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COVID-19: LEGAL FRAMEWORK FOR VACCINE DISTRIBUTIONS AND MANDATES

*Dana B. Taschner**

*Ashley Atwood***

I. INTRODUCTION

Dr. Anthony Fauci, Director of the National Institute of Allergy and Infectious Diseases, announced to the American people in March 2020, shortly after coronavirus cases emerged in the United States, “You’ve got to be realistic. And you’ve got to understand that you don’t make the timeline, the virus makes the timeline.”¹ Since then, the American people began the anxious waiting process for a vaccine to battle against the dangerous SARS-CoV-2 virus. It is difficult to imagine that our modern healthcare system and prime status as a global leader are not enough to protect us from this virus. Yet, in under a year of the coronavirus making its appearance on the global stage, there were more than 8.5 million infections and 225,000 deaths in the United States.²

The fatality rates across the planet appear to be dropping for many months, but the Delta variant and opposition over vaccines have led to an all-time record of cases.³ Former U.S. Food and Drug Administration commissioner Dr. Scott Gottlieb opined that “for most people who get the Delta variant, it’s going to be the most serious virus they get in their lifetime in terms of risk of putting them in the hospital.”⁴ Scientists report that Delta variant viral loads are 1,260 times higher than those found in the earlier

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1. See Paul LeBlanc, *Fauci: “You Don’t Make the Timeline, the Virus Makes the Timeline” on Relaxing Public Health Measures*, CNN (Mar. 25, 2020), <https://www.cnn.com/2020/03/25/politics/anthony-fauci-coronavirus-timeline-cnntv/index.html> [https://perma.cc/T64Y-QQSG].

2. See *COVID Data Tracker*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://covid.cdc.gov/covid-data-tracker/#datatracker-home> (last updated Mar. 3, 2021).

3. *U.S. COVID-19 Vaccine Tracker: Your State’s Progress*, MAYO CLINIC, <https://www.mayoclinic.org/coronavirus-covid-19/vaccine-tracker> (last visited Aug. 6, 2021).

4. Melissa Quinn, *Gottlieb Warns Delta Variant Will Be “Most Serious Virus” Unvaccinated Get in Their Lifetime*, CBS NEWS (July 18, 2021), <https://www.cbsnews.com/news/scott-gottlieb-delta-variant-covid-19-vaccines/>.

Covid pandemic wave.⁵ The Delta variant has, rightfully, sounded alarms as it leads a disastrous resurgence in global coronavirus cases and accounts for 83% of new cases nationwide.⁶ At the time of writing this article, the sobering numbers of global Covid cases have risen to a record of 200 million recorded cases⁷ and over four million deaths.⁸ Against this shocking number of lives lost, scientists suggest most people not vaccinated will face the highly contagious Delta variant.⁹ Only .8% of deaths in May resulted from vaccinated individuals, making the death toll all the more tragic, as the majority of these deaths would be almost entirely preventable.¹⁰ Likewise, statistics released in June of 2021 revealed 98% of deaths were among people not fully vaccinated, with a very high proportion of the deaths in at-risk segments of the population.¹¹

Alarmingly, the Delta variant is infecting and hospitalizing the younger population greater than before.¹² Over the course of July, children made up 15.3% of all new cases in North Carolina.¹³ While many children are not old enough to get the vaccine, this points to the importance of herd immunity to keep children safe; if a greater number of adults were vaccinated, the Delta variant would not be able to spread at this scale and would not reach many populations. Scientists do not view the Delta variant and resurging deaths as a temporary blip.¹⁴

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5. Aya Elamroussi & Holly Yan, *The Delta Variant Is So Contagious, Those Unprotected Will Likely Get It, A Trump Administration FDA Chief Says*, CNN (July 18, 2021), <https://www.cnn.com/2021/07/18/health/us-coronavirus-sunday/index.html>.
 6. Anna Deen, *Covid-19 Delta Variant Affects Younger, Unvaccinated Populations in NC*, CAROLINA PUB. PRESS (July 26, 2021), <https://carolinapublicpress.org/47324/covid-19-delta-variant-affects-younger-unvaccinated-populations-in-north-carolina/>.
 7. Emma Mayer, *World Reaches Grim Milestone of 200 Million COVID Cases Globally, as Delta Variant Surges*, MSN (Aug. 4, 2021), <https://www.msn.com/en-us/health/medical/world-reaches-grim-milestone-of-200-million-covid-cases-globally-as-delta-variant-surges/ar-AAMWF3m?ocid=msedgdp&pc=U53>.
 8. *WHO Coronavirus (COVID-19) Dashboard*, WORLD HEALTH ORG., <https://covid19.who.int/> (last visited Aug. 16, 2021).
 9. Elamroussi & Yan, *supra* note 5.
 10. Clark K. Johnson & Mike Stobbe, *Nearly All COVID Deaths in US are Now Among Unvaccinated*, AP NEWS (June 29, 2021), <https://apnews.com/article/coronavirus-pandemic-health-941fcf43d9731c76c16e7354f5d5e187>.
 11. *Id.*
 12. Deen, *supra* note 6.
 13. *Id.*
 14. See Ariana Eunjung Cha, Loveday Morris & Michael Birnbaum, *Covid-19 Death Rates Are Lower Worldwide, But No One Is Sure Whether That's a Blip*

Policymakers are now of the same opinion. Mask mandates and COVID-19 vaccines have been treated as a political issue instead of a national health issue, causing Democrats and Republicans to have polarized stances on this topic. However, the deadly nature of the Delta variant and readily accessible vaccinations have led to a more unified political response.¹⁵ The escalating case numbers and deaths are continuing to permeate every nation across the planet.¹⁶ Every person alive is susceptible to COVID-19, with increased risk from the highly contagious Delta variant and at-risk populations more vulnerable than before.¹⁷ These issues have called to attention the possibility of mandatory vaccinations and other restrictions for unvaccinated individuals because of the fatality rate and efficacy of the vaccine itself.

This article seeks to outline a comprehensive synopsis of the legal and societal difficulties of the COVID-19 pandemic, with special attention drawn to implications of the Delta variant. In Part II, the impact of COVID-19 on the homeless population is discussed. In Part III, the vaccination distribution system is analyzed and explains the roles of various government organizations. Part IV focuses on legal complications surrounding mandatory vaccinations, vaccine passports, and the legal implications of continued regulations for unvaccinated individuals.

II. COVID-19 IMPACT ON THE HOMELESS POPULATION

The Centers for Disease Control and Prevention (CDC) website has a list of people who are at increased risk of severe illness from coronavirus; among them are older adults and people with underlying medical conditions.¹⁸ These are people that have received countless strong warnings throughout the pandemic as being at a greater risk of serious illness from COVID-19. However, further down the list are groups that have received far

or a Trend, WASH. POST (Oct. 9, 2020), <https://www.washingtonpost.com/health/2020/10/09/covid-mortality-rate-down/> [<https://perma.cc/9WLZ-G84T>].

15. Samuel Chamberlain, *Alabama Gov. Kay Ivey Calls Out Unvaccinated Residents for Choosing a Horrible Lifestyle*, N.Y. POST (July 23, 2021), <https://nypost.com/2021/07/23/alabama-gov-kay-ivey-blasts-unvaccinated-residents/>.
16. *See COVID Data Tracker*, *supra* note 2.
17. *See COVID-19 Impact on Vulnerable Populations*, CLAUDE PEPPER CTR., <https://claudepeppercenter.fsu.edu/coronavirus-covid-19-and-you/covid-19-impact-on-vulnerable-populations/> (last visited Aug. 16, 2021).
18. *See People at Increased Risk and Other People Who Need to Take Extra Precautions*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fpeople-at-increased-risk.html (last updated Jan. 1, 2021) [<https://perma.cc/HCB9-98DE>].

less attention in recent months, and most notably for this article, this includes people who are experiencing homelessness.

According to a 2019 point-in-time estimate, there are approximately 553,742 people in the United States experiencing homelessness on a given night.¹⁹ Not only is there great risk in unsheltered living, but now that the Delta variant has overtaken America, these vulnerable individuals are now in more danger than ever. Alarming, this massive population has been left out of vaccine distribution schemes in at least twenty states.²⁰

Nearly a full year after the first confirmed cases of coronavirus, the public still lacked access to a consistently reliable cure or vaccination. Even with such a remedy, medical professionals cautioned against the idea of a vaccine being the complete and immediate solution to the global pandemic.²¹ The director-general of the World Health Organization (WHO), Tedros Adhanom Ghebreyesus, warned that “there’s no silver bullet at the moment [to stop the spread of coronavirus] and there might never be.”²² However, the main method that the world has been able to eliminate catastrophic diseases, such as polio and measles, is through vaccination.²³ Although a vaccination may not be the 100% reliable solution to eradicate this virus, vaccines have been the safest and most cost-effective protection against disease and thus will be a powerful weapon in the fight against COVID-19.²⁴

In December 2020, the U.S. Food and Drug Administration (FDA) issued emergency use authorizations (EUAs) for the use of the Pfizer and

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19. See U.S. DEP’T HOUS. & URBAN DEV., HUD 2019 CONTINUUM OF CARE HOMELESS ASSISTANCE PROGRAMS HOMELESS POPULATIONS AND SUBPOPULATIONS (Sept. 20, 2019), https://files.hudexchange.info/reports/published/CoC_PopSub_NatlTerrDC_2019.pdf.
 20. Linsey Van Ness, *States Fail to Prioritize Homeless People for Vaccines*, PEW (Mar. 1, 2021), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/03/01/states-fail-to-prioritize-homeless-people-for-vaccines>.
 21. See Kevin J. Tracey, *Vaccines Alone Are Not Enough to Beat COVID*, SCIENTIFIC AM. (Feb. 7, 2021), <https://www.scientificamerican.com/article/vaccines-alone-are-not-enough-to-beat-covid/>.
 22. See WHO Director-General’s Opening Remarks at the Media Briefing on COVID-19 – 3 August 2020, WORLD HEALTH ORG. (Aug. 3, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---3-august-2020> [https://perma.cc/BME5-EACV].
 23. See *Fourteen Diseases You Almost Forgot About (Thanks to Vaccines)*, CTRS. FOR DISEASE CONTROL & PREVENTION (May 8, 2020), <https://www.cdc.gov/vaccines/parents/diseases/forgot-14-diseases.html> [https://perma.cc/28KA-JZWT].
 24. See *The Vaccines Success Story Gives Us Hope for the Future*, WORLD HEALTH ORG. (July 14, 2020), <https://www.who.int/news-room/feature-stories/detail/the-vaccines-success-story-gives-us-hope-for-the-future> [https://perma.cc/Q42M-3N33].

