



UNIVERSITY OF CALIFORNIA LAW  
SAN FRANCISCO

# **Legal Developments: Mandates and Misinformation**

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# Presentation plan

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## Mandates:

- School mandates
  - Generally.
  - Religion...
- Workplace mandates
  - Religion
  - Bills
- Federal mandates.

## Misinformation:

- AB2198
- Murthy v. Missouri





# Disclosures:

- The family owns stock (regular) in GSK.
- Served as a volunteer (unpaid) advisor on Moderna's ethics advisory group



# School mandates:

- Still on strong legal grounds.
- Do they need religious exemptions?
  - Mississippi.
  - But...

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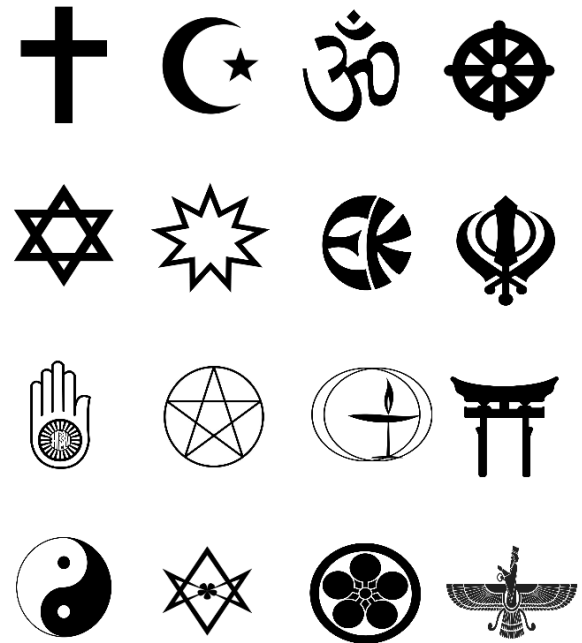




# Warning signs:

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- Supreme Court jurisprudence?
- Controversy in lower courts.
- Note:
- If First Amendment requires a religious exemption, it may limit burden you can attach.
- Can burden religious & secular exemptions similarly.



# Legislation abounds

- Multiple states introduced legislation.
- Very little has passed, and that is limited.



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# Adult mandates generally:

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**Argument: freedom not to vaccinate.**

**Standard: Jacobson v. Mass (1905)**

- Stands for reasonable limits on individual rights in the public health.
- Still (again?) High deference.
- Mandates survived.
  - But...



A stylized graphic of a bridge with yellow towers and blue cables, positioned on the left side of the slide.

# Workplace mandates:

- Employment in the United States is generally at-will.
- Vaccine mandates: a work safety rule.
- Some limits.







# Civil Rights Act of 1964:

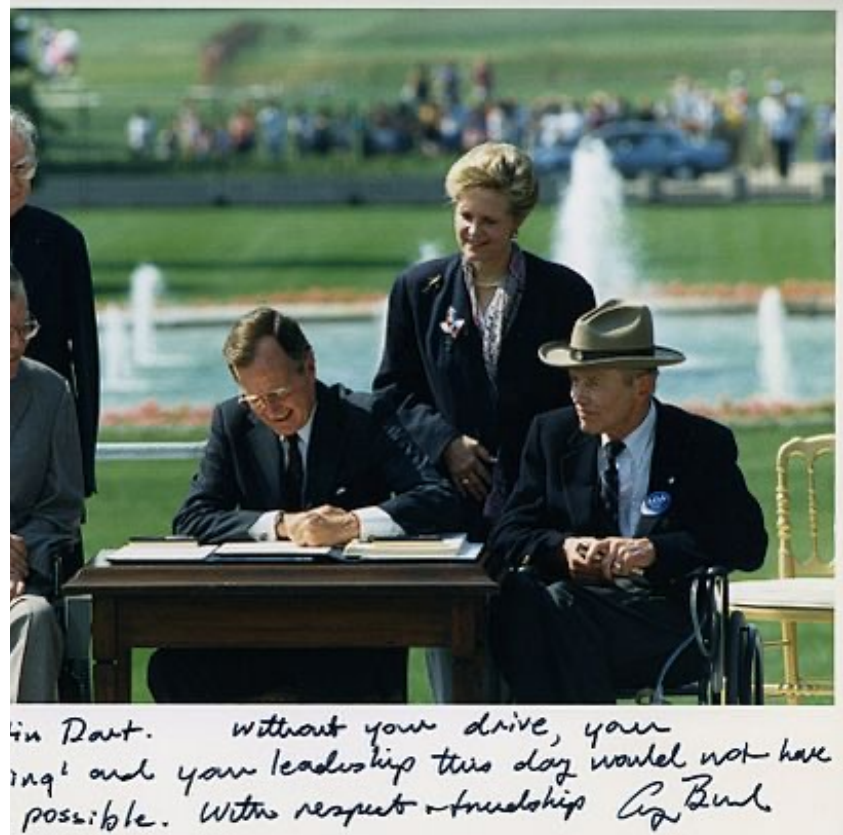
- Title VII
- Employers with 15 or more employees..
- Cannot “discriminate against, any individual because of his race, color, religion, sex, or national origin...”



