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Destroying Liberty: Governance by Decree

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ABSTRACT

Constitutional structures and limits on the exercise of government power protect and preserve liberty, even during a pandemic. Many State Governors see Covid-19 as an opportunity to ignore such constraints, autocratically issuing despotic edicts. If left unaddressed, the rising tyranny threatens to destroy deeply rooted foundations of good governance under the Rule of Law. The blessings of liberty and prosperity come with responsibility. Each generation inherits a special trust to ensure the preservation of liberty and the moral administration of justice. As state governing regimes increasingly use fear to act without constitutional authority, and infringe upon constitutionally protected liberty, we the people must fearlessly fight to preserve the Rule of Law. If State Governors go further and tyrannically mandate vaccines without consent of the governed, the Federal government should exercise its power under the Commerce Clause to enact pre-emptive Federal legislation.

I CONSTITUTIONAL REPUBLIC OR TOTALITARIAN REGIME

The founders of the United States government established a representative Republic. Federal in nature, their Constitution promises every State a republican form of government,

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Thus, Article IV § 4 of the *United States Constitution* provides that:

The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.¹

As used here, a ‘*republican form of government*’ refers to ‘a state in which the exercise of the sovereign power is lodged in representatives elected by the people.’²

Thus, the people of the various States are citizens of a constitutional Republic, not subjects of a totalitarian regime. The significance of this distinction matters. In totalitarian regimes an autocratic leader exercises power as he wishes without limitation. Governance occurs through coercive ‘subordination of the individual to the state and strict control of all aspects of the life and productive capacity’.³ Elected representatives of the people in a constitutional Republic, on the other hand, legitimately exercise only such power as constitutionally delegated to them by the people. And so, whenever government acts, some constitutional or statutory provision must authorise the action. In exercising power pursuant to such provisions, government authorities must always act within the scope of the power authorized.

The American Constitution expressly enumerates and separates those powers delegated by the people to the national government. By dividing power the Framers sought to protect liberty, despite the sinful and ambitious nature of human beings holding power. James Madison, in Federalist 51 explained:

In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which

¹ *United States Constitution* art IV § 4.

² American Dictionary of the English Language (1828) <<http://webstersdictionary1828.com/Dictionary/republic>>.

³ *Merriam-Webster Dictionary* <<https://www.merriam-webster.com/dictionary/totalitarian>>.

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to a certain extent is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own;****

But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others.... Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.⁴

Thus, the American people established a governing structure where the various branches of the national government may act only if an enumerated power authorizes the action. Additionally, the American Constitution reserves all power not expressly given to the national government to the States. Because the American Constitution delegates no police powers to the national government,⁵ State governments in

⁴ James Madison, 'The Federalist No 51', 1788 <<https://billofrightsintstitute.org/founding-documents/primary-source-documents/the-federalist-papers/federalist-papers-no-51?>>.

⁵ To be sure we see national law enforcement action, but such action must find its authority in an enumerated power. Thus, whilst a Federal law makes it a felony to distribute cocaine, the underlying authority authorising the national law is the Power to Regulate Commerce among the States enumerated in Article I of the *United States Constitution* (drugs being commerce). Thus, with proper Congressional authorisation, the Federal government could also exercise significant authority under the Commerce Power.

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the USA hold (pursuant to their State Constitutions) the police power to regulate health and safety matters. That is why most of the Covid-19 governing in the USA occurs, not in Washington DC, but in the States.⁶ In this regard, the various State Constitutions divide power among legislative, executive, and judicial branches of government. Where state constitutions are silent as to the police actions permitted by the governor, state statutes, enacted by the legislature pursuant to a State Constitution, define the scope of a governor's power.

Even when State constitutional or statutory law authorizes a government action, the action must not infringe upon protected rights and liberty. That is, a State must recognise the constitutional limits placed on the exercise of its power by constitutional liberty interests. The American Declaration affirms the Creator endowed us with the inalienable rights of life, liberty, and the pursuit of happiness.⁷ Recognising the significance of this truth, the American Constitution makes clear that one of the key purposes of government is to preserve these unalienable rights:

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the Blessings of Liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.⁸ (emphasis added)

Some of the liberty interests protected under both the American and State Constitutions include:

- The right to freedom of speech
- The right to petition government
- The right to freedom of association

⁶ See eg, 'Not One Size Fit All', *Washington Examiner*, 21 April 2020 <<https://www.washingtonexaminer.com/opinion/not-one-size-fits-all-different-states-and-cities-varied-in-their-pandemic-responses>> (discussing how different states vary in their pandemic response).

⁷ United States Declaration of Independence, [3] (1776).

⁸ *United States Constitution*, preamble.

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- The right to freedom of religious exercise
- The right of a parent to control and direct the upbringing of their child
- The right to be free from State action that Impairs a Contract
- The right to be free from state action that takes Property without Just Compensation

II GOOD GOVERNANCE UNDER THE RULE OF LAW OR TYRANNY THROUGH FEAR

When officials operate within the scope of their legal authority, adhering to constitutional limits placed on the exercise of their power, it is called good governance under the Rule of Law. Conversely, when regimes act outside the scope of their authority, and refuse to adhere to constitutional limits, the people experience the very essence of tyranny. Covid-19 temptingly provided an opportunity for State authorities to sneak a taste this tyranny. Too many State Governors succumbed to the temptation with disquieting consequences. Indeed, if, as Hamilton's observed, '...a sacred respect for the constitutional law is the vital principle, the sustaining energy of a free government' then the Governors' extra-constitutional Covid-19 edicts and decrees place a principal precept protecting liberty in peril.⁹

Constitutional limits on the exercise of governmental power remain especially relevant during a pandemic. Nonetheless, during Covid-19, dictatorial-like executive actions by State governors radically restricted personal autonomy and substantially interfered with constitutionally protected liberty. Many of these decrees generally mandated that healthy citizens *stay at home*.¹⁰ The reasons given for these extraordinary quarantine orders include suppressing the spread of COVID-19, so as to not overwhelm state health care systems. Submit or die, says the govern-

⁹ Alexander Hamilton, 'Tully No III' (28 August 1794), National Archives (Hamilton Papers), *Founders Online* <<https://founders.archives.gov/documents/Hamilton/01-17-02-0130>>.

¹⁰ See eg, Whitmer Executive Order No 2020-21 <https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-522626--,00.html>.