Moderna COVID-19 vaccines.²⁵ However, the distribution of these vaccines for people experiencing homelessness is an important concern. As seen through the testing debacle in the early stages of the pandemic, the healthcare professionals and those experiencing symptoms who were in dire need of tests struggled for access while the rich, famous, and powerful appeared to have easier access to tests.²⁶

The Director of the CDC, Dr. Robert Redfield, has said that COVID-19 is the greatest public health crisis that has hit this nation in more than 100 years.²⁷ On top of that, there is intense political infighting within the United States, reflected in the prominent Supreme Court case scheduled to be heard after the 2020 election regarding the potential overturn of the Affordable Care Act.²⁸ Economically, it will not be feasible for all persons to access a COVID-19 vaccination, namely those who do not have high socioeconomic status or the technology necessary to make an appointment, a population that is only growing amidst economic struggles in the fallout of coronavirus.²⁹ As such, however the pie is divided, some will go without. The homeless need to be considered in the distribution list because once the virus has infected this population, it will be extraordinarily difficult to control due to factors associated with unstable housing conditions.

In this section, the authors discuss the necessity to plan for the distribution of a vaccine with acknowledgment of the acute needs of those experiencing homelessness. There are long-standing health issues, both physically and mentally, that have been proven to impact the homeless population with a greater severity. Coronavirus has magnified these differences and elevated

25. See *FDA Takes Additional Action in Fight Against COVID-19 By Issuing Emergency Use Authorization for Second COVID-19 Vaccine*, U.S. FOOD & DRUG ADMIN. (Dec. 18, 2020), <https://www.fda.gov/news-events/press-announcements/fda-takes-additional-action-fight-against-covid-19-issuing-emergency-use-authorization-second-covid>.
26. See Megan Twohey, Steve Eder & Marc Stein, *Need a Coronavirus Test? Being Rich and Famous May Help*, N.Y. TIMES (Mar. 18, 2020), <https://www.nytimes.com/2020/03/18/us/coronavirus-testing-elite.html> [https://perma.cc/T448-BZVE].
27. See Cami Mondeaux, *CDC Director: COVID-19 Is Greatest Public Health Crisis in over 100 Years*, KSL NEWSRADIO.COM (Apr. 1, 2020), <https://kslnnewsradio.com/1922346/cdc-director-covid-19-is-greatest-public-health-crisis-in-over-100-years/> [https://perma.cc/3SBH-HZX7].
28. See Samantha Liss, *Supreme Court to Hear ACA Arguments after November Election*, HEALTHCARE DIVE (Aug. 19, 2020), <https://www.healthcarediver.com/news/supreme-court-will-hear-aca-case-after-november-election/583804/> [https://perma.cc/524J-4C6E].
29. See Hallie Golden, *Up to Eighteen US States Haven't Prioritized Covid Vaccines for Homeless, Study Finds*, GUARDIAN (Mar. 3, 2021), <https://www.theguardian.com/world/2021/mar/03/us-covid-coronavirus-vaccines-homeless-study>.

the previously established at-risk homeless population into a group at high-risk of COVID-19. It is imperative that a unified front is demonstrated and the distribution of said vaccine is done with acknowledgment of moral and ethical obligations. The authors will argue that the overarching questions of the pandemic recovery process are (1) who receives the vaccine; and (2) who has the rights and responsibilities during a global health crisis.

A. Prompt and Affirmative Steps Toward Protecting Homeless in the Face of COVID-19

The “at-risk” populations from COVID-19—noted as being in need of enhanced protection—typically includes the elderly, those with pre-existing somatic health conditions, people in poverty, and people of color.³⁰ Those who are still at-risk and are largely undiscussed are those who are marginalized by substance abuse, homelessness, and housing instability.³¹ The notion of invisible homelessness is most accurately explained as one who goes “unnoticed as a person without a home.”³²

The most recent point-in-time (PIT) identified well over 500,000 homeless on a single night, but the National Coalition for the Homeless has pointed out that this number may be downplaying the true figures as the PIT count overlooks recently homeless individuals who are staying in supportive housing.³³ As such, the total number of homeless people in the United States may be well over 1 million.³⁴ This number was also taken pre-pandemic, before the economic crises hit and many suffered unexpected losses.³⁵ With initial lockdowns in place in hopes of limiting the spread of the virus, unemployment rates soared higher in three months of the first year of COVID-19 than it did in two full years of the Great Recession from 2007–2009.³⁶ De-

30. See *COVID-19 Impact on Vulnerable Populations*, *supra* note 17.

31. See Robert Heimer et al., *A Community Responds to the COVID-19 Pandemic: A Case Study in Protecting the Health and Human Rights of People Who Use Drugs*, 97 J. URB. HEALTH 448, 448–56 (July 27, 2020), <https://link.springer.com/article/10.1007/s11524-020-00465-3>.

32. See Sig Langegger & Stephen Koester, *Invisible Homelessness: Anonymity, Exposure, and the Right to the City*, 37 URB. GEOGRAPHY 1030, 1030–48 (Mar. 21, 2016), <https://doi.org/10.1080/02723638.2016.1147755>.

33. See *Current State of Homelessness*, NAT’L COAL. FOR HOMELESS (Apr. 2018), <https://nationalhomeless.org/wp-content/uploads/2018/04/State-of-things-2018-for-web.pdf>.

34. See Benjamin Schneider, *CityLab University: Understanding Homelessness in America*, BLOOMBERG.COM (July 6, 2020), <https://www.bloomberg.com/news/features/2020-07-06/why-is-homelessness-such-a-problem-in-u-s-cities> [<https://perma.cc/YP4Y-TYMD>].

35. *Id.*

36. See Rakesh Kochhar, *Unemployment Rose Higher in Three Months of COVID-19 Than It Did in Two Years of the Great Recession*, PEW RSCH. CTR. (June 11,

spite government aid through the Paycheck Protection Program (PPP) loan and unemployment, much of the United States workforce suddenly found themselves out of work.³⁷ Columbia University professor Dr. Brendan O’Flaherty found that mass unemployment induced from COVID-19 could cause homelessness in the United States to grow as much as 45% in a single year.³⁸ Over a year since the pandemic began, the impact of COVID-19 on the homelessness rates is unclear as government agencies continually set this population on the backburner.³⁹

If these estimations are even remotely true, the world will continue to face physical and economic struggles in the coming years. When COVID-19 cases first began appearing in the United States, some of the first products to disappear from the store shelves were hand sanitizers, cleaning wipes, and toilet paper.⁴⁰ Unsure about how to protect themselves from the virus or how long lockdowns would last, people purchased these types of products in hordes, forcing the stores to set customer limits on such items.⁴¹ Meanwhile, resources such as public bathrooms that are heavily utilized by those experiencing homelessness were shut down or closed.⁴² These closures all over the nation mean that there were few options to practice basic sanitation measures. In the middle of a global health pandemic, this lack of resources is a nightmare.

2020), <https://www.pewresearch.org/fact-tank/2020/06/11/unemployment-rose-higher-in-three-months-of-covid-19-than-it-did-in-two-years-of-the-great-recession/> [https://perma.cc/846Y-JVLE].

37. See *Unemployment Rates During the COVID-19 Pandemic: In Brief*, CONG. RSCH. SERV., <https://fas.org/sgp/crs/misc/R46554.pdf> (last updated Jan. 12, 2021).
38. See *Analysis on Unemployment Projects 40–45% Increase in Homelessness This Year*, CMTY. SOLS. (May 11, 2020) <https://community.solutions/analysis-on-unemployment-projects-40-45-increase-in-homelessness-this-year/> [https://perma.cc/3AKK-ECUN].
39. Van Ness, *supra* note 20.
40. See Emma Balter, *From Toilet Paper to Roller Skates, These Were the Great Shortages of 2020*, HOUS. CHRON. (Dec. 30, 2020), <https://www.houstonchronicle.com/life/article/shopping-shortages-2020-covid-pandemic-15836207.php>.
41. See Laura Haefeli, *Grocery Hoarding Crackdown: Stores to Limit Items Per Customer Amid Coronavirus Outbreak*, CBS SACRAMENTO (Mar. 16, 2020), <https://sacramento.cbslocal.com/2020/03/16/grocery-hoarding-crackdown-coronavirus/> [https://perma.cc/4FVQ-JNH7].
42. See Alex Brown, *The Pandemic Has Closed Public Restrooms, and Many Have Nowhere to Go*, PEW CHARITABLE TRS. (July 23, 2020), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/07/23/the-pandemic-has-closed-public-restrooms-and-many-have-nowhere-to-go> [https://perma.cc/ZB28-H9AT].

B. Improving Legal Frameworks Is Required to Address the Physical and Mental Challenges in the Homeless Population

Homelessness is associated with several harmful stereotypes and stigmas: alcoholism, drug addiction, violence, and mental illness.⁴³ Although persons can experience homelessness for any variety of reasons that is in no way correlated to their mental or physical states or capabilities,⁴⁴ it is rarely discussed that those who are experiencing homelessness often experience unique physical and mental hurdles.⁴⁵ Research shows that numerous physical health problems may result from or are commonly associated with homelessness, including malnutrition; parasitic infestations; dental and periodontal disease; degenerative joint diseases; venereal diseases; hepatitis cirrhosis secondary to alcoholism; and infectious hepatitis related to intravenous (IV) drug abuse.⁴⁶ However, these struggles are also exacerbated by the fact that healthcare is significantly less readily attainable for those experiencing homelessness.⁴⁷

For example, diabetes is a condition that impacts nearly 35 million Americans but is treatable and manageable.⁴⁸ For most people, daily insulin injections or monitoring their diet is enough to continue to live a healthy lifestyle in spite of their diagnosis.⁴⁹ However, for a homeless person, diabetes treatment is virtually impossible—some types of insulin require refrigeration, syringes can be stolen, and diets are extremely difficult, if not impossible, to be controlled.⁵⁰ Thus, we see that conditions that are easily treatable by our modern health system can in fact have much more drastic repercussions if the patient is experiencing homelessness at the same time.

43. See *Beyond Stigma and Stereotypes: What Is Homelessness?*, ANTI-DEFAMATION LEAGUE, <https://www.adl.org/education/educator-resources/lesson-plans/beyond-stigma-and-stereotypes-what-is-homelessness> (last visited June 14, 2021) [<https://perma.cc/UXR5-5UJJ>].

44. See *Homelessness in America: Overview of Data and Causes*, NAT'L L. CTR. ON HOMELESSNESS & POVERTY (Jan. 2015), https://nlchp.org/wp-content/uploads/2018/10/Homeless_Stats_Fact_Sheet.pdf.

45. See *id.*

46. See HOMELESSNESS, HEALTH, AND HUMAN NEEDS, NAT'L ACADS. PRESS (1988), <https://www.ncbi.nlm.nih.gov/books/NBK218232/>.

