No. 21-1463

IN THE
Supreme Court of the United States

MISSOURI, *ET AL.*, *Petitioners*,
v.
JOSEPH R. BIDEN, JR.,
PRESIDENT OF THE UNITED STATES, *ET AL.*,
Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eighth Circuit

Brief *Amicus Curiae* of America's Future, Center for Medical Freedom, U.S. Constitutional Rights Legal Defense Fund, Downsize DC Foundation, DownsizeDC.org, Virginia Freedom Keepers, Leadership Institute, Fitzgerald Griffin Foundation, Conservative Legal Defense and Education Fund, Restoring Liberty Action Committee, and Virginia Delegate Dave LaRock in Support of Petitioners

RICK BOYER
Lynchburg, VA
KERRY L. MORGAN
Wyandotte, MI
GERALD R. THOMPSON
Livonia, MI
PATRICK MCSWEENEY
Powhatan, VA
JOSEPH W. MILLER
Fairbanks, AK
JAMES N. CLYMER
Lancaster, PA
J. MARK BREWER
Houston, TX

WILLIAM J. OLSON*
JEREMIAH L. MORGAN
ROBERT J. OLSON
WILLIAM J. OLSON, P.C.
370 Maple Ave. W., Ste. 4
Vienna, VA 22180
(703) 356-5070
wjo@mindspring.com
Attorneys for *Amici Curiae*

PHILLIP L. JAUREGUI
Washington, DC

**Counsel of Record*

June 21, 2022

TABLE OF CONTENTS

TABLE OF AUTHORITIES

MISCELLANEOUS

INTEREST OF THE *AMICI CURIAE*[1]

America's Future, U.S. Constitutional Rights Legal Defense Fund, Downsize DC Foundation, DownsizeDC.org, Virginia Freedom Keepers, Leadership Institute, Fitzgerald Griffin Foundation, and Conservative Legal Defense and Education Fund ("CLDEF") are nonprofit organizations, exempt from federal taxation under sections 501(c)(3) or 501(c)(4) of the Internal Revenue Code. Center for Medical Freedom is a project of CLDEF. Restoring Liberty Action Committee is an educational organization. Each is dedicated, *inter alia*, to the correct construction, interpretation, and application of law. Virginia Delegate Dave LaRock is a member of the Virginia House of Delegates. Many of these *amici* filed an *amicus* brief in this Court in *NFIB v. OSHA*, 142 S. Ct. 661 (2022), on December 30, 2021.

STATEMENT OF THE CASE

On November 5, 2021, the Centers for Medicare and Medicaid Services ("CMS") promulgated an Interim Final Rule ("IFR") requiring all employees, volunteers, and third-party contractors employed by or working at CMS-covered facilities to receive the COVID-19 "vaccination" as a condition of the facility

---

[1] It is hereby certified that counsel for Petitioners and for Respondents have consented to the filing of this brief; that counsel of record for all parties received notice of the intention to file this brief at least 10 days prior to its filing; that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

receiving federal funds. *Missouri v. Biden*, 2021 U.S. Dist. LEXIS 227410, *3 (E.D. Mo. 2021). CMS did not seek "notice and comment" required by the Administrative Procedure Act, claiming that COVID-19 triggered the "good cause" exception. *Id.* at *12-13. With this rule, CMS reversed its general longstanding practice of not requiring vaccinations from employees of CMS-funded facilities. *Id.* at *26.

Ten Plaintiff States sought injunctive and declaratory relief from a district court, which temporarily enjoined the rule, finding that the Plaintiff States had demonstrated a likelihood of success on the merits.

On appeal, the Eighth Circuit Court of Appeals denied a stay of the injunction. *Missouri v. Biden*, 2022 U.S. App. LEXIS 10258, *5 (8th Cir. 2022). CMS then appealed to this Court, which stayed the injunction. *Biden v. Missouri*, 142 S. Ct. 647, 652 (2022).

STATEMENT

For a century, vaccines have involved the administration of a dead or attenuated pathogen to trigger the body to develop an immunity. Until the dictionary definition of the word "vaccine" was changed on February 5-6, 2021 to include the experimental gene therapy used in all three COVID-19 shots, they would not have been considered vaccines. *See* "Merriam-Webster Dictionary Quietly Changes Definition of 'Vaccine' to Include COVID-19 mRNA Injection," *TheRedElephants.com* (Mar. 2, 2021). This

change in definition was believed to be necessary to "sell" the COVID-19 shots to the public. Stefan Oelrich, President of Pharmaceuticals at Bayer, explained this rhetorical device at the World Health Summit:

> ULTIMATELY, the mRNA vaccines are ... gene therapy. I always like to say, if we had surveyed, two years ago, the public,"would you be willing to take gene or cell therapy and inject it into your body?" we probably would have had a 95 per cent refusal rate. [Paul Craig Roberts, "Big Pharma Executive Admits the Covid 'Vaccine' is Gene Therapy," *Institute for Political Economy* (Nov. 21, 2021).]

