

# ANALYSIS: What 9th Circuit Ruling Reinstating Challenge to LAUSD's Employee Vaccine Mandate Means

By Jennifer Van Laar | 4:27 PM on June 08, 2024

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In a split decision, a three-judge panel from the Ninth Circuit Court of Appeals issued a ruling Friday afternoon reversing the dismissal of a lawsuit filed by Los Angeles Unified School District (LAUSD) employees challenging the district's COVID-19 vaccine mandate. The suit was remanded back to the District Court level, where it will proceed toward trial.

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On the merits, the district court misapplied the Supreme Court's decision in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), stretching it beyond its public health rationale. We vacate the district court's order dismissing this claim and remand

to ripple effects in other lawsuits, especially if the evidence at trial bears out what is in the pleadings and the court or a jury finds that evidence persuasive.

### **KEY POINTS**

- Plaintiffs argue that what's commonly known as the COVID-19 vaccine isn't a vaccine at all (because it doesn't prevent transmission), but is a therapeutic, so it cannot be mandated by law.
- At the U.S. District Court level, a judge ruled that a 1905 Supreme Court ruling (*Jacobson v. Massachusetts*) related to mandatory smallpox vaccination allowed the COVID-19 vaccine mandate.
- The 9th Circuit panel ruled that, taking the Plaintiff's pleadings as true (which they must at this point in the proceedings), *Jacobson* does not apply and that employees cannot be forced to receive "treatment" they don't want to receive.
- The ruling rejected LAUSD's claim that the suit is moot since the district had rescinded its mandate two weeks after oral arguments in this appeal went very poorly for the district, and gave a detailed timeline of LAUSD's continued attempts to manipulate the legal proceedings.

To fully appreciate LAUSD's manipulative tactics, you have to understand the timeline.

- March 4, 2021: LAUSD institutes an employee vaccine mandate, telling employees in a memo they would be notified when it was their turn to get the vaccine and making no allowance for exemptions or alternatives such as COVID testing
- March 17, 2021: LAUSD employees opposed to vaccination file suit
- March 18, 2021: LAUSD issues a "clarifying" memo allowing employees to COVID test in lieu of being vaccinated
- LAUSD files motion to dismiss lawsuit as moot
- July 27, 2021: U.S. District Court judge dismisses lawsuit without prejudice
- August 13, 2021: LAUSD reinstates vaccine mandate
- November 3, 2021: Lawsuit challenging mandate is refiled with additional plaintiffs
- September 2, 2022: U.S. District Court Judge Dale S. Fischer dismisses lawsuit with prejudice, awards costs to LAUSD
- November, 2022: Plaintiffs appeal to 9th Circuit Court of Appeals

- September 29, 2023: LAUSD Board votes to rescind vaccine mandate
- October 4, 2023: Counsel for LAUSD argues employee lawsuit is moot because mandate has been rescinded

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The pleadings show a lot more detail about LAUSD's manipulation, including that LAUSD's Chief HR Officer stated in a deposition that back in July, 2021, the district was "drafting a [vaccine] mandate" yet they didn't mention that to the judge before the lawsuit against them was dismissed as not yet being ripe. The actions of Attorney Michaels show that counsel was also involved in this manipulative behavior.

That brings us to Friday's ruling.

Los Angeles attorney Julie Hamill, who represented the LA Parents' Alliance in a lawsuit challenging vaccine and mask mandates and social media censorship of mandate critics, [broke down the ruling](#):

Much like LADPH and other authoritarian government agencies, LAUSD had a pattern of withdrawing and then reinstating its vaccination policies. According to the Court, this pattern was enough to keep the case alive. "The record supported a strong inference that LAUSD waited to see how the oral argument in this court proceeded before determining whether to maintain the Policy or to go forward with a pre-prepared repeal option. LAUSD expressly reserved the option to again consider imposing a vaccine mandate. Accordingly, LAUSD has not carried its heavy burden to show that there is no reasonable possibility that it will again revert to imposing a similar policy." The mootness argument was rejected.

Then, we get to the real juice. "[T]he district court misapplied the Supreme Court's decision in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), in concluding that the Policy survived rational basis review. *Jacobson*

recipient and therefore is akin to a medical treatment, not a 'traditional' vaccine. Taking plaintiffs' allegations as true at this stage of litigation, plaintiffs plausibly alleged that the COVID-19 vaccine does not effectively "prevent the spread" of COVID-19. Thus, *Jacobson* does not apply."

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Leslie Manookian of Health Defense Freedom Fund, one of the plaintiffs in the case, [noted in a 2023 opinion piece](#) that there's an unresolved conflict between *Jacobson* and another precedential SCOTUS case, *Cruzan vs. Director*, which held that medical treatments may be refused even if they might save a recipient's life. And, she states, in *Jacobson* "the court decided that vaccines could be mandated in clearly defined and limited situations, such as a deadly smallpox outbreak. But COVID is not smallpox. What's more, *Jacobson* allowed those who declined the vaccine to pay a fine — *Jacobson* did not allow the state to force a vaccine on unwilling recipients on pain of losing their livelihoods."

Public health officials, including former CDC Director Rochelle Walensky, have admitted for years (even before LAUSD's resurrected mandate on August 13, 2021) that the COVID-19 mRNA [shot does not prevent transmission of the virus](#) and was ineffective against the Delta variant.