47. See *Homelessness in America*, *supra* note 44.

48. See *Statistics About Diabetes*, AM. DIABETES ASS'N, <https://www.diabetes.org/resources/statistics/statistics-about-diabetes> (last visited Aug. 16, 2021) [<https://perma.cc/C8LA-D2YQ>].

49. See Mayo Clinic Staff, *Diabetes Management: How Lifestyle, Daily Routine Affect Blood Sugar*, MAYO CLINIC (June 6, 2020), <https://www.mayoclinic.org/diseases-conditions/diabetes/in-depth/diabetes-management/art-20047963>.

50. *Id.*

Lack of appropriate housing not only contributes to physical health but can also have real and tangible mental health impacts as well. Certain experiences are unique to urban homelessness, including crowding, pollution noise, inadequate lighting, and lack of access to green spaces.⁵¹ These and other environmental factors associated with slums can exacerbate mental health disorders, including depression, anxiety, violence, and other forms of social disfunction.⁵² Individuals with low incomes are disproportionately likely to suffer from poor mental health, and depression and stress are known to weaken immune systems.⁵³ In a pandemic, these pre-existing high levels of risk create a crisis within a crisis. The pandemic has caused a negative impact on mental health in about 50% of the U.S. population.⁵⁴ While statistics on the homeless population remain uncollected, it is a fair presumption that this heightened risk group has suffered just as greatly, if not more.

C. Homeless Populations as COVID-19 “Superspreaders” Create Urgency and Prospect of Legal Battles Over Encampments

When the pandemic first hit the United States, the CDC issued guidelines to cities that stated, unless there were available housing units, “do not clear encampments [where persons experiencing homelessness are residing] during community spread of COVID-19. Clearing encampments can cause people to disperse throughout the community,” which “increases the potential for disease spread.”⁵⁵ However, cities across the nation continued to conduct sweeps of these encampments in which those residing in the space were forced to move out immediately.⁵⁶ This forcible move can be traumatic for people who are already living on the edge as they often lose their belongings

51. See Nádia Nara Rolim Lima et al., *People Experiencing Homelessness: Their Potential Exposure to COVID-19*, 288 *PSYCHIATRY RSCH.* (June 2020), <https://www.sciencedirect.com/science/article/pii/S0165178120306491?via%3Dihub>.

52. *Id.*

53. *Id.*

54. Audrey Kearney, Liz Hamel, & Mollyann Brodie, *Mental Health Impact of the COVID-19 Pandemic: An Update*, KFF (Apr. 14, 2021), <https://www.kff.org/coronavirus-covid-19/poll-finding/mental-health-impact-of-the-covid-19-pandemic/>.

55. See *Interim Guidance on Unsheltered Homelessness and Coronavirus Disease 2019 (COVID-19) for Homeless Service Providers and Local Officials*, CTRS. FOR DISEASE CONTROL & PREVENTION (Feb. 26, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html> [<https://perma.cc/3UYL-25KQ>].

56. See Conrad Swanson & Shelly Bradbury, *Police Launch Early Morning Sweep of Homeless Camp near Capitol*, DENVER POST (July 29, 2020), <https://www.denverpost.com/2020/07/29/homeless-sweep-denver-capitol-colorado/> [<https://perma.cc/22TP-S35Y>].

and contact with outreach workers who provide them with access to basic resources.⁵⁷

The problems between the spread of the virus and those who are experiencing homelessness are highly complex and nuanced. An individual is more susceptible to being homeless with the spread of COVID-19 due to sudden lack of income or unemployment, but potential exposure to COVID-19 may also negatively impact their ability to be housed, as well as their mental and physical health.⁵⁸ Since the homeless also lack access to appropriate healthcare, as discussed earlier, a COVID-19 diagnosis could impact them much more severely than the average sheltered American.⁵⁹

Many people experiencing homelessness live in congregate living settings and may not have consistent access to basic hygiene supplies or showering facilities, all of which could foster virus transmission.⁶⁰ These settings may be formal or informal—shelters, halfway houses, encampments, and abandoned buildings—and can make it a challenge to find the appropriate and necessary hygiene resources.⁶¹ Those who are younger than 65 years of age and are experiencing homelessness have a mortality rate that is 5–10 times higher than that of the general American population.⁶² A COVID-19 diagnosis could further increase this disparity in mortality because of the enhanced risk of suffering a more severe case of coronavirus than a non-homeless individual.⁶³

San Francisco, California has one of the largest homeless populations in the United States.⁶⁴ There were 8,035 homeless individuals counted in the city's 2019 PIT street and shelter count, an increase of more than 14% from

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57. See Teresa Wiltz, *Against CDC Guidance, Some Cities Sweep Homeless Encampments*, PEW CHARITABLE TRS. (Apr. 28, 2020), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/04/28/against-cdc-guidance-some-cities-sweep-homeless-encampments> [https://perma.cc/GL75-8MBG].
 58. See Jack Tsai & Michal Wilson, *COVID-19: A Potential Public Health Problem for Homeless Populations*, 5 LANCET PUB. HEALTH (Apr. 2020), [https://doi.org/10.1016/s2468-2667\(20\)30053-0](https://doi.org/10.1016/s2468-2667(20)30053-0).
 59. See *Homelessness in America*, *supra* note 44.
 60. Tsai & Wilson, *supra* note 58.
 61. *Id.*
 62. Travis P. Baggett et al., *Mortality Among Homeless Adults in Boston: Shifts in Causes of Death Over a 15-Year Period*, J. AM. MED. ASS'N INTERNAL MED. (Feb. 11, 2013), <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/1556797>.
 63. *Id.*
 64. Benjamin Oreskes, *California has the Most Homeless People of Any State. But L.A. Is Still a National Model*, L.A. TIMES (Aug. 1, 2019, 12:04 PM), <https://www.latimes.com/california/story/2019-08-01/california-homeless-people-housing-national-model-conference>.

the previous 2017 count.⁶⁵ Unfortunately, after COVID-19 cases broke out in San Francisco's largest homeless shelter, 67% of residents and 17% of staff tested positive for SARS-CoV-2.⁶⁶ The shelter offered three floors of beds, all located 1.5–3 feet apart, putting them outside of the CDC's recommended six feet of separation for social distancing.⁶⁷ Six days after the first residents tested positive for COVID-19, the shelter was shut down and testing continued.⁶⁸ This outbreak demonstrates the extremely high risk of COVID-19 transmission in homeless shelters, as well as reinforcing the risks of congregate living and highly populated shelters without capacity for social distancing.⁶⁹ Persons with stable housing will be able to adhere to stay-at-home orders far more comfortably in terms of physical safety than those who are experiencing homelessness, for whom social distancing is nearly impossible.⁷⁰

III. VACCINE ACCESS: WHO GETS IT AND WHEN? PRIORITIZATION OF ACCESS TO COVID-19 VACCINATIONS

Now that vaccines are being distributed, it is critical for the distribution to meet moral and ethical expectations as well as advancing global health and safety.⁷¹ The CDC has identified certain populations as being at higher risk than others for COVID-19 infection, which some believe should be the order in which people ought to be vaccinated.⁷² In determining the order of vaccine distribution plans, the vulnerable populations of elderly people with pre-existing conditions and healthcare workers who are on the front lines fighting

65. *Homeless Population*, CITY & CNTY. S.F., <https://sfgov.org/scorecards/safety-net/homeless-population> (last visited Aug. 16, 2021) [<https://perma.cc/JF2B-3QL7>].

66. Elizabeth Imbert et al., *Coronavirus Disease 2019 Outbreak in a San Francisco Homeless Shelter*, CLINICAL INFECTIOUS DISEASES (Aug. 3, 2020), <https://academic.oup.com/cid/advance-article/doi/10.1093/cid/ciaa1071/5879965>.

67. *Id.*; *Social Distancing*, CTRS. FOR DISEASE CONTROL & PREVENTION (Nov. 17, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html> [<https://perma.cc/Y9AT-PBEY>].

68. Imbert et al., *supra* note 66.

69. *Social Distancing*, *supra* note 67.

70. *Id.*

71. Katie Pearce, *Distributing a COVID-19 Vaccine Raises Complex Ethical Issues*, JOHN HOPKINS UNIV. (July 1, 2020), <https://hub.jhu.edu/2020/07/01/covid-vaccine-ethics-faden/>.

72. *People at Increased Risk*, CTRS. FOR DISEASE CONTROL & PREVENTION (Jan. 4, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html>.

this disease are prioritized, but homeless people should also be considered.⁷³ This is a vulnerable population due to insufficient housing; lack of reliable basic hygiene supplies; greater risk to physical health conditions; and propensity for depression and stress, both of which can lower the body's immune system.⁷⁴ Additionally, science shows that they are at a greater risk of COVID-19 and they lack access to appropriate health care.⁷⁵ Thus, people experiencing homelessness should be recognized as a group that must have quick access to the vaccine, regardless of negative social perceptions. But this has not been the case, and the homeless population is either not included in vaccination schemes or will be one of the last to receive them.⁷⁶

New York was one of the first American cities to become a hotspot for COVID-19 in March 2020.⁷⁷ During some of the worst times, frontline healthcare workers were offered ridiculous items to wear during their hospital shifts, including New York Yankees' souvenir rain ponchos and garbage bags.⁷⁸ Human lives were on the line, and the resources to protect the workers as well as other patients were frighteningly scarce.⁷⁹ A study by the CDC found that there were 9,000 healthcare workers that had been infected by the coronavirus only a few months after the first diagnosed cases in the United States.⁸⁰ Unfortunately, the lack of PPE likely contributed to the cases of

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73. Sarah Elizabeth Richards, *Who Is Really 'First in Line' for the Vaccine? It Depends on Your State*, NAT'L GEOGRAPHIC (Dec. 11, 2020), <https://www.nationalgeographic.com/science/article/who-is-really-first-in-line-coronavirus-vaccine-states-not-guaranteed>.
 74. Lima et al., *supra* note 51.
 75. Imbert et al., *supra* note 66.
 76. Van Ness, *supra* note 20.
 77. German Lopez, *Why Some States Became Coronavirus Hot Spots – and Others Haven't*, VOX (Apr. 21, 2020, 2:30 PM), <https://www.vox.com/2020/4/21/21224944/coronavirus-hot-spots-covid-new-york-michigan-florida>.
 78. Ebony Bowden et al., *Worker at NYC Hospital Where Nurses Wear Trash Bags as Protection Dies from Coronavirus*, N.Y. POST (Mar. 25, 2020, 4:32 PM), <https://nypost.com/2020/03/25/worker-at-nyc-hospital-where-nurses-wear-trash-bags-as-protection-dies-from-coronavirus/> [<https://perma.cc/4WTU-ZEKZ>]; Haven Orecchio-Egresitz, *One New York Doctor Said She Was Given a Yankees Rain Poncho as Protective Medical Gear*, INSIDER (Apr. 1, 2020, 12:28 PM), <https://www.insider.com/new-york-doctor-said-given-yankees-rain-poncho-gown-2020-4> [<https://perma.cc/W4ML-5CRG>].
 79. See Bowden et al., *supra* note 78; Orecchio-Egresitz, *supra* note 78.
 80. Ariana Eunjung Cha, *More than 9,000 U.S. Health-Care Workers Have Been Infected with the Coronavirus*, WASH. POST (Apr. 14, 2020, 2:57 PM), <https://www.washingtonpost.com/health/2020/04/14/coronavirus-healthcareworkers-infections/> [<https://perma.cc/5XBE-5JUC>].

