IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

KATIE SCZESNY, JAMIE RUMFIELD, DEBRA HAGEN, and MARIETTE VITTI, Plaintiffs, vs. THE STATE OF NEW JERSEY, GOVERNOR PHILIP MURPHY (in his official and personal capacity) Defendant.	IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY CIVIL ACTION

BRIEF IN SUPPORT OF APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

Oral Argument Requested if opposed.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE**

EXECUTIVE ORDERS

CONSTITUTIONS, STATUTES & RULES OF COURT

PRELIMINARY STATEMENT

The question presented in this case is whether the state government can coerce people to continue take continual Covid-19 injections by ordering private employers to discipline workers who want to stop taking them.

Plaintiffs are all fully vaccinated nurses. Two of them were injured by the first series of shots. One is pregnant and does not want to take additional injections while pregnant. Two of them were infected with covid, despite being fully vaccinated, and want to rely on their naturally-acquired immunity. All have carefully thought about their decision to stop taking Covid-19 injections. For each of them, this a private medical decision about what risks to take with their bodies. They are now slated to be fired from their jobs on April 24, 2022 because Governor Phil Murphy has ordered their employers to discipline them if they refuse to be injected again.[1]

Plaintiffs have strong liberty and privacy interests to stop taking the unwanted injections, and the state's interest in slowing the spread of Covid-19 through continual, coerced injections is weak compared to Plaintiffs' liberty interests.

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[1] Plaintiff Debra Hagen resigned on Friday to avoid the termination on her record, but wishes to return to work immediately if Executive Order 283 is enjoined.

Executive Order 283 ("EO 283"), the executive order at issue in this case, violates the substantive due process clause of the Fourteenth Amendment because it impermissibly intrudes on the fundamental liberty and privacy right to decline unwanted medical procedures. It essentially makes Plaintiffs ineligible to continue working in the healthcare field unless they surrender their constitutional right to decline medical procedures. This condition on employment in their field violates the doctrine of unconstitutional conditions, which prohibits the government from conditioning a privilege on the surrender of a constitutional right. *Frost v. Railroad Commission of State of California*, 271 *U.S.* 583 (1926).

The EO also violates the equal protection clause of the Fourteenth Amendment because it treats Plaintiffs differently based on the exercise of their fundamental rights and the due process clause of the Fourteenth Amendment because it has deprived them of the ability to use their licenses without due process of law.

STATEMENT OF FACTS

A. Executive Orders 283, 294, and Nomenclature

Executive Order 283 requires people to be "up to date" with regard to Covid-19 injections. Exhibit 1 to Declaration of Dana Wefer ("Wefer Decl."). "Up to date" is defined as having received "either a 2-dose series of an mRNA Covid-19 vaccine or a single

dose COVID-19 vaccine, *and any booster doses for which they are eligible as recommended by the CDC."* (collectively these injections are referred to herein as "the Mandated Pharmaceuticals" or "Mandated Injections").

On March 29, 2022, the FDA authorized a second booster for people 50 years and older and some immunocompromised people. On March 30, 2022 the CDC recommended a second booster for these same groups. Because EO 283 requires people to get more injections when the CDC says they are eligible, these groups had to take two boosters to be "up to date" under Executive Order 283.

On April 13, 2022, Governor Murphy signed executive order 294 stating that people who are now eligible for the fourth shot do not have to get it *yet* because "the CDC *currently* considers a person boosted and up to date with their COVID19 vaccination after receiving their first booster dose *at this time*." Wefer. Decl., Exhibit 2, pg. 5 (emphasis added). If the CDC changes the definition of "up to date," then healthcare workers have to get more injections to stay compliant. How often and how many times workers have to present their bodies for injection is now dictated by the CDC and Governor Murphy. The term could mean three shots, four shots, annual shots, or shots three times a year. The term "up to date" gives the government unlimited discretion to mandate when workers must undergo medical procedures and is very different from the limited term "fully vaccinated" for this reason.

Other important nomenclature essential to this case is the word "vaccine." The question of whether the Mandated Pharmaceuticals are vaccines is a threshold issue because if they are not, then *Jacobson v. Massachusetts*, 1987 *U.S.* 11 (1905) does not apply and the injections are analyzed the same as other unwanted medical procedure- under strict scrutiny. This nomenclature is discussed in Part Ib.

B. Plaintiffs

Plaintiffs are four healthcare workers employed by Hunterdon Medical Center. As such they are subject to EO 283, the constitutionality of which is challenged by this suit. They are all "fully vaccinated." Two Plaintiffs, Debra Hagen and Mariette Vitti, were injured by the first series of Covid-19 injections. One Plaintiff, Katie Sczesny, is pregnant and does not want to take another injection while carrying her child. All Plaintiffs felt unwell after the first two injections.

Plaintiff Debra Hagen, MSN, FNP, RN, has been a nurse for 30 years and employed by Hunterdon Medical Center for 16. Verified Complaint ("Verif. Compl.") at ¶9. She has a long and complicated medical history that includes seizures beginning at puberty and serious adverse reactions to vaccines and other medications. She has carefully managed neurological and immune issues all of her adult life. In 2009, when pregnant with her fourth child, she developed shingles four times prior to giving birth. She

subsequently suffered a seizure when her son was 5 months old. An EEG showed that she had persistent seizure activity in her brain and she was referred to an epileptologist. *Id.* at ¶¶ 11-13.

Unfortunately, Ms. Hagen suffered reactions to available seizure medications and was not able to tolerate any of them. She has managed her seizure disorder to the best of her ability with strict lifestyle guidelines. She states: "I have been very careful with any medications, treatments, beverages, and anything else that I put into my body because I know that triggering another seizure would mean loss of my driver's license and likely my job." *Id.* at ¶14. She avoids alcohol, certain medications, and she strictly monitors and limits caffeine intake. She must be careful to get regular and sufficient sleep, to eat frequent meals, and to avoid stressful situations to prevent seizure breakthroughs. Her body is susceptible to neurological and immune issues and she continues to develop shingles 2-3 times per year during times of increased stress.