For this reason, these *amici* put the word "vaccine" in quotation marks or refer to it as a COVID-19 "shot." If healthcare facilities had been compelled to impose experimental "gene therapy" or a "drug" on their employees, there would be an even greater outcry — but this is exactly what CMS is requiring. These *amici* do not believe that even a true vaccine can be compelled, but this Court should not be reassured by viewing the COVID-19 shot as just another "vaccine."

Further demonstrating the arbitrariness of CMS's vaccination rules and guidance is its recent rescission of its "Vaccination Expectations for Surveyors Performing Federal Oversight." On June 16, 2022, the CMS withdrew its prior guidance that state surveyors — responsible for enforcing the CMS's vaccine mandate at issue in this case — should not participate with on-site inspections, and covered facilities are not

permitted to check the vaccination status of the state surveyors.[2]

SUMMARY OF ARGUMENT

On Emergency Application, this Court ruled, *inter alia*, that the HHS Secretary had statutory authority to promulgate the IFR "within the authorities that Congress has conferred upon him." *Biden v. Missouri*, 142 S. Ct. 647, 652 (2022). These *amici* strongly urge this Court to revisit that finding (*see* Petition for Certiorari ("Pet. Cert.") at 33), particularly since it was based on no clear grant of congressional authority, but rather was based on an "agglomeration of statutes" and a "hodgepodge of provisions" including statutory definitions. *Biden* at 656 (Thomas, J., dissenting). However, these *amici* focus their brief on the need for this Court to grant certiorari to rule on the authority of Congress to impose a COVID-19 "vaccine mandate" — a threshold issue neither raised nor addressed by this Court in the emergency appeal.

The IFR is not a valid exercise of the spending or commerce power because it is predicated on an erroneous view of those powers so excessive as to create a federal police power that can be found neither in the Constitution nor the decisions of this Court. In *U.S. v. Lopez*, 514 U.S. 549, 584 (1995), concurring Justice Thomas warned that government use of the

---

[2] *See* CMS, "Rescission of the January 25, 2022 memo regarding Vaccination Expectations for Surveyors Performing Federal Oversight (QSO-22-10-ALL) and removal from its guidance repository" (June 16, 2022).

Commerce Clause, "if taken to its logical extreme, would give Congress a 'police power' over all aspects of American life." *Lopez* at 584. If the national government has the power to mandate unwanted medical treatments, it is difficult to imagine what mandates it could not impose. The same type of uncontrolled federal police power could arise from a misreading of the spending power. Indeed, the predicate for the government's claim is rooted in this Court's decisions issued under duress imposed by the court packing threat from President Franklin Roosevelt. The error of these flawed decisions has now been revealed by the abusive CMS "vaccine"mandate, making it necessary for this Court to revisit those decisions to restore constitutional constraints on the national government.

Further, the IFR unconstitutionally commandeers state officials and agencies to implement a policy change imposed by the national government. The mandate violates the right to life, liberty, and the pursuit of happiness which our Constitution was written to protect. Lastly, with the shot, CMS has imposed mandatory medical experimentation in violation of the Nuremberg Principles.

ARGUMENT

I. THIS COURT SHOULD GRANT CERTIORARI TO ADDRESS THE SCOPE OF THE NATIONAL GOVERNMENT'S SPENDING POWER.

The Petition correctly challenges the government's position that the CMS mandate is authorized by the Spending Clause. Pet. Cert. at 30-31. The Congressional Research Service summarizes the government's position as follows: "Congress may offer federal funds to nonfederal entities and prescribe the terms and conditions under which the funds are accepted and used."[3] "As the federal government increased its role in public health, Congress [also] relied on the Commerce Clause to pass more comprehensive national health regulations."[4] Neither constitutional provision justifies the CMS mandate.

A. This Court's Weakening of Limits on the Spending Power and Commerce Clause Were Based on Political, not Constitutional, Considerations.

