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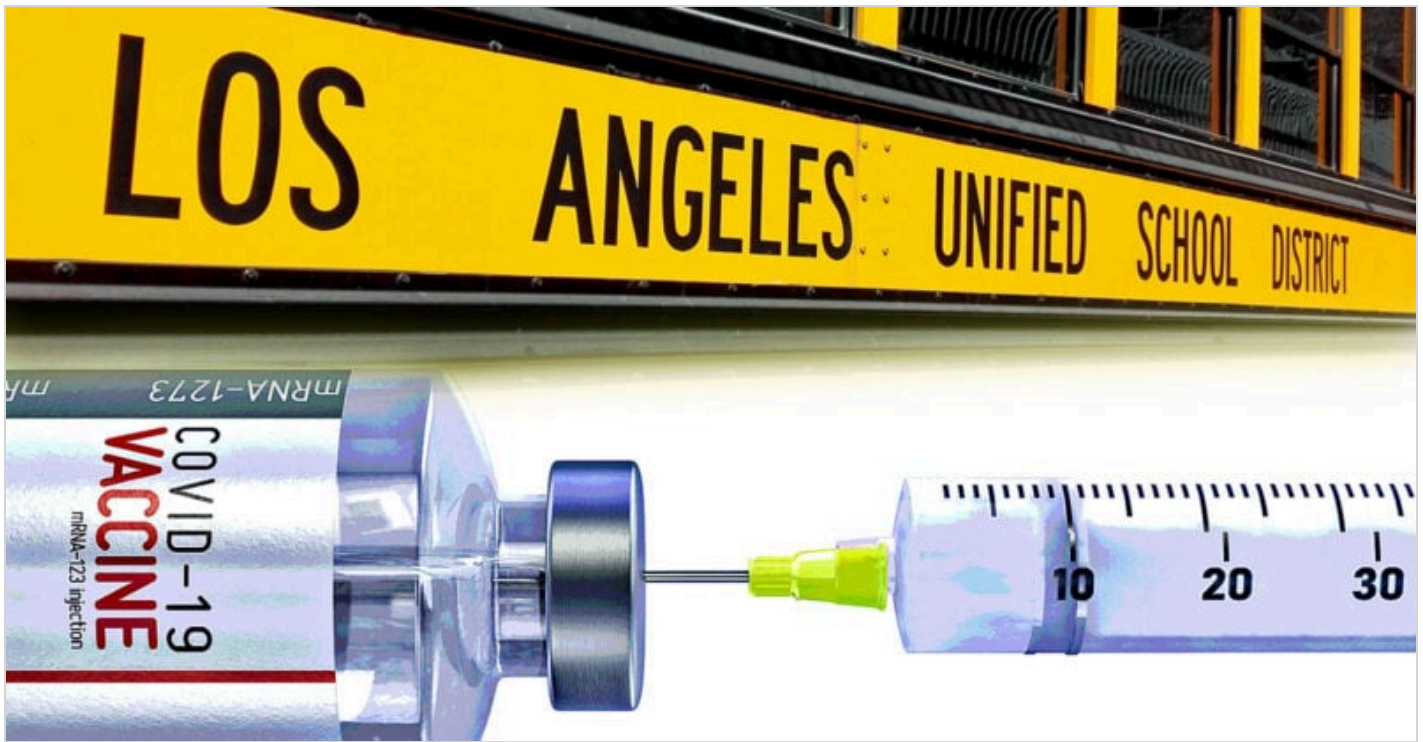
COVID

Employees Can Sue L.A. Schools Over COVID Vaccine Mandate Because Shots Don't Prevent Transmission, Appeals Court Rules

An appeals court late Friday revived a lawsuit challenging the Los Angeles Unified School District's COVID-19 vaccine mandate. The court said the school district misapplied the precedent-setting Jacobson v. Massachusetts ruling because unlike "traditional" vaccines, the COVID-19 shots don't prevent infection and transmission.

by **Suzanne Burdick, Ph.D.**

JUNE 10, 2024



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A lawsuit challenging the Los Angeles Unified School District's (LAUSD) COVID-19 vaccine mandate will proceed after an appeals court late Friday **ruled** the school district misapplied the precedent-setting U.S. Supreme Court **Jacobson v. Massachusetts** ruling because unlike "traditional" vaccines, the **COVID-19** shots don't prevent infection and transmission.

In the Jacobson case, the court found that a state may require all residents to take a vaccine, without exemptions, if a rational basis exists to determine that such a step is necessary to mitigate a public health emergency.

In the 2-1 decision by a three-judge panel, Judge Ryan Douglas Nelson for the **U.S. Court of Appeals for the 9th Circuit** stated:

"Jacobson, however, did not involve a claim in which the compelled vaccine was 'designed to reduce symptoms in the infected vaccine recipient rather than to prevent transmission and infection.' ... The district court thus erred in holding that Jacobson extends beyond its public health rationale — government's power to **mandate** prophylactic measures aimed at preventing the recipient from spreading disease to others — to also govern 'forced medical treatment' for the recipient's benefit."

The appeals court decision reverses a ruling by the U.S. District Court for the Central District of California on Sept. 2, 2022, **dismissing the case**. The case will now go back to the U.S. District Court.

Mary Holland, CEO of **Children's Health Defense** (CHD) called the appeal court's decision "a triumph of common sense." Holland told The Defender:

"This decision cuts the overshadowing Jacobson vaccine precedent case down to size. Plaintiffs successfully argued that 'if it's not a vaccine, Jacobson public health vaccine law doesn't apply.' They had ample evidence to show that the COVID shots were not vaccines in any traditional sense.

"The shots are medical treatments at best, and the law prohibiting unwanted medical treatment in most circumstances is clear."