healthcare workers, as being exposed to ill patients while still not adequately protected put them at enhanced risk of contracting the virus.⁸¹

As COVID-19 quickly began spreading to other states, there was still a shortage of supply of key items to treat the virus, including ventilators.⁸² New York Governor Andrew Cuomo was able to secure ventilators for his state while they were struggling in their peak, but then offered to share the equipment with Massachusetts if needed.⁸³ The vaccination distribution plan must go beyond a simple question of which population receives the vaccine first, but also involve the complexities of which countries have access to the vaccination as well as who the responsible party is for the manner in which it is distributed.⁸⁴

A. Wealthy Countries Disproportionately Monopolize Vaccines

In the race to vaccine development, India and South Africa put forward a proposal to replace the competition-driven approach with a cooperative and collaborative style.⁸⁵ The countries requested the World Trade Organization (WTO) members “work together to ensure intellectual property rights . . . [and the] protection of undisclosed information do[es] not create barriers to the timely access to affordable medical products including vaccines and medicines or to scaling-up of research, development, manufacturing and supply of medical products essential to combat COVID-19.”⁸⁶

When vaccines were still being developed, a study by Oxfam International analyzed the deals that pharmaceutical corporations and vaccine producers have already struck with nations and discovered that wealthy nations representing only 13% of the world’s populations have already cornered 51% of the promised doses of leading COVID-19 vaccine candidates.⁸⁷ This type

81. *Id.*

82. Young-Jin Kim, ‘We’re Going to Be There for You’: Cuomo Says NY Ready to Send 400 Ventilators to Massachusetts, NBC 10 BOSTON (Apr. 19, 2020, 2:59 PM), <https://www.nbcboston.com/news/local/were-going-to-be-there-for-you-cuomo-says-ny-ready-to-send-400-ventilators-to-massachusetts/2110216/> [https://perma.cc/R3LU-8AG6].

83. *Id.*

84. Pearce, *supra* note 71.

85. Council for Trade-Related Aspects of Intellectual Property Rights, *Waiver From Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19*, WTO Doc. IP/C/W/669 (Oct. 2, 2020), <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q/IP/C/W669.pdf&Open=true>.

86. *Id.* (alterations in original).

87. Kai Tabacek, *Small Group of Rich Nations Have Bought Up More Than Half the Future Supply of Leading COVID-19 Vaccine Contenders*, OXFAM INT’L (Sept. 17, 2020), <https://www.oxfam.org/en/press-releases/small-group-rich-nations-have-bought-more-half-future-supply-leading-covid-19>.

of disproportionate monopolization should be alarming—before a reliable vaccine was created, more than half of the hypothetical supply had already been claimed.⁸⁸

Hoarding the vaccines has only led to waste; an estimated 50% of all COVID-19 vaccines are discarded.⁸⁹ Because of these nationalistic and imperialistic actions seen from both G7 nations and Big Pharma, global vaccination will not be achieved until 2078.⁹⁰ Sixty years is an unacceptable timeframe, reflecting a failure of democratic systems to properly maintain the health of the nations.⁹¹ Political systems have become so deferential to corporate power and profit, the dire need of international cooperation has been tragically set aside.⁹²

Sharing the coronavirus vaccine presents the perfect opportunity to bolster relationships between countries and create long-term goodwill.⁹³ In October 2020, Germany pledged to include Israel in Europe's deal for a vaccination, in alignment with Germany's "special relationship" with Israel as a response to the Holocaust.⁹⁴ Although COVID-19 has wreaked havoc around the world, countries' first responses leading up to the development of a vaccine appeared to focus more on personal relationships rather than regarding the pandemic and subsequent vaccine distribution as an international human rights issue.⁹⁵

Countries continued to work cooperatively and joined an international coalition known as COVAX to find and distribute a COVID-19 vaccine.⁹⁶ The WHO has warned strongly against "vaccine nationalism" and cautioned wealthier countries that if they choose to keep treatments to themselves then

88. *See id.*

89. Annabelle Timsit, *How Many COVID Vaccines Go To Waste*, QUARTZ (May 28, 2021), <https://qz.com/2013918/some-countries-are-wasting-more-covid-19-vaccines-than-others/>.

90. Luke Savage, *The Pandemic Will Continue Until We Break Pharma's Monopoly and End Vaccine Apartheid*, JACOBINMAG, <https://jacobinmag.com/2021/07/pandemic-covid-vaccine-distribution-big-pharma-apartheid-corporate-profits-2078> (last visited Aug. 16, 2021).

91. *Id.*

92. *Id.*

93. *See* Toby Axelrod, *Germany Would Share Europe-Only COVID Vaccine with Israel, Citing 'Special Relationship'*, FORWARD (Oct. 14, 2020), <https://forward.com/fast-forward/456421/germany-would-share-europe-only-covid-vaccine-with-israel-citing-special/> [<https://perma.cc/8QUW-2F8L>].

94. *Id.*

95. *See id.*; *see also* *Waiver From Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19*, *supra* note 85.

96. Seth Berkley, *COVAX Explained*, GAVI (Sept. 3, 2020), <https://www.gavi.org/vaccineswork/covax-explained>.

they cannot expect to remain safe while poorer nations remain exposed.⁹⁷ The chief of WHO, Tedros Adhanom Ghebreyesus, has stated: “[f]or the world to recover faster, it has to recover together, because it’s a globalized world: the economies are intertwined. Part of the world or a few countries cannot be a safe haven and recover.”⁹⁸ Still, the actions and statements of several world countries acting in their own self-interests seem to indicate that a widespread and equitable distribution of the vaccine may be more easily said than done.⁹⁹

The WHO, Gavi – the Vaccine Alliance, and the Coalition for Epidemic Preparedness Innovations are together pooling resources and negotiating its own deals with pharmaceutical companies through the COVAX facility in an effort to help low- and middle-income countries access vaccines.¹⁰⁰ However, it still fails to challenge hoarding by its own financial participants because it does not commit to pooling and sharing of intellectual property or requiring pricing transparency.¹⁰¹ As such, any vaccine developed by these efforts may still not be within the realm of affordability to many parts of the world.¹⁰² Much of the globe will still be forced to continue waiting for a vaccine as the wealthier power players of the world hoard the cure for COVID-19.¹⁰³ However, countries’ choices to avoid cooperative efforts may also result in their facing other potential repercussions between other countries as they face serious fall-out from other nations who have not been included in the “vaccine nationalism” plans.¹⁰⁴

97. Martin Farrer, *Global Report: WHO Warns Against Dangers of ‘Vaccine Nationalism’*, *GUARDIAN* (Aug. 6, 2020, 23:51), <https://www.theguardian.com/world/2020/aug/07/global-report-who-warns-against-dangers-of-vaccine-nationalism> [<https://perma.cc/FFC4-C76C>].

98. *Id.*

99. *See* Tabacek, *supra* note 87.

100. Bruno Stagno Ugarte, *Protecting the Profits of a Few Could Prevent Vaccine Access for All*, *HUM. RTS. WATCH* (Oct. 15, 2020, 9:45 AM), <https://www.hrw.org/news/2020/10/15/protecting-profits-few-could-prevent-vaccine-access-all> [<https://perma.cc/9RG5-RB3U>].

101. *Id.*

102. *Id.*

103. *Id.*

104. *See* Farrer, *supra* note 97.

B. Inattention to Homeless Populations During COVID-19 Will Increase Fatalities and Produce Harsh Economic Results

The United States started distributing the Pfizer and Moderna COVID-19 vaccinations in December 2021.¹⁰⁵ However, this move will not be the immediate resolution to all disasters created by and related to the coronavirus.¹⁰⁶ The CARES Act (the Act), passed in the early months of the pandemic, quickly dried up and studies have found that poverty escalated to levels higher than even before the pandemic.¹⁰⁷ One must also consider that as poverty rates increase, so also does risk of exposure to COVID-19.¹⁰⁸ Columbia University research found that in April and May 2020, the Act was successful in offsetting the potential poverty-fueled increases, but failed to succeed in preventing a rise in deep poverty—understood as having a monthly income lower than half the monthly poverty threshold.¹⁰⁹ Beyond this, the Act’s stimulus checks and unemployment benefits lifted more than 18 million people out of poverty in early 2020, but this number later fell to around 4 million after the \$600 per week unemployment supplement of the Act expired.¹¹⁰ The study also correlated to other projections that high unemployment rates may persist in the coming years, and found that additional income transfers are likely to be necessary to blunt even further poverty increases.¹¹¹ If this does come to fruition, the economic ramification on the U.S. economy will be necessary to plan for in the coming months and years.

The entire planet is facing economic risk through the pandemic; the World Bank suggested that COVID-19 will plunge the global economy into

105. Terri Moon Cronk, *Pfizer, Moderna Produce COVID-19 Vaccine*, U.S. DEP’T DEF. (Dec. 21, 2020), <https://www.defense.gov/Explore/News/Article/Article/2453288/pfizer-moderna-produce-covid-19-vaccine/>.

106. See Jason DeParle, *Eight Million Have Slipped Into Poverty Since May as Federal Aid Has Dried Up*, N.Y. TIMES (Oct. 15, 2020), <https://www.nytimes.com/2020/10/15/us/politics/federal-aid-poverty-levels.html> [https://perma.cc/6FGF-42DK].

107. *Id.*

108. See W. Holmes Finch & Maria E. Hernández Finch, *Poverty and Covid-19: Rates of Incidence and Deaths in the United States During the First Ten Weeks of the Pandemic*, FRONTIERS SOCIO. (June 15, 2020), <https://doi.org/10.3389/fsoc.2020.00047>.