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ing regime. Even after hospital capacity concerns failed to materialize, though, Governors continued to despotically wield power. Sometimes the fear of a thing can be more dangerous than the thing itself.

During the early days of the Republic, our founders sought to build a better nation, not on fear, but under the Rule of Law. John Adams contrasted the foundation for such good governance from elsewhere at the time: ‘Fear is the foundation of most governments....’ because he understood that fear ‘is so sordid and brutal a passion, and renders men in whose breasts it predominates so stupid and miserable,’ he believed that ‘Americans will not be likely to approve of any political institution which is founded on it.’ While Adams understood the crippling power of fear, he foresaw not how future generations might so cavalierly assume authorities would continue to respect liberty and the constitutional limits it placed on their actions.¹¹

As of this writing numerous Governors continue to rule by edict through fear. Fear not just wrought by a pandemic, but also by the force of law and punishment. To be sure, a virus holds the capacity to make many sick and kill others, especially the elderly. If left unaddressed, though, the government’s tyranny in responding to the pandemic holds potential to destroy everyone’s liberty. Indeed, our liberty, for which Adams and others so greatly sacrificed, exists on life support with no respirator in sight. Benjamin Franklin warned that ‘They who would give up an essential liberty for temporary security, deserve neither liberty or security.’¹² We do well to heed his counsel.

A Exercising Power Outside the Scope of the Law

With various degrees of specificity, State constitutions and statutes assign police power to protect health and safety. Too often during Covid-19, Governors exercised power beyond the scope of the authority

¹¹ John Adams, ‘Thoughts on Government’ (April 1776), *Massachusetts Historical Society* <<http://www.masshist.org/publications/adams-papers/index.php/view/PJA04dg2>>.

¹² Benjamin Franklin, ‘Pennsylvania Assembly: Reply to the Governor’ (November 11, 1775), National Archives (Franklin Papers), *Founders Online* <<https://founders.archives.gov/documents/Franklin/01-06-02-0107>>.

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authorized under these State provisions, often encroaching on power belonging to the legislature.

In promoting ratification of the proposed Constitution, James Madison recognized in Federalist 47 that:

The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny... In order to form correct ideas on this important subject, it will be proper to investigate the sense in which the preservation of liberty requires that the three great departments of power should be separate and distinct.

Citing Montesquieu, Madison then explained:

...it may clearly be inferred that, in saying ‘There can be no liberty where the legislative and executive powers are united in the same person,’ [Montesquieu meant] that where the whole power of one department is exercised by the same hands which possess the whole power of another department, the fundamental principles of a free constitution are subverted.

The reasons on which Montesquieu grounds his maxim are a further demonstration of his meaning. ‘When the legislative and executive powers are united in the same person or body,’ says he, “there can be no liberty, because apprehensions may arise lest the same monarch or senate should enact tyrannical laws to execute them in a tyrannical manner.

The response by the Governor of Michigan, Gretchen Whitmer, to Covid-19 illustrates Madison’s point. The most despotically prolific of all the State governors in the USA, Michigan’s chief executive issued more edicts than any other State Governor.¹³ To put the impact of her

¹³ ‘State Executive Order Tracking’, *BallotPedia*, 29 June 2020 <[https://ballotpedia.org/Executive_orders_issued_by_governors_and_state_agencies_in_response_to_the_coronavirus_\(COVID19\)_pandemic,_2020#State_executive_order_tracking](https://ballotpedia.org/Executive_orders_issued_by_governors_and_state_agencies_in_response_to_the_coronavirus_(COVID19)_pandemic,_2020#State_executive_order_tracking)>.

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decrees in perspective, Michigan is about the same size population and land mass as Sweden.

What are the implications for a free society when Governors misuse power under the guise of protecting health and safety? As the COVID-19 pandemic commenced, Michigan's Governor enacted numerous lawmaking edicts governing virtually every aspect of life.

Article IV § 1 of Michigan's Constitution states that the legislative power rests in the *legislative* branch of government.¹⁴ Moreover, art IV § 51 expressly provides: '... The *legislature* shall pass suitable laws for the protection and promotion of the public health.'¹⁵

Recognising the constitution consigns all legislative power in the legislature, the Michigan legislature enacted the 1976 Emergency Management Act. This law expressly includes epidemics, and explicitly limits the maximum duration of a gubernatorial emergency order:

The state of emergency shall continue until the governor finds that the threat or danger has passed, the emergency has been dealt with to the extent that emergency conditions no longer exist, or until the declared state of emergency has been in effect for 28 days. After 28 days, the governor shall issue an executive order or proclamation declaring the state of emergency terminated, unless a request by the governor for an extension of the state of emergency for a specific number of days is approved by resolution of both houses of the legislature.¹⁶

Assuming *arguendo* that the legislature properly delegated power to the executive branch during a time of disaster or emergency,¹⁷ no

¹⁴ *Michigan Constitution* art IV § 1.

¹⁵ *Michigan Constitution* art IV § 51 (emphasis added). This constitutional provision declares that '[t]he public health and general welfare of the people of the state are ... matters of primary public concern.'

¹⁶ *Emergency Management Act*, MCL § 30.403(3) and (4).

¹⁷ Nothing in the Michigan Constitution authorizes the legislature to delegate its lawmaking power to the Executive Branch. A serious question exists, therefore, as to whether these delegations of lawmaking authority were even proper in the first place, or whether they violate the separation of powers delineated in the State's Constitution.

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question exists as to whether the Governor exercised power far outside and beyond the scope of authority authorized by these provisions. For months after the legislature refused a request from the Governor for an extension of an initial authorisation,¹⁸ the Governor defiantly enacted executive edicts legislating where, who, and in what manner individuals may associate, as well as everything from how, when and if businesses, churches, the press, and schools may operate.¹⁹ Both houses of the Legislature, as well as numerous businesses, churches, and individuals, filed lawsuits in court. At issue in all these cases is, *inter alia*, whether the Governor's actions exceed the scope of her constitutional and statutory authority.²⁰ Refusing to govern within the State's constitutional structures, including structures requiring participation by the people's representatives, affronts the Rule of Law.²¹

B *Exercising Power in Ways that Infringe on Constitutional Rights*

More troubling, Governors throughout the USA ignore constitutional limits placed on the exercise of their power, issuing edicts infringing on constitutionally protected liberty with impunity. A number of

¹⁸ Legislative authorisation ceased to exist on 30 April 2020.

