

No. 25-488

IN THE UNITED STATES COURT OF APPEALS
for the
NINTH CIRCUIT

Jonathan Schmidt, an individual
Plaintiff-Appellant

Vs.

City of Pasadena, et.al.,
Defendant-Appellee

**On Appeal from the United States District Court of the Central
District of California**

Civil case no: 2:21-cv-08769-JAK-JC
Honorable John A. Kronstadt, Judge

**PLAINTIFF-APPELLANT'S EMERGENCY MOTION
UNDER FRAP 27 AND CIRCUIT RULE 27-3 TO VACATE OPINION
RENDERED BY PANEL BASED ON LIES, MISSTATEMENTS, FALSE
STATEMENTS, MATERIAL OMISSIONS AND SOPHISTRY IN THE
RENDERED OPINION AND TO REMAND BASED ON THIRD AMENDED
COMPLAINT WITH ALL CAUSES OF ACTIONS THEREOF;
PLAINTIFF-APPELLANT REQUESTS A DECISION ON THE PRESENT
MOTION BY 10/12/2026 BASED ON THE DEADLINES FOR A
REHEARING OF PANEL/EN BANC.**

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‘ Wherefore that man lies, who has one thing in his mind and utters another in words, or by signs of whatever kind. Whence also the heart of him who lies is said to be double thought: the one, of that thing which he either knows or thinks to be true and does not produce; the other, of that thing which he produces instead thereof, knowing or thinking it to be false.’ **St. Augustine of Hippo, ‘ON LYING’, AD 395**

PLAINTIFF-APPELLANT FILES THE PRESENT MOTION TO VACATE THE ENTIRE OPINION RENDERED ON THIS MATTER ON OCTOBER 5, 2026 BASED ON THE FACT THAT THERE HAVE BEEN LIES, MISSTATEMENTS, MATERIAL OMISSIONS BY THE PANEL AS WILL BE OUTLINED BELOW. PLAINTIFF/APPELLANT HAS A TIME DEADLINE TO FILE A PETITION FOR REHEARING/EN BANC REVIEW WHICH IS 10/19/2026 AND THEREFORE REQUESTS THE PRESENT EMERGENCY RULING TO VACATE THE ENTIRE OPINION, NOT NECESSARILY BASED ON THE MERITS, BUT SIMPLY THAT THE OPINION CONTAINS WILLFUL MISSTATEMENTS, LIES, MATERIAL OMISSIONS IN THE OPINION THAT RENDERS THE ENTIRE OPINION VOID AS WILL BE OUTLINED BELOW. PLAINTIFF-APPELLANT RESPECTFULLY REQUESTS THE COURT TO REMAND BASED ON THE THIRD AMENDED PLEADING IF THE MOTION IS GRANTED. THE

LIES/MISSTATEMENTS AND MATERIAL OMISSIONS ARE NOT AN ACCIDENT BUT BASED ON DELIBERATE FORETHOUGHT BY THE PANEL TO JUSTIFY THEIR FINDING ON THE PREP ACT, WILLY-NILLY, NO MATTER WHAT THE FACTS NOR THE LAW, CONSISTENT WITH THE BEHAVIOR OF THE JUDGE IN THE DISTRICT COURT BELOW.

THERE IS A SEPARATE ISSUE REGARDING THE FACT THAT THE PRESENT PANEL NEVER ONCE QUOTED SUPREME COURT OPINIONS NOR THE CONSTITUTION, EXCEPT AS AN AFTERTHOUGHT. THIS WILL BE THE FOCUS OF THE COMING REHEARING IN PANEL/EN BANC. THE FOCUS OF THE PRESENT MOTION IS TO BRING TO LIGHT FACTUAL MISSTATEMENTS/LIES WHICH THE PANEL KNEW TO BE TRUE, BUT IGNORED OR COVERED OVER, BASED ON THE COPIOUS EVIDENCE APPELLANT PRESENTED TO THEM. THIS WOULD RENDER THE OPINION VOID ON ITS FACE.