In *Helvering v. Davis*, 301 U.S. 619 (1937), this Court sanctioned expanded and expansive congressional actions under the Spending power. And,

---

[3] "Could the President or Congress Enact a Nationwide Mask Mandate?" *Congressional Research Service* at 2 (Aug. 6, 2020).

[4] "State and Federal Authority to Mandate COVID-19 Vaccination," *Congressional Research Service* at 39 (Feb. 7, 2022).

in *Wickard v. Filburn*, 317 U.S. 111 (1942), this Court did the same under the Commerce Clause. These two decisions were at odds with this Court's prior jurisprudence and the Constitution's text. They are difficult to understand legally, but they can readily be understood politically.

Even during the early years of Franklin Roosevelt's administration, this Court hewed comparatively strictly to the Framers' vision of a federal government with limited, enumerated powers. However, after his re-election in 1936, angered by the Court's unwillingness to jettison the Constitution's limits on federal power, Roosevelt proposed the "Judicial Procedures Reform Bill of 1937," known since as the "court packing" scheme.[5] The scheme proposed adding a new Supreme Court justice for every sitting justice over the age of 70, potentially allowing Roosevelt to appoint six new members, overwhelming the conservative bloc on the Court. *Id.* Roosevelt claimed the justices "were 'slow and infirm' and behind in their work."[6] "The Supreme Court, which was not at all behind on its docket, was insulted by the Roosevelt administration's proposal." *Id.* However, in an effort to avoid public support for the scheme, "concerned that Congress with its large Democratic majority would enact his Court proposal, two Justices

---

[5] O. Waxman, "Some Democrats Want to Make the Supreme Court Bigger. Here's the History of Court Packing," *Time* (Oct. 16, 2019).

[6] "FDR & The Court Packing Controversy: Full Script," Supreme Court Historical Society.

unexpectedly voted to uphold New Deal initiatives." *Id.*

Likely because the Court did not want to appear to have been cowed, it found language on which it could rely in *United States v. Butler*, 297 U.S. 1 (1936). To be sure, there the Court determined that Roosevelt's "Agricultural Adjustment Act" intruded upon rights expressly reserved to state governments and invalidated the Act. However, Justice Owen Roberts implied in *dicta* that Congress had almost unlimited authority to utilize the Spending Clause for the "general welfare." *Id.* at 66. As constitutional law Professor Rob Natelson notes:

> Roberts examined contradictory statements by only two Founders, James Madison and Alexander Hamilton. He accepted Hamilton's version. But he failed to note that Hamilton's version, issued for political convenience *after* the Constitution was ratified, was inconsistent with public representations Hamilton had made *before* the Constitution was ratified.... It also was inconsistent with the views of just about every other Founder. [R. Natelson, "How the Supreme Court Rewrote the Constitution Part III: The Court on the Brink," *Tenth Amendment Center* (Feb. 10, 2022).]

The next year, in *Helvering v. Davis*, Justice Benjamin Cardozo treated Justice Roberts' *dicta* on the "general welfare clause" as authoritative precedent. *See* Natelson, *supra.* Cardozo asserted that Congress' power to spend for any general welfare

purpose was "now settled by decision.... The conception of the spending power advocated by Hamilton and strongly reinforced by Story has prevailed over that of Madison." *Helvering* at 640.

Having made the leap to determining that Congress' power to spend was not limited by its other enumerated powers, Justice Cardozo boldly asserted that it was his purpose to evade the constraints of the original understanding of the Constitution. "Nor is the concept of the general welfare static.... What is critical or urgent changes with the times." *Id.* at 641.

"The discretion belongs to Congress," the Court added, to determine whether a particular spending plan pertains to the general welfare. *Id.* at 640. Under what circumstances Congress would ever be likely to pass a spending plan without claiming it supported the general welfare, Cardozo's decision did not say.

With *Helvering* added to *Butler*, the "general welfare" became a giant "catchall" exception to swallow the rule that the national government was intended to be one of enumerated and limited powers.

B. The Constitution's Text and History Show that *Helvering* Was Wrongly Decided.

But text and history demonstrate Justices Roberts and Cardozo were wrong in finding Hamilton's view to be constitutionally correct. In fact, numerous Federalists, in rallying popular support for

ratification, promised that Congress' spending power under the "general welfare" clause was limited to spending on enumerated powers.

1. The "General Welfare" Exception Cannot be Read to Vitiate the Rest of the Constitution's Text.

First, the *Butler / Helvering* reading of the "general welfare" clause flies in the face of the rest of the Constitution. If anything a given Congress finds to be in pursuit of the "general welfare" is a legitimate function of the federal government, then most of the remainder of the Constitution is surplusage.