¹⁹ See 'Executive Orders' <https://www.michigan.gov/whier/0,9309,7-387-90499_90705---,00.html>.

²⁰ See, eg, Beth LeBlanc, 'Federal Judge asks Michigan's High-Court to Clarify Whitmer's Emergency Powers', *Detroit News*, 18 June 2020 <<https://www.detroitnews.com/story/news/local/michigan/2020/06/18/federal-judge-asks-michigans-high-court-clarify-whitmers-emergency-powers/3217956001/>>; Bill Chappell, 'Michigan Legislature sues Governor Whitmer', *Detroit News*, 6 May 2020 <<https://www.npr.org/sections/coronavirus-live-updates/2020/05/06/851339264/michigan-legislature-sues-gov-whitmer-seeking-to-end-coronavirus-emergency-order>>; and Gus Burns, 'Churches sue Whitmer', *Detroit News*, 6 May 2020 <<https://www.mlive.com/public-interest/2020/05/churches-sue-whitmer-claim-coronavirus-orders-hinder-religious-gatherings-despite-exceptions.html>>.

²¹ After the termination of the emergency under the *Emergency Management Act 1976* ('EMA'), the Governor declared new emergencies and contended a World War II era law – *Emergency Powers of Governor Act 1945* MCL 10.31 ('EPGA') – authorizes her actions -- even though the EPGA does not cover epidemics and was enacted in response to the need to control riots. Even if it was applicable here, Michigan law requires it be read together with the EMA. Instead, the Governor incorrectly claims an inapplicable law applicable, and refuses to comply with the law that actually does apply.

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the decrees in the Governors' executive decrees substantially infringe upon liberty interests protected under the US and State Constitutions.

The First Amendment to the American Constitution prohibits State authorities from 'abridging the freedom of speech.'²² 'Government action that stifles speech on account of its message, or that requires the utterance of a particular message favored by the Government, contravenes this essential right....'²³ The First Amendment similarly guarantees the right to 'peaceably to assemble, and to petition the government for a redress of grievances.'²⁴ '[A]n attribute of national citizenship,'²⁵ 'the right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental.'²⁶ The First Amendment also prohibits State authorities from abridging an individual's freedom of association.²⁷ Freedom of speech, petition, assembly, and religion necessarily require association, and is therefore, considered a fundamental constitutional liberty. This First Amendment liberty likewise protects one's right to not associate with others where the exclusion is based upon the expressive message of the group.²⁸ Additionally, the First Amendment expressly protects the freedom of the press.²⁹ Finally, under the First Amendment, government also must not prohibit 'the free exercise [of religion]'. These limits on the exercise of government power generally also apply to actions by State entities.³⁰

²² *United States Constitution* amend I.

²³ *Turner Broadcasting System v FCC* 512 US 622 (1994).

²⁴ *United States Constitution* amend I.

²⁵ *United States v Cruikshank*, 92 US 542 (1876).

²⁶ *DeJonge v Oregon*, 299 US 353 (1937).

²⁷ *United States Constitution* amend I; *NAACP v Alabama ex rel Patterson*, 357 US 449 (1958) (holding 'Immunity from state scrutiny of petitioner's membership lists is here so related to the right of petitioner's members to pursue their lawful private interests privately and to associate freely with others in doing so as to come within the protection of the Fourteenth Amendment') (*emphasis added*).

²⁸ See, eg, *Hurley v Irish-American Gay, Lesbian, and Bisexual Group of Boston*, 515 US 557 (1995); *Boy Scouts of America v Dale*, 530 US 640 (2000).

²⁹ *United States Constitution* amend I.

³⁰ See, eg, *Cantwell v Connecticut*, 310 US 296 (1940); *DeJonge v Oregon*, 299 US 353 (1937); *Near v Minnesota*, 283 US 697 (1931); *Gitlow v New York*, 268 US 652 (1925).

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Notwithstanding the constitutional liberty limiting the exercise of Executive Power, State Governors issued edicts mandating people stay at home and banning any size gathering.³¹ Thus, in some places, it became a crime to travel to or gather in front of a State Capitol to petition the government for redress of grievances concerning the draconian regulations. It likewise became a crime for an individual to travel to or gather together at a church to worship, or even to safely live stream a religious message to the homes of congregation members. Other State restrictions include the prohibition of worship songs at church.³² Michigan's governor prohibited the press from attending her press briefings, or even from verbally asking questions remotely. The governor instead required the press to submit written questions for her approval prior to answering.³³ Other Executive edicts suspended Freedom of Information laws.³⁴

One of the oldest fundamental constitutional rights recognized by the US Supreme Court is the right to direct and control the upbringing of one's children, especially with regard to their education.³⁵ The Michigan Governor's decrees dictated education policy, making it a crime for a parent to personally educate their own child in their own home.³⁶ Sometimes, in addition to interfering with protected liberty,

³¹ See, eg, Whitmer Executive Order No 2020-21 <https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-522626--,00.html>.

³² Caleb Parke, 'Outrage after California bans Singing in Churches', *Fox News*, 6 July 2020 <<https://www.foxnews.com/us/california-singing-ban-church-coronavirus-restriction>>.

³³ See, eg, 'Michigan Governor Whitmer Bars the Press', *WBCK-FM*, 7 August 2020 <<https://wbckfm.com/governor-whitmer-bars-the-press-from-her-press-conference/>>.

³⁴ Craig Mauger, 'Whitmer Law Easing Transparency Draws Scrutiny', *Detroit News*, 29 April 2020 <<https://www.detroitnews.com/story/news/local/michigan/2020/04/29/whitmer-order-easing-transparency-law-draws-suit-senate-scrutiny/3032960001/>>.

³⁵ See, eg, *Pierce v Society of Sisters*, 268 US 510 (1925); *Wisconsin v Yoder*, 406 US 205 (1972).

³⁶ See, eg, David A Kallman, William Wagner and Stephen Kallman, 'Governor's EO Unconstitutionally Outlaws Home Education and Usurps the State Board of Education Authority Over Public Schools', Great Lakes Justice Center, 9 April 2020 <https://greatlakesjc.org/governors_eo_outlaws_home_education/>.

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these decrees lacked any constitutional or statutory authority authorising the executive action. For example, Michigan's Constitution and statutory law assigns power over educational matters to the State Board of Education.³⁷ While constitutional and statutory authority arguably exists for the governor to close public school buildings during an emergency, her additional actions regulating educational policy improperly usurped power constitutionally assigned to the State Board of Education.