109. See Zachary Parolin et al., *Monthly Poverty Rates in the United States During the COVID-19 Pandemic*, CTR. ON POVERTY & SOC. POL’Y (Poverty and Soc. Pol’y Working Paper, Oct. 15, 2020), <https://static1.squarespace.com/static/5743308460b5e922a25a6dc7/t/5f87c59e4cd0011fabd38973/1602733471158/COVID-Projecting-Poverty-Monthly-CPSP-2020.pdf> [https://perma.cc/34UP-LYXR].

110. *Id.*

111. See *id.*

its worst recession since World War II.¹¹² This crisis is one that we have been told we are all in together, but when it comes to a vaccine, the acts of neighborliness seem to fade. Before vaccines were available, Canada and the United States both pre-purchased vaccines totaling nearly 1 billion dosages.¹¹³ While each country does have an obligation to protect its own citizens, is there not also a human right obligation to contribute to a global effort to protect those who are less fortunate? Some believe there is, saying “the dictates of justice and equity demand that the governments of the world work together to reduce harm, save lives, and end the pandemic.”¹¹⁴ Former Nobel Prize winners Muhammad Yunus and José Ramos-Horta echo this sentiment: “for the rich world, we would say that this proposed act of human solidarity to ensure that medicines and vaccines get to the whole human family simultaneously is in their own self-interest, not just an act of charity.”¹¹⁵ These pleas for solidarity, compassion, and global cooperation sound like where we ought to be in light of modern healthcare and economic capacities. However, vaccine distribution plans remain complex tangled webs with major economic, international, and ethical elements.¹¹⁶

As every country strives to lift itself out of the economic downfall that has resulted from COVID-19, many have suggested that a cooperative approach to vaccination distribution could be the key to recovery.¹¹⁷ Interna-

112. See *COVID-19 to Plunge Global Economy into Worst Recession Since World War II*, WORLD BANK (June 8, 2020), <https://www.worldbank.org/en/news/press-release/2020/06/08/covid-19-to-plunge-global-economy-into-worst-recession-since-world-war-ii>.

113. See David Moscrop, *Opinion: Canada Is Trying to Secure Millions of Covid-19 Vaccine Doses. It Should Share*, WASH. POST (Oct. 15, 2020, 2:13 PM), <https://www.washingtonpost.com/opinions/2020/10/15/canada-vaccine-nationalism/> [<https://perma.cc/FM6R-BBYW>]; see also Ivan Couronne, *Pre-Orders of COVID-19 Vaccine Top Five Billion*, MED. XPRESS (Aug. 11, 2020), <https://medicalxpress.com/news/2020-08-pre-orders-covid-vaccine-billion.html> [<https://perma.cc/5ESY-98XK>].

114. Moscrop, *supra* note 113.

115. See China Daily, *Nobel Peace Prize Winners Call for Global Cooperation on Vaccine*, CHINA GLOB. TELEVISION NETWORK (Oct. 16, 2020), <https://newsus.cgtn.com/news/2020-10-16/Nobel-Peace-Prize-winners-call-for-global-cooperation-on-vaccine-UCrjNrH42Y/index.html> [<https://perma.cc/G6SV-U3Y9>].

116. See *Study Shows Vaccine Nationalism Could Cost Rich Countries US \$4.5 Trillion*, INT’L CHAMBER COM. (Jan. 25, 2021), <https://iccwbo.org/media-wall/news-speeches/study-shows-vaccine-nationalism-could-cost-rich-countries-us4-5-trillion/>.

117. See David Brancaccio et al., *The Potential for Global Cooperation When It Comes to COVID-19 Vaccine Distribution*, MARKETPLACE (Sept. 24, 2020), <https://www.marketplace.org/2020/09/14/covid-19-vaccine-distribution-governments-fareed-zakaria/>; David Lawder & Rodrigo Campos, *Vaccine Cooper-*

tional Monetary Fund Managing Director, Kristalina Georgieva, emphasized the need for even vaccine distribution in both developing countries and wealthy nations in order to boost confidence in travel, investment, trade and other activities: “if we make fast progress everywhere, we could speed up the recovery. And we can add almost \$9 trillion to global income by 2025, and that in turn could help narrow the income gap between richer and poorer nations.”¹¹⁸ If true, vaccine distribution done equitably could have tremendous universal benefits in only a few short years by saving jobs and lives from the virus and accelerating the overall speed of recovery.¹¹⁹

C. Vaccine Distribution: Transcending Politics and Mitigating Loss

Regardless of whether vaccine nationalism takes over or the WHO and COVAX alliances’ cooperative efforts persist, people will eventually receive treatments. If access comes through COVAX and is distributed in a country that may not be as economically stable as others, then there may be potential issues when it comes to financial coverage as a result of side effects from COVID-19 vaccines or the access itself.¹²⁰ In the United States, the vaccines are provided to anyone living in the country free of charge.¹²¹ However, no vaccination is 100% effective, and although proven to be safe by numerous studies and research, there can still be unexpected negative side effects.¹²² If these adverse effects occur, someone must be fiscally responsible.¹²³ Or, if a person is forced to wait for COVID-19 vaccinations for any myriad of rea-

ation, Recovery Could Boost Global Income \$9 Trillion by 2025, IMF Chief Says, REUTERS (Oct. 15, 2020, 9:14 PM), <https://www.reuters.com/article/imf-worldbank-stimulus/vaccine-cooperation-recovery-could-boost-global-income-9-trillion-by-2025-imf-chief-says-idUSKBN27107P>.

118. See Lawder & Campos, *supra* note 117.

119. See *id.*

120. See Francesco Guarascio, *WHO Vaccine Drive Bedevilled by Familiar Question: Who Pays if Things Go Wrong?*, REUTERS (Oct. 15, 2020, 7:28 AM), <https://www.reuters.com/article/health-coronavirus-who-vaccine-insight/who-vaccine-drive-bedevilled-by-familiar-question-who-pays-if-things-go-wrong-idUSKBN2701PO>.

121. See *Frequently Asked Questions About Vaccination*, CTRS. FOR DISEASE CONTROL & PREVENTION (Feb. 25, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/faq.html>.

122. See *Vaccine Side Effects and Adverse Events*, HIST. VACCINES (Jan. 17, 2018), <https://www.historyofvaccines.org/content/articles/vaccine-side-effects-and-adverse-events> [<https://perma.cc/G9ZC-2RFK>].

123. See Dorit Rubinstein Reiss, *Congress Should Enact No-Fault Compensation for COVID-19 Vaccine Injuries*, PETRIE-FLOM CTR. HARV. (Jan. 5, 2021), <https://blog.petrieflom.law.harvard.edu/2021/01/05/covid-vaccine-injury-compensation/>.

sons, falls ill, and dies, it may be more than simply an unfortunate and tragic death during a pandemic.¹²⁴

First responders and hospital staff are some of the most exposed populations, forced to interact almost daily with others who may or may not be taking appropriate coronavirus precautions by practicing social distancing or mask wearing.¹²⁵ Research verifies that it is possible to become infected with COVID-19 more than once, thus all front-line workers remain susceptible regardless of whether they have had the virus in the past or not.¹²⁶ If a first responder pulls a mask-less individual from a car accident, and later tests positive with verification that the infection was from this incident, then this happened on the job.¹²⁷ If the first responder is stricken with coronavirus and later dies, then this is an on the job death.¹²⁸ When it is a death on the job, the resulting payout is substantial.¹²⁹ The city budgets will then be responsible for making the appropriate financial compensations to the surviving family members; but during COVID-19 when cases are spreading at an unprecedented rate, the costs of payout may be too great for the city to sustain.¹³⁰ Thus, an organized vaccination scheme is of paramount importance not only for people's wellness but also for cities' pocketbooks.

124. See Nathan A. Adams IV, *COVID-19 Vaccinations Are Coming, but What Will the PREP Act Immunize?*, HOLLAND & KNIGHT (Nov. 17, 2020), <https://www.hklaw.com/en/insights/publications/2020/11/covid-19-vaccinations-are-coming-but-what-will-the-prep-act-immunize>.

125. See Keith A. Reynolds, *Study: Healthcare Workers Most at Risk for COVID-19*, MED. ECON. (Nov. 17, 2020), <https://www.medicaleconomics.com/view-study-healthcare-workers-most-at-risk-for-covid-19>.

126. See Julia Ries, *Yes, You Can Get COVID-19 Again: What to Know*, HEALTHLINE (Aug. 27, 2020), <https://www.healthline.com/health-news/yes-you-can-get-covid-19-again#The-bottom-line> [<https://perma.cc/EZL2-DTHP>].

127. See Molly Sullivan, *Sacramento Metro Fire Firefighter Tests Positive for Coronavirus, Agency Announces*, SACRAMENTO BEE (Mar. 24, 2020, 2:23 PM), <https://www.sacbee.com/news/coronavirus/article241475906.html>.

128. See Judith Retana, *COVID-19 A Leading Cause of Death for First Responders so Far This Year*, CBS17 (Sept. 23, 2020, 5:56 PM), <https://www.cbs17.com/digital-stories/covid-19-a-leading-cause-of-death-for-law-enforcement-firefighters-so-far-this-year/>.

129. See Tom Hals, *'Take Home' Lawsuits Over COVID Infections Could Be Costly for U.S. Employers*, REUTERS (Sept. 28, 2020, 5:09 AM), <https://www.reuters.com/article/us-health-coronavirus-usa-lawsuits/take-home-law-suits-over-covid-infections-could-be-costly-for-u-s-employers-idUSKBN26J1H8>.

130. See David Voreacos & Michelle Kaske, *States Grapple with Compensation for Families of Front-Line Workers Killed by COVID-19*, BENEFITSPRO (Apr. 22, 2020, 10:21 AM), <https://www.benefitspro.com/2020/04/22/states-grapple-with-compensation-for-families-of-front-line-workers-killed-by-covid-19/>.

The lines blur when it comes to deciding state and federal involvement on this issue. The Tenth Amendment to the U.S. Constitution states: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”¹³¹ If taken literally and with an originalist interpretation, then much, if not all, of the COVID-19 relief efforts ought to come from the states rather than the federal government.¹³² The CDC has issued recommendations and guidance for vaccine distribution among at-risk groups, including people experiencing homelessness.¹³³ However, it is up to the individual states to decide how the state will distribution the vaccine.¹³⁴ The results have been varied; some states have prioritized homeless shelters by including them in early phases of distribution, but others have not included them in the roll out plans at all.¹³⁵

IV. GOVERNMENT INTERVENTION

Alongside states’ ability to control the distribution of vaccines comes the controversial power to force vaccinations and otherwise establish regulations that divide between vaccinated and unvaccinated persons. Dividing the population in two generally implicates anti-discrimination laws but are permissible under certain circumstances. Such regulations implicate serious constitutional questions and force courts to weigh the common good against individual liberties. In the case of communicable diseases, restraints on personal freedom rest upon maintaining the common good and preserving a safe environment for all. This section seeks to outline the legality of mask requirements, vaccine mandates, and vaccine passports in one fell swoop.

