

# SAFEGUARDING A RIGHTS-BASED SOCIETY: HOW PUBLIC HEALTH HYSTERIA DEGRADES OUR LAWS

## An AFLDS Issue Brief for Citizens, Policymakers and Physicians

**STATEMENT OF POSITION** Today the United States stands on the precipice of an experiment in mass vaccination and state surveillance. America's Frontline Doctors (AFLDS) believes this is the wrong path for our country. The US and its tradition of individual rights and the rule of law remain compatible with public health mitigation, despite what unelected bureaucrats and their allies in the media may claim. The purpose of this Issue Brief is to describe the protections already in place for the maintenance of these rights, as well as recommendations for concerned citizens and their representatives to uphold those enumerated rights currently under threat in the age of COVID-19.

**?BREAKING WHAT WAS FIXED** According to a [video recording](#) of an August 2020 meeting of the CDC's Advisory Committee on Immunization Practices (ACIP), a panel member said: "I just wanted to add that, just wanted to remind everybody, that under an Emergency Use Authorization, an EUA, vaccines are not allowed to be mandatory. So, early in this vaccination phase, **individuals will have to be consented and they won't be able to be mandated** [emphasis added]." This consideration for personal liberty has guided the United States through most of its experience with infectious disease outbreaks. In 1996, Congress provided in legislation that every immigrant entering the United States, or every individual seeking adjustment of status to that of a legal permanent resident, show proof that he or she was vaccinated against vaccine-preventable diseases (VPDs). These VPDs include mumps, measles, rubella, and polio. **All have a pre-vaccination mortality rate higher than COVID-19.** Nearly all states grant exemptions for parents of schoolchildren who oppose immunizations for religious reasons. Exemptions based on philosophical or moral convictions in opposition to immunization are less common but are provided by [15 states](#), according to the National Conference of State Legislatures. Furthermore, the secretary of Health and Human Services (HHS) has authority under the [Public Health Service Act](#) to issue regulations necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the states or from state to state. Current federal regulations do not include any mandatory vaccination programs beyond active military personnel and certain immigrants. The major legal exception to this rule has been *Jacobson v Massachusetts*, in which the US Supreme



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Court decided for the government's mandatory vaccination program. AFLDS has previously noted the different circumstances between Jacobson and today's COVID-19 pandemic on [page 15](#) of its Civil Liberties guide, including the non-lethality of SARS-CoV-2 versus smallpox. These established guidelines are now under threat, with "vaccine passports" and other mandates being considered for use on a mass scale. Service members report that the Department of Defense has relied on bad data, failed to perform follow-up independent assessments, and increasingly resort to coercion to force vaccine compliance.

**PERSONAL LIBERTIES ARE INVOLABLE** Some have argued that mandating experimental COVID vaccines and other aggressive public health measures are consistent with existing patient protections under HIPAA. This is false. For instance, does the [HHS Notice of Enforcement Discretion](#) order cover something as broad and as-yet-undefined as vaccine passports? Legal experts say no. This is because the HHS order appears narrowly tailored to vaccine-scheduling smartphone apps, something for which patients would have to opt-in to access. Mandatory vaccinations, however, would offer no such informed consent, a staple of international law and medical ethics. Under HIPAA, employers cannot use vaccine status ("personal health information") to discriminate against current or prospective employees.

**FREEDOM OF MOVEMENT MUST BE UPHELD AND PROTECTED** The Fourth Amendment guarantees Americans the right to unimpeded travel between the states, period. Courts have upheld this "public right of transit" through the navigable airspace as well. Mixed messages from Dr. Anthony Fauci and others in the medical community vis-à-vis freedom of movement requires that legislative bodies and the courts reaffirm this right. Although major passenger air carriers have for now rejected mandatory testing and vaccination for US domestic customers, cracks are beginning to develop in the government's longstanding approach to freedom of movement and public health.

**CONCLUSION AND RECOMMENDATIONS** Legal remedies for civil liberties violations must continue to be explored. The US cannot have a rights-based society if after every infection spike unelected bureaucrats are empowered to shut down businesses and quarantine individual citizens. The rule of law must be respected, and balanced, with the need to mitigate viral spread in the community. To this end, AFLDS supports business owners and concerned citizens pooling their legal resources together to resist major intrusions on their rights. One useful example of this collective approach to problem-solving comes to us from the world of healthcare finance. Association plans allow the uninsured across various sectors to buy into lower-cost plans for themselves and their employees. Individuals threatened with loss of legal rights should be allowed to form legal cooperatives in much the same way, reducing the sky-high lawyer fees that can act as a deterrent for many private citizens. As class-action lawsuits pile up across the country, ordinary citizens should be equipped with an additional legal remedy if they need it.

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