The Fifth Amendment to the *United States Constitution* states: 'nor shall private property be taken for public use, without just compensation.'³⁸ State Constitutions likewise prohibit the State from taking private property without just compensation. Moreover, under art I, § 10 of the *United States Constitution*, 'No state shall ... pass any ... law impairing the obligation of contracts.'³⁹ Here the constitution limits exercises of government power where a state law operates as a substantial impairment of a contractual relationship.⁴⁰

Governors, boldly infringing on constitutional liberties, issued numerous edicts shutting down private contracts. For example, lawn care businesses who had entered into contracts to provide lawn care were prohibited from carrying out the terms of the contract when Executive decrees made it a crime for an employee to mow a lawn even where no other person was present.⁴¹ Other businesses faced bankruptcy, directly as a result of executive decrees closing their business or prohibiting them from selling their products, even in manner that posed no increased risk to health or safety. Governors also prohibited, by

³⁷ *Michigan Constitution* art VIII § 3.

³⁸ *United States Constitution* amend V.

³⁹ *United States Constitution* art I § 10. State Constitutions likewise prohibit the State from impairing private contracts.

⁴⁰ *Energy Reserves Group v Kansas Power & Light*, 459 US 400 (1983).

⁴¹ See, eg, Tony Wittkowski, 'Lawn Care, Landscaping Companies Left Hanging due to Covid_19 Restrictions', *The Herald-Palladium*, 11 April 2020 <https://www.heraldpalladium.com/news/lawn-care-landscaping-companies-left-hanging-due-to-covid-19-restrictions/article_19291184-1f21-5fd2-9d47-d967d52b2ec1.html>; Whitmer 2020 Executive Orders <https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705---,00.html>.

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the force of law and punishment, property owners from enforcing the terms of a rental contracts, when a renters refuse to pay contractually agreed to rent.⁴²

C Enabling Impact of An Activist Judiciary – Justifying Constitutional Infringements

While no dispute exists as to whether the executive actions by Governors infringe on constitutionally protected liberty, decades of judicial activism diabolically evolve constitutional law, enabling State Governors to justify their infringements and emboldening them to govern despotically.⁴³

During the current pandemic, Governors often rely upon a 1905 Supreme Court case, *Jacobson v Massachusetts*, decided in the midst of a small pox epidemic in the United States.⁴⁴ The *Jacobson* Court reviewed a challenge to a state law mandating small pox vaccinations for everyone. The Court addressed the scope of the State police power stating, ‘[t]he Constitution, does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint.’⁴⁵ Thus, citizens may sometimes, ‘under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand.’⁴⁶ Here an unelected Court permitted police powers saying that ‘a community has the right to protect itself against an epidemic.’⁴⁷

Consequently, it is not surprising today that an activist judiciary enables Executive tyranny by saying it is ok for the State to infringe on

⁴² See eg, Whitmer Executive Order No 2020-19 <https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-522509--,00.html>.

⁴³ For an in-depth discussion of how judges threaten the constitutional order when they engage in politically unaccountable creation of new meaning, see: William Wagner and N Katherine Wagner, ‘The Virtue of True Meaning: A Remonstrance Against Politically Unaccountable Judicial Policymaking’ (2019) 10 *Western Australian Jurist* 3.

⁴⁴ *Jacobson v Massachusetts*, 197 US 11 (1905).

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

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constitutionally protected liberty, as long as it can sufficiently justify the infringement to the Court's satisfaction. The US Supreme Court accomplishes this feat, with virtually no opposition from the politically accountable branches, via relativistic judicial decisions on the value of various liberty interests. In doing so, the Court sets various levels of justification where government authorities may infringe on protected liberty, if the Court-decreed government interest and means used is sufficient.

Even where the Court once historically required a lot of justification, as when government interfered with one's freedom of speech or religion, its evolutionary jurisprudence routinely diminished the value of the liberty interest. For example, when government substantially interfered with one's speech, parental rights, or religious exercise, the Court traditionally required a high level of justification.⁴⁸ Here, the Court required the government authority to demonstrate a compelling interest in the interference. If the authority demonstrated a sufficiently compelling government interest, the Court then required that the government show it achieved this interest using the least restrictive means possible.⁴⁹ Under this Court-devised approach for valuating liberty, an evolving relativistic jurisprudence thereafter diminished the liberty interests that limit government power.

Preliminarily, if the government's interference in the liberty interest fails to rise to the level of substantial interference, then courts require the authorities to provide virtually no justification for their actions.⁵⁰ Moreover, using a relativistic neutrality jurisprudence, courts often decrease the level of justification required. For example, if the government enacts a law restricting speech in a content-neutral way,

⁴⁸ See, eg, *Turner Broadcasting System v FCC*, 512 US 622, 641 (1994) (stating high level of scrutiny of content-based speech restrictions); *Sherbert v Verner*, 374 US 398 (1963) (denying unemployment benefits to a person who lost her job when she did not work on her Sabbath); *Wisconsin v Yoder*, 406 US 205 (1972) (overturning convictions for violations of state compulsory school attendance laws incompatible with sincerely held religious beliefs).

⁴⁹ See, eg, *Republican Party of Minnesota v White* 536 US 765 (2002).

⁵⁰ See, eg, *Moore v City of East Cleveland*, 431 US 494 (1977).

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the level of justification is much less.⁵¹ Likewise, the Court has permitted state authorities to substantially interfere with a person's free exercise of religious conscience, if it characterizes the statute as a generally applicable neutral law.⁵²

The US Supreme Court also diluted the economic liberty interests expressly listed in the Constitution. These economic liberty interests once served an effective means of limiting the exercise of government power.⁵³ By adjusting the level of justification to a very low level, though, courts now uphold almost any government action infringing on economic liberty interests. For example, even though art I § 10 of the *United States Constitution* expressly prohibits states from impairing the obligation of contracts, the Supreme Court has ruled that States may nonetheless do so if, using their police powers, they have a legitimate reason, 'such as remedying of a broad and general social or economic problem.'⁵⁴ And, even though the Fifth Amendment expressly prohibits the government taking property for public use without just compensation, the Court has so broadly defined public use so as to greatly reduce the protection promised in the plain meaning of the provision.⁵⁵

Thus, Governors issuing their Covid-19 edicts and decrees claim their use of "the police power" is justified. Citing court decisions, they contend a government health and safety interest justifies their substantial infringement of constitutionally protected liberty.