A. Mask Requirements

After over a year of agitated customers being ejected from stores and viral videos of airplane passengers being dragged off kicking and screaming, it is now settled that companies have the right and authority to maintain mask requirements to enter their property—even where states’ mask mandates

131. U.S. CONST. amend. X.

132. See *Federal, State, and Local Government Responses to COVID-19*, LIBR. OF CONG., <https://www.loc.gov/law/help/covid-19-responses/us.php> (last updated Dec. 30, 2020).

133. See *Vaccination FAQs*, CTRS. FOR DISEASE CONTROL & PREVENTION (Feb. 17, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/vaccine-faqs.html>.

134. See Lane Holman, *State-by-State Guide to COVID Vaccine Information*, WEBMD (Feb. 10, 2021), <https://www.webmd.com/vaccines/covid-19-vaccine/news/20201224/state-by-state-guide-to-covid-vaccine-information>.

135. See Golden, *supra* note 29.

have been lifted.¹³⁶ This is because companies “can prescribe reasonable rules for employees . . . [a]nd if you have a business open to the public you can have non-discriminatory conditions for entry.”¹³⁷ A mask requirement is a logical extrapolation of no shoes, no shirt, no service.¹³⁸ However, customers must be given fair notice; stores still must clearly indicate masks are required to enter the store.¹³⁹ If a customer can reasonably see the sign but refuses to obey by it, they can be liable for criminal trespass.¹⁴⁰ Depending on the state this can be a misdemeanor, requiring up to six months in prison, or only an infraction, consisting of a fine.¹⁴¹

One approach customers take to challenge private mask mandates is through Title II and Title III disability claims.¹⁴² As a public accommodation, a business may not impose eligibility criteria that screen out persons with disabilities, although it may “impose legitimate safety requirements necessary for safe operation.”¹⁴³ Even so, plaintiffs are finding success where private mask mandates do not allow for medical exemptions.¹⁴⁴ Completely banning exemptions requires a “direct threat,” determined on a case-by-case basis, and even where that is satisfied alternate means of providing access must be available.¹⁴⁵ Recent decisions that consider face shields as a reasonable alternative to masks, however, provide ammunition for private entities’ right to impose unilateral mask requirements.¹⁴⁶ While the mask-wearing was once thought to be the crux of the COVID-19 spread, now getting the popu-

136. Catherine Thorbecke, *Why Businesses Can Still Require Masks After States Drop Mandates*, ABC NEWS (Mar. 10, 2021), <https://abcnews.go.com/Business/businesses-require-masks-states-drop-mandates/story?id=76363007>. Less settled is whether the states have the power to prevent companies from implementing mask requirements. See Brenda Argueta, *Florida School District Defies DeSantis, Issues Mask Mandate Due to COVID-19 Surge*, CLICKORLANDO (Aug. 4, 2021), <https://www.clickorlando.com/news/local/2021/08/04/florida-school-district-defies-desantis-issues-mask-mandate-due-to-covid-19-surge/>.

137. Janet Nguyen, *What Businesses Can and Can’t Do About Mask Mandates*, MARKETPLACE (Apr. 21, 2021), <https://www.marketplace.org/2021/04/21/what-business-can-and-cant-do-about-mask-mandates/>.

138. *Id.*

139. *Id.*

140. Thorbecke, *supra* note 136.

141. *Id.*

142. Elizabeth Pendo et al., *Resolving Tensions Between Disability Rights Law and COVID-19 Mask Policies*, 80 MD. L. REV. ONLINE 1, at *9 (2020).

143. *Id.*

144. *Id.*

145. *Id.*

146. *Pletcher v. Giant Eagle Inc.*, No. CV 2:20-754, 2020 WL 6263916 (W.D. Pa. Oct. 23, 2020).

lation vaccinated at a level to achieve herd immunity presents a new Goliath to conquer.

B. Vaccine Mandates

The state can implement its broad police power to enact reasonable laws to protect the public health and safety of its citizens—frequently invoked during public health emergencies.¹⁴⁷ In such cases, the Fourteenth Amendment's Due Process Clause clashes with the state's police power, derived from the Tenth Amendment, to act for the public health.¹⁴⁸ While fundamental personal liberties are protected by the Constitution, these rights are not absolute and cannot furnish citizens with an absolute right to be free from all restraint.¹⁴⁹ Justice Harlan famously opined “There are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist with safety to its members.”¹⁵⁰ The massive backlash on COVID-19 vaccinations makes an understanding of this legal landscape more important than ever; the following discussion is instructive on the legality of mandatory vaccinations and seeks to show how one's desire to remain unvaccinated will rightfully result in being unable to participate in society as freely as those who are vaccinated. Simply put, there are times when individual rights must give way to protect the population as a whole.

States' ability to mandate vaccinations is captured by *Jacobson v. Massachusetts*, a landmark Supreme Court case holding a law mandating smallpox vaccinations constitutional.¹⁵¹ *Jacobson* explained the principle that the Constitution reserves the police power to the states to implement “such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety.”¹⁵² The broad police power is only unconstitutional where arbitrariness or extreme injustice under the particular facts can be shown—nearly impossible thresholds to meet in the context of highly contagious viruses like smallpox and COVID-19.¹⁵³ The holding that compulsory vaccinations are well within the police power of the state has become the bedrock from which personal rights cases have grown, and even allows such authority to be delegated to a local body.¹⁵⁴ Recently,

147. *Jacobson v. Massachusetts*, 25 S. Ct. 358, 361 (1905); *Marshall v. United States*, 414 U.S. 417, 427 (1974).

148. See U.S. CONST. amend XIV; see also U.S. CONST. amend. X.

149. See U.S. CONST. amend XIV; see also U.S. CONST. amend. X.

150. *Jacobson*, 25 S. Ct. at 361.

151. See generally *id.*

152. *Id.* at 361.

153. *Id.*

154. *Id.*

in *South Bay United Pentecostal Church v. Newsom*, Chief Justice Roberts reaffirmed the central tenants of *Jacobson*:

Our Constitution principally entrusts “[t]he safety and the health of the people” to the politically accountable officials of the States “to guard and protect.” When those officials “undertake to act in areas fraught with medical and scientific uncertainties,” their latitude “must be especially broad.” Where those broad limits are not exceeded, they should not be subject to second-guessing by an “unelected federal judiciary,” which lacks the background, competence, and expertise to assess public health and is not accountable to the people.¹⁵⁵

To put *Jacobson* in context, the smallpox disease claimed around 300–500 million lives in the thousands of years during its spread.¹⁵⁶ Left unchecked, COVID-19 would be on track to match smallpox and has already taken nearly four and a half million lives in little over a year.¹⁵⁷ The two diseases share a number of similarities in transmission and harrowing lingering effects.¹⁵⁸ Notably, wide use of the smallpox vaccine has nearly eradicated the virus and curbed the monumental loss of life.¹⁵⁹

Mandatory vaccinations are in no way foreign; there are already a slew of vaccines that are required for children to attend school.¹⁶⁰ For example, Texas requires tetanus, polio, measles, hepatitis A, hepatitis B, varicella, and many other vaccines prior to attending school.¹⁶¹ Although the smallpox fatality rate¹⁶² was far higher than that found in COVID-19, the Delta variant’s striking transmissibility and viral load could make the theoretical mandatory vaccination into a reality.¹⁶³ COVID-19’s relatively modest mortality rate is unlikely to prevent it from being added to a state’s list of mandatory vaccina-

155. *S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613–14 (2020) (J. Roberts, concurring) (citations omitted).

156. See Angel Aguirre, *A Tale of Two Pandemics: The Impact of Smallpox and COVID-19*, YORK, <https://www.york.cuny.edu/news/a-tale-of-two-pandemics-the-impact-of-smallpox-and-covid-19> (last visited Aug. 16, 2021).

157. WHO Coronavirus (COVID-19) Dashboard, *supra* note 8.

158. Aguirre, *supra* note 156.

159. *Id.*

160. *Texas Minimum State Vaccine Requirements for Students Grades K-12*, TEX. DEP’T HEALTH & HUM. SERVS., <https://www.dshs.texas.gov/immunize/school/school-requirements.aspx> (last visited Aug. 16, 2021).

161. 25 TEX. ADMIN. CODE §§ 97.61–97.72.

162. Aguirre, *supra* note 156.

163. Ashley Hagen, *How Dangerous Is the Delta Variant (B.1.617.2)?*, AM. SOC’Y MICROBIOLOGY (July 30, 2021), <https://asm.org/Articles/2021/July/How-Dangerous-is-the-Delta-Variant-B-1-617-2>.

tions—sufficient risk to an individual is not synonymous to sufficient risk to the community. Varicella, typically mild in children and accounts for around fifty deaths a year, is still placed on the list of mandated vaccinations.¹⁶⁴ While some states have issued laws prohibiting a public vaccination mandate,¹⁶⁵ the ability for the state to use its police power in this context is well-settled law.

In circumstances where the COVID-19 vaccine is mandated, challenges to mandatory vaccinations based on parental rights or First Amendment grounds are extremely unlikely to succeed. In 1944, *Prince v. Massachusetts* held that neither “rights of religion nor rights of parenthood are beyond limitation . . . [t]he right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death.”¹⁶⁶ Although forty-eight states have statutory religious exemptions to vaccine mandates, a vaccine mandate without such an exemption would certainly pass muster under current Supreme Court precedent.¹⁶⁷ In a challenge under the free exercise clause of the First Amendment, *Employment Division, Department of Human Resources of Oregon v. Smith* established a standard that “the right of free exercise does not relieve an individual of the obligation to comply with a ‘valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).’”¹⁶⁸ It is reasonable to conclude, then, that there is no First Amendment free exercise right to an exemption from mandatory vaccination requirements.¹⁶⁹ With most states having religious exemptions to mandatory vaccination laws, the question is raised whether such exemptions could stand against a federally mandated vaccine.¹⁷⁰ For instance, the Mississippi Supreme Court found that a religious exemption to mandatory vaccination violated the Equal Protection Clause of the Fourteenth Amendment because it would “require the great body of

164. Kevin Malone & Alan Hinman, *Vaccination Mandates: The Public Health Imperative and Individual Rights*, in *LAW IN PUBLIC HEALTH PRACTICE* 262, 279 (2003).

165. For instance, just last week, USDC IN/ND case 1:21-cv-00238-DRL-SLC document 34 filed 07/18/21 page 8 of 101 9 the State of Ohio passed a law banning public vaccine mandates. See 2021 Bill Text Ohio H.B. 244, Sec. 3792.04(B)(1), 134th Gen. Assemb. (effective Oct. 13, 2021).