Congress' enumerated powers include the power to coin money, to regulate commerce between states and with other nations, to make treaties, to provide for an army and a navy, and to declare war. Certainly all these powers are pursuant to the "general welfare." If the general welfare is a broad grant of general power, why enumerate other powers at all? Why not simply state any powers reserved from national authority?

Also, the *Butler / Helvering* reading eviscerates the Tenth Amendment. If there is general "catchall" language in the Constitution, it is not the "general welfare" clause; it is the Tenth Amendment. The Tenth Amendment specifically reserves "[all] powers not delegated." Under the *Butler / Helvering* reading of the Spending power under the "general welfare" clause, it is difficult to conceive of any powers not delegated, rendering the Tenth Amendment a nullity.

Professor Natelson explains that the "practical consequences" of *Butler* and *Helvering* were devastating.

> Before those decisions, Congress usually balanced its budget or ran a surplus. In the 85 years since, Congress has rarely balanced its budget, and the size of the deficits continues to accelerate.... Removing limits on the federal spending power also created a mob of special interests that pursue federal dollars irrespective of the public interest. Because those special interests fund congressional re-election campaigns, cooperative members of Congress can remain in office for decades. [R. Natelson, *supra*.]

2. The "Hamiltonian" View was not the Predominant View of the Framers.

The view Justice Roberts attributes to Hamilton was not even the view Hamilton himself expressed in encouraging ratification — or until after ratification was accomplished. Professor Natelson notes that:

> Hamilton wanted the federal government to be more powerful than the Constitution allowed. After the ratification, Hamilton sought to promote that goal by spinning interpretive theories in a manner foreshadowing the efforts of today's results-oriented law professors. But while ratification was still pending, Hamilton was much more circumspect.... He affirmed that the following were outside federal

> authority: land transfers, inheritance, civil justice, criminal law, domestic relations, the press, and "agriculture and ... other concerns of a similar nature." [R. Natelson, "The Founders Interpret the Constitution: The Division of Federal and State Powers," *The Federalist Society Review*, Vol. 19 (May 31, 2018).]

The so-called "Hamiltonian" view aroused strong opposition among Anti-Federalists. One such writer, under the pen name "Brutus" (most likely Robert Yates of New York), argued against the Constitution for precisely this reason.[7] He argued that:

> [t]he phrase "general welfare" is merely a formal "abstract proposition." It is undefined, "general and indefinite." Hence, the taxing and spending power … [is] not well defined, not defined by [its] "end" or "purpose." The conclusion drawn by "Brutus" is that the Constitution does not establish a "limited" government, a government confined to "certain purposes only." It rather establishes a government authorized to embrace "all … purposes" of any "importance" whatsoever…. [*Id.* at 9:5, 9, 26, 56-57, 64, 77.]

James Madison was perhaps the most prominent Federalist advocate for the argument that the "general welfare" clause is a mechanism only to allow Congress

---

[7] H. Storing, II *The Complete Anti-Federalist* at 9:4, 64, 77 (UNIV. OF CHICAGO PRESS: 1981).

to spend to promote programs pursuant to its other enumerated powers, rather than a vast catchall power of its own:

> According to James Madison, "the most important and fundamental question" he ever addressed was the meaning of and relation between the general welfare clause on the enumeration of particular powers.... Commentators virtually agree on the answer Madison proposed and defended in Federalist 41, namely, that the general welfare clause is neither a statement of ends nor a substantive grant of power. It is a mere "synonym" for the enumeration of particular powers which are limited and wholly define its content. From this answer, it follows that the primary meaning of the national dimension of the federal Constitution is limited government…[8]

Against Brutus' charge, Madison stoutly insisted that the Spending Power was not its own grant of power, but that the Framers intended that Congress would be limited to spending only on otherwise enumerated responsibilities:

> Construe either of these articles by the rules which would justify the construction put on the new constitution [by Brutus], and **they**

---

[8] L. Sorenson, "Madison on the Meaning of the 'General Welfare,' the 'Purpose' of Enumerated Powers, and the 'Definition' of Constitutional Government," 109 Publius: *The Journal of Federalism*, Vol. 22, Issue 2, Spring 1992, pp. 109-121.