D Enforcement Concerns

Even assuming *arguendo* governors hold a proper government interest justifying infringement of constitutional liberty, enforcement of Covid-19 orders were executed based on who a governor deemed essen-

⁵¹ *Turner Broadcasting System v FCC* 512 US 622, 641 (1994) (comparing content neutral regulation of speech which receives intermediate scrutiny).

⁵² See, eg, *Employment Division v Smith*, 494 US 872 (1990).

⁵³ *United States v Carolene Products Company*, 304 US 144 fn 4 (1938).

⁵⁴ *Energy Reserves Group v Kansas Power & Light*, 459 US 400, 411-413 (1983).

⁵⁵ See, eg, *Kelo v New London*, 545 US 469 (2005) (holding 'public use' in the Fifth Amendment Takings Clause permits government authorities to exercise the power of eminent domain even for economic development purposes).

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tial, rather than on whether some activity could be carried out safely in a way that protects health. Rahm Emanuel infamously stated, ‘You never want a serious crisis to go to waste...’.⁵⁶ Thus, the Executive edicts almost always favored political constituencies.

For example, when business owners, pastors, parents, and other affected citizens peacefully protested the shut-down, and petitioned the government for redress of their grievances, Governors rebuked and threatened extended closures, blaming it on the protesters.⁵⁷ A short while later when leftist-sponsored anti-law enforcement groups rallied, Governors attended and supported, without social distancing.⁵⁸ Likewise, the Governor of Illinois, a Democrat, permitted protestors to assemble in large rallies, but banned political gatherings sought by Republicans.⁵⁹

Governors force gun stores and gyms to close, but declared marijuana distributors essential. While barbers were forced to close shop, strip clubs stayed open for business. While you could purchase lottery tickets you could not buy seeds to plant in your garden. Governors closed churches for worship, but allowed casinos to operate. (When a church in the State of Nevada then went to a casino to worship God, the Governor fined the casino).⁶⁰ While Executive edicts banned health

⁵⁶ ‘Never let a Crisis go to Waste’, *Lexington Chronicle*, 6 March 2020 <https://www.lexingtonchronicle.com/business/never-let-crisis-go-waste>. Mr Emanuel served as President Barack Obama’s Chief of Staff and as Mayor of Chicago.

⁵⁷ Rose White, ‘We Know that this Rally Endangered People – Whitmer Responds to Lansing Protest’, *ABC 13*, 15 April 2020 <<https://www.wzzm13.com/article/news/local/michigan/gretchen-whitmer-responds-to-lansing-protest/69-a0006e0c-531d-4d07-8f91-2a14ea629085>>.

⁵⁸ Craig Mauger and James David Dickson, ‘With little Social Distancing, Whitmer Marches with Protesters’, *Detroit News*, 4 June 2020 <<https://www.detroitnews.com/story/news/local/michigan/2020/06/04/whitmer-appears-break-social-distance-rules-highland-park-march/3146244001/>>.

⁵⁹ Caitlin McFall, ‘Justice Kavanaugh Denies Emergency Request from Illinois GOP Groups Seeking to Hold Large Rallies’, *Fox News*, 4 July 2020 <<https://www.foxnews.com/politics/kavanaugh-denies-emergency-request-illinois-gop-groups-hold-large-rallies>>.

⁶⁰ John Nolte, ‘Nevada’s Democrat Governor Punishes Casino for Holding Worship Service’, *Breitbart*, 11 August 2020 <<https://www.breitbart.com/politics/2020/08/11/nolte-nevadas-democrat-governor-punishes-casino-for-holding-worship-service/>> .

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care professionals from conducting elective surgeries, they kept abortion providers in business, allowing elective surgeries that terminate the life of unborn children.⁶¹

Authorities in Kentucky stopped Christian people from attending an Easter Sunday drive-through service where worshippers stayed in their cars.⁶² Authorities throughout the USA turn off water and electricity of those they deem in compliance with their regime's rules.⁶³ Law enforcement in Colorado handcuffed a father playing outside with his wife and young daughter.⁶⁴ Police in Philadelphia physically pulled a man not wearing a mask off a bus.⁶⁵ Other law enforcement authorities banned people from sitting on a park bench alone in a public park.⁶⁶

In 1887 Lord Acton observed that “power tends to corrupt and absolute power corrupts absolutely.” Unfortunately, the exercise of absolute dictatorial power by State Governors, throughout the COVID ordeal, proves the rule rather than the exception.⁶⁷

III UPCOMING THREAT TO LIBERTY FROM INEVITABLE VACCINE ENFORCEMENT AND A PROPOSED CHECK ON STATE POWER

Given the eagerness of State governors to use Covid-19 as a reason to interfere with constitutionally protected liberty, serious concerns

⁶¹ See, eg, Whitmer Executive Order No 2020-17 <https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-522451--,00.html>.

⁶² Editorial Board, ‘It’s Still America, Virus or Not: Draconian orders and enforcement will undermine public support for social distancing’, *The Wall Street Journal*, 13 April 2020 <<https://www.wsj.com/articles/its-still-america-virus-or-not-11586718091>>.

⁶³ Brittany De Lea, ‘Los Angeles to Cut Off Water, Power to Properties, Hosting Large Gatherings’, *Fox News*, 5 August 2020 <<https://www.foxnews.com/us/los-angeles-water-power-properties-large-gatherings>>.

⁶⁴ *The Wall Street Journal*, above n 62.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ The only thing more contagious than the virus is abuse of power. Emboldened by the State’s draconian decrees, some in Michigan’s judiciary unapologetically issue general warrants, broadly authorising police to arrest *anyone* suspected of being sick.

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exist as to what will occur when a vaccine finally emerges. Citing Jacobson's small pox precedent, expect governors to mandate vaccinations for everyone, without regard to medical side-effects or religious conscience.

Grave ethical concerns exist regarding the role of abortive fetal cell lines in the development of the potential vaccines.⁶⁸ Other concerns exist over potential neurotoxins included in the future vaccines.⁶⁹ Additionally, Covid-19 introduces new invasive surveillance techniques for State governments, threatening personal privacy.⁷⁰ Mandatory vaccines interface with Covid-19 tracking apps, already installed on every smart phone without consent. These apps enable governing authorities to collect and meticulously track detailed private personal data on every citizen.⁷¹ If State Governors mandate vaccines without consent of the governed, Congress should stop them by invoking its power under the Commerce Clause.

