SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

FRATERNAL ORDER OF POLICE,
METROPOLITAN POLICE DEPARTMENT
LABOR COMMITTEE,
D.C. POLICE UNION, ET AL.

PLAINTIFFS

vs. Case No. 2022 CA 000584 B

DISTRICT OF COLUMBIA, ET AL

DEFENDANTS

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AMICUS CURIAE MEMORANDUM OF LAW

Judge Maurice A. Ross of the Superior Court in the District of Columbia correctly concluded that Mayor Muriel E. Bowser did not have the authority to impose, what is referred to as "vaccines" upon anyone. Her judgment joins Judge Mizelle's April 18th 2022 order from the federal ninth circuit that removed the mask-wearing practice for airlines, at least as it pertained to passengers. Each judge arrived at the same conclusion by a different path and each judge's determination was based upon various erroneous and false assumptions, but they each arrived at the same pertinent conclusion, there was no authority to impose these measures.

Mayor Bowser never had the authority, even from the beginning, and even within the first fifteen days of any her executive orders, to require everyone in the entire community to submit to any medical treatments without any diagnosis, evidence, due process or court order. Not one of the mayor's orders was based upon the diagnosis of anyone having a deadly contagious disease, and not based upon any physician's affidavit of the same, nor was it based upon any *bona fide* health order obtained from the superior court for any specific individual or group of individuals. Each of the mayor's health orders was based upon pure speculation, stereotype and generalization in violation of the city's public health policy as you will learn in this memorandum.

The reason for this memorandum is to express our appreciation for Judge Ross' order, but correct him by the fact that while there is no evidence of any such public health emergency, even if there were, no new legal authority or legal duty permitted any of these

provisions in the mayor's executive order to have any force or effect of law. There is no argument that the mayor has the authority to issue such an executive order, it's just that there is absolutely no legal authority or legal duty to enforce such terms as none of them have any force of effect of law.

No Vaccines During EUA Period, or Commercially Available

At the time and as of the date of Judge Ross' order, there were no so-called "vaccines". These medical treatments listed in the court's findings were experimental medical treatments and clinical trials because they were part of and within the Emergency Use Authorization (EUA) period. There were no "vaccines" in the first place. "Authorized" by the FDA is not "approved" and is under the EUA classification of "clinical trials" or "epidemiological experiments" to which no one can be compelled to submit. See 21 CFR Part 50.20. You will also discover that there is no legal authority that imposes vaccines without informed consent or in violation of anyone's medical privacy rights. Judge Ross incorrectly cited Jacobsen.

FDA: Mask-wearing is a Medical Intervention

The Food and Drug Administration defines the surgical mask as a medical device when intended for health purposes, even though there is no evidence of the medical efficacy or medical necessity of such mask-wearing in preventing the spread of any contagious disease of any kind. The purpose of "surgical masks" is to reduce or eliminate the contamination of the surgical field by preventing human tissue and other substances from entering the surgical field during surgery. This is established under Section 201(h) of the Food, Drug and Cosmetic Act and the Food and Drug Administration's (FDA's) "Final Guidance" on the Classification of Products as Drugs and Devices & Additional Product Classification Issues: Guidance for Industry and FDA Staff. All the science shows that surgical masks would never prevent the spread of a contagious disease, even if there were such a thing.

The mask-wearing has the same legal significance as vaccines, experimental vaccines, disclosing medical records, vital statistics, isolation, quarantine or any other related measure. Every term described in the mayor's executive order is a medical intervention as each is related to public health, although erroneously.

No Evidence of Any Emergency

I

Moreover, while the government proclaimed a public health emergency, there was never any evidence of such an emergency, and the mayor never obtained probable cause to legally impose any provisions of his executive order as required under D.C. Official Code §§7-131 to 7-144. The department of health admits that it had and still has no documentary or scientific evidence (any culture or specimen) of any so-called "Covid-19" contagious disease. In fact, it is a scientific fact that viruses are not contagious pathogens in the first place. The Hollywood portrayal of "viruses" is a fantasy. Even with an histological or excretory specimen of any individual, there is no way to obtain valid test results establishing that the individual has or does not have any such disease as "Covid-19" for the simple reason that there is no sample by which the specimen can be compared. This demonstrates that there is no evidence of any public health emergency, merely a naked proclamation based upon pure speculation.