I

INTRODUCTION

The present matter has been extremely contentious and procedure intensive. Appellant filed his lawsuit against the city of Pasadena on November 2021 **based solely on constitutional considerations, including (but not exclusively) the Free Exercise Clause.**

Time and time again, Appellant has reminded both the judge in the court below (Judge Kronstadt) that the present lawsuit was based on the protection of Appellant's religious beliefs and abhorrence to the testing and mask mandate. Yet over and over, the district court, and now the present court has decided to ignore these constitutional considerations and has focused, in a myopic fashion, on the validity of the Prep Act, exclusively. In its intentions, hell-bent, to ignore constitutional considerations, the court below, opposing counsel and now the panel assigned to this case has twisted, bent and misstated the facts as presented by Appellant to justify its unconstitutional and illegal rulings. The opinion rendered on October 5, 2026 is no exception to these attempts to bend the facts, clearly and

transparently presented by Appellant, in his appellate brief, replies, as well as multiple court filings, in order to justify an outcome that the panel desires.

Now the panel's decision, after months of deliberation, has been filed. **It is rife with lies, misstatements, material omissions and total fabrications. The record on appeal is there for the entire public to peruse, but the panel has gone ahead and created 'facts' to justify its opinions.**

Appellant is not even discussing the legal merits of the ruling—simply that it is filled with fabrications and material omissions. The Commonwealth of Virginia has expressed its opinion regarding a ‘judgment so affected by a fundamental infirmity that is no judgment at all. (*Manley v Commonwealth*, 86 VA App. 308, 318, 923, S.E. 2d 737 (2025)). If one were to transpose ‘judgment’ for ‘opinion’ and ‘fundamental infirmity’ for lies, fabrications and misstatements, then one would conclude that the opinion of October 5, 2026 **should be vacated in its entirety and the panel not given the possibility for do-over, since they had plenty of time to get their facts correct on this case. The fabrications, presented below, in excruciating detail, cannot be ascribed to an oversight, normal judicial negligence, nor plain laziness. It must be attributed to a desire to twist the outcome towards the desired result.**

Appellant is parsing his words here. ‘An adverse ruling is not evidence of judicial bias.’ (*A Co, Hungary KFT v Bepalov*, 122 Cal. App. 5th 341 (2026)). Had the present panel not fabricated facts, misrepresented Appellant's positions, nor materially

omitted important points, Appellant would have proceeded to a panel/en banc hearing petition without more. *However, the panel has lowered itself to fabricating statements whole cloth, changing the plain meaning of an EUA and placed words into Appellant's filings that were not there. In order to justify its position on the Prep act, the panel should have done its job-to consider the facts, the law, the procedural history on its merits, and thereafter rendered its opinion. It did not do so, and therein lies the problem.*

Finally, Appellant and his counsel (not based out of a fancy office in Los Angeles) are two individuals **bringing truth to power**. They have been fighting this fight, based on constitutional principles, right from the gate. They will not stop and will not allow the power of the Ninth circuit to stop them. **Especially when the judges of the Ninth circuit subvert justice, the representation of the truth, the rule of law, and their own oath to the constitution, as is shown in their shoddy opinion.**

Alexander Hamilton made it plain in Federalist Paper no. 78- **'No legislative act, therefore contrary to the tenor of the Constitution is VOID.'**

And in Federalist 82. **The original jurisdiction of the judicial power is vested in only ONE supreme court. Inferior courts are creatures of Congress and therefore of the American people. They MUST consider the Supreme Court's rulings-it is not optional.**

II

The misstatements, lies, and material omissions in the opinion rendering the whole opinion void *ab initio*.

Again, this review is not a discussion of the errors of the opinion on the merits. It is quite simply a rendering of lies, misstatements and material omissions created in order to justify the end result, probably decided on from the beginning of this process-an affirmation of the district court's dismissal of the case.

A. Fundamentally erroneous recounting of procedural history by the panel.

For a case that has been extremely procedure driven , it is absolutely crucial that the panel get the procedural history correct. Here is their recounting of procedural history, verbatim in the opinion.

Fabrication: Schmidt originally filed this action on November 8, 2021, and five iterations of his complaint ultimately ensued. For the purposes of this appeal, the operative complaints are Schmidt's Third Amended Complaint ("TAC") and Fourth Amended Complaint ("FAC").

The TAC asserted twenty-one federal and state claims, all related to the testing and masking requirements, against the City and several current and former employees of the city. Defendants moved to dismiss, asserting among other defenses that they had immunity under the PREP Act. The district court concluded that the PREP Act applied but did not immunize the individual Defendants from all of Schmidt's claims. Nevertheless, it found that the individual Defendants were entitled to other forms of immunity and dismissed the entire TAC.