A Amend the Controlled Substances Act – No Vaccine without Consent

As part of a constitutionally authorized federal regulatory scheme, the US Congress should amend the Controlled Substances Act to express-

⁶⁸ See, eg, Jonathan Abbamonte, 'Which COVID-19 Vaccines Are Being Developed with Fetal Cell Lines Derived from Abort Babies?' *Population Research Institute*, 4 June 2020 <<https://www.pop.org/which-covid-19-vaccines-are-being-developed-with-fetal-cell-lines-derived-from-aborted-babies/>>, and Dr Susan Berry, 'Left-wing Media Claim Aborted Baby Parts Needed to Cure Coronavirus', *Breitbart*, 20 March 2020, <<https://www.breitbart.com/politics/2020/03/20/fact-check-left-wing-media-claim-aborted-baby-parts-needed-cure-coronavirus/>>.

⁶⁹ See, eg, 'Vaccines & Immunizations', *Centers for Disease Control and Prevention* <<https://www.cdc.gov/vaccines/vac-gen/additives.htm>>.

⁷⁰ See, eg, Claire Chretien, 'Doctors Lay Out Plan to Punish People Who Refuse Coronavirus Vaccine: "There is no Alternative"', *LifeSiteNews*, 11 August 2020 <<https://www.lifesitenews.com/news/doctors-lay-out-plan-to-punish-people-who-refuse-coronavirus-vaccine-there-is-no-alternative>; <https://www.wsj.com/articles/coronavirus-paves-way-for-new-age-of-digital-surveillance-11586963028>>.

⁷¹ See, eg, Lucas Nolan, 'MIT Technology Review Begins Tracking Coronavirus Contact Tracing Apps', *Breitbart*, 19 June 2020 <<https://www.breitbart.com/tech/2020/06/19/mit-technology-review-begins-tracking-coronavirus-contact-tracing-apps/>>.

ly prohibit mandatory imposition of any federally controlled vaccine drug into a human being without their consent.⁷²

Congress may act to regulate the dispensing of vaccine drugs if: 1) empowered to do so under a provision of the *United States Constitution*; and 2) no other part of the *Constitution* limits such regulation.⁷³ If authority exists under the *U.S. Constitution* for Congress to regulate, and no other part of the *Constitution* limits such regulation, then the Supreme Court should uphold the law when it is rationally related to any legitimate governmental interest. Most importantly, under the Supremacy Clause, such a federal law pre-empts any conflicting State law that cannot consistently stand together with the federal regulation.⁷⁴

1 The Constitutional Power of Congress to Regulate Controlled Substances

Article I of the *United States Constitution* vests in Congress the power ‘[t]o regulate Commerce ... among the several States,’⁷⁵ Additionally, the ‘Necessary and Proper’ Clause empowers Congress to enact laws reasonably necessary to carry out its power under the Commerce Clause.⁷⁶ Supreme Court precedent interprets these provisions as empowering Congress to regulate inter alia ‘things in interstate commerce’ and activities that ‘substantially affect’ interstate commerce.⁷⁷ Article I empowers Congress, therefore, to regulate dispensing of controlled substances like vaccines if either: 1) the drugs are things in interstate commerce or 2) the activity substantially affects interstate commerce.

⁷² *Controlled Substances Act*, 21 USCA §§ 801-02, 811-14 821-30, 841-44a, 846-56, 858-65, 871-87, 889-90, 901-04, 951-71 (2006).

⁷³ *United States Constitution* art I.

⁷⁴ *United States Constitution* art VI; see also 21 USC § 903; *Gonzales v Raich*, 545 US 1, 29 (2005).

⁷⁵ *United States Constitution* art I § 8 cl 3.

⁷⁶ *United States Constitution* art I § 8 cl 18.

⁷⁷ See *United States v Morrison*, 529 US 598, 608-09 (2000); *United States v Lopez*, 514 US 549, 558-59 (1995); see also *United States v Darby*, 312 US 100, 118 (1941).

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Drugs dispensed as vaccines have likely traveled in interstate commerce.⁷⁸ Such drugs are, therefore, ‘things’ in interstate commerce. Because the controlled substances are ‘things’ in interstate commerce, Congress, has the power under the Commerce Clause, to regulate by amending the CSA as proposed.

Congress may also regulate activity concerning controlled substances if the activity substantially affects interstate commerce.⁷⁹ In determining whether a substantial effect on interstate commerce exists, a court can aggregate the regulated activity if it is economic activity.⁸⁰ ‘[A]ctivities regulated by the CSA are quintessentially economic’ since they involve ‘the production, distribution, and consumption of commodities.’⁸¹

Doctors dispensing federally controlled drugs actively participate in the interstate controlled substances market.⁸² Since this economic activity concerning controlled substances substantially affects interstate commerce, Congress may regulate it.⁸³ When Congress enacts comprehensive legislation to regulate the interstate market in a fungible commodity, it acts ‘well within its authority to “make all Laws which shall be necessary and proper” to “regulate Commerce among the several States.”’⁸⁴ For example, in *Gonzales v Raich*, the Court held Congress possessed the power to regulate even the intrastate

⁷⁸ See, eg, *Gonzales v Oregon*, 546 US 243, 302 n 2 (2006) (Thomas J, dissenting) (*‘Oregon’*) (drugs dispensed for assisted suicide in interstate commerce).

⁷⁹ *Gonzales v Raich*, 545 US 1, 9, 15 (2005) (*‘Raich’*). ‘[A]ctivities regulated by the CSA are quintessentially economic’ since they involve ‘the production, distribution, and consumption of commodities.’ at 25-26.

⁸⁰ *Ibid* (aggregating economic activity); *Morrison*, 529 US 598, 617-18 (holding that court may not aggregate non-economic activity based on its ‘aggregated effect on interstate commerce’).

⁸¹ *Raich*, 545 US 1, 25-26. Moreover, ‘[i]n assessing the scope of Congress’ authority under the Commerce Clause, ... [a court] need not determine whether [the] activities, taken in the aggregate, substantially affect interstate commerce in fact, but only whether a “rational basis” exists for so concluding.’ at 22 (citing *United States v Lopez*, 514 US 549, 557).

⁸² See *Oregon*, 546 US 243, 302 n 2 (2006) (Thomas J, dissenting).