II

The official records of the medical examiner's office reveal that there was absolutely no cognizable change in either the morbidity or mortality rates for the year 2020; however, we can notice a significant increase in these rates following the practice of administering or unlawfully compelling people to take the experimental "vaccines" which have caused stroke, heart failure, neurological disorders, blood tissue clotting and related disorders, organ failure, sterility and death. These were not the direct and proximate result of the so-called "virus" but the experimental medical treatments. This demonstrates that there is no evidence of any public health emergency, merely a naked proclamation based upon pure speculation.

III

The Department of Health did not receive one verifiable affidavit from any physician reporting any *bona fide* diagnosis of any certain individual having contracted "Covid-19". These are public records and can easily be verified but instead, everyone just accepts the fake news and what government officials blurt out in the news without any scrutiny. This demonstrates that there is no evidence of any public health emergency, merely a naked proclamation based upon pure speculation and those making these false claims (your mayor, governor, etc.) are participating in disaster fraud, as they are rewarded by money from the disaster relief funds.

IV

At no time did the Department of Health file any petition to obtain any detention order with the superior court as required by D.C. Official Code §§7-133(a), (b) and 7-134(a). Failing to apply for a detention order denies anyone who is adversely affected by the so-called "Covid" policy or the mayor's executive order the right to a be heard. If there was such a disease and if someone had been diagnosed with it, the Department of Health failed to fulfill its legal duty under the law. This demonstrates that there is no evidence of any public health emergency, but merely a naked proclamation based upon pure speculation. The fact that no such records exist again establishes that there is no evidence of any public health emergency.

V

Once again, we revisit the official public records of the Department of Health and discover that it has absolutely no documentary or scientific evidence, first of all that viruses are contagious pathogens, but more importantly, no evidence of the existence of the so-called "SarsCov2" or "Covid-19", whereby, no such specimen or culture has ever been isolated, purified and visualized by long-standing scientific standards. Once again, there is no evidence of any such public health emergency.

VI

No single death certificate (public record) ever identified the so-called "Covid-19" as the single and certain cause of death; however, including the term in the actual certificate as a possible cause awarded the coroners and physicians huge sums of money. Once again, there is no evidence of any such public health emergency.

Judge Ross failed to mention or consider these six facts in his order, but he certainly included much commentary about the so-called "pandemic" and how it was merely announced (while never proven to exist).

Announcement of Public Health Emergency

Did not Create Any New Legal Authority or Any New Legal Duty

I

Even if there were such an epidemic or pandemic, and even if the government's claim was proven to be true and correct, this fact alone did not suddenly give anyone any new legal authority, nor any new legal duty of care to impose the same exact medical treatment on everyone at the same time and without any diagnosis of any single individual, and without any judicial oversight or approval based upon a medical diagnosis that any one or more specific individuals within the "group", the entire city, had any such contagious disease.

There is no need to cite the pertinent laws and regulations because they are compiled in the 2nd Edition of the city's Public Health Emergency Law Manual first published in 2017 under the supervision of Chief Judge Robert E. Morin. It was later revised and published by the Director of the city's Department of Health, LaQuandra S. Nesbitt, MD, MPH, under the supervision and direction of the mayor himself, the Honorable Muriel E. Bowser in 2019. You will discover that the mayor's executive orders pertaining to the so-called "public health emergency" violate her own compilation of the city's very own public health policy.[1]

Even if there were any single fiber of evidence that such a public health emergency did exist, the mayor did not thereby obtain any new legal authority, nor any new legal duty to act in the manner expressed in her related executive orders. Likewise, just because someone declared a public health emergency, even if it were true, this alone does not give anyone any new legal authority or legal duty to violate the medical privacy rights of people in the community nor does it constitute any waiver of such rights.

Specifically, Sections 8 and 10 related to the actual legal duties of the department of health and the mayor, the summary of which include: upon receiving an affidavit from a licensed physician that reports a specific individual as having a deadly contagious disease, or that he has been exposed to a toxic substance, the Department of Health, if unable to obtain the cooperation of the individual, can apply to the superior court for an order imposing certain medical treatments upon the individual and also imposing quarantine or isolation measures, but only under certain conditions and for only a limited time. If, by competent evidence following a *bona fide* evidentiary hearing, the individual is proven to be a direct threat to himself or others, the court may order such measures to be imposed upon him. There has never been any cognizable authority for a mayor, or anyone from within the executive branch

1 It should be noted that this publication has been scrubbed from the Internet but it can be obtained. See here: http://dclaw.dohcloudservices.com/ (broken link) but it is in my possession.

of government, to act as if everyone in the community had the same exact illness and then impose medical treatments upon everyone simultaneously, including forced medical examinations and compelling everyone to disclose his medical records for the purpose of policing such illegal policies.