And just this week former NIAID Director Dr. Anthony Fauci admitted under questioning from Congress that the COVID vaccine didn't stop transmission of the virus.

officials mandated it anyway

How many people lost their jobs and were demonized because of the "experts"?



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Fauci's full reply (emphasis mine):

That is a complicated issue because, in the beginning, the first iteration of the vaccines did have an effect, not 100 percent, not a high effect. They did prevent infection and subsequently, obviously, transmission. However, it's important to point out something that we did not know early on that became evident as the months went by, is that ***the durability of protection against infection and, hence, transmission, was relatively limited***, whereas the duration of protection against severe disease, hospitalization, and deaths, was more prolonged. We did not know that in the beginning. In the beginning, it was felt that it did, in fact, prevent infection and, thus, transmission. But that was proven as time went by to not be a durable effect.

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decision that would have been banned by Twitter, Meta, and all mainstream media outlets. Schiff must be losing his mind.

In the decision Judge Ryan D. Nelson ([a Trump appointee](#)), detailed the unimpressive and unethical tactics used by LAUSD and its attorneys. Hamill writes:

OH MY GOD. "According to a declaration submitted by Plaintiffs' counsel, LAUSD's attorney turned to him as they were leaving the courtroom and said, "What are you going to do when we rescind the mandate?" That same day, LAUSD's Superintendent (the Superintendent) submitted to the LAUSD Board (the Board) of Education a proposal to repeal the mandate. Twelve days later, (the Board) voted to rescind the Policy by a six to one vote, with one abstention. This lawsuit was mentioned by members of the public at the meeting of the Board. Indeed, one commenter played excerpts from the publicly available audio recording of the oral argument in this court." THIS IS IN THE DECISION. Brutal for LAUSD and its lawyers.

(The other two judges on the panel were [Michael D. Hawkins](#), a Clinton appointee, and [Daniel Collins](#), a Trump appointee. Collins voted with Nelson to vacate the judgment and remand the case to the District Court level.)

Nelson continued:

"We held oral argument on the morning of September 14, 2023, where LAUSD's counsel was vigorously questioned. That same day LAUSD submitted a report recommending rescission of the Policy. Twelve days later, LAUSD withdrew the Policy. **Litigants who have already demonstrated their willingness to tactically manipulate the federal courts in this way should not be given any benefit of the doubt.** LAUSD's about-face occurred only after vigorous questioning at argument in this court, which suggests that it was motivated, at least in part, by litigation tactics."

Nelson then explained how the District Court's application of *Jacobson* was incorrect in the case.

"The district court relied on *Jacobson* to hold that the Policy was rooted in a legitimate government interest. (citation). But *Jacobson* does not directly control based on Plaintiffs' allegations. In *Jacobson*, the Supreme Court balanced an individual's liberty interest in declining an unwanted smallpox vaccine against the State's interest in preventing disease. (citation). The Court explained that the "principle of vaccination" is 'to prevent the spread of smallpox.' (citation). Because of this, the Court concluded that the State's interest superseded *Jacobson*'s liberty interest, and the vaccine requirement was constitutional.

"The district court reasoned that '*Jacobson* does not require that a vaccine have the specific purpose of preventing disease.' (citation). It acknowledged Plaintiffs' allegations that the vaccine did not 'prevent transmission or contraction of COVID-19.' (citation). But it declared that 'these features of the vaccine further the purpose of protecting LAUSD students and employees from COVID-19,' and thus 'the Policy survives rational basis review.'"

And then the smackdown:

"This misapplies *Jacobson*. *Jacobson* held that mandatory vaccinations were rationally related to "preventing the spread" of smallpox. (citation). *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." (citation). **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**

It's important to note that the court did not find as a fact that the mRNA COVID shot is a treatment and not a vaccine, and did not find as a fact that it does not prevent the spread of COVID-19, as proceedings have not reached that stage; the court was simply ruling on a procedural motion as to whether the suit was moot and whether LAUSD's motion for judgment on the pleadings was properly decided.

"At this stage, we must accept Plaintiffs' allegations that the vaccine does not prevent the spread of COVID-19 as true. (citation). And, because of this, Jacobson does not apply. LAUSD cannot get around this standard by stating that Plaintiffs' allegations are wrong. Nor can LAUSD do so by providing facts that do not contradict Plaintiffs' allegations. It is true that we "need not [] accept as true allegations that contradict matters properly subject to judicial notice." (citation). But even if the materials offered by LAUSD are subject to judicial notice, they do not support rejecting Plaintiffs' allegations. LAUSD only provides a CDC publication that says "COVID-19 vaccines are safe and effective." But "safe and effective" for what? LAUSD implies that it is for preventing transmission of COVID-19 but does not adduce judicially noticeable facts that prove this."

With Friday's ruling, [the case will go back to the District Court level](#) for discovery and depositions and, eventually, an opportunity for plaintiffs to prove their case in court.

Read the entire ruling below:



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Jennifer Van Laar, RedState's Managing Editor, is an unapologetic California conservative, sports fanatic, mom of three boys, and Gramie to two perfect little girls. She holds a bachelor's degree from Boston University, where she studied international relations and became a die hard hockey fan. Prior to entering journalism in 2014, she was a court reporter for 20 years in the criminal and civil courts of North Carolina. She joins [The Inland Empire Answer](#) on Salem Radio Network's AM 590 The Answer every Thursday for "Spill The Tea Thursday." Follow her work on [Facebook](#) and [Twitter](#). Story tips: [jenredstate@protonmail.com](mailto:jenredstate@protonmail.com).

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