In January 2016, Ms. Hagen fell down stairs and suffered a concussion. Her recovery was prolonged and she suffered post-concussion symptoms of brain fog, headaches, fatigue, and lack of concentration. Her doctor treated these symptoms with Adderall, which allowed her to go back to work, but puts her at increased risk for another seizure, especially as she suffers from tachycardia (increased heart rate) as a side effect of her

medication. Ms. Hagen's seizures have always been linked to her hormones and she is currently perimenopausal, which puts her at an even greater risk of seizures. *Id.* at ¶16.

In 2019, Ms. Hagen underwent titer testing for measles, mumps, rubella, and varicella (chicken pox) *Id.* at ¶¶17-19. Despite having had 3 MMR vaccines in the past, she did not show immunity to measles. Neither did she show immunity to chicken pox, despite the fact that she had chicken pox and suffers from regular shingles because she has had chicken pox. Nevertheless, Ms. Hagen received another chicken pox vaccine and subsequently developed two back-to-back cases of shingles within 2 weeks of having received the vaccine and another case of shingles six months later. Shingles is a known adverse event following the chicken pox vaccine. It is also a known adverse event following the Covid-19 injections. *Id* at ¶¶21-22.

Ms. Hagen's complex neurological and immunological medical history makes her high-risk for neurological reactions and complications from medications, vaccines, and even beverages. She was nervous about taking any of the Covid-19 injections because she became aware of reports and data that people were suffering neurological side effects such as headaches, brain fog, fatigue, and Guillen-Barre syndrome. These are symptoms that Ms. Hagen could not risk because she is already being treated to control these symptoms due to her preexisting conditions. *Id* at ¶¶24-25.

Ms. Hagen's requests for a religious accommodation and medical accommodation for the primary series of shots were both denied. Given Governor Murphy's and the CMS (federal) mandates, she felt boxed into a corner, especially because both she and her husband work in the medical field and cannot afford to be out of work with 6 children to support. On January 26, 2022, Ms. Hagen took a chance on the J&J injection.

48 hours after receiving the J&J injection, Ms. Hagen began to experience neurological symptoms. The symptoms began with numbness, tingling, and sciatic pain through her left leg, which spread to her left arm within an hour. Her pain continued over the next several days and she developed additional symptoms including: pain, numbness, and tingling in her legs; headaches; dizziness; severe fatigue; and an inability to concentrate. Ms. Hagen sought medical help. Her doctor told her that she was having a reaction to the J&J shot and was presenting with symptoms of "demyelinating neuritis" that may progress into Guillen-Barre. *Id.* at ¶¶26-28.

After an EMG showed that certain sensory nerves could not feel electric stimulation, Ms. Hagen. was diagnosed with "sensory neuropathy". Her doctor advised her that she should not receive any further covid vaccinations and signed a medical exemption form for her stating the same. *Id.* at ¶28.

Ms. Hagen's request for a medical accommodation was denied twice. She does not want to take any more of the Covid-19

injections because she does not want to risk exacerbating her health problems further. She feels that she needs to be able to make her own decisions about what to put into her body, considering her doctor's advice, her personal medical history, and her life circumstances. *Id.* at ¶¶29-30.

Plaintiff Mariette Vitti, RN, BSN-BC, is board certified in Medical Surgical Nursing. She is fully vaccinated, having received two doses of the Moderna Covid-19 injection in May and June of 2021. *Id* at ¶49.

After the second injection, she began having pain at the injection site, which progressed to tingling in her fingers and then body aches for four days. Her body aches were so severe that her clothing hurt when it touched her. She had to tell her husband to keep her children away from her because anything touching her caused terrible pain. *Id.* at ¶¶50-51.

Ms. Vitti's heart is not the same since her second shot. Her problems began 8 hours after her second shot, while walking up the stairs. She says:

> I felt my heart pounding like it was about to come out of my chest. I told my husband I was scared, and he may have to take me to the ER. I checked my apple watch and the heart rate was 168 after doing very minimal activity. I felt the need to lay down so I layed down on the couch and tried to bear down to decrease my heart rate down to 128 but no lower. From that day forward things that require minimal activity, walking up the stairs at home, leisurely walking to my car after work, can lead to heart rates up into the 130's and 140's

and significant palpitations.

Id. at ¶52. Ms. Vitti visited a cardiologist and wore a heart monitor for two weeks. The report shows that she had a heart rate of up to 160 with trigeminy (an irregular heart beat). *Id.* at ¶53.

Ms. Vitti does not want to take any more of the Covid-19 shots. Her heart is not the same after the first series, and she does not want to further risk her health. She wishes to make her own decisions about her healthcare and what pharmaceuticals to put into her body. *Id.* at ¶54.

Plaintiff Katie Sczesny is a nurse employed by HMC. She is fully vaccinated, recently recovered from Covid-19 infection, and pregnant. Ms. Sczesny received two shots of the Pfizer Covid-19 injection in September 2021. She had severe spinal pain, joint aches, and a fever for 48 hours following the second shot. In December 2021, contracted and recovered from Covid-19. *Id.* at ¶¶40-42.

Ms. Sczesny does not want to get more Covid-19 injections while pregnant. She does not want to take any risks with her baby. Ms. Sczesny was told by HMC that her recent Covid-19 infection and being fully vaccinated was not a legitimate reason under EO 283 to wait to get another injection. Ms. Sczesny was also told that her pregnancy was not a legitimate reason to wait, despite a note from her doctor supporting her decision on how to manage her health and the health of her baby. *Id.* at ¶¶43-47.

Plaintiff Jamie Rumfield is a labor and delivery nurse at Hunterdon Medical Center. She received the Moderna Covid-19 injections on March 8, 2021 and April 8, 2021. After receiving the injections she experienced severe headache, body aches, chills, fever, and a red rash surrounding the injection site. *Id* at ¶¶31-33.

In December 2021, Ms. Rumfield contracted Covid-19. Six days after testing positive, while still symptomatic and likely still contagious, she was told she could return to work because her symptoms were resolving. *Id.* at ¶¶34-35. Now that she has recovered from Covid-19, Ms. Rumfield does not want to take any more Covid-19 injections because she has natural immunity and does not need a booster. *Id.* at ¶¶38.

Ms. Rumfield requested a 90 day extension on her deadline to take the booster after testing positive, but was told by HMC that she was eligible to receive the booster 5 days after testing positive for Covid-19. *Id.* at ¶36.

All plaintiffs want to make their own decisions with regard to what is injected into their bodies, based on their individual circumstances and health.