> **vest in the existing congress a power to legislate in all cases whatsoever**. But what would have been thought of that assembly [the Constitutional Convention], if, attaching themselves to these general expressions, and **disregarding the specifications which ascertain and limit their import**, they had exercised an **unlimited power of providing for the ... general welfare**?[9]

Madison argued that the "general welfare" clause could not be an independent grant of power, as such a massive grant would entail the ability to destroy all the other freedoms enumerated. "A power to destroy the freedom of the press, the trial by jury, or even to regulate the course of descents, or the forms of conveyances, must be very singularly expressed by the terms 'to raise money for the general welfare.'"[10]

Jefferson shared Madison's view:

> To consider the latter phrase [the general welfare], not as describing the purpose of the first [the power to tax], but as giving a distinct and independent power to do any act they please, which might be for the good of the Union, would render all the preceding, and subsequent enumerations of power completely useless. It would reduce the whole instrument

---

[9] G. Carey & J. McClellan, eds., The Federalist, No. 41 (Liberty Fund: 2001) at 214-15.

[10] *Id.* at 301.

> to a single phrase, that of instituting a congress with power to do whatever would be for the good of the United States; and, as they would be the sole judges of the good or evil, it would also be a power to do whatever evil they pleased.... Certainly, no such universal power was meant to be given them. It was intended to lace them up strictly within the enumerated powers, and those, without which, as means, those powers could not be carried into effect.[11]

In *dicta*, the *Butler* Court cited only Hamilton and Justice Joseph Story in support of the position that the "general welfare" clause is a broad power unto itself. The Court failed to mention Madison, Jefferson, or any other Founder on the other side, and thus provides a tenuous foundation for Justice Cardozo's deep reservoir of powers in *Helvering*. Even Story's positing of the "general welfare" clause as an independent source of power hardly supports the vast administrative state built upon *Butler* and *Helvering*.

II. THE COMMERCE POWER DOES NOT AUTHORIZE THE MANDATE.

Despite the transfers of power to the national government sanctioned in *Helvering* and *Wickard,* this Court has recognized limitations. In *U.S. v. Lopez*, in

---

[11] J. Story, 2 Commentaries on the Constitution of the United States at 644-645, 2d ed. (C. Little & J. Brown: 1851) (hereinafter "Story's *Commentaries*") (quoting Jefferson's Opinion on the Bank of the United States, 15th February, 1791; 4 Jefferson's Correspondence, 524, 525).

striking down a federal law banning gun possession in a school zone, this Court explained: "the Constitution ... withhold[s] from Congress a plenary police power that would authorize enactment of every type of legislation." *United States v. Lopez*, 514 U.S. 549, 566 (1995). Quoting James Madison, this Court said:

> "the powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." ... "Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, **a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front**." [*Lopez* at 552 (internal citations/quotations omitted) (emphasis added).]

In his concurrence, Justice Thomas drove the point home: "[W]e *always* have rejected readings of the Commerce Clause and the scope of federal power that would permit Congress to exercise a police power.... The Federal Government has nothing approaching a police power." *Id.* at 584-585.

Jacobson v. Massachusetts, 197 U.S. 11 (1905), is commonly cited in defense of COVID-19 "vaccine" mandates, but that case undermines the government's position here. In *Jacobson*, this Court described the authority of **states** to impose "'health laws of every

description.'" *Jacobson* at 25. The Court grounded that authority in "what is commonly called the police power — **a power which the State did not surrender when becoming a member of the Union** under the Constitution." *Id.* (emphasis added).

In 2012, Chief Justice John Roberts delivered yet another stinging rebuke to the idea of federal police powers. In *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012), he wrote for this Court, "This case concerns two powers [Commerce and Spending Clauses] that the Constitution does grant the Federal Government, but which must be read carefully to avoid creating a general federal authority akin to the police power." *Id.* at 536. "Our cases refer to this general power of governing, possessed by the States but not by the Federal Government, as the 'police power.'" *Id.*

> The independent power of the States also serves as a check on the power of the Federal Government: By denying any one government complete jurisdiction over all the concerns of public life, federalism **protects the liberty of the individual from arbitrary power**." [*Id.* (internal quotations omitted) (emphasis added).]

Justice Roberts denied to Congress the power to evade constitutional limits based on perceived need:

> Our respect for Congress's policy judgments thus can never extend so far as to disavow restraints on federal power that the Constitution carefully constructed. The

> peculiar circumstances of the moment may render a measure more or less wise, but cannot render it more or less constitutional. [*Id.* at 538 (internal quotation omitted).]

