS, LOUISIANA, MONTANA, NEBRASKA, SOUTH CAROLINA, AND UTAH AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI CURIAE[1]

Amici curiae are the States of Texas, Alabama, Alaska, Arkansas, Idaho, Iowa, Kansas, Louisiana, Montana, Nebraska, South Carolina, and Utah. Amici have an interest in protecting the right of all Americans to be free from forced medical intervention.

SUMMARY OF ARGUMENT

In *Cruzan v. Director of Missouri Department of Health*, this Court reiterated the "sacred" right of American citizens to be free from compelled bodily intrusion. 497 U.S. 261, 269 (1990) (quoting *Union Pac. Ry. Co. v. Botsford*, 141 U.S. 250, 251 (1891)). Deeply rooted in our Nation's history and common-law tradition, this right is reflected in laws against battery and in those requiring informed consent for medical treatment, and it is recognized across this Court's Due Process and Fourth Amendment jurisprudence.

Jacobson v. Massachusetts, 197 U.S. 11 (1905), represents a narrow exception to the right to be free from compelled medical treatment. In that case, this Court upheld a Massachusetts law allowing the boards of health of cities and towns to compel vaccination as a means of protecting public health. In doing so, it explained that "a community has the right to protect itself against an epidemic of disease which threatens the safety of its members." *Id.* at 27. The Court therefore deferred to the State's conclusion that vaccination was a "means of preventing the spread of smallpox." *Id.* at 36; *see also id.* at 31-32 (noting "vaccination as a means to prevent the spread of smallpox").

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[1] Pursuant to Rule 37.2, Amici provided timely notice of their intent to file this brief to all parties.

The decision below erroneously expands *Jacobson* outside of its narrow context to allow compelled medical treatment to "protect . . . health and safety" by "lessen[ing] the severity of symptoms"—even if that medical treatment does not "prevent the spread of a disease [or] provide immunity." *Health Freedom Def. Fund, Inc. v. Carvalho*, 148 F.4th 1020, 1031 (9th Cir. 2025) (en banc). As Judge Lee's dissent, joined by Judge Collins, recognized, this holding gives the government virtual "carte blanche to require a vaccine or even medical treatment against people's will." *Id.* at 1036 (Lee, J., dissenting in part).

This Court should grant certiorari to correct the Ninth Circuit's misinterpretation of *Jacobson* and reaffirm the right to be free from compelled medical treatment.

ARGUMENT

I. The Right to Refuse Medical Treatment and the Foundational Liberty of Bodily Autonomy Have Deep Historical Roots.

For well over a century, this Court has recognized that "[n]o 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." *Union Pac. Ry. Co.*, 141 U.S. at 251. Compelling anyone to submit their body to the touch of a stranger was "an indignity, an assault, and a trespass." *Id.* at 252.

Many cases discussed this right in the context of bodily searches and the Fourth Amendment. This Court recognized that "[t]he integrity of an individual's person is a cherished value of our society" and "that the Constitution does not forbid the States minor intrusions into an individual's body under stringently limited conditions."

Schmerber v. California, 384 U.S. 757, 772 (1966). For example, one case explained that an individual has the "right to immunity from such invasion of the body as is involved in a properly safeguarded blood test," albeit it was "outweighed by the value of its deterrent effect" in identifying individuals driving under the influence. *Breithaupt v. Abram*, 352 U.S. 432, 439–40 (1957).

In contrast, "[a] compelled surgical intrusion into an individual's body for evidence . . . implicates expectations of privacy and security" of significantly greater magnitude. *Winston v. Lee*, 470 U.S. 753, 759 (1985). Likewise, pumping a suspect's stomach to locate pills that he swallowed—"the forcible extraction of his stomach's contents"—was part of a course of conduct that "shock[ed] the conscience." *Rochin v. California*, 342 U.S. 165, 172 (1952). "It would be a stultification of the responsibility which the course of constitutional history has cast upon this Court to hold that in order to convict a man the police cannot extract by force what is in his mind but can extract what is in his stomach." *Id.* at 173.