LEGAL ARUGMENT

A temporary injunction should be granted if (1) the plaintiff is likely to succeed on the merits; (2) denial will result in irreparable harm to the plaintiff; (3) granting the injunction

will not result in irreparable harm to the defendant; and (4) granting the injunction is in the public interest. *Maldonado v. Houstoun,* 157 F.3d 179, 184 (3d Cir. 1998). Plaintiffs fulfill each element.

I. Executive Order 283 should be analyzed under strict scrutiny

The right of a free and mentally competent person to decline unwanted medical procedures is established as essential to ordered liberty and right to privacy. It applies to taking things out of a person's body against their will, *In re A.C.*, 573 A.2d 1235 (D.C. Court of Appeals 1990) (c-section cannot be performed without consent, even to save life of baby), *Lane v. Candura*, 376 N.E.2d 1232 (Mass. App. Ct. 1978) (patient cannot be forced to undergo amputation even if they will likely die without it) and putting things into a person's body against their will. *Zant v. Prevatte*, 286 S.E.2d 715 (Ga. 1982) (prisoner right to refuse food), *Erickson v. Dilgard,* 252 N.Y.S. 2d 705 (Special term 1962) (liberty to refuse blood transfusion even if it may cause their death). It applies even if children will be left without a parent. *In re Osborne*, 294 A.2d 372 (D.C. Court of Appeals 1972). People have the right to decline even lifesaving medical care.

The right to decline medical procedures falls within the right to bodily integrity. *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997)(stating that the liberty protected by substantive due process includes the right to bodily integrity); *see also Cruzan*

by Cruzan v. Dir., Missouri Dep't of Health, *497 U.S. 261*, 277 (1990) (stating that "the common-law doctrine of informed consent is viewed as generally encompassing the right of a competent individual to refuse medical treatment").

Because declining medical procedures is a fundamental right, strict scrutiny applies. *Harris v. McRae*, 448 *U.S.* 297, 312 (1980) (stating "[i]t is well settled that...if a law impinges upon a fundamental rights...[it] is presumptively unconstitutional"); see also, *Regents of Univ. of California v. Bakke*, 438 *U.S.* 265, 357 (1978) (stating that government actions that restrict fundamental rights are "subjected to strict scrutiny and can be justified only if it furthers a compelling government purpose and, even then, only if no less restrictive alternative is available").

The right to exercise personal choice over medical decisions also falls within privacy interests protected by substantive due process, specifically "the individual interest in avoiding disclosure of personal matters and the interest in independence in making certain kinds of important decisions." *Doe by & through Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 527 (3d Cir. 2018) (citing *Doe v. Luzerne County*, 660 F.3d 169, 175 (3d Cir. 2011)). Because EO 283 implicates the fundamental rights to privacy and liberty to decline medical procedures, strict scrutiny applies.

A. Jacobson is distinguishable from EO 283 on many grounds

Jacobson v. Massachusetts, 197 U.S. 1, 25 (1905), which

triggers analysis akin to rational basis, is not controlling precedent because it is so factually removed from the situation presented here. The question in *Jacobson* was whether a statute that allowed a $5 fine to be imposed on people who declined the smallpox vaccine was constitutional. Mr. Jacobson had a trial, was convicted, and was fined $5, which he challenged. The Court's holding was direct and narrow: "[W]e hold that the statute in question is a health law, enacted in a reasonable and proper exercise of the police power." Jacobson, 197 U.S. at 25.

EO 283 does not fit under this holding. Some of the many ways in which the statute in Jacobson is distinguishable from EO 283 are: 1) The targeted diseases are very different; covid is not as deadly as smallpox, which had a mortality rate of 30%, 2) the Mandated Pharmaceuticals have existed for less than 2 years and are still in trials, while the smallpox vaccine was already a century old when Jacobson was decided, and 3) the "reasonable" consequences for Mr. Jacobson declining the smallpox vaccine under the Massachusetts statute was a modest fine while EO 283 makes Plaintiffs unemployable in their field of work, and 4) the smallpox vaccination requirement was explicitly authorized by the legislature and enacted at a local level while EO 283 is an executive action with no explicit authorization. The factual differences between EO 283 and *Jacobson* are so great that *Jacobson* simply does not apply.

B. Jacobson does not apply because the Mandated Pharmaceuticals are not "vaccines" under *Jacobson's* precedent

Government attempts to coerce people into undergoing unwanted medical procedures are subject to strict scrutiny with the sole exception of "vaccines." Vaccines alone stand outside traditional constitutional analysis and instead get deferential rational basis review under *Jacobson*. Because vaccines are granted this deference, it is vital to ensure that the pharmaceutical being mandated is correctly categorized as a "vaccine." Here, the FDA and CDC have categorized these novel pharmaceuticals as "vaccines," but courts must look beyond the agency classification.

Both the Supreme Court and Third Circuit Court of Appeals have noted that courts must look at substance over form and are not bound by agency classifications. *Azar v. Allina Health Servs.*, 139 *U.S.* 1804, 1812 (2019) (noting that "courts have long looked to the contents of the agency's action, not the agency's self-serving label") (emphasis in original); *State of New Jersey v. Dep't of Health and Hum. Servs.*, 670 F.2d 1262 (3d Cir. 1981) (stating that "a court of appeals is obligated to look beyond the label the Secretary puts on his or her actions, and instead is required to conduct an independent evaluation of the underlying substance" because "[t]o do otherwise would be to elevate form over substance and...make the jurisdiction of a court of appeals contingent upon the Secretary's unfettered discretion").

Thus, the question of whether the Mandated Injections are

"vaccines" within the meaning of *Jacobson* is a threshold inquiry for any court before determining that *Jacobson* applies to these pharmaceuticals. This inquiry beings with a simple question: What does the word "vaccine" mean?

In 1905, when Jacobson was decided, a "vaccine" was *one* specific drug, not a category of drugs. The definition was fixed and narrow:

> of or pertaining to cows; pertaining to, derived from, or caused by, vaccinia; as, vaccine virus; the vaccine disease. - - n. The virus of vaccinia used in vaccination.

Wefer Decl. at Exhibit 4. The word described one specific virus and the use of that virus to inoculate against smallpox. The Court's opinion in *Jacobson* related *only* to the smallpox vaccine, though at the time the term "smallpox vaccine" would have been redundant.