The government claims that its Mandate should be approved because of the broad and general statutory language CMS cites allowing the Secretary to impose a "vaccination" mandate because he "finds [it] necessary in the interest of the health and safety of individuals who are furnished services." 42 U.S.C. § 1395x(e)(9). The claim must fail under *Sebelius*:

> We have thus upheld laws that are convenient, or useful or conducive to the authority's beneficial exercise. But we have also carried out our responsibility to **declare unconstitutional those laws that undermine the structure of government established by the Constitution**.... It is of fundamental importance to consider whether essential attributes of state sovereignty are compromised by the assertion of federal power.... [*Id.* at 559-60 (internal quotations omitted) (emphasis added).]

Forcing a citizen to undergo an unwanted medical treatment — particularly one which has proven to have frequent negative health effects (including death) — is a much greater violation of individual liberty than requiring that citizen to spend money to buy health insurance. If the Commerce Clause cannot support the latter, it necessarily cannot support the former.

As Justice Gorsuch put it, "Government is not free to disregard the [Constitution] in times of crisis. [A] particular judicial impulse to stay out of the way in times of crisis ... may be understandable or even admirable in other circumstances, [but] we may not shelter in place when the Constitution is under attack. Things never go well when we do." *Roman Catholic Diocese v. Cuomo*, 141 S. Ct. 63, 69, 71 (2020) (Gorsuch, J., concurring).

III. THE MANDATE UNCONSTITUTIONALLY COMMANDEERS STATE AGENCY EMPLOYEES TO ENFORCE NATIONAL GOVERNMENT POLICY.

As Petitioners document, the compulsion is clear. CMS instructs "State surveyors" to ensure compliance with the Mandate. 86 *Fed. Reg.* 61574. If states do not require their surveyors to ensure compliance, Medicaid and Medicare providers in their states will be disqualified from federal reimbursement. Pet. Cert. at 32.

Chief Justice Roberts explained in *Sebelius* that "when the State has no choice, the Federal Government can achieve its objectives without accountability, just as in *New York* and *Printz*. Indeed, **this danger is heightened when Congress acts under the Spending Clause**, because **Congress can use that power to implement federal policy it could not impose directly under its enumerated powers**." *Sebelius* at 578 (emphasis added). The states have no practical choice under the

conditions of the CMS Mandate — "it is a gun to the head." *Id.* at 581.

Most importantly, the "commandeering" of state agents to enforce the Mandate clearly illustrates the Mandate's greater problem — its creation of a vast new federal government police power that "'draw[s] **all power** into its impetuous vortex'" (*Sebelius* at 554), and greatly exacerbates "'the risk of tyranny and abuse'" (*Lopez* at 552). As Chief Justice Roberts explained in *Sebelius*, "The Government's theory here would effectively ... establish[] that individuals may be regulated under the Commerce Clause whenever enough of them are not doing something the Government would have them do. Indeed, the Government's logic would justify a mandatory purchase to solve almost any problem." *Sebelius* at 553. If this Court upholds the Mandate, it would "fundamentally chang[e] the relation between the citizen and the Federal Government" (*Sebelius* at 555); as well as destroying the protection of "'the liberty of the individual from arbitrary power.'" *Id.* at 536 (citation omitted).

IV. THE CMS MANDATE VIOLATES THE LAW OF NATURE.

Beyond the textual and structural constitutional limits on the federal government discussed *supra*, these *amici* believe that not even the States have authority to impose or assist in implementing such mandates. Thus, they urge the Court to grant certiorari also to assess whether the CMA Mandate violates the law of nature, which imposes a

jurisdictional limit on the power of any civil government to abridge the unalienable right to refuse medical treatment.

The law of nature is revealed in Holy Writ, which explains that God made mankind male and female and charged them with the duty of self-government. *Genesis* 2. The most basic unit of society is the individual. Each individual person is a creation of God (*see Psalm* 139:13-16) who is born with a mind and a conscience (*see Romans* 1:18-20; 2:14-15), and is therefore a separate decision-making unit of society (*see Deuteronomy* 24:16). Accordingly, self-government is also the most basic unit of government. Each person is a moral being, made in the image of God (*see Genesis* 1:27), such that each person is ultimately responsible for his own individual behavior. We all stand condemned or forgiven based on our own choice — no one else can do it for another. *See 2 Corinthians* 5:10.

The Declaration of Independence, which lays out the principles which our Constitution protects, makes this Biblical foundation of our rights clear: "all men ... are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." Mandating an invasive medical treatment which carries risk violates all three — life, liberty, and the pursuit of happiness. Although our federal government was instituted "to secure" individual rights, the CMS mandate violates those rights by intruding into each individual's realm of self-government, substituting a uniform and inflexible rule on all, violating the law of nature.