166. *Prince v. Massachusetts*, 64 S. Ct. 438, 442 (1944).

167. For a list of the statutes governing vaccine mandates see *States With Religious and Philosophical Exemptions From School Immunization Requirements*, NAT’L CONF. STATE LEGIS. (Apr. 30, 2021), <https://www.ncsl.org/research/health/school-immunization-exemption-state-laws.aspx>.

168. *Emp. Div., Dep’t of Hum. Res. Oregon v. Smith*, 110 S. Ct. 1595, 1600 (1990) (quoting *United States v. Lee*, 102 S. Ct. 1051, 1058 n.3 (1982)).

169. Malone & Hinman, *supra* note 164, at 276.

170. *Id.* at 273–76.

school children to be vaccinated and at the same time expose them to the hazard of associating [with unvaccinated children].”¹⁷¹ Finally, while sincerely held religious beliefs may provide parents with grounds on which to oppose government control of their children,¹⁷² such permissible “moral, ethical, or religious principles” do not encompass concerns over “considerations of policy, pragmatism, or expediency.”¹⁷³ While it is an open question whether *Welsh* would equally apply to an Amish family resisting a vaccine, rather than state education, on religious grounds, concerns over the necessity or risk related to a vaccine will not constitute a sincerely held belief permitting religious exemption. Thus, the common refrains that “I don’t need the vaccine” or “the vaccine is too risky” hold no water as a matter of law.

C. Proof of Vaccination and Vaccine Passports

While such arguments are sure to make their way through courts over the upcoming months—over 500 colleges now require the COVID-19 vaccine to be enrolled on campus—their success will likely be limited.¹⁷⁴ Indiana University (IU) has already settled this matter in *Klassen v. Trustees of Indiana University*, holding that the school’s vaccination requirements are constitutional.¹⁷⁵ IU quickly faced litigation after releasing its vaccination policy requiring students and staff to upload their vaccination records or meet one of the few exemptions.¹⁷⁶ The consequences for non-compliance include expulsion, cancellation of classes, or termination from the university.¹⁷⁷ The rigorous requirements to gain exemption status have the effect of controlling the spread of COVID-19 and protecting the community, but provide another target for those who would challenge vaccine-related requirements.¹⁷⁸

171. *Brown v. Stone*, 378 So.2d 218, 223 (Miss. 1979).

172. *Wisconsin v. Yoder*, 92 S. Ct. 1526, 1536 (2012) (holding that Amish family not subject to requirement that children remain in school until age 16).

173. *Welsh v. United States*, 90 S. Ct. 1792, 1798 (1970).

174. Jessica Dickler, *Colleges and Unvaccinated Students Are Set for a Standoff This Fall*, CNBC (July 21, 2021), <https://www.cnbc.com/2021/07/21/covid-vaccine-colleges-and-students-are-set-for-a-standoff-this-fall.html>.

175. *Klaassen v. Indiana Univ.*, No. 1:21-CV-238 DRL (Ind. 2021).

176. Complaint at *4, *Klaassen*, No. 1:21-CV-238.

177. *Id.*; For a list of exemptions, see also *COVID-19 Frequently Asked Questions*, IND. UNIV., <https://www.iu.edu/covid/faq/index.html#vaccine-req> (last visited Aug. 16, 2021) (“exemptions will be extremely limited”).

178. Complaint at *5, *Klaassen*, No. 1:21-CV-238. Exempt individuals must meet the following Extra Requirements: (1) participate mitigation testing twice a week; (2) a mandatory quarantine if exposed to someone who tests positive for COVID; (3) mandatory face masks in public spaces; and (4) a mandatory return to their home address if the campus has a serious outbreak of the virus. *Id.*

Acting under state authority, the IU Board of Trustees are endowed with the power to “set conditions and standards for admission that are in the ‘best interests of the state and the state educational institution’”¹⁷⁹ Outside of Indiana’s vaccination requirements to attend a public university, IU has its own policy to further manage infectious and communicable diseases.¹⁸⁰ Regardless of state requirements, IU can take “reasonable measures to ensure the safety” of its populous during times of outbreaks at a community or global level.¹⁸¹

Plaintiffs, admitted students at IU, hold the position that “an admitted IU student’s right to attend IU cannot be conditioned on the student waiving their rights to bodily integrity, bodily autonomy, and consent to medical treatment like IU has done here.”¹⁸² The plaintiffs’ objections to the vaccination or mask requirements are numerous and varied, ranging from frivolous claims such as “masks are silly and nasal swabs cause cancer,”¹⁸³ to “deeply held” religious objections.¹⁸⁴ In support of their position, the students emphasize their young age and lack of health factors that render them lower risk for severe complications.¹⁸⁵

The court heavily relied on statistics regarding the number of positive cases in the young adult age group and that 67.3% of all cases came from the Delta variant.¹⁸⁶ Considered fleetingly, risk to the specific age group was unpersuasive to the court when weighed against the common good.¹⁸⁷ With Delta variant statistics, efficacy of available vaccines, education levels of the board members who made the decision, expert testimony, and strong rationale for the vaccination requirements considered, the court had little issue in concluding the mandate was a reasonable measure taken in the best interest of the university.¹⁸⁸ Further, the numerous requirements for exempt students

179. *Id.* at *8; IND. CODE § 21-40-3-1(b).

180. *Klaassen*, No. 1:21-CV-238, at *8 (citing IND. CODE § 21-40-5-2 (“Indiana requires all public university students to be vaccinated for diphtheria, tetanus, measles, mumps, rubella, and meningococcal disease before attending school.”)).

181. *Id.*

182. Clare Lombardo, *Indiana University’s Vaccine Requirement Should Stand, Federal Judge Rules*, NPR (July 19, 2021), <https://www.npr.org/2021/07/19/1018010489/indiana-universitys-vaccine-requirement-should-stand-federal-judge-rules>.

183. *Klaassen*, No. 1:21-CV-238, at *26–28.

184. *Id.* at *28.

185. *Id.* at *27.

186. *Id.* at *7.

187. *Id.* at *61 (noting the student’s position “overlooks the larger Indiana University community.”).

188. *Id.* at *9–11, *59–61.

were not unreasonable nor discriminatory, as plaintiffs contended.¹⁸⁹ Under the totality of the circumstances, the court found that IU still faces an “objectionable” and “serious threat” that is reasonably addressed by IU’s vaccination policy.¹⁹⁰ The holding reached in *Klaassen* will likely be echoed across the nation, as IU’s rigorous requirements were still considered to reasonably address the public health crisis at hand.

Taking a step back from the political climate surrounding COVID-19, requiring *proof* of vaccination does not seem to be so controversial. Indeed, in 2021, the Southern District of New York upheld an emergency order issued during a measles outbreak requiring schools to “exclude from attendance” any students who could not show proof of vaccination.¹⁹¹ In deciding *Rockland*, the court found that “county officials reasonably believed that the public was in immediate danger,” where there was an increased incidence of measles above the baseline level within the county, and measles was “highly contagious and could cause serious complications.”¹⁹² Indeed, because there was an “outbreak” at the time the orders were issued, New York law gave the county commissioner of health discretionary authority to order the challenged exclusion.¹⁹³ In keeping with these principals, which apply equally well to the COVID-19 pandemic, New York officials have expressed support for vaccine passports to visit virtually any indoor space.¹⁹⁴

On the other hand, Indiana’s General Assembly recently enacted law that prohibits a vaccine passport, although it does not prohibit a vaccine requirement.¹⁹⁵ Although states have struggled with vaccine mandates, companies have not.¹⁹⁶ A growing number of U.S. companies, like Google, Facebook, Netflix, McDonalds, and more, all have vaccine mandates alongside mask requirements.¹⁹⁷ Indeed, the challenge to mandatory vaccination and proof of vaccination (or, alternatively, a strict testing regimen to gain exemption) in *Klaassen* was struck down with such strong legal precedent

189. *Klaassen*, No. 1:21-CV-238, at *56–59.

190. *Id.* at *63 (citing *Zimmerman v. Bd. of Trustees of Ball State Univ.*, 940 F. Supp. 2d 875, 890–91 (S.D. Ind. 2013)).

191. *W.D. v. Rockland Cnty.*, 2021 WL 707065, at *15 (S.D.N.Y. Feb. 22, 2021).

192. *Id.*

193. *Id.* at *13.

194. Caitlin Owens, *New York City Revives Vaccine Passports*, AXIOS (Aug. 4, 2021), <https://www.axios.com/new-york-coronavirus-vaccine-passports-mandates-e047dec9-d07a-484f-97ab-33afb6490049.html>.

195. IND. CODE § 16-39-11-5.

196. Dania Nadeem et al., *Factbox: Major U.S. Companies Making Masks, Vaccines Mandatory*, REUTERS (Aug. 12, 2021), <https://www.reuters.com/business/healthcare-pharmaceuticals/major-us-companies-making-masks-vaccines-mandatory-2021-07-30/>.

197. *Id.*

cited that it would be a shock to see the holding overturned.¹⁹⁸ In short, while mandatory vaccinations (with or without exclusions) are almost sure to pass constitutional muster, vaccine passports seem to be on a beeline for consideration by the Supreme Court.

V. CONCLUSION

A little more than a year after the first emergence of the coronavirus, vaccines are being distributed.¹⁹⁹ Meanwhile, people around the world continue aging and facing further economic difficulty, both of which put themselves at greater risk of serious infection. The current global population is aging at an unprecedented rate and as healthcare professionals predict COVID-19 will continue for the foreseeable future, it is more important than ever to ensure that adult immunization practices are occurring to limit the spread of the coronavirus.²⁰⁰ Research on behalf of the International Council on Adult Immunization states: “even if there is a successful vaccine, unless COVID-19 is eliminated, the need for immunization of older adults is expected to persist along with the importance of developing stronger platforms for other existing or new vaccines for older adults.”²⁰¹ Herd immunity would stop COVID-19, and could come through a mass vaccination or uninhibited spread.²⁰² Sweden enacted the herd immunity approach from the beginning of the pandemic and chose not to follow the lockdown/shelter in place approaches taken by countries like China, Italy, and the United Kingdom.²⁰³ Unfortunately, the country failed to achieve herd immunity and COVID-19

198. See generally *Klaassen v. Indiana Univ.*, No. 1:21-CV-238 DRL (Ind. 2021).

199. See Claire Felter, *A Guide to Global COVID-19 Vaccine Efforts*, COUNCIL ON FOREIGN RELS. (Mar. 1, 2021, 9:00 AM), <https://www.cfr.org/background/guide-global-covid-19-vaccine-efforts>.

200. See Lois A. Privor-Dumm, *A Global Agenda for Older Adult Immunization in the COVID-19 Era: A Roadmap for Action*, SCIENCE DIRECT (July 3, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7332930/>.