⁸³ *Gonzales v Raich*, 545 US 1, 25-26.

⁸⁴ *Ibid* 22 (citing *United States Constitution* art I § 8).

manufacture and possession of marijuana for personal use, since such economic activity substantially affected interstate commerce.⁸⁵ Justice Stevens, writing for the Court stated, ‘When Congress decides the total incidence of a practice poses a threat to the national market, it may regulate the entire class.’⁸⁶

In *Raich* the Court expressly held that ‘the CSA is a comprehensive regulatory regime specifically designed to regulate which controlled substances can be utilized for medicinal purposes, and in what manner.’⁸⁷ Seven months later, however, the Court in *Gonzales v Oregon* characterized the CSA’s comprehensive regulatory regime more restrictively (ie, limiting ‘doctors from using their prescription-writing powers as a means to engage in illicit drug dealing and trafficking as conventionally understood’).⁸⁸ The majority stated Congress should use ‘explicit language in the statute’ if it desires to prohibit physicians from dispensing drugs to assist suicide.⁸⁹ In view of the Court’s language, Congress should expressly amend the CSA to prohibit mandatory vaccination without consent of the patient. Since art I of the *United States Constitution* provides an appropriate power source for Congress to enact the proposed amendment – either because the drugs are *things* in interstate commerce or because the *activity* substantially affects interstate commerce – the next issue is whether any other part of the *United States Constitution* limits Congress from exercising its art I powers.

2 Nothing in the Constitution Limits Congress from Using it’s Article I Powers to Regulate the Dispensing of Federally Controlled Drugs by Prohibiting Mandatory Vaccination without Consent

No constitutional provision limits Congress from exercising its art I power as proposed here. Some may, however, attempt to misconstrue

⁸⁵ Congress may regulate even ‘purely local activities that are part of an economic “class of activities” that have a substantial effect on interstate commerce.’: *ibid* 17.

⁸⁶ *Ibid* (citations omitted).

⁸⁷ *Ibid* 27; see also 24.

⁸⁸ *Oregon*, 546 US 243, 270 (2006) (eg, diversion of drugs into illegal channels).

⁸⁹ *Ibid* 271-72.

the proposed amendment to the CSA by suggesting that it concerns a State's right to regulate the practice of medicine – and that it therefore alters the usual constitutional balance between the states and federal government. The proposed amendment here is not about the regulation of medical practice; it is about the right of the federal government to regulate controlled substances (ie, commerce) in a uniform manner. That is, the proposed amendment, as part of a constitutionally authorized federal regulatory scheme, prohibits mandatory imposition of any federally controlled vaccine drug into a human being without their consent. In any case, no constitutional provision limits Congress from using its powers under art I to regulate commerce in connection with medical matters; no question exists that Congress can establish uniform national standards in the areas of health and safety.⁹⁰

Since no fundamental right limiting Congress' power exists, Congress may regulate federal drugs as long as its legislation is rationally related to a legitimate government purpose.⁹¹ The government has a legitimate interests in preserving human life, preserving privacy and religious liberty interests.⁹² A statute prohibiting mandatory imposition of any federally controlled vaccine drug into a human being without their consent is rationally related to these legitimate governmental interests. In amending the CSA, therefore, Congress should clearly articulate that its intent to comprehensively regulate the market of controlled substances includes regulation of such substances used to vaccinate.

⁹⁰ *Raich*, 545 US 1, 9 (2005); *Oregon*, 546 US 243, 302 n 2 (2006) (Thomas J, dissenting); see also *United States v Darby*, 312 US 100, 115-17 (1941) (renouncing earlier doctrines holding that Congress could not utilise the commerce power to achieve legitimate objectives relating to the health and welfare of the nation).

⁹¹ See, eg, *Hodel v Indiana*, 452 US 314, 323-24 (1981) ('A court may invalidate legislation enacted under the Commerce Clause only if it is clear that there is no rational basis for a congressional finding that the regulated activity affects interstate commerce, or that there is no reasonable connection between the regulatory means selected and the asserted ends.').

⁹² See, eg, *Washington v Glucksberg*, 521 US 702, 728 (1997) (recognising a number of legitimate state interests including 'preserving life,' 'preventing suicide,' and preventing a moral slide 'toward euthanasia'); *Vacco v Quill*, 521 US 793, 808-09 (same); see also *Planned Parenthood v Casey*, 505 US 833, 846, 878 (1992) (recognising protection of human life as a legitimate state interest).

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Moreover, Congress properly can conclude that regulation of drugs, and drug-dispensing vaccination activity, is a reasonably necessary way to achieve its purpose of comprehensively regulating the interstate market in controlled substances in the CSA as amended.⁹³ As noted, drugs dispensed for vaccination are “things” in interstate commerce Congress may regulate under the Commerce Clause. If a primary purpose of the CSA is to control the controlled substances market,⁹⁴ then regulating such a commodity in interstate commerce is rationally related to the government’s legitimate purpose. Likewise, since doctors dispensing vaccination drugs actively participate in the interstate controlled substances market, Congress can rationally conclude that, in the aggregate, leaving vaccination drugs outside the regulatory scheme substantially influences price and market conditions. Such is the case even if the manufacture and dispensing of controlled substances for vaccination is purely intrastate, since such economic activity, in the aggregate, substantially affects the larger interstate drug market. Congress should provide clear legislative history establishing this fact.⁹⁵

⁹³ Congress’s original purpose in enacting the Controlled Substances Act was to comprehensively regulate the market of such substances. See *Raich*, 545 US 1, 27 (2005). A House Report expressly stated that Congress promulgated the law in order ‘to deal in a comprehensive fashion with the growing menace of drug abuse in the United States . . . through providing more effective means for law enforcement aspects of drug abuse prevention and control.’ HR Rep No 91-1444, pt 1, 1 (1970), reprinted in 1970 USCCAN 4566, 4567. Moreover, when it enacted the *Federal Controlled Substances Act*, Congress made extensive findings and statements, including that:

(1) Many of the drugs included within this subchapter have a useful and legitimate medical purpose and are necessary to maintain the health and general welfare of the American people.

(2) The illegal . . . distribution, and possession *and improper use* of controlled substances have a substantial and detrimental effect on the health and general welfare of the American people.

(3) A major portion of the traffic in controlled substances flows through interstate and foreign commerce. Incidents of the traffic which are not an integral part of the interstate or foreign flow, such as manufacture, local distribution, and possession, nonetheless have a substantial and direct effect upon interstate commerce 21 USC § 801(emphasis added).