For at least 50 years after *Jacobson* the dictionary definition of "vaccine" remained largely the same. In 1954 Webster's Dictionary's definition still related only to smallpox: "[t]he substance taken from a cow with cowpox and the fluid used in inoculating the body against smallpox." Wefer Decl. at Exhibit 5. In 2006,[2] Webster's Dictionary Online's first definition for

[2] Archived webpages throughout were taken from archive.org, a 501(c)(3) organization "building a digital library of Internet sites and other cultural artifacts in digital form" since 1996 The website allows users to save a screenshot of a webpage in time. The about section for the organization is here: https://archive.org/about/

"vaccine" still related only to smallpox, as it had for the past century. A secondary definition expanded the word "vaccine" to include a broader class of drugs, specifically: "a preparation of killed microorganisms, living attenuated organisms, or living fully virulent organisms that is administered to produce or artificially increase immunity to a particular disease." Wefer Decl. at Exhibit 6. This definition ("the Microorganism Definition") became dominant and is still found in other dictionaries such as Collins English Dictionary and Chambers Dictionary (13th Edition) and the American Heritage Dictionary). Decl. of Dana Wefer, Exhibits 7, 8, and 9.

Few courts have grappled with the question of what constitutes a "vaccine," but of those that have, most have used the Microorganism Definition. *See Blackmon v. American Home Products Corp.*, 267 F.Supp.2d 667, 674 (S.D. Tex. 2003) (relying on definition of vaccine in Dorland's Medical Dictionary 1799 (27th ed.1988)("a suspension of attenuated or killed microorganisms") and Webster's 9th New Collegiate Dictionary 1301 (9th ed.1991) ("a preparation of killed microorganisms, living attenuated organisms, or living fully virulent organisms"); see also *Owens Ex Rel. Schafer v. American Home Prod.*, 203 F. Supp. 2d 748, 755 (S.D. Tex. 2002) (citing the same dictionary definitions).

Technology advanced again with the invention of "Subunit, recombinant, polysaccharide, and conjugate vaccines," a

subcategory of vaccines that contain "specific pieces of the germ—like its protein, sugar, or capsid (a casing around the germ)." Some dictionaries have expanded the definition of "vaccine" to include this new technology and others have not. *See* e.g., Dorland's Illustrated Medical Dictionary, 1767 (32d ed 2012) (defining "vaccine" as "a suspension of attenuated or killed microorganisms. . . .or of antigenic proteins derived from them, administered for the prevention, amelioration, or treatment of infectious diseases") (as quoted in *Dean v. Secretary of Health and Human Services*, United States Court of Federal Claims, No. 16-1245V (May 29, 2018)). Washington State uses a similar definition in legislation concerning vaccines:

> a preparation of killed or attenuated living microorganisms, or fraction thereof, that upon administration stimulates immunity that protects against disease and is approved by the federal food and drug administration as safe and effective.

RCW 70.290.010(10)3. The mRNA (Pfizer and Moderna) and DNA (Jannsen) injections are excluded from this definition because they do not contain pieces of microorganisms, they contain synthetic genetic material.

The technology advanced again last year with the advent of mRNA and DNA "vaccines." In a testament to how fluid the definition is, some online dictionaries changed the definition for "vaccine" overnight in order to bring the Mandated Pharmaceuticals within its ambit. For example, someone looking up the definition of

"vaccine" Webster's Online Dictionary on January 18, 2021 saw this definition:

> A preparation of killed microorganisms, living attenuated organisms, or living fully virulent organisms that is administered to produce or artificially increase immunity to a particular disease.

Wefer Decl., Exhibit 10. This definition excludes the Mandated Injections because they do not contain microorganisms. Someone looking up the definition of "vaccine" eight days later would have seen a secondary definition that brings the Mandated Pharmaceuticals within the vaccine category:

> A preparation of genetic material (such as a strand of synthesized messenger RNA) that is used by the cells of the body to produce an antigenic substance (such as a fragment of virus spike protein).

Wefer Decl., Exhibit 11. Cambridge Dictionary also changed its definition of "vaccine" last year to include the new pharmaceuticals. At the beginning of 2021, the Mandated Pharmaceuticals were excluded from the Cambridge Dictionary definition of "vaccine" because they do not contain a virus or bacteria:

> A substance containing a virus or bacterium in a form that is not harmful, given to a person or animal to prevent them from getting the disease that the virus or bacterium causes.

Wefer Decl., Exhibit 12. But by August 2021 the definition was changed to bring the Mandated Injections within its ambit:

> A substance that is put into the body of a

> person or animal to protect them from a disease by causing them to produce antibodies (=proteins that fight diseases).

Wefer Decl., Exhibit 13.

The fact that these dictionaries had to change their definition of "vaccine" to make the Mandated Pharmaceuticals fit shows that these pharmaceuticals do not fall within a common or traditional meaning of the word "vaccine." The definition of "vaccine" has expanded as technology progressed, resulting in a hodgepodge of definitions as technology has moved faster than language. Even the CDC has fallen into this trap. On the CDC webpage titled "Glossary of Vaccine Terms," the CDC defines "vaccine" as:

> A suspension of live (usually attenuated) or inactivated microorganisms (e.g. bacteria or viruses) or fractions thereof administered to induce immunity and prevent infectious diseases and their sequelae.

Wefer Decl., Exhibit 14. This definition excludes the Mandated Pharmaceuticals. However on another webpage the definition drops any reference to composition and instead defines "vaccine" by its function: "[a] preparation that is used to stimulate the body's immune response against diseases."[3]

Wefer Decl., Exhibit 15.

[3] Note that in the second CDC definition, the bar has also been lowered with regard to efficacy. In the glossary definition, a vaccine "prevents infectious disease." In the new definition a vaccine "stimulate[s] the body's immune response."

The split in definitions on the CDC website illustrates a larger trend and demonstrates that the word "vaccine" is expanding in two different directions to the same result. On one hand the definition is expanded to bring new pharmaceutical technology into the category. Thus the composition part of the definition has gone from: the vaccinia virus → microorganisms → microorganisms or parts of microorganisms → modified genetic material that encodes for a viral protein.

Other definitions, like the second CDC one, have dropped the composition part of the definition altogether and lowered the bar for efficacy, such that anything that "stimulates" an immune response is a "vaccine." In that case, the definition went from the vaccinia virus → microorganisms generally → microorganisms or parts of microorganisms → anything that stimulates immunity.