In addition to the context of searches, this Court's Due Process cases recognized that the protection of bodily autonomy was "embodied in the requirement that informed consent is generally required for medical treatment." *Cruzan*, 497 U.S. at 269. "Every human being of adult years and sound mind has a right to determine what shall be done with 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." *Id.* (quoting *Schloendorff v. Soc'y of N.Y. Hosp.*, 105 N.E. 92, 93 (N.Y. 1914) (Cardozo, J.)). "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." *Id.* at 270; *accord id.* at 277 ("[T]he common-law

doctrine of informed consent is viewed as generally encompassing the right of a competent individual to refuse medical treatment.").

In *Cruzan*, this Court applied that principle to hold that "a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment." 497 U.S. at 278; *see Washington v. Harper*, 494 U.S 210, 221-22 (1990) (explaining that there is "a significant liberty interest in avoiding the unwanted administration of antipsychotic drugs under the Due Process Clause of the Fourteenth Amendment"). This right could be "inferred from [the Court's] prior decisions." *Cruzan*, 497 U.S. at 278.

In *Cruzan*, a parent "sought a court order directing the withdrawal of their daughter's artificial feeding and hydration equipment after it became apparent that she had virtually no chance of recovering her cognitive faculties" after an automobile accident. 497 U.S. at 265. This Court "assumed that the United States Constitution would grant a competent person a constitutionally protected right to refuse lifesaving hydration and nutrition." *Id.*

But the daughter was not competent, so the choice to receive or refusal medical treatment had to be made on the daughter's behalf by a surrogate. *Id.* at 280. In recognition of that interest, even for the incompetent, "Missouri [could] legitimately seek to safeguard the personal element of this choice [between life and death] through the imposition of heightened evidentiary requirements." *Id.* at 281. This Court ultimately held "that a State may apply a clear and convincing evidence standard in proceedings where a guardian seeks to discontinue nutrition and hydration of a person diagnosed to be in a persistent vegetative state." *Id.* at 284.

As these cases confirm, the Constitution recognizes a protected liberty interest "for a competent person to refuse unwanted medical treatment." *Id.* at 278.

II. *Jacobson v. Massachusetts* Involves a Narrow Exception to this Right: Preventing Transmission and Spread of a Disease.

In *Jacobson v. Massachusetts*, this Court carved out a narrow exception to the right to refuse unwanted medical treatment based on a governmental need to prevent the transmission and spread of a communicable disease. But *Jacobson* must be read carefully so as not to swallow the right to bodily integrity that this Court later elucidated in *Cruzan*.

Jacobson involved a Massachusetts law allowing the boards of health of cities and towns to compel vaccination to protect the public health or safety. 197 U.S. at 12. The Cambridge board of health exercised this power to require vaccination or revaccination against smallpox, but Jacobson refused the vaccine and was convicted in state court for failing to comply. *Id.* at 13. As a defense to his prosecution, Jacobson asserted that the Massachusetts compulsory-vaccination law violated his right to liberty under the U.S. Constitution, but the state courts rejected that defense. *Id.* at 14.

This Court affirmed. It held that the "principle of self-defense" permits a community "to protect itself against an epidemic of disease which threatens the safety of its members." *Id.* at 27. This principle justified intervention because "smallpox . . . was prevalent to some extent in the city of Cambridge, and the disease was increasing." *Id.* As the Court explained, "the principle of vaccination as a means to prevent the spread of smallpox has been enforced in many states by statutes making the vaccination of children a condition of their right to enter

or remain in public schools." *Id.* at 31-32. Though Jacobson sought to introduce evidence that some members of the medical profession "attach[ed] little or no value to vaccination as a means of preventing the spread of smallpox," this Court stated that "an opposite theory accords with the common belief," including "high medical authority." *Id.* at 30. Ultimately, the Court concluded that the Massachusetts Legislature was entitled to credit this latter theory in an exercise of its police power. *Id.*

Particularly after this Court's decision in *Cruzan*, *Jacobson* cannot be understood to have authorized the government to impose *any* compulsory medical treatment that it believes is warranted. The general rule is that "a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment." *Cruzan*, 497 U.S. at 278.