Schmidt then filed the FAC. The City moved to dismiss, and Schmidt moved for reconsideration of the TAC dismissal based on what he argued was new evidence

regarding the COVID-19 testing that he underwent. The district court denied Schmidt's request for reconsideration. The court reasoned that the evidence Schmidt raised was previously available and was not enough to cure the legal deficiencies underlying the TAC's dismissal. In addition, the court granted Defendants' motion to dismiss the FAC, and denied the remaining discovery motions as moot.

Truth:

On 03/21/2024, the court did not dismiss the ENTIRE TAC. The court granted the motion IN PART (ER-1-15). Leaving Appellant to file an amended complaint.

On 04/22/2024, the FAC was filed.

On 04/23/2024, the Motion for reconsideration was filed.

On 05/06/2024, Appellee filed a motion to dismiss FAC after the Motion for Reconsideration by Appellant had already been filed.

On 08/06/2024. The court considered the merits of both the Motion for reconsideration as well as the Motion to dismiss the FAC.

On 06/10/2024. A hearing was held on the Motion for reconsideration. This was the hearing where the transcript mysteriously 'disappeared' and where the judge claimed that Appellant's counsel stated something she hadn't. (The entire transcript is volume 10 of the present appeal).

The timeline on this issue is extremely important, and rendering the timeline as the panel has done in such a shoddy way renders void everything that follows.

B. Erroneous by the panel regarding what Schmidt claimed to be the case regarding the diagnostic test of PCR and the face masks.

Fabrication by the panel:

Schmidt does not necessarily dispute that the saliva test and face masks constitute a “diagnostic” and “respiratory protective device.” Rather, he contends that the measures were ineffective and unauthorized. (Page 14 of the opinion).

Truth:

Appellant has always disputed that the PCR test was a diagnostic.

- Appellate brief page 24.
- Appellant’s reply to Appellee’s FRAP letter dated June 20, 2026
- Appellant’s reply brief, pages 13 and 24.

On the masks, Appellant also makes it clear that the masks were never a ‘respiratory protective device.

- Appellate brief, pages 13, 22. 25.
- Reply brief, page 27.

C. Erroneous recounting on what the EUA for the tests implied.

Fabrication by the panel (page 15).

Nothing in the EUA summary expressly limits the use of Ultimate DX’s diagnostic tool under the EUA to particular collection methods.

Truth: Here is the explicit language of the EUA that was cited. There are explicit limitations and the saliva test is never discussed.

Limitations: (ER-2-75-76).

The performance of UDX SARS-CoV-2 Molecular Assay was established using nasopharyngeal swabs. Nasal swabs, mid-turbinate nasal swabs and oropharyngeal swabs are also considered acceptable specimen types for use with the UDX SARS-CoV-2 Molecular Assay but performance has not been established. **Testing of nasal and mid-turbinate nasal swabs (self- collected at a healthcare site or collected by a healthcare provider) is limited to patients with symptoms of COVID-19.**

In the attached affidavit, Appellant claims he was never symptomatic-not once in the 19 weeks of the testing mandate. (See attached affidavit of Appellant).

Further, the amplification plots reveal that the SARS COV-2 virus was ‘never detected, and **appellant never provided a nasal swab, as falsely indicated in the amplification plots.**

D. Misstatements by the panel regarding the submission of all 20 exhibits before March 21, 2024.

Fabrication: Schmidt submitted 20 exhibits—each of which was available to him before the TAC dismissal was issued.

Truth: The April 21, 2024 exhibit of Dr. Couey (ER-2-121-176) was not available to Appellant by March 21, 2024.

E. Erroneous and misleading statements regarding *Loper Bright v Raimondo*.

For a court of limited jurisdiction, like the present court, Supreme Court rulings that are pertinent are extremely relevant.

Fabrication: As an afterthought, and a footnote, the present panel considered the impact of *Loper Bright v Raimondo* (603 US 369 (2024)) (page 17 of the opinion). Schmidt argues that *Loper Bright v. Raimondo*, 603 U.S. 369 (2024), permits us to disregard the HHS Secretary’s definition of “covered countermeasure.” However, even under *Loper Bright*, we must respect when Congress has “expressly delegated to an agency the authority to give meaning to a particular statutory term.” *Id.* at 394–95 (citation modified). Schmidt has not alleged that the PREP Act’s grant of authority is ambiguous nor that HHS has acted outside its statutory authority. See *id.* at 412–13. Therefore, *Loper Bright* is inapplicable.