Whether the composition part of the definition is expanded to include new technology or dropped altogether, it is clear that the word's definition is elastic and being regularly expanded to accommodate new technology that was not even conceivable in 1905 when *Jacobson* was decided. The expansion of the word "vaccine" would be nothing more than a cultural curiosity, like how the word "phone" has come to encompass smartphones, except that if courts apply *Jacobson* to any pharmaceutical that federal government agencies categorize as a "vaccine," then every government expansion of the word "vaccine" triggers an accompanying expansion

of government power to coerce people to take new pharmaceuticals. This is far outside of *Jacobson's* holding. *Jacobson* does not stand for the proposition that any new technology the federal government categorizes as a "vaccine" can be mandated by other branches of government.

In summary, *Jacobson* does not apply to EO 283 because the Mandated Pharmaceuticals do not fit under a traditional or common meaning of the word vaccine, and are far outside the meaning of the word "vaccine" as used in *Jacobson*. Even using an expanded definition from the last ten years, the pharmaceuticals do not qualify as "vaccines" under most dictionary definitions because they do not contain microorganisms or pieces of microorganisms. It is impossible to determine that Plaintiffs have no liberty right to decline the Mandated Injections because they are "vaccines" when they do not fall under the common meaning of the word "vaccine." Consequently, traditional constitutional analysis applies and EO 283 is subject to strict scrutiny.

II. EXECUTIVE ORDER 283 IS UNCONSTITUTIONAL UNDER STRICT SCRUTINY ANALYSIS BECAUSE IT IS A SUBSTANTIAL BURDEN ON PLAINTIFFS' LIBERTY AND PRIVACY RIGHTS AND IS NOT NARROWLY TAILORED

To survive strict scrutiny, the government must demonstrate a compelling government interest and show that the government action is narrowly tailored to achieve that interest. *Glucksberg*, 521 *U.S.* at 721 (stating that "the Fourteenth Amendment 'forbids the government to infringe... 'fundamental' liberty interests at all,

no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest") (quoting *Reno v. Flores*, 507 *U.S.* 292, 301 (1993)).

The government's asserted interests must be balanced and weighed against the seriousness of the intrusions on Plaintiffs' liberty and privacy. *Wisconsin v. Yoder*, 406 *U.S.* 205, 214 (1972) (stating that with balancing, the government interest must be "of sufficient magnitude to override the interest claiming protection"). The policy also must be narrowly tailored to achieve the government's asserted interests.

A. The Government's Asserted Interests

In 2020, the Supreme Court stated that "California undoubtedly has a compelling interest in combating the spread of COVID-19 and protecting the health of its citizens." *S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1614 (2020). For purposes of this motion, it is assumed that New Jersey has this compelling interest. The question is whether New Jersey's interest in forcing healthcare workers to be continually injected with the Mandated Pharmaceuticals whenever the CDC so recommends is a narrowly tailored policy to further the interest in combatting the spread of covid. It is not. Moreover, Plaintiffs liberty rights to stop taking these unwanted pharmaceuticals is stronger than the government's interest in coercing them to continue.

B. Balancing Plaintiffs' liberty and privacy rights against the government interests show that Plaintiffs' rights

are stronger and more compelling than the governments' interests and that EO 283 is not narrowly tailored

Weighing the government's interest against the serious intrusion on the Plaintiffs' liberty and privacy rights shows that EO 283 is unconstitutional.

Plaintiffs' liberty and privacy rights to decline an unwanted medical intervention are extremely strong when: a) the injections do not prevent infection and transmission against the dominant variant of Omicron; b) there are known and unknown risks of taking the pharmaceuticals; c) the person being mandated to take the pharmaceuticals has taken them in the recent past and been hurt and/or made sick by them; d)the individual who the government wishes to compel to take the pharmaceutical has been advised by their doctor not to take the pharmaceutical; e) the medical procedure the government wishes to compel involves a new technology that has never before been approved for or used in healthy humans, never mind three doses in less than a year period; f) the medical procedure was invented by and is manufactured by corporations with criminal track records or no track record at all; g) the FDA advisory committee voted 16-2 to NOT recommend the medical procedure citing safety concerns; h) the federal agency tasked with oversight of public safety (FDA) is plagued by scandals and high profile failures and acted contrary to its own advisory committee's recommendations; and i) the CDC and FDA advisory committees both voted *against* recommending the procedure for

healthcare workers under 65.

In addition, the government's interest in coercing repeated medical procedures to stop the spread of a virus is less compelling and lacks narrow tailoring when: 1) there exists a wide range of treatments for the targeted virus; 2) the virus has an objectively low mortality rate, especially among working-age people who are targeted by the mandates; and 3) the mandate does not account for natural immunity gained from previous infection, only "vaccination," and 4) the mandate gives a single actor of a single federal government agency the power to determine when and how often Plaintiffs must be injected with pharmaceuticals.

Each of these factors is discussed in more detail below.

1. The Advisory panels of *both* the CDC and FDA recommended against authorizing third shots for all people

The CDC has an advisory committee on immunization. The committee, comprised of doctors and vaccine experts, voted *against* recommending boosters for healthcare workers, teachers, and others whose jobs put them at risk. Wefer Decl. at Exhibit 16. The advisory committee noted that "[p]eople younger than 49, however, should only get a third dose if the benefits outweigh the risks...a personal consideration to discuss with their doctor." Id. One committee member, Dr. Oliver Brooks, chief medical officer of Watts Healthcare Corporation, stated: "I'm really concerned about the data for boosters in general."

CDC Director Rochelle Walensky overruled the committee and

decided to recommend third injections for all adults. Thus, the CDC's recommendation that people under 50 receive a third Covid-19 injection is based on the opinion of just one person and is *against* the opinion of the expert committee that advises the CDC. Because Executive Orders 283 and 294 tie healthcare workers' right to stop taking Covid-19 injections to CDC recommendations, and because CDC Director Rochelle Walensky apparently has sole power to make CDC recommendations, Governor Phil Murphy has made CDC Director Walensky the sole arbiter of whether and when Plaintiffs can stop taking Covid-19 injections.