There is no authority anywhere that permits the mayor to act upon the declaration that there is a public health emergency such as a deadly contagious disease, by imposing medical treatments and examinations upon everyone simultaneously without any evidence or diagnosis or due process.

II

The mayor's policy, while unenforceable for many reasons, failed to include provisions for those with disabilities and failed to include any provisions establishing liability for the collection, use and retention of medical records and failed to establish any waiver of the medical privacy rights and rights to informed consent that everyone in the city still enjoyed. The order merely regurgitated the same false claim that there was a public health emergency, without any evidence, and then sought to impose medical interventions upon everyone in a purely speculative manner.

This is unprecedented for many reasons, but the mayor's policy was disproportionately applied to everyone by grouping people into categories such as "those who were vaccinated" and "those who were not vaccinated", "those with Covid" and "those without Covid" and then ignored those with disabilities, while also treating the group of people qualifying for medical exemptions and then religious exemptions differently than the rest of the population.

Furthermore, the policy demonstrated that all employees and residents of the city, including the plaintiffs, were regarded as having a contagious disease, that is, a disability as defined by the Americans with Disabilities Act. The policy itself makes a record of such disability by mis-classifying every employee and resident as having an impairment that substantial limits his or her ability to engage in one or more major life activities, the cure for which is the mayor's illegal policy. The ADA thereby prohibits the policy from requiring city employees and residents from being required to accept the accommodations offered in the policy, including but not limited to mask-wearing and experimental vaccinations, medical examination, disclosing medical records and the disclosure of vital statistics. Each city

employee and resident has intangible private property rights to refuse the medical treatments offered or listed in the mayor's policy and these rights are rooted squarely in the Americans with Disabilities Act, 28 CFR Part 35.130(e)(1) for residents and non-employees and 29 CFR part 1630.9(d) for employees.

Outrageously, the city has a policy that states:

> "As advocates for effective public policy, we protect the rights of all residents of and visitors to the District of Columbia, regardless of their physical or mental ability.
>
> The Commission serves as an advisory body to inform and advise the District on programs, services, facilities, and activities that impact the lives of residents with disabilities in the District of Columbia. The Commission is committed to enhancing the image, status, inclusion, and quality of life for all District of Columbia residents, visitors, and employees with disabilities, and ensuring that they have the same rights and opportunities as those without disabilities."[2]

Not only did the mayor's executive order and policy violate the city's very own bench book on public health policy that the mayor herself commissioned, it violates the city's very own policy against disability discrimination and the pertinent laws.

III

Under the Doctrine of Assumption of Risk, the city has no legal duty of care in such a situation. If taken at face value, as if there is such a contagious disease, the risk is widely known to everyone in the community, and therefore, each member of the community assumes his own risk. See also Turner v. United States, 248 U.S. 354. Since the city has no legal duty to protect any one individual, it has no legal right to impose medical treatments upon any one individual unless in the manner authorized by law.

IV

The city has no insurable risk (cannot obtain insurance) to compensate anyone for contracting any contagious disease, and has no financial responsibility for anyone suffering adverse health consequences for participating in the medical treatments described in the mayor's executive order.

V

2 https://odr.dc.gov/DCCPD

The city cannot use public funds to force medical interventions of any kind, and then create a possible liability, for example, the individual who is compelled by force to take an experimental vaccine, or an actual vaccine either way, and then risks death or injury from something such as a contraindication that was never discovered because there was never any *bona fide* medical examination. This is dangerous and the reason why the mayor's executive orders violate public health policy. The city has no budget approval to use public funds to engage in the practice of forced medical interventions and examinations and the collection of medical data and related surveillance data, such as via "contact tracing". The city has no authority to use public funds for this purpose, any more than it has the right to donate public funds to "save the whales" or sponsor go-cart racing on the weekends.

VI

In addition to the foregoing, there is no possible way to establish liability even if the city had any financial responsibility because there is no way to establish proximate cause.