To be sure, no person is compelled by force of law to accept a CMS mandated shot, as the employee is free to resign from employment to escape the Mandate. However, the legitimacy of the CMS Mandate is not based on whether it can be avoided, but rather whether it is lawful according to the law of nature. Because the Mandate tramples down that liberty of self-government, its enforcement is an arbitrary act of tyranny.

In fact, all natural rights, and all natural freedoms, are bestowed exclusively on individuals. There are no group rights or corporate freedoms, and no collective salvation. We each stand alone before God as a moral agent — and God fully expects us to govern ourselves accordingly, *i.e.*, as responsible moral agents. *See 1 Corinthians* 3:11-15; *Revelation* 20:12-15. This responsibility to God extends not only to matters of the mind (*e.g.*, religion and speech), but also extends to matters concerning our bodies and our health, including physical self-care and medical decisions.[12]

In the tradition of the American founding, all individual duties to God are also inalienable rights toward others. In the words of James Madison, "It is the duty of every man to render to the Creator such

---

[12] *See* H. W. Titus, "Medical Licensure: Rendering to Caesar What is God's?", *Journal of Biblical Ethics in Medicine*, vol. 9, no. 1 (1996) ("One of those things [which did not belong to the king] was the practice of medicine, because medicine rightfully understood was intimately and inextricably intertwined with the spiritual life of man.").

homage and such only as he believes to be acceptable to him. This duty is precedent, both in order of time and in degree of obligation, to the claims of Civil Society."[13] It is self-evident that personal medical decisions are no different from freedom of the mind, in this respect, that is, as a natural right of all individuals as against any societal interests.

President Joe Biden, in ordering "vaccine" mandates, famously opined, "This is not about freedom or personal choice,"[14] when of course that is exactly what this is all about. He also promised to "follow the science," but as the leader of a constitutional republic defined as "a government of laws and not of men," he should have followed the law instead. Our nation is neither founded on science, nor governed by science. Instead, it is founded on and governed by laws, including the laws of nature and nature's God.

In ordering vaccine mandates, the federal government defies the reality that individuals are capable of self-government and responsibility before God. Rather, it subjects people to a do or die mandate: "conform or be cast off," that is, "comply or be denied a livelihood." By a contrivance, that is, the purported "privilege" of being employed by a company which

---

[13] J. Madison, "Memorial and Remonstrance" to the Honorable the General Assembly of the Commonwealth of Virginia (June 20, 1785), reprinted in 5 The Founders' Constitution at 82 (item # 43) (P. Kurland & R. Lerner, eds., U. of Chi.: 1987)

[14] Remarks by President Biden on Fighting the COVID-19 Pandemic (Sept. 9, 2021).

accepts federal funds, adult employees all across America have effectively been declared wards of the federal government. Thus, the age-old doctrine of *parens patriae* is taken to an absurd extreme, whereby the federal government deems itself entitled to act as the parent of American citizens, as if they were small children.

Implicitly, a federal vaccine mandate assumes that employees lack the capacity to make their own healthcare decisions, to govern their own affairs, and to choose what is best for their personal health and medical care. It also assumes that government bureaucrats, solely by virtue of such status, intrinsically know better than employees, what is medically sound and in the best medical interests of each person. Like a child or a ward of the government, individual consent is unnecessary, for the putative parent has full authority to make such medical decisions for them as though by decree based on the class they are in — without notice, hearing, or a showing of cause, and without any knowledge of the individual employee's medical history.

This puts our constitutional republic on a slippery legal slope. Next, we must suppose, the mere "privilege" of paying taxes, or of living under the protection of the government, will be sufficient to declare federal officials as the parents of us all. Under that rationale, who knows but that in the future, federal officials may desire to coerce the use of

contraceptives or impose forced sterilizations[15] for the "protection" and "benefit" of the nation? How would such actions be sufficiently distinguished from forced vaccinations?

If such threshold issues of government power are never recognized and identified, they are never briefed, but rather are assumed while never being decided. Therefore, on certiorari, parties should be asked to brief this foundational issue: "Does either the law of nature or the common law prohibit the Executive Branch from abridging the natural, essential, inherent rights of the people, including the right to accept or reject the COVID-19 vaccination as a condition of employment?"