The FDA advisory panel also voted against recommending third injections for everyone, instead only recommending them for people above retirement age. PBS reported that the vote was 16-2 against "with members expressing frustration that Pfizer had provided little data on the safety of extra doses." Wefer Decl., Exhibit 17. The New York Times reported that two high profile regulators, Dr. Marion Gruber, the director of the F.D.A.'s vaccines office, and her deputy, Dr. Philip Krause, resigned over this issue. Specifically:

> Neither believed there was enough data to justify offering booster shots yet, the people said, and both viewed the announcement, amplified by President Biden, as pressure on the F.D.A. to quickly authorize them.

Wefer Decl. at Exhibit 18.

Like the CDC, the FDA authorized third injections for everyone

over the overwhelming objection of its expert advisors. It is not clear who in the FDA made the decision.

The fact that the FDA and CDC expert advisory panels both rejected additional injections for Plaintiffs weighs strongly in favor of Plaintiffs' right to stop being injected.

2. The fact that the Mandated Pharmaceuticals carry serious health risks and that two Plaintiffs have already by injured by them weighs in favor of the individual liberty to stop taking them

As part of informed consent, people who take the Mandated Pharmaceuticals are given a "Fact Sheet for Recipients and Caregivers." The Fact Sheets for the Pfizer and Moderna injections list several risks, including myocarditis and pericarditis. The Fact Sheet for the J&J pharmaceutical warns that "[b]lood clots involving blood vessels in the brain, lungs, abdomen, and legs along with low levels of platelets," and Guillian Barre syndrome have occurred in some people. Wefer Decl., Exhibit 21. The fact sheets for all the mandated pharmaceuticals state that "[s]erious and unexpected side effects may occur" and the drug is "still being studied in clinical trials." *See Fact Sheets* for Pfizer (Wefer Decl., Exhibit 19); Moderna (Wefer Decl., Exhibit 20); and Janssen (Wefer Decl., Exhibit 21).

Two Plaintiffs in this case suffered serious adverse events from the primary series of injections. Plaintiff Debra Hagen was diagnosed with demyelinating neuropathy, which her doctor has said was induced by the injection. She and her doctor both feel that

her medical history and conditions put her at an increased risk of further injury if her body is injected with any more of the Mandated Pharmaceuticals. This is a personal and potentially life-changing medical decision that should be between her and her doctor.

Plaintiff Mariette Vitti is now suffering heart palpitations and an irregular heartbeat after receiving two injections. Her daily activities are substantially limited and even mild activity, like walking to her car after work, triggers a fast heart rate and palpitations. It has completely changed her life.

Plaintiff Katie Sczesny is pregnant and does not want to subject her baby to this pharmaceutical. There have been no clinical studies on third injections and their effect on pregnant women or their unborn babies. Whether to be injected with a pharmaceutical is a decision that should be between a woman and her doctor, free of government coercion or interference.

Beyond Plaintiffs, adverse events from the Mandated Pharmaceuticals are subject to the Vaccine Adverse Event Reporting System ("VAERS") reporting. VAERS was created by Congress in 1990 as "a national early warning system to detect possible safety problems in U.S.-licensed vaccines."[4] In the past year and a half since the Mandated Pharmaceuticals have been available, more injuries have been reported to VAERS as a consequence of these

[4] https://vaers.hhs.gov/about.html

pharmaceuticals than all other injuries for all vaccines-combined. There are more than 1,216,787 reports as of April 24, 2022, including 23,693 deaths and 50,000 people permanently disabled.[5]

It is indisputable that these pharmaceuticals carry the risk of heart damage, disability, and even death. Two Plaintiffs have already by injured by them. The pharmaceutical companies are required by law to inform people of the risks, but EO 283 demands that Plaintiffs ignore the information. The government is required to maintain a database where adverse reactions can be recorded, but Plaintiffs are required to ignore that data as well. It is illogical that the government on the one hand can require that people be informed about potential risks of a pharmaceutical and on the other hand, force people to disregard those risks.

If the government wishes to compel people to take risk of serious injury or death, the government interest must be compelling enough to override the individual liberty to avoid the risk of injury or death. Here, it is not. Moreover, the urgency of the individual liberty to avoid this health risk is heightened because there is no recourse against the product manufacturers or the government if they are injured. This is because the manufacturers

[5] Current compilations of data concerning VAERS reports can be found at https://www.openvaers.com/. It is a website that downloads data from VAERS and reports it exactly as it is on the VAERS website in a more readable format. https://openvaers.com/faq

have been granted legal immunity for harm caused by their product under the PREP Act[6] and the government likely has sovereign immunity.

3. The Mandated Injections are of questionable efficacy

Much is unknown concerning the Mandated Pharmaceuticals' efficacy and duration of protection. Even when the injection was matched genetically to the alpha strain, the corporations manufacturing them all stated in their informational fact sheets that "the duration of protection against Covid-19 is currently unknown." *See* Facts Sheet for Pfizer (Wefer Decl., Exhibit 19), Fact sheet for Moderna (Wefer Decl., Exhibit 20), and Fact Sheet for Janssen (Wefer Decl., Exhibit 21).

The uncertainty is even greater now that the virus has mutated into various strains, most recently Omicron. It is now commonly known that people who received third injections can still contract and transmit covid, including Defendant Governor Phil Murphy.[7] The New York Times has reported that protection from the booster "wanes within 10 weeks." Wefer Decl., Exhibit 22.

The fact that the pharmaceuticals don't prevent infection and that protection may be measured in weeks weighs heavily in favor

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[6] 42 U.S.C. § 247d-6d

[7] Governor Murphy's case is especially telling because he stated that he experienced no symptoms. If a third injection does not prevent infection, but suppresses symptoms, people who get a third injection may actually be more likely to spread covid because they would not be alerted to their infection with traditional symptoms.

of people's right to stop being injected with them.

4. The experimental and investigational nature of the Mandated Pharmaceuticals and the technology they use favors people's liberty to stop taking them

New Jersey is mandating that Plaintiffs be injected with novel pharmaceuticals that are *still in trials.* They are investigatory and experimental. The clinical trials for *the first two doses* will not end until October 2022 for Moderna and January 2023 for Pfizer, never mind trials on a third injection. There are no long term studies on these pharmaceuticals because not enough time has elapsed to do them. There are no studies on the safety of third doses in pregnant women, unborn babies, people who recently recovered from covid, people with seizure disorders, or people who were injured by them before. The CDC and FDA did not conduct any studies on the safety of booster doses, and CDC and FDA advisory panel experts specifically stated that there was not enough data when rejecting a third dose for working-age adults.