201. *Id.*

202. See *Herd Immunity and COVID-19 (Coronavirus): What You Need to Know*, MAYO CLINIC (Mar. 3, 2021), <https://www.mayoclinic.org/diseases-conditions/coronavirus/in-depth/herd-immunity-and-coronavirus/art-20486808>; Alan McGuinness, *COVID-19: Boris Johnson Says No Change to Next Steps of Roadmap Out of Lockdown Despite UK Facing Cut in Vaccine Supply*, SKYNEWS (Mar. 18, 2020), <https://news.sky.com/story/covid-19-pm-says-no-change-to-next-steps-of-roadmap-out-of-lockdown-as-uk-faces-cut-in-vaccine-supply-12249873>; Emily Rauhala et al., *First, China. Then, Italy. What the U.S. Can Learn from Extreme Coronavirus Lockdowns.*, WASH. POST (Mar. 11, 2020, 4:56 PM), https://www.washingtonpost.com/world/asia_pacific/first-china-then-italy-what-the-us-can-learn-from-extreme-coronavirus-lockdowns/2020/03/11/1cfaa07c-630e-11ea-912d-d98032ec8e25_story.html.

203. See Eric J.W. Orlowski & David J.A. Goldsmith, *Four Months into the COVID-19 Pandemic, Sweden’s Prized Herd Immunity Is Nowhere in Sight*, J.

cases are still spreading throughout Sweden after months of the pandemic.²⁰⁴ This demonstrates the paramount importance of a vaccine, though it still must not be treated as a complete resolution to the pandemic. Past pandemics echo the same conclusion and teach us the sobering effects of rejecting vaccinations. From 1985–1994, religious groups in opposition to the measles vaccine faced thirteen outbreaks, resulting in unnecessary deaths.²⁰⁵ COVID-19 has crippled the world in little over a year and there is a possibility that vaccine refusal, failure to cover forgotten populations, and countries hoarding available vaccines will add years, if not decades, onto its reign.

In light of the global and economic repercussions that may occur from vaccine distribution, intentional planning is needed.²⁰⁶ The common cliché phrase “he who has the gold, makes the rules” may be true for much of the modern world, but during a pandemic, one must also account for humanitarian, moral, and ethical obligations. As the concept of corporate social responsibility gains increasing support and awareness, there is no greater time than now to enact lasting legislation that commands adherence to said humanitarian, moral, and ethical responsibilities.²⁰⁷ Lives are on the line every day, and people will die from coronavirus at the current rate of politicization and vaccine nationalism.²⁰⁸ The economic and political implications of the virus is an impending topic that we must prepare for in the wake of vaccinations.

There may well be disparate treatment by country, as seen through immigration policies around the world. Some countries will agree to cooperate and take collectivistic approaches to vaccine development, and some will forge their own paths. The early days of the pandemic and failure to provide global access to masks and other necessary PPE equipment evidenced a repetition of class preference when it comes to distribution of a vaccine.²⁰⁹ How-

ROYAL SOC’Y MED. (Aug. 11, 2020), <https://doi.org/10.1177/0141076820945282>.

204. See *Herd Immunity and COVID-19*, *supra* note 202.

205. Malone & Hinman, *supra* note 164, at 274.

206. See Guarascio, *supra* note 120.

207. See *Beyond Philanthropy: Corporate Social Responsibility for COVID-19*, OPEN ACCESS GOV’T (Sept. 29, 2020), <https://www.openaccessgovernment.org/corporate-social-responsibility/95161/>.

208. See *With More Than 1.5 Million Lives Lost to COVID-19, World Leaders in General Assembly Demand Urgent Action to Guarantee Equitable Distribution of Life-Saving Vaccines*, U.N. (Dec. 3, 2020), <https://www.un.org/press/en/2020/ga12293.doc.htm>.

209. See Juliet Linderman & Martha Mendoza, *US Medical Supply Chains Failed, and Covid Deaths Followed*, ASSOCIATED PRESS (Oct. 6, 2020), <https://apnews.com/article/virus-outbreak-pandemics-ap-top-news-global-trade-fresno-4354f8e8026cf8135b74fa19f0d0f048>; Rick Maranon, *Minority and Low-Income Communities Missing Out on COVID-19 Vaccine Rollout in Oklahoma*

ever, this pandemic has revealed more than ever how critical and beneficial cooperation can be, even on a state level.²¹⁰

There are certain obligations we must all fulfill as global citizens and part of a greater collective humanity.²¹¹ During a global health crisis, the stakes are higher than ever. The at-risk American populations have been identified, and now is the time to enact protocol to protect them.²¹² It is no longer a matter of *if* a vaccine is created, but rather *who* receives access first and who will reject it. The Delta variant presents a threat of a new lockdown, but economically, people cannot last 1–2 years in lockdown.²¹³ In particular, those experiencing homelessness cannot wait 1–2 years before they will receive protection from the virus.²¹⁴ For these people, it has taken even longer due to their “invisible” status within the U.S. population.²¹⁵ There is no one to advocate for them, regardless of their high-risk lifestyle.

The way COVID-19 can spread rapidly with immense destruction amongst the homeless population is a looming crisis that demands immediate attention. They are one of the largest and most uncontrollable super-spreader populations because their life circumstances do not provide them the ability to adhere to standard American procedures for curbing the spread of coronavirus.²¹⁶ The government has ordered individuals to stay at home, to

Cities, Fox23 (Jan. 28, 2021, 2:57 PM), <https://www.fox23.com/news/local/minority-low-income-communities-missing-out-covid-19-vaccine-rollout-oklahoma-cities/ZXHGV4XQHVAP7DCPPPS442LDLA/>.

210. See *COVID-19 Pandemic Demonstrates Multilateral Cooperation Key to Overcoming Global Challenges, President Stresses as General Assembly Concludes Annual Debate*, U.N. (Sept. 29, 2020), <https://www.un.org/press/en/2020/ga12273.doc.htm>.

211. See Ron Israel, *Rights and Responsibilities*, GLOB. CITIZEN INITIATIVE, <https://www.theglobalcitizensinitiative.org/index.php/the-rights-and-responsibilities-of-global-citizenship/> (last visited Aug. 16, 2021).

212. See Christopher Troeger, *High-Risk Populations for Severe COVID-19 Infections in the United States*, THINK GLOB. HEALTH (Apr. 27, 2020), <https://www.thinkglobalhealth.org/article/high-risk-populations-severe-covid-19-infections-united-states>.

213. See Alexander W. Bartik et al., *The Impact of COVID-19 on Small Business Outcomes and Expectations*, PROC. NAT’L. ACAD. SCI. U.S. (July 28, 2020), <https://www.pnas.org/content/117/30/17656>.

214. See Golden, *supra* note 29.

215. See Molly Bohannon et al., *COVID-19 Is a ‘Crisis Within a Crisis’ for Homeless People*, PULITZER CTR. (Aug. 25, 2020), <https://pulitzercenter.org/stories/covid-19-crisis-within-crisis-homeless-people>.

216. See *FAQs for Homeless Shelters*, CTRS. FOR DISEASE CONTROL & PREVENTION (Feb. 26, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/faqs.html>.

not go out, and wear a mask.²¹⁷ This population may not have a home to stay at, some live outside, and many are unable to afford adequate face coverings. The disease will thus run rampantly, utterly uninhibited as seen in the San Francisco homeless shelter.²¹⁸ This outcome is horrifying and unacceptable; it demands that adjustments be made to protect the millions of homeless at risk in the United States. When considering that the number of homeless has been projected to increase through 2021 and COVID-19 cases continually rise, our eyes must be opened to the urgent crisis that encompasses us all.²¹⁹

It is evident that time is of the essence when it comes to providing vaccines to at-risk populations, while at the same time appreciating risks and adverse side effects that could consume wide proportions of the population. A vaccination must be distributed equitably, without regard to socioeconomic status. This is being partially accomplished by providing the vaccines at no cost.²²⁰ Paul Mango, the deputy chief of staff for policy at HHS said: “this is very consistent with our overarching objective, which is to protect the most vulnerable Americans from COVID.”²²¹ He is unquestionably correct: we must protect the most vulnerable Americans from the virus.

The legal framework for COVID-19 vaccine considerations must include prioritizing vaccine access for those who are at-risk, especially in the face of the highly contagious Delta variant that is causing a surge in cases and deaths. Homeless populations have a well-documented history of being at greater risk of the virus due to lack of safe housing and high prevalence of external risk factors in health conditions, economics, and lifestyles.²²² Persons who are at-risk need COVID-19 vaccination as they are proving to be at greater risk of the Delta variant, and states must include them in their prompt

217. See Grace Hauck & Chris Woodyard, *New Coronavirus Restrictions: Here’s What Your State Is Doing to Combat Rising Cases and Deaths*, USA TODAY (Nov. 13, 2020, 12:39 AM), <https://www.usatoday.com/story/news/nation/2020/11/13/covid-restrictions-state-list-orders-lockdowns/3761230001/>.

218. See Vivian Ho, *‘It Could Have Been Averted’: How 92 Residents at a San Francisco Homeless Shelter Got Covid-19*, GUARDIAN (Apr. 15, 2020), <https://www.theguardian.com/us-news/2020/apr/15/san-francisco-homeless-coronavirus-msc-shelter>.

219. See Pam Fessler, *For Many Areas, Count of Homeless Population Is Canceled, or Delayed*, NPR (Jan. 18, 2021, 4:18 PM), <https://www.npr.org/2021/01/18/957379320/for-many-areas-count-of-homeless-population-is-canceled-or-delayed>.

220. See *Frequently Asked Questions About Vaccination*, *supra* note 121.

221. C. Todd Lopez, *DOD, HHS Name Partners to Administer COVID-19 Vaccines in Long-Term Care Facilities*, U.S. DEPT. OF DEF. (Oct. 17, 2020), <https://www.defense.gov/Explore/News/Article/Article/2385260/dod-hhs-name-partners-to-administer-covid-19-vaccines-in-long-term-care-facilit/>.

222. See Melissa Perri et al., *COVID-19 and People Experiencing Homelessness: Challenges and Mitigation Strategies*, CANADIAN MED. ASS’N J. (June 29, 2020), <https://www.cmaj.ca/content/192/26/E716.short>.

distribution plans for COVID-19 vaccinations in a way that is humane, affordable, safe, and equitable. Alongside this notion comes the need of herd immunity, achieved through vaccinations and compliance with mask requirements. Although it is in question as to whether states will mandate vaccines, companies have implemented measures, supported by decades of caselaw. Too numerous are the humanitarian, social, international, and economic factors that are present with COVID-19, but humanity cannot lose sight of our obligation and opportunity to help others.