V. THE CMS MANDATE VIOLATES THE NUREMBERG CODE.

After World War II, the U.S. Military prosecuted German physician and SS officer Karl Brandt and 19 other medical doctors as war criminals for crimes against humanity in conducting medical experiments with prisoners, sentencing Brandt to death by hanging, which was carried out on June 2, 1948. *See United States v. Karl Brandt, et al.* (1946-47) (the "Doctors' Trial").[16] That Court's decision established what came to be called the Nuremberg Code: 10

---

[15] Abortion rights activists prove the Eugenics Movement has not departed from the scene since *Buck v. Bell*, 274 U.S. 200 (1927), which was never overruled.

[16] *See* documents at U.S. Holocaust Memorial Museum.

principles governing medical experimentation on human subjects.

Although the legal force of this Code may be subject to debate, the Court should be aware that the CMS Mandate violates these principles. Medical workers being directed to take the COVID-19 vaccine upon pain of dismissal cannot be said to have given their voluntary consent. Nor can they be said to have given informed consent when information about the dangers of the vaccine has been hidden from them, and the public.[17]

No one could contend the CMS Mandate is valid under this Nuremberg Principle.

> The **voluntary consent** of the human subject is absolutely essential. This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise **free power of choice**, without the intervention of any element of force, fraud, deceit, **duress**, over-reaching, or other ulterior form of constraint or **coercion**; and should have **sufficient knowledge and comprehension** of the elements of the subject

---

[17] *See* Dr. Naomi Wolf, "Dear Friends, Sorry to Announce a Genocide," Outspoken with Dr. Naomi Wolf (May 29, 2022); A. Berenson, "Vaccinated English adults under 60 are dying at twice the rate of unvaccinated people the same age," The Burning Platform (Nov. 20, 2021); D. Archibald, "UK Covid Vaccine Fatality Rates," The Wentworth Report (Nov. 26, 2021); D. Archibald, "The Alarming Result of the UK Vaccination Experiment," The Wentworth Report (Oct. 26, 2021).

> matter involved, as to enable him to make an **understanding and enlightened decision**. [*Id.* (emphasis added).]

The United States has a long and sad history of conducting experiments on humans, including the "Tuskegee Study of Untreated Syphilis in the Negro Male," conducted between 1932 and 1972 by the U.S. Public Health Service. Another case came to light in *United States v. Stanley*, 483 U.S. 669 (1987), where this Court determined that a U.S. Serviceman given LSD without his consent could not sue the U.S. Army for damages, but he was later awarded over $400,000 by Congress. *See* Private L. No. 103-8 (Oct. 25, 1994) (103d Cong.). The dissenting opinion of Justice O'Connor stated:

> No judicially crafted rule should insulate from liability the involuntary and unknowing **human experimentation** alleged to have occurred in this case ... the United States military played an instrumental role in the criminal prosecution of Nazi officials who experimented with human subjects during the Second World War ... and **the standards that the Nuremberg Military Tribunals developed** to judge the behavior of the defendants stated that the "**voluntary consent** of the human subject is absolutely essential...." [*Stanley* at 709-10 (O'Connor, J., dissenting) (emphasis added).]

The CMS Mandate is coercion without consent — the polar opposite of voluntary consent.

CONCLUSION

For the reasons stated above, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

RICK BOYER
INTEGRITY LAW FIRM PLLC
P.O. Box 10953
Lynchburg, VA 24506

KERRY L. MORGAN
PENTIUK, COUVREUR & KOBILJAK, P.C.
2915 Biddle Avenue
Wyandotte, MI 48192

GERALD R. THOMPSON
37637 Five Mile Road
Suite 397
Livonia, MI 48154

PATRICK MCSWEENEY
MCSWEENEY, CYNKAR & KACHOUROFF, PLLC
3358 John Tree Hill Road
Powhatan, VA 23139

JOSEPH W. MILLER
JOSEPH MILLER LAW OFFICES, LLC
P.O. Box 83440
Fairbanks, AK 99708
Attorney for RLAC

WILLIAM J. OLSON*
JEREMIAH L. MORGAN
ROBERT J. OLSON
WILLIAM J. OLSON, P.C.
370 Maple Ave. W., Ste. 4
Vienna, VA 22180
(703) 356-5070
wjo@mindspring.com
Attorneys for Amici Curiae

JAMES N. CLYMER
CLYMER MUSSER & SARNO, P.C.
408 West Chestnut St.
Lancaster, PA 17603

J. MARK BREWER
BREWER & PRITCHARD, P.C.
800 Bering Dr. Ste. 201A
Houston, TX 77057

PHILLIP L. JAUREGUI
Judicial Action Group
1300 I Street, NW
Suite 400 E
Washington, DC 20005

**Counsel of Record*
June 21, 2022