In addition to the injections being novel and still in trials, they also use a novel technology. DNA (Janssen) and mRNA (Moderna & Pfizer) therapies use a person's own cellular machinery to transcribe and translate synthetic genetic material to manufacture a foreign protein. Wefer Decl., Exhibit 23. DNA and mRNA gene therapeutics are an emerging technology with great promise, but this is the first time they have been tested on or used for healthy people.

These pharmaceuticals are still investigational. New Jersey does not have the moral or legal authority to force people to continue taking an experimental pharmaceutical that can cause injury and death. The right to stop taking experimental pharmaceuticals is an inviolable human right and is essential to liberty.

5. The fact that the Mandated Pharmaceuticals are likely to make individuals ill in the short term weighs in favor of Plaintiffs' liberty to stop taking them

CDC data shows that most people experience symptoms of illness after the injections including headache, fatigue, fever, muscle ache and chills. 82.8% of the participants between the ages of 18 and 55 in Pfizer's clinical trials experienced at least one of these symptoms, 81.9% of the Moderna and 61.5% of the J&J participants in that age range. *See* CDC Reports on "Vaccine Reactions and Adverse Events" for Pfizer (Wefer Decl., Exhibit 24), Moderna (Wefer Decl., Exhibit 25), and Janssen (Wefer Decl., Exhibit 26).

This tracks with Plaintiffs' experiences. All of them report being ill after the first series of injections. Exhibit D to Verified Compl. (Decl. of Mariette Vitti stating that she experienced such severe body aches after injection that her clothes hurt against her skin); Exhibit B to Verified Compl. (Decl. of Jamie Rumfield in which she states she experienced severe headache, body aches, chills, fever, and a rash after her second injection);

Exhibit C to Verified Compl. (Declaration of Katie Sczesny in which she states she experienced spinal pain, join aches, and fever following her second injection); Exhibit A to Verified Compl. (Decl. of Debra Hagen experienced onset of her ongoing injury 48 hours after injection).

The fact that an individual is more likely than not to experience symptoms of illness after the procedure favors the individual right to decline the procedure. It is impossible that the Constitution forbids the government from forcing an ill person to take something that will make them well, but allows the government to force someone who is well to take something that will likely make them ill. That would be a logical and moral absurdity.

6. The fact that the Mandated Pharmaceuticals are manufactured by corporations with either extensive criminal records or no track record at all weighs in favor of the individual right to stop taking the pharmaceuticals

Of the three corporations manufacturing the Mandated Pharmaceuticals, two of the parent companies (Pfizer and J&J) have extensive track records of criminality, fraud, and product safety issues. The third, Moderna, has no track record at all, having never had a product approved by the FDA.

Pfizer, J&J, and their subsidiaries have pled guilty to felony and misdemeanor criminal violations of an astonishing range of statutes including the Food, Drug and Cosmetics Act, the False Claims Act, and the Foreign Corrupt Practices Act. A jury also

found that Pfizer violated the Racketeering Influenced and Corrupt Organizations Act. Pfizer's underlying criminal and unethical actions include: feloniously misbranding drugs with intent to defraud or mislead, illegally promoting drugs, submitting false claims to the government, paying kickbacks to doctors, withholding evidence about faulty medical products, falsifying records to cover up unsafe manufacturing practices, and testing an experimental drug on children in Nigeria. Wefer Decl., Exhibits 27, 28, 29, 30.

J&J and its' subsidiaries' records of criminality and deception may exceed Pfizer's. Highlights include: causing children's medicine contaminated with metal to enter commerce and covering up the contamination without informing the public, obstructing justice and "corruptly persuading others" to shred evidential documents, numerous instances of illegally marketing drugs, submitting false claims to the government, and paying kickbacks to doctors, pharmacists, and nursing homes. Wefer Decl., Exhibits 31, 32, 33, 34, 35.

The shocking criminal backgrounds of these corporations weighs in favor of the individual liberty to avoid having their bodies injected with products they manufacture.

7. The fact that the federal agency tasked with ensuring pharmaceutical safety is plagued by scandals and failures directly related to the agency's ability to protect the public from unsafe pharmaceuticals favors the individual liberty to stop taking the mandated pharmaceuticals

Whistleblowers, industry experts, and even U.S. Senators have been warning the public for more than a decade that the FDA is not working properly to protect the public from dangerous pharmaceuticals. Well-publicized drug recalls, class actions, and jury verdicts have made this a high-profile public issue.

Fifteen years ago, Senator Chuck Grassley testified before the House Oversight Committee outlining systemic issues within the FDA that he discovered as Chairman of the Senate Finance Committee. The Senator testified:

> First, scientific dissent is discouraged, quashed, and sometimes muzzled inside the Food and Drug Administration. Second, the FDA's relationship with drug makers is too cozy. The FDA worries about smoothing things over with industry much more than it should with its regulatory responsibilities. Third, inside the FDA there's widespread fear of retaliation for speaking up about problems. And fourth, the public safety would be better served if the agency was more transparent and forthcoming about drug safety and drug risks.

Wefer Decl., Exhibit 36.

The corruption of the pharmaceutical industry and failures of the FDA are so notorious that the Edmund J. Safra Center for Ethics at Harvard University sponsored a fellowship for Dr. David W. Light that specifically focused on researching "the historical roots of institutional corruption in the development of prescription drugs and its consequences." Wefer Decl., Exhibit 37. Dr. Light wrote prolifically on corruption in the pharmaceutical sector and FDA. In one article titled "Risky Drugs: Why The FDA Cannot Be Trusted,"

Dr. Light argued that financial conflicts of interest have had a corrupting influence on the FDA:

> since the [pharmaceutical] industry started making large contributions to the FDA for reviewing its drugs, as it makes large contributions to Congressmen who have promoted this substitution for publicly funded regulation, the FDA has sped up the review process with the result that drugs approved are significantly more likely to cause serious harm, hospitalizations, and deaths...This evidence indicates why we can no longer trust the FDA to carry out its historic mission to protect the public from harmful and ineffective drugs.