VII

The court's citation of Jacobsen v. Massachusetts, 197 U.S. 11 (1905) is erroneous and not a holding that is binding upon the court because it was determined over a century before the mayor's executive order and failed to consider whether or not Jacobsen was a direct threat, was not based upon any medical diagnosis and Jacobsen failed to raise these issues in the proceeding. Essentially Jacobsen waived his rights and shouldered the entire burden of proof when he should have argued that there was no evidence that he was a risk to anyone else and that there was no diagnosis of the same, no evidence, and that the policy sought to be imposed upon him was based upon the pure speculation and stereotype that he was infected with a disease that presented a direct threat.

Even in Jacobsen, the court stated:

> "It is within the police power of a State to enact a compulsory vaccination law, and it is for the legislature, and not for the courts, to determine in the first instance whether vaccination is or is not the best mode for the prevention of smallpox and the protection of the public health."

The Jacobsen court itself admits that the court cannot exercise the police power to require vaccinations and that only the legislature has such power and then, only under

specific conditions. Why is anyone citing this case as a new authority for state compelled medical treatments on a mass-scale when the court itself denied having any such authority?

Remember also that there were no determinations regarding what we now know as an "Emergency Use Authorization" period and what constitutes clinical trials or epidemiological experiments as these concepts did not arise until the trial of the Nazis at Nuremberg and the adoption of the Nuremberg Code and its codification into United States regulations (21 CFR Part 50.20). The vaccination which was the subject of the Jacobsen case was not an experimental medical treatment.

Additionally, the Jacobsen court's holding was under the specific criteria of rights under the Fourteenth Amendment and other provisions of the U.S. Constitution, and not what is explained here (intangible private property rights) or in this court's determination.

Moreover, in the Jacobsen court, the Massachusetts Board of Health, the equivalent of today's Department of Health, actually sought judicial oversight and approval instead of having the mayor publish an executive order. Even in that case, the government failed to introduce any evidence that Jacobsen was a direct threat, or had been diagnosed with any deadly contagious disease. Jacobsen failed to express a defense based upon this obvious and relevant criteria. In the conclusion of Jacobsen, he was ordered to pay a fine, instead of being excluded from society and or suffering the termination of his employment or threatened with arrest and imprisonment for trespass or any other crime as people have suffered today.

This explains very clearly by Jacobsen does not provide any precedent or authority whatsoever for any of these illegal "Covid" policies and to this extent, Judge Ross, like many other judges, attorneys and government officials, was incorrect.

Court Adopts Same Illegal Policies

Ironically, the court itself is participating in the same illegal policies as the mayor. It was a pure miracle that Judge Ross made the correct legal determination.[3] These policies (administrative orders) of course violate the court's own legal duties of care under the laws pertaining to those with disabilities.

3 https://www.dccourts.gov/coronavirus

Conclusion

The mayor never had the authority from the very beginning, not because her order (the so-called mandate) expired. The court and every branch of government and every government employee has serious problems with this phony pandemic and participating in it is creating the situation we now see emerging, the disruption and destruction of nearly every supply chain, including our access to fuel under another false and phony agenda (climate change). What could not be "achieved" by the false "climate change" agenda, is being accomplished with the phony pandemic, and much of the credit goes to very ignorant people who won't even read the law or follow it., and most of whom have no ability to think critically and realize there is no pandemic and there is no deadly contagious disease.

At the very least, unless the government can prove the existence of the so-called "Covid-19" disease, every dollar it has received under the guise of such an emergency is nothing short of disaster fraud. This court should also make a referral to the inspector general's office for an investigation into the possibility that the mayor is involved in disaster fraud.

DATED this 1st day of September 2022.

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John Smith, *Amicus Curiae*

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CERTIFICATE OF SERVICE

I John Smith do hereby certify that a true and correct copy of the foregoing was duly served upon the plaintiffs' attorneys Anthony M. Conti, Esq. and Daniel J. McCartin, Esq. at the address of 36 South Charles St., Suite 2501; Baltimore, MD 21201; and upon the defendants' attorneys Conrad Z. Risher, Esq. Assistant Attorney General, Equity Section at the address of 400 Sixth St., NW, Suite 10100; Washington, DC 20001, and Judge Maurice A. Ross to his address at the Moultrie Courthouse, 500 Indiana Avenue NW, Suite 6600; Washington, DC 20001, each via first class mail this 1st day of September, 2022.

By: ___