⁹⁴ *Raich*, 545 US 1, 19 (2005).

⁹⁵ Although not required, a specific finding to this effect by Congress will be helpful when courts inevitably review the statutory scheme. See *Raich*, 545 US 1, 20-22 (2005).

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Congress properly, therefore, can conclude that regulation of drug-dispensing activity is a reasonably necessary way to achieve its purpose of comprehensively regulating the interstate market in controlled substances – especially as amended. Including improper drug-dispensing activity for vaccination purposes within the CSA’s coverage furthers its legitimate objective. Indeed, leaving such activity excepted from regulation will undermine a clear legislative intent to regulate the drug market comprehensively in a manner which protects public health and safety.⁹⁶

Under a “rational basis” standard, broad deference is due to congressional judgments concerning whether drug dispensing economic activity by physicians substantially affects interstate commerce.⁹⁷ Likewise, such broad deference applies to whether Congress’s regulation of drugs is reasonably necessary to carry out its amended legislative purpose under the Commerce Clause.⁹⁸

B Effects of the Proposed Legislation

As amended, the *Federal Controlled Substances Act* will preempt State laws mandating vaccinations where doctors involuntarily dispense drugs.

Where federal and state provisions conflict, art VI of the *United States Constitution* controls:

This Constitution, and *the Laws of the United States* which shall be made in Pursuance thereof .. shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the . . . laws of any State to the Contrary notwithstanding.⁹⁹

⁹⁶ This is why, for example, the dispensing of controlled substances is regulated under the CSA by ‘provid[ing] for control . . . through registration of manufacturers, wholesalers, retailers, and all others [including physicians] in the legitimate distribution chain . . .’ HR Rep No 91-1444, pt 1, 3, 6 (1970), reprinted in 1970 USCCAN 4566, 4569.

⁹⁷ See *Raich*, 545 US 1, 22, 25-26 (2005); *United States v Lopez*, 514 US 549, 557 (1995) (‘*Lopez*’).

⁹⁸ *Lopez*, 514 US 549, 557-58 (1995).

⁹⁹ *United States Constitution* art VI (emphasis added).

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In its *Raich* decision, the Supreme Court reiterated:

The Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail. It is beyond peradventure that federal power over commerce is superior to that of the States to provide for the . . . necessities of their inhabitants No form of state activity can constitutionally thwart the regulatory power granted by the commerce clause to Congress.¹⁰⁰

As amended, the CSA will expressly preempt any state laws to the extent ‘there is a positive conflict between [a provision of the CSA] and that state law so that the two cannot consistently stand together.’¹⁰¹ Under conventional conflict preemption principles, therefore, the CSA as amended will clearly preempt State statutes mandating imposition of any federally controlled vaccine drug into a human being without their consent.

Moreover, even if a court could somehow construe the CSA as amended to not expressly preempt a State mandatory vaccination statute, implied preemption exists where ‘compliance with both federal and state regulations is a physical impossibility.’¹⁰² The mutually exclusive provisions of an amended CSA and potential State mandatory vaccination laws governing the dispensing of controlled substances make it impossible for a dispensing physician to comply with both. In such situations, the Supreme Court has deemed the state law preempted – even where a distinctive state interest is at stake.¹⁰³

¹⁰⁰ *Raich*, 545 US 1, 29 (2005) (internal quotations and citations omitted).

¹⁰¹ 21 USC § 903. To be sure, nothing in the CSA prevents a state from enacting its own stricter drug legislation, or prosecuting drug offenses at the state level. And nothing in the Federal CSA preempts a state from regulating within the field of physician-assisted suicide (ie, nothing in the CSA preempts a state law authorising physician-assisted suicide *per se*).

¹⁰² *Boggs v Boggs*, 520 US 833, 844 (1997) (internal quotation marks omitted) (citing *Gade v National Solid Wastes Management Ass’n*, 505 US 88, 98 (1992)).

¹⁰³ See, eg, *Hisquierdo v Hisquierdo*, 439 US 572, 581, 590 (1979) (finding state community property law preempted by federal military pay law).

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IV PRESERVING LIBERTY REQUIRES STEWARDSHIP

The American nation's Great Experiment in government by the consent of the governed requires responsible stewardship and a devoted commitment of the people. Many present at the beginning of this Great Experiment experienced personally the oppressive dictates of a tyrannical regime. Those most responsible for the freedom declared in the Declaration, and guaranteed under the Constitution, understood Acton's admonition that power corrupts with its consequent threat to liberty. They also understood the cost of preserving liberty, lucidly expressed in the words of Patrick Henry at the Second Virginia Convention, in 1775:

Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it. Almighty God! I know not what course others may take; but as for me, give men liberty or give me death!¹⁰⁴

For a long while we stood on the shoulders of giants who founded a great nation committed to the preservation of freedom. Today as State regimes infringe on freedoms without to the consent of the governed, we forget the wisdom and warning of President Ronald Reagan:

Freedom is never more than one generation away from extinction. We didn't pass it to our children in the bloodstream. It must be fought for, protected, and handed on for them to do the same, or one day we will spend our sunset years telling our children and our children's children what it was once like in the United States where men were free.¹⁰⁵

Today, State regimes infringe on freedoms without the consent of a governed too fearful of a virus to not submit. Instead of living in a fear-induced existence of submit or die, we ought to live the maxim of our founders, *Live Free or Die*, uttered while experienc-

¹⁰⁴ Patrick Henry, 'Give Me Liberty or Give Me Death' (March 23, 1775), *The Avalon Project* <https://avalon.law.yale.edu/18th_century/patrick.asp>.

¹⁰⁵ See eg, Ronald Reagan, 'Inaugural Address' (January 5, 1967), Ronald Reagan Presidential Library <<https://www.reaganlibrary.gov/research/speeches/01051967a>>.

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ing far greater life-threatening perils than Covid-19.¹⁰⁶ If Covid-19 is to come my way, let me be in the midst of sharing my faith in an omnipotent and omniscient Creator; let me be preserving liberty so that those who come after me can likewise do so without fear of persecution.

¹⁰⁶ During the American Revolution, a major smallpox outbreak existed, in what today is the United States. See eg, <<https://www.aier.org/article/the-american-revolution-occurred-in-the-middle-of-a-pandemic/>>.