

On the 127th Year Anniversary of the “Separate But Unequal” Plessy v. Ferguson Case The U.S Supreme Court Will Vote On Whether to Forever Ban ALL Vaccine Mandates



- First lawsuit in the U.S. that challenges the constitutional authority of federal, state, and private employers to mandate any vaccine as a condition of employment.
- 30 years ago, the Occupation Safety & Health Act (OSH Act) abrogated federal, state, and private sector authority to mandate any vaccine to control airborne communicable diseases even during a pandemic.
- All vaccines violate the OSH Act environmental method standards established to prevent the spread of any airborne hazard in work or public places.
- The OSH Act protects the fundamental right of all citizens to refuse vaccines and bans employer wrongful separation of employees for exercising their right.
- The right to refuse and choose medical treatments is a fundamental right of every citizen based on a 100-year Supreme Court precedent that includes the right to choose Plant-Based Lifestyle Medicine
- [Press Conference](#) and rally scheduled on May 18th at 9:00am on the U.S Supreme Court sidewalk.

For Immediate Release

Women of Color for Equal Justice

May 15, 2023

Bowie, Maryland – As thousands of [Americans](#) remain locked out of their careers due to the continued enforcement of government and private sector Covid-19 vaccine mandates, on May 18, 2023, the 127th year anniversary of the landmark case [Plessy v. Ferguson](#) – wherein the US Supreme Court declared on May 18, 1896 that it was constitutional to require African-Americans to use separate public accommodations based on their skin color, the [U.S. Supreme Court will vote](#) in private conference on whether to rule on the merits of an [Emergency Application](#) that asks the Court to forever ban the separate and unequal public and private vaccine mandates enforced by federal, state and private employers, which have caused the wrongful separation of millions of employees from their jobs based on their vaccination status.



The emergency application submitted by the [Women of Color For Equal Justice](#) (WOC4EJ), a Maryland non-profit advocacy center on behalf of New York City

employees, asks the Court to declare that all vaccine mandates by public and private sectors are illegal and where unauthorized when enacted and enforced because they violate the Occupational Safety and Health Act (OSH Act) minimum safety standards as well as the Free Exercise and substantive Due Process clauses of the Constitution. Unlike the many cases around the country that sought to declare various vaccine mandates unconstitutional based on their “unequal or discriminatory application” against employees wherein some employees were granted exemptions and many were not, Jo Saint-George, Founder and Chief Legal Officer of WOC4J, argues that “all vaccine mandates have been illegal since at least 1970 when the OSH Act was enacted by Congress, which at that time was one of the most important pieces of “human rights” legislation for workers in America.”

OSHA Protects The Right To Refuse Any Vaccine

The [OSH Act](#) expressly protects the First Amendment Free Exercise right of all employees to refuse any immunization or vaccine based on religious grounds¹ and the OSH Act also bans any person or employer from terminating or removing an employee from their job or a person from a public place based on their refusal to be vaccinated.

The OSH Act provides everyone employee an “automatic exemption” from any vaccination (a.k.a immunization) based on religious grounds because there is nothing in the statute that authorizes employers to demand employees to prove their religious beliefs nor are employees required to provide a letter from their clergy before the exemption is to be granted. When congress enacted the “automatic religious exemption” in Section 20(a)(5) of the OSH Act no exemption pre-conditions was included and courts are to strictly interpret the statute based on its plain language and no employer can add or subtract from the language of the statute.

Vaccines Violate OSHA Minimum Standards

[Bruce Miller](#) a board-certified industrial hygienist with 30 years’ experience as an OSHA expert explains in the Emergency Application that “vaccines are not an OSHA authorized method for preventing airborne communicable diseases because vaccines can never meet the “minimum environmental safety standards” set by OSHA because vaccines are incapable of preventing exposure to any airborne viral hazard, like Covid-19 and vaccines cannot remove airborne hazardous communicable viruses found in the atmosphere of workplaces or places of public business, which is required to be an approved environmental safety method under the OSHA General Duty Clause and Respiratory standards.” When the [OSH Act](#) was enacted in 1970, Congress gave the OSHA Secretary exclusively authority, with the aid of a consensus of industry experts including the federal Department of Health and Human Services (HHS) along with state and municipal legislators, to set minimum safety standards for