The ruling is a "**huge legal victory**" for the nonprofit **Health Freedom Defense Fund** (HFDF) and LAUSD employees with **California Educators for Medical Freedom** who **sued the school district** on Nov. 3, 2021.

Leslie Manookian, president and founder of HFDF, said in an X (formerly Twitter) post, "HUGE!!! **WE WON our appeal against LAUSD**. 9th Circuit Appeals Court vacated the district court decision. LAUSD's C@v!d j@b\$ mandate interfered with the 'fundamental right to refuse medical treatment.'"

Leslie Manookian



@LeslieManookian · [Follow](#)

HUGE!!! WE WON our appeal against LAUSD. 9th Circuit Appeals Court vacated the district court decision. LAUSD's C@v!d j@b\$ mandate interfered with the "fundamental right to refuse medical treatment."

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Health Freedom Defense Fund @theHFDF

HUGE!!! WE WON our appeal against LAUSD!

The Ninth Circuit Court of Appeals vacated the district court's decision, writing that LAUSD's C0v!d j@b\$ mandate interfered with their employees' "fundamental right to refuse medical treatment."

@lausdsup

4:36 AM · Jun 8, 2024



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CDC changed definition of 'vaccine'

In their suit, HFDF and the district employees alleged LAUSD's vaccine mandate — which resulted in more than **1,000 employees losing their jobs** prior to being **lifted on Sept. 26, 2023** — violated the “rights of **personal autonomy**, self-determination, bodily integrity, and the right to reject medical treatment.”

The suit asked the court to declare the mandate unconstitutional. It also sought compensation for legal expenses and “other and further relief as the Court may deem just and proper.”

Defendants in the suit include top LAUSD officials and board members.

After a lower court dismissed the suit — reasoning that LAUSD had a rational basis for its COVID-19 vaccine policy — plaintiffs on Oct. 3, 2022, **appealed**.

However, the appeals court — which on Sept. 14, 2023, heard **oral arguments** — concluded there were important differences between the 1905 Jacobson case and the situation regarding COVID-19 vaccines.



For instance, the judges noted that the plaintiffs pointed out that the Centers for Disease Control and Prevention (CDC) had changed the **definition of the word “vaccine”** to accommodate the COVID-19 shots by removing the word “immunity” from it.

John Howard, one of the plaintiff's attorneys, told The Defender the 9th Circuit's decision will likely have ramifications beyond this one lawsuit because the ruling distinguishes between a medical treatment and a vaccine.

“One has a constitutional right to refuse medical treatment,” Howard said.

Jacobson — “which should, in my view, be more carefully limited, if not completely overruled,” Howard said — suggests that the government can require the injection of a foreign substance if the substance is a “vaccine” that prevents a disease and if there is a substantive public health emergency that the involuntary application of vaccines can help ameliorate.


Friday's ruling “bodes well for American freedom,” Howard said, because it establishes that the COVID-19 vaccines were medical treatments, not vaccines as a vaccine was understood to be when the Supreme Court ruled on Jacobson.




Aaron Siri  

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In response to many inquiries about the 9th Circuit decision:

(1) If Covid-19 vaccines are not considered “vaccines” because they do not prevent transmission, then neither are pertussis, tetanus, inactivated polio, etc., vaccines because they also do not prevent transmission. We... [Show more](#)

4:21 AM · Jun 11, 2024 

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Ruling ‘knocks bricks from the wall of Jacobson v. Massachusetts’

Scott Street, attorney for the plaintiffs, told The Defender he was “pleased” with the panel’s opinion.

“All our clients have ever asked for,” he said, “is a chance to gather evidence and to prove their claims in court.”

Street said, “Too many courts have reflexively cited the Jacobson decision to kick people out of court, failing to recognize the ways in which constitutional law has evolved since Jacobson was decided in 1905, and the procedural and factual distinctions between that case and this one.”

He added, “This opinion should serve as a reminder of those differences.”

Kim Mack Rosenberg, general counsel for CHD, said the appeals court’s decision “knocks bricks from the wall of Jacobson v. Massachusetts, with respect to the appropriate standard the state must meet before it can mandate an unwanted medical treatment, such as the COVID-19 shot.”

“We at CHD will be watching this case carefully to see what next steps LAUSD takes in light of the 9th Circuit’s important decision,” Mack Rosenberg added.

It is presently unknown what that next step will be. A LAUSD spokesperson on June 10 told The Defender that LAUSD “is reviewing the 9th Circuit ruling and assessing the District’s options.”

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Lifting the mandate doesn't make the lawsuit 'moot'

In their **opinion**, the panel majority — Judges Nelson and Daniel P. Collins — said LAUSD's Sept. 26, 2023, rescission of its COVID-19 vaccine mandate policy does not render the lawsuit moot.

Dissenting judge Michael Daly Hawkins disagreed.

LAUSD waited until after the Sept. 14, 2023, oral arguments to lift the mandate — more than two years after it **announced the mandate** and after the **CDC admitted** COVID-19 vaccines don't prevent infection or transmission.

HFDF said in a **press release**, "The majority called out LAUSD's gamesmanship for what it was — a bald-faced attempt at avoiding an adverse ruling by trying to create an issue of mootness."

"The evidence shows," the majority wrote in their opinion, "that LAUSD acted at least partially in bad faith to avoid litigation risk."

Manookian said in the HFDF press release, "The court saw through LAUSD's monkey business, and in so doing, it made clear that American's cherished rights to self-determination, including the sacred right of bodily autonomy in matters of health, are not negotiable."

"This is a great triumph for the truth, decency, and what is right," she added.



Suzanne Burdick, Ph.D.

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