Jacobson holds, at most, that this liberty interest may be outweighed by the need to prevent transmission or spread of a contagious disease. That is why the Court discussed the possible "injury that may be done to *others*," *Jacobson*, 197 U.S. at 26 (emphasis added), and cited the right to "self-defense," such that "a community has the right to protect itself against an epidemic of disease which threatens the safety of its members," *id.* at 27. Only in that context did the Court state that vaccination had a "real or substantial relation to the protection of the public health and the public safety." *Id.* at 31. Having recognized the state's police power to combat diseases and vaccination as one of "the methods employed to stamp out the disease of smallpox" that the State legislature used "to *prevent the spread* of smallpox," the Court held that Jacobson's liberty interest had to give way. *Id.* at 31–32 (emphasis added).

III. The Decision Below Overreads *Jacobson* as Allowing Compulsory Medical Treatment Unrelated to Preventing the Transmission and Spread of Disease.

The decision below errs by refusing to limit *Jacobson* to medical treatments "that prevent the spread of a disease and provide immunity." *Health Freedom Def. Fund, Inc. v. Carvalho*, 148 F.4th 1020, 1031 (9th Cir. 2025).

The complaint alleges that "the COVID-19 vaccine mitigates serious symptoms but does not 'prevent transmission or contraction of COVID-19.'" *Id.* at 1036 (Lee, J., dissenting in part). "The plaintiffs here go further and contend that the COVID-19 vaccine is not even a 'traditional' vaccine that prevents transmission or provides immunity. Rather, the COVID-19 vaccines merely mitigate symptoms in a manner more akin to a medical treatment than a vaccine." *Id.* at 1038 (Lee, J., dissenting in part).

The majority held that that these facts, even if true, were irrelevant: *Jacobson* applies "regardless of whether such vaccines actually provide immunity and prevent the spread of disease or whether they provide no immunity and merely render COVID-19 less dangerous to those who contract it, so long as policymakers could reasonably conclude that the vaccines would protect the public's health and safety." *Id.* at 1032.

The Ninth Circuit's analysis would allow the government to impose compulsory medical treatment on competent individuals based on a purely paternalistic rationale: that the medical treatment is for the individual's own good, even if it has no benefit to third parties or the public health generally. *See id.* at 1032 n.12 (holding that a legislature could impose compulsory medical treatment that "only reduce[d] symptoms for the recipient").

This holding swallows the constitutionally protected liberty interest of a competent person to refuse unwanted medical treatment. *Cruzan*, 497 U.S. at 278. If a legislature's invocation of "public health" allows it to compel competent persons to receive medical treatment—based on a justification that the treatment will benefit the individual receiving it—then the right is meaningless. *See* Pet. 16-18.

Judge Lee's dissent correctly identifies how *Cruzan* and *Jacobson* are harmonized: *Jacobson* applies only to medical treatments that "preven[t] the transmission and contraction" of disease; *Jacobson* does not allow the State to compel a competent person to receive medical treatment based on an alleged benefit to the recipient; and *Jacobson* requires a justification based on the protection of third parties from disease spread by the recipient. *Carvalho*, 148 F.4th at 1038 (Lee, J., dissenting in part). "The entire thrust of *Jacobson* is that '*public* health and *public* safety' means protecting the mass public from the spread of smallpox." *Id.* at 1039.

The decision below reasons incorrectly from *Jacobson* when it concludes "whether the vaccine actually prevented the spread of smallpox did not matter." *Id.* at 1032 n.11 ("By rejecting Jacobson's argument—supported by offers of proof—that the smallpox vaccine did not prevent the spread of the disease, the Court necessarily held that whether the vaccine *actually prevented* the spread of smallpox did not matter[.]" (emphasis added)). From this statement, the Ninth Circuit majority concluded that preventing the spread of smallpox was irrelevant.