¹ See 1970 OSHA Act – 29 USC 669, Section 20(a)(5) - Nothing in this or any other provision of this Act shall be deemed to authorize or require medical examination, immunization, or treatment for those who object thereto on religious grounds....

workplace and public business safety, and the Act abrogated the police power of states, municipalities, and other federal agencies to enforce vaccine mandates as well as banned private employers from mandating vaccines as a pre-condition of employment because it is impossible for any vaccine to stop the spread or exposure to hazardous viruses in the atmosphere.

According to Dr. Baxter Montgomery, MD, cardiologist, and OSHA compliance expert, “all vaccines are “medical treatments” manufactured under FDA regulations² to affect the function of the immune system in the body and are not manufactured to serve as an environmental safety method to be used to stop the spread of communicable diseases that are transmitted in the environment outside the body.”

Attorney Saint-George says that “while the FDA approved the Covid-19 vaccines as safe and effective for “internal” use in the body as a medical treatment, the FDA does not have legal jurisdiction to determine safety and effectiveness of vaccines as an environmental safety method to be used in public and workspaces outside the body. Based on the limits on the authority of the OSHA agency in the Act, the Secretary will never approve any vaccine as an environmental safety method because vaccines can never meet the minimum safety requirements that all proposed safety methods manufactured to prevent serious illness or death from respiratory hazards must meet.” The validity of vaccine mandates has always been an issue controlled by federal law regarding the separation of powers between federal agencies, specifically the OSHA agency under the US Department of Labor and the FDA under HHS, and states under the 10th Amendment of the Constitution, which protects powers of states not expressly reserved to the federal government, as was reserved in the OSH Act.

As the former chief legal officer of a global cement corporation regulated by OSHA and the Mine Safety and Health Administration (MSHA) which has some of the strictest safe regulations, attorney Saint-George found it outrageous that during a pandemic public and private employers nationwide would blatantly ignore federal OSHA minimum standards, and ignore the civil liberties expressly protected by the OSH Act that neither Congress nor the courts can repeal or change.

The Fundamental Right to Choose And Refuse Medical Treatment

So, why did millions of public and private employers enforce illegal Covid-19 vaccine mandates? Because over 100 years ago in 1905 the U.S. Supreme Court in the case [Jacobson v. Massachusetts](#), 197 U.S. 11 (1905) held that while every citizen has the fundamental right to choose their own healthcare, that individual right protected by the Free Exercise Clause of the Constitution can be limited by states’ rights under the Constitution’s 10th Amendment, which gives states “police power” to criminalize a person’s refusal to take a small pock vaccine. At that time, the Massachusetts public health officials “believed” that “anti-vaxxers” at that time could harm the “common

² See Food and Drug Administration Definitions in 21 USC 321(g)(1)(C) -(D), (h)(3)

good” of society and needed to be criminally prosecuted as was Mr. Jacobson who was found guilty and subject to a year in prison and a \$10 fine. While the Jacobson Supreme Court admitted it had no evidence that the unvaccinated “caused” harm to others or that small pocks vaccine was effective at preventing spread, because the Federal Department of Health & Human Services did not exist at that time, the Supreme Court sided with the majority of political voices who demanded the criminal prosecution and fining of Mr. Jacobson.

While Jacobson is no longer good law due to the Congressional enactments of several federal laws including the [1944 Public Health Service Act](#) and the 1970 OSH Act that overruled the decision, public and private employers during the Covid-19 Pandemic erroneously believed that Jacobson is still good law and have illegally exercised the *Jacobson* authorized “police power” to mandate vaccine that was authorized by the Supreme Court at a time when Congress had not acted to establish any public health agencies back in 1905. The belief that the *Jacobson* case is still good law also has been echoed in the recent opinion of the [Illinois Labor Relations Board Administrative Law Judge Anna Hamburg-Gal](#), which stated that the City of Chicago has the “authority” to implement vaccine mandates.