Wefer Decl., Exhibit 38. Dr. Light closes the article with advice "not to take a new drug approved by the FDA until it is out for 7 years, unless you have to, so that evidence can accumulate about its real harms and benefits." *Id.*

People have the liberty to distrust the FDA's ability to keep them safe from dangerous drugs and people should not be coerced by the government to submit their bodies to be injected against their will based on the determination of the same federal government agency they distrust. It is an egregious violation of their liberty.

8. Executive Order 283 puts Plaintiffs on a "vaccine" schedule mandated by a single federal government bureaucrat who is acting contrary to her own advisory committee and who has been provably wrong on questions surrounding the efficacy of the Covid-19 injections.

Executive Order 283 depends almost entirely on CDC-provided information and is specifically linked to CDC recommendations,

requiring people to be injected with more pharmaceuticals when the CDC recommends that they should. Because CDC recommendations are apparently promulgated by the director, Plaintiffs must get injected whenever the CDC director, who is not any of these Plaintiffs' doctor, says so.

Plaintiffs' liberty is egregiously infringed by the fact that their current and future healthcare decisions have been removed from their power. The situation is further aggravated by the fact that the power now rests in the hands of government agency that has been repeatedly and demonstrably wrong on matters concerning the injections.

For example, Director Walensky stated that "[v]accinated people do not carry the virus- they don't get sick." Decl. of Dana Wefer at Exhibit 39. We now know this was wrong. Director Walensky stated: "Data have emerged again that [demonstrate] that even if you were to get infected during post vaccination that you can't give it to anyone else." That was wrong, too. On March 3, 2022, Director Walensky admitted that the CDC had "too little caution, and too much optimism" with respect to the Mandatory Pharmaceuticals. Wefer. Decl. at ¶44.

Conditioning Plaintiffs' ability to work in healthcare on the whim of one federal bureaucrat is the opposite of a narrowly tailored policy. It is, in fact, so broad that it can change at any time based on the whim of a single federal government employee.

9. EO 283's failure to account for natural immunity shows that it is not narrowly tailored

People who recover from Covid-19 develop robust and broad immunity that protects them from reinfection. A study funded by the National Institute of Health and National Cancer Institute and published in the journal Science found that "more than 95% of people who recovered from COVID-19 had durable memories of the virus up to eight months after infection." Wefer Decl., Exhibit 41. Plaintiffs Jaimie Rumfield and Katie Sczesny have recovered from Covid-19 and should be presumed to have natural immunity in the same way that people who have received the injections are presumed to have vaccine-acquired immunity.

The fact that people who recover from a virus develop natural immunity is well-established. In 1997, a New Jersey District Court acknowledged, under a section the Judge titled "Basic Principles of Virology" that

> When a higher organism such as an animal or human is exposed to a virus and its cells become viral hosts, the animal or human develops a natural immunity. This immune response operates at two levels: first, at the initial stage of the infection before the virus has invaded the host and second, after the virus has invaded. When the virus stimulates certain specialized cells, these cells produce antibodies which prevent future infection.

Boehringer Ingelheim Animal Health, Inc. v. Schering-Plough Corp., 984 F. Supp. 239, 243 (D.N.J. 1997). The concept of immunity is notably absent from Executive Order 283. In fact, the words

"immune" and "immunity" do not appear in the Order. The state's choice to ignore natural immunity does not negate this basic principle of virology and ignoring basic principles of virology is irrational and shows that the EO is not narrowly tailored.

10. The wide range of treatments available for Covid-19 undermines the government's interests and shows that the Mandates are not narrowly tailored

Most people who contract covid require no treatment and are given no treatment. For people who need treatment, there are no fewer than eight FDA authorized treatments available.[8] The availability of multiple treatments undermines the government's interest in mandating a prophylactic pharmaceutical of questionable efficacy that carries serious risks.

11. Covid's low infection fatality rate even without treatment, weighs in favor of Plaintiffs' liberty and privacy rights to stop taking the pharmaceuticals

To balance the state and individual interests, it is not necessary to know the exact infection mortality rate of covid. Viruses have a range of mortality rates ranging from 100% fatal (rabies) to essentially zero. Smallpox had a mortality rate of up to 30%. The government's interest in stemming the spread of viruses through coerced medical procedures is logically more compelling

[8] A list of currently authorized treatments is available on the FDA, Emergency Use Authorization Website (listing authorized therapeutics under Drug and Biological Therapeutic Products, available at https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization#Coviddrugs (last accessed September 7, 2021).

with more fatal viruses and less compelling with less fatal viruses.

The World Health Organization Bulletin, a peer reviewed journal, published a study that found that "the infection fatality rate of COVID-19...ranged from 0.00% to 0.31% (median 0.05%)" for people under 70. Wefer Decl., Exhibit 42. Even if these numbers are not exact, it is clear that covid is on the low end of virus mortality, which weighs in favor of Plaintiffs' right to stop taking the Mandated Pharmaceuticals, makes the government's interest less compelling, and shows that the EO is not narrowly tailored.

III. GRANTING THE INJUNCTION WILL PRESERVE THE STATUS QUO, PREVENT IRREPARABLE HARM TO PLAINTIFFS, WILL NOT RESULT IN IRREPARABLE HARM TO DEFENDANTS, AND WILL SERVE THE PUBLIC GOOD

An injunction would simply preserve the status quo while the constitutionality of Executive Order 283 is considered by the federal courts.

Government coercion that violates the Constitution is irreparable harm *per se*. The Executive Order requires Plaintiffs to undergo an irreversible medical procedure that carries serious risk or lose their jobs and become effectively disqualified from their chosen field of work. The coercion itself is irreparable harm.

Moreover, if Plaintiffs submit to the government coercion, what is done to their bodies cannot be undone. If the governor's actions are later found to be unconstitutional, there is no adequate remedy at law for the harm done. Moreover, if they are injured, or further injured, by the pharmaceuticals any route of monetary recovery leads to actors that are immunized from liability.

There is no irreparable harm to Defendant in enjoining EO 283 because "the Government does not have an interest in the enforcement of an unconstitutional law." *New York Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013). Moreover, there are many alternative and constitutional methods that New Jersey has as its disposal to promote public health without coercing people to undergo repeated and open-ended injection with government-mandated pharmaceuticals.

CONCLUSION

For the foregoing reasons, it is respectfully requested that the Court enter an order enjoining EO 283 and enjoining HMC and Governor Murphy from enforcing it in any way.

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