This conclusion does not follow. *Jacobson*'s analysis emphasized the existence of conflicting evidence regarding whether the smallpox vaccine would prevent the

spread of disease. It deferred to the legislature's evaluation of these conflicting theories: "It is no part of the function of a court or a jury to determine which one of two modes was likely to be the most effective for the protection of the public against disease. That was for the legislative department to determine in the light of all the information it had or could obtain." *Jacobson*, 197 U.S. at 30. Whether the smallpox vaccine *actually* prevented the spread of smallpox was not controlling, but the crux of the holding was the legislature *reasonably believed* that the smallpox vaccine prevented the spread of smallpox.

Here, in contrast, as the dissent explains, the justifications for the compelled treatment shifted from "preventing transmission and contraction of COVID-19" to "mitigating serious symptoms." *Carvalho*, 148 F.4th at 1037 (Lee, J., dissenting in part). In other words, the vaccine was not allegedly justified (in good faith but erroneously) by the effect of preventing the spread and transmission of disease but justified instead by the effect of reducing the recipient's symptoms.

The analysis in the decision below appears to rely heavily on the word "vaccine." *See id.* at 1033 (suggesting that *Jacobson* "remains binding and squarely governs this case" regarding mandatory vaccinations). But such an approach elevates form over substance: the distinction between a medical treatment that a competent person can refuse under *Cruzan* and a treatment governed by *Jacobson* cannot rest on whether it is labeled "vaccine;" instead, it rests on whether the treatment prevents the transmission and contraction of a contagious disease. *See* Pet. 16–17.

In this case, Petitioners allege "that the COVID-19 vaccine is not even a 'traditional' vaccine that prevents transmission or provides immunity." *Carvalho*, 148 F.4th

at 1038 (Lee, J., dissenting in part). It is "more akin to a medical treatment than a vaccine." *Id.* The petition explains that a "vaccine," properly understood, is "a shot that *prevents* the spread of disease." Pet. 3 (citing 26 U.S.C. § 4132(a)(2)) (emphasis added); *see also Carvalho*, 148 F.4th at 1040 (Lee, J., dissenting in part) ("Vaccines, by definition, build immunity and prevent transmission and contraction of an infectious disease, but we risk blurring the line between vaccines and medical treatment if vaccines are defined as anything that lessens symptoms."). The constitutional right to liberty cannot be infringed merely by labeling a medical treatment as a "vaccine."

As Judge Lee's dissent explains, accepting this reasoning—"that a state can impose a vaccine mandate just to 'lessen the severity of symptoms' of sick person[s] without considering whether it lessens transmission and contraction of this disease"—"open[s] the door for compulsory medical treatment against people's wishes." *Id.* at 1039-40.

And as the experience of Amici demonstrates, laws mandating the COVID-19 vaccine were unnecessary to protect the public health. *See, e.g.*, The Governor of the State of Tex., Exec. Order No. GA-35, 46 Tex. Reg. 2515, 2515 (2021) (prohibiting any governmental entity from "compel[ling] any individual to receive a COVID-19 vaccine administered under an emergency use authorization").

By permitting compulsory medical treatment of competent persons based on the supposed benefit to the recipient, the Ninth Circuit's analysis risks "giving the government a blank check to foist health treatment mandates on the people." *Carvalho*, 148 F.4th at 1040 (Lee, J., dissenting in part).

Granting the petition will allow this Court to harmonize *Jacobson* and *Cruzan*, reaffirming that "a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment." *Cruzan*, 497 U.S. at 278; *see also* Pet. 4-5. As the dissent below recognizes, *Jacobson* properly applies "only if a vaccine prevents transmission and contraction of a disease." 148 F.4th at 1036 (Lee, J., dissenting in part).

Granting certiorari and answering this question now will allow this Court to clarify the law, providing clear rules in advance of any future pandemic.

CONCLUSION

This Court should grant the petition for a writ of certiorari.

Respectfully submitted.

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