Truth: This quote by the Supreme Court is taken out of context. The **entire quote is quite revealing, as provided below. (Page 30-32).**

There is a best reading all the same—“the reading the court would have reached” if no agency were involved. *Chevron*, 467 U. S., at 843, n. 11. It therefore makes no sense to speak of a “permissible” interpretation that is not the one

the court, after applying all relevant interpretive tools, concludes is best. **In the business of statutory interpretation, if it is not the best, it is not permissible. Perhaps most fundamentally, Chevron’s presumption is misguided because agencies have no special competence in resolving statutory ambiguities. Courts do. The Framers, as noted, anticipated that courts would often confront statutory ambiguities and expected that courts would resolve them by exercising independent legal judgment. And even Chevron itself reaffirmed that “[t]he judiciary is the final authority on issues of statutory construction” and recognized that “in the absence of an administrative interpretation,” it is “necessary” for a court to “impose its own construction on the statute.”** *Id.*, at 843, and n. 9. Chevron gravely erred, though, in concluding that the inquiry is fundamentally different just because an administrative interpretation is in play. The very point of the traditional tools of statutory construction—the tools courts use every day—is to resolve statutory ambiguities.

The Supreme Court in the above quote **stated exactly the opposite of the present panel—that where there are statutory ambiguities, it is up to judges to resolve them, as Kronstadt never did.**

The Prep Act is not a get out of jail card for judges to give up their role to decide on the constitutionality of this act given the facts of the case. The Supreme Court never gave it to agencies to resolve statutory ambiguities.

The present part of the ruling is the most egregious, since the panel engaged in **sophistry, defined as (Merriam Webster)**

a subtle, tricky, superficially plausible, but generally fallacious method of reasoning.

And for appellate judges, this is probably the worst part of the ruling.

III

Conclusion

For the above mentioned reasons, the entire opinion needs to be vacated. The present court cannot allow stand such an opinion, filled with lies, sophistry, clever backstrokes, misstatements, whatever it may consider to be the merits of Appellant's underlying arguments. Facts cannot be twisted by judges to achieve the aims of their rulings.

Respectfully submitted,

Dated: 10/07/2026

/s Vasu Vijayraghavan

Vasu Vijayraghavan

Appellants counsel

CERTIFICATE OF WORD COUNT

I hereby certify that the word count in Appellant's Emergency Motion is 2,588
and that the typeface conforms with FRAP 27 (d))(1)

/s Vasu Vijayraghavan

Vasu Vijayraghavan

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Emergency Motion with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit on October 7 2026, by using the appellate CM/ECF system and that service will be accomplished by the appellate CM/ECF system on all parties and their counsel.

Dated: October 7, 2026

/s Vasu Vijayraghavan

Vasu Vijayraghavan

I, Jonathan Schmidt, being duly sworn make the following statements:

1. Between the illegally and unconstitutionally mandated PCR testing dates from November, 2021 to March, 2022, I had no symptoms of any illness during those months I was forced to test under duress. I already had natural immunity, which the city officials knew about, yet they unethically and unscientifically denied its existence since I already had the virus in 2020. My time off for being sick in the fall of 2020 is documented in my work files as every person in the forensics section was either sick or in self quarantine, and we had to fill out workman's comp paperwork for our illness we caught at work from a former coworker.
2. I did not even have a common cold during the timeframe of the coerced PCR testing as it was protocol that if you had a single symptom of feeling ill you would be forced to go home and quarantine for at least 10 days. If you were sick you were to notify your immediate supervisor and stay home for the 10 days. You were then forced to take a PCR test and have a negative result in order to return to work. If you started to feel ill during your workday you would also be forced to go home and self quarantine for ten days, take a PCR test, and get a negative PCR test result in order to return to work.
3. Upon my return from my illegal and discriminatory suspension there was an electronic thermometer on my desk. We were required to check our temperature every single day and some employee would ask us if we made sure to test every single workday. I never had a fever at any point during the testing period.
4. All employees who were forced to test weekly under duress during the plandemic were healthy individuals. Not one sick person waited in line to get a weekly test. Instead, those returning from illness after the minimum ten day quarantine went to the front of the line to take a test in order to return to work.

Under penalty of perjury, I hereby declare and affirm that the above-mentioned statement is, to the best of my knowledge, true and correct.

Jonathan Schmidt

Signature:

Date: October 06, 2026