# American With Disabilities Act

- Disability?
- Accommodation.
- Undue burden?
- Direct threat?

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# Collective bargaining?

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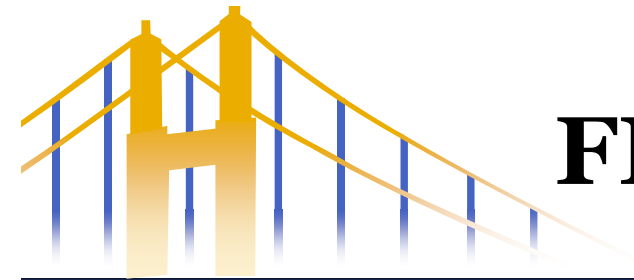
- Is there a union?
- Does collective bargaining agreement require negotiating with union before mandate?

Alpha Stock Images - <http://alphastockimages.com/>

Original Author: Nick Youngson - link to - <http://www.nyphotographic.com/>

Original Image: <http://www.picserver.org/highway-signs2/c/collective-bargaining.html>





# FEDERAL MANDATES

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# September 2021:

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- Federal workers mandate
- Contractor mandate
- OSHA ETS
  - Also paid leave
- CMS rule

**All  
stopped  
by courts**

CMS rule  
stay lifted  
by SCOTUS



# What's going on?

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**Vaccines are caught in a larger battle against the administrative state**

**SCOTUS focused on language:**

- Language.
- Major Questions

**Lower Courts also addressed**

- Delegation
- Federalism



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# Politicization in the Courts:

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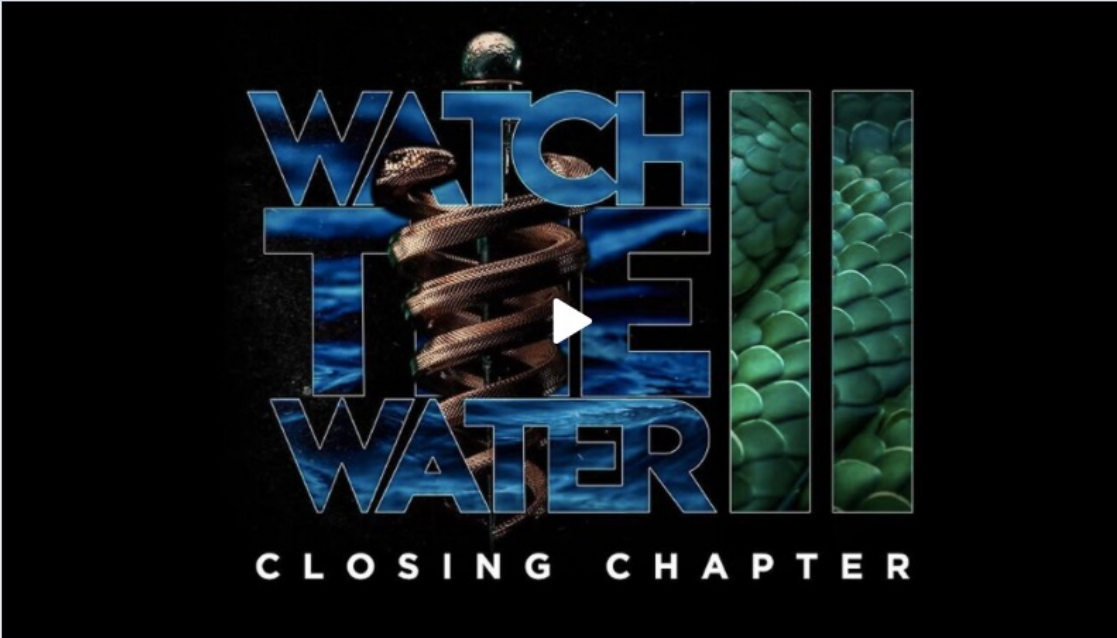
- Sometimes blatant –
  - Head start ruling.
- Deviation from previous jurisprudence –
  - Navy seals ruling






# MISINFORMATION AND THE COURTS




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**WATCH THE WATER 2 - COVID-19 Virus & Vaccines Bioweapon is Royal King Cobra Snake Venom**

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# AB 2098: Context

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB2098](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2098)

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- Concerns about COVID-19 and misinformation.
- Medical board has the authority to regulate unprofessional conduct.
  - Misleading patients is generally unprofessional.
- The First Amendment at least somewhat applies to professionals.
- There's a question about professional speech.



# Murthy v. Missouri:

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- What is the case about?
- Fifth Circuit's decision.
- What's at stake?

 **New Civil Liberties Alliance** ✓  
@NCLALegal

The [#AdministrativeState](#) is pressuring social media platforms to censor Americans for expressing specific opinions that conflict with the government's views.

That's why NCLA is fighting for First Amendment rights in *Murthy v. Missouri* at [#SCOTUS](#) on March 18th!

More: [bit.ly/49JvjXI](https://bit.ly/49JvjXI)



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**Thank you!**  
**Questions? Comments?**  
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