However, the U.S. Supreme Court made clear over 30-years ago in the 1981 case *City o Milwaukee v. Illinois and Michigan*, 451 U.S. 304, 305 (1981) that when Congress addresses a question through the enactment of legislation, federal court case law is overruled by the enacted federal statute and should not be relied upon contrary to the enacted federal law.

With Jacobson overruled as early as 1944 and further limited by the OSH Act in 1970, the U.S. Supreme Court in 1990 further reiterated its holding in *Jacobson* that all competent citizens have the fundamental right to choose and refuse medical treatment even on the brink of death, in the case *Cruzan v. Director, Missouri Dept of Health*, 497 U.S. 261 (1990) which was the first “right to die” case. The Women of Color for Equal Justice in its pending Application has asked the U.S. Supreme Court to not only make clear that criminalization of the right to refuse a vaccine has been overruled, since the court has never stated in any opinion, the Application further asks the Supreme Court to declare that all citizens have the fundamental right to choose their medical treatment and specifically to choose Plant-Based Lifestyle Medicine.

One of the Plaintiffs in the pending case, Ms. Amoura Bryan, a schoolteacher for the City of New York Department of Education (NYCDOE), requested in her religious exemption request from the Covid-19 vaccine that she be allowed to use her Bible based Plant-based Lifestyle Medicine instead of the Covid-19 vaccine to protect her from a Covid-19 infection and to protect others. Ms. Bryan provided the NYCDOE with medical evidence from three research studies that established her religious practice of using Plant-Based Lifestyle Medicine was effective at reducing severe Covid-19 and death by up to 73%. Despite the evidence, the NYCDOC refused the automatic exemption she should have received based on the OSH Act. Consequently,

the fundamental constitutional rights of U.S. citizens as well as immigrants have been blatantly ignored during the Covid-19 Pandemic.

While the [Biden Administration announced](#) the end of the Federal Covid-19 vaccine mandates for federal employees, contractors, international travelers, head start educators and CMS certified health facilities, the administration's repeal does not render the issue of the illegality of all vaccine mandates moot before the U.S. Supreme Court. It is well settled Supreme Court law – since 1982 - that the voluntary cessation of the enforcement of a law does not deprive the Court of its power to declare its illegality.³

The City of New York also reported that on March 10, 2023, it had also amended its nine (9) vaccine orders to no longer ban unvaccinated city employees from its buildings. Unlike the Biden Administration, the City placed new restrictions on the unvaccinated locked out City workers wherein they are required to waive their claims for backpay and to apply for jobs that they are not guaranteed to get.

Attorney Saint-George says that the millions of victims of these blatantly illegal vaccine mandates have been irreparably harmed, and the acts of public and private employers was done with reckless disregard for the fundamental rights of citizen protected by the OSH Act and the U.S. Constitution all because politicians “believed” that vaccines could stop the spread when it has been known for over 40 years that they are incapable of preventing or stop the spread.”

Now it is up to the U.S. Supreme Court to decide during its private conference on May 19, 2023, whether it will convert the Application to a Petition for Certiorari so that the case will receive a full hearing on the merits or whether the Court will issue a written opinion and send the case back to the New York Eastern District Court with instructions on the law.

Ms. Bryan prays that the Court will not follow in the steps of the *Plessy v. Ferguson* case that legalized “separate and unequal” in the U.S. based on skin color and “keep us unvaccinated workers separated from our jobs and livelihoods because the financial burdens have been unequal to us all”.

Press Conference: May 18, 2023, a 9am - U.S. Supreme Court sidewalk
Contact: Jo Saint-George – (301) 447-3600 or jo@woc4equaljustice.org.

Women of Color for Equal Justice - is a Maryland non-profit national advocacy affiliate of the Madison County Economic Development Corporation a 501(c)(3) nonprofit organization whose mission is to eliminate structural and systemic barriers to equality and economic justice and development for communities of color around the country.

³ See [City of Mesquite v. Aladdin Castle, Inc, 455 U.S. 283, 289 \(1982\)](#)