The Constitution and Federalism in the Age of Pandemic

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Is it possible that the framers of the United States Constitution contemplated how our government would function in the time of a pandemic? And, what is the extent of power that the Executive Branch of the United States enjoys in the precise time of a pandemic? Moreover, what did the United States Supreme Court mean when it held that, "... the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint."?[1] Answering these questions we are reminded that, "[t]he federal and State governments are in fact but different agents and trustees of the people, constituted with different powers, and designed for different purposes."[2]

What makes the United States Constitution (Constitution) unique from other countries' founding documents, is that it is not just a precatory statement of idealistic goals - - it is the law. The Supreme Law of the land.[3] It is not, however, an exhaustive list of laws - - like countries with pure civil codes - - but a binding framework intended to be the boundaries within which our democratic republic would abide in times of peace and in times of war.[4]

In the age of pandemic, we must understand what parameters the framers of the Constitution laid, regarding federal and States' powers, in anticipation of such uncertain and turbulent times as now. It is also necessary to examine the constitutional guarantees of the people, that are inevitably called into question during a pandemic.

Significantly, during a pandemic, the federal Congress plays a critical role, having exercised its constitutional authority.[5] Ultimately, we must understand how the United States

Supreme Court (Supreme Court) interpreted the Constitution on the issues of federalism, separation of powers, and individual rights, in times of pandemic or natural disaster. Because, as Chief Justice Marshall said, "It is emphatically the province and duty of the Judicial Department to say what the law is."[6]

What is Federalism?

Our federalist system of government reflects the principle of subsidiarity - - that the best guarantee of a citizen's happiness and liberty lies in the lowest level of his government.[7] Think of a triangle. The broadest lowest line represents your municipality (Mayors, Administrators, Town Councils, Municipal Courts). Then, the bulk of the triangle comprises the individual State governments (State Legislatures, Governors, and State Courts). And the smallest part, the virtual tip of the triangle, represents the federal government (Executive, Legislative, Federal Courts and Supreme Court).

In 1788, James Madison wrote, " [t]he powers delegated by the ... Constitution to the federal government, are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce. *** The powers reserved to the several States will extend to all objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State."[8] Correspondingly, in the time of global pandemic - - a time where exactly the citizens' "lives, liberties, and properties" are jeopardized - - the individual State governments bear the greater constitutional mandate and authority to provide for the "general welfare" of its citizenry. Notwithstanding, in the specific time of a pandemic, Congress has granted the Executive Branch

of the federal government extraordinarily broad powers over the States, subject to little or no judicial review.

Federal and State Governments are meant to co-exist - - the idea of Dual Sovereignty.

The hallmark of a federalist system of government is that the federal and state governments are meant to co-exist, evincing a "dual sovereignty." Constitutional challenges, then, focus on whether the federal government's actions infringe on a State's power and vice versa.

The Supreme Court affirmed the basic principle of federalism. Chief Justice Roberts, writing for the Supreme Court, said, "[t]he Federal Government has expanded dramatically over the past two centuries, but it still must show that a constitutional grant of power authorizes each of its actions."[9] The same does not apply to the States, because the Constitution is not the source of their power. The Constitution may restrict state governments--as it does, for example, by forbidding them to deny any person the equal protection of the laws. But where such prohibitions do not apply, state governments do not need constitutional authorization to act. The States thus can and do perform many of the vital functions of modern government * * * even though the Constitution's text does not authorize any government to do so. Our cases refer to this general power of governing, possessed by the States but not by the Federal Government, as the 'police power.'"[10]

Moreover, "State sovereignty is not just an end in itself: Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power."[11] "Because the police power is controlled by 50 different States instead of one national sovereign, the facets of governing that touch on citizens' daily lives are normally administered by smaller governments

closer to the governed. The Framers thus ensured that powers which 'in the ordinary course of affairs, concern the lives, liberties, and properties of the people' were held by governments more local and more accountable than a distant federal bureaucracy.[12] The independent power of the States also serves as a check on the power of the Federal Government: 'By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power.'"[13]

So, where does the Executive Branch derive its enormous power during the time of a national emergency like a pandemic? The chief benefactors are the United States Congress and Supreme Court precedent.

Where does the Federal Government Fit in During a Pandemic?

"The President's authority to act, as with the exercise of any governmental power, 'must stem either from an act of Congress or from the Constitution itself.'"[14] Specifically, the President may not make laws, but only recommend laws he thinks are good, veto laws he thinks are bad, and "take care" to see that the laws of the Legislative Branch are carried out.[15] With proper authority, though, the President may impose Executive Orders, which liken to a general law. And, in the case of a national emergency like pandemic, the Congressional grant of authority to the Executive Branch is vast.

On March 13, 2020, President Donald J. Trump declared a National Emergency[16], owing to the current pandemic COVID-19.[17] His Executive Order and the National Emergency Declaration primarily cite four statutes as sources of Executive Branch power here: National Emergencies Act[18] (NEA), the Public Health Service Act[19] (PHSA), the Defense Production Act of 1950[20] (DPA), and the Stafford Act[21] (SA).

The landmark case, interpreting the constitutionality of an Executive Order, is *Youngstown Sheet & Tube Co. v. Sawyer.*[22] Justice Jackson's concurrence therein is most cited when a Presidential Executive Order faces a constitutional challenge. Specifically, Justice Jackson stated that, a President's powers, "are not fixed but fluctuate depending on the disjunction or conjunction with those of Congress."[23]

"Justice Jackson's familiar tripartite scheme provides the accepted framework for evaluating executive action in this area. First, '[w]hen the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate.' *Youngstown*, 343 U.S., at 635, 72 S.Ct. 863 (Jackson, J., concurring). Second, '[w]hen the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain.' *Id*., at 637, 72 S.Ct. 863. In this circumstance, Presidential authority can derive support from 'congressional inertia, indifference or quiescence.' *Ibid*. Finally, '[w]hen the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb,' and the Court can sustain his actions 'only by disabling the Congress from acting upon the subject.' *Id*., at 637-638, 72 S.Ct. 863."[24]

In today's pandemic, the Executive Branch is acting pursuant to broad specific Congressional grants of authority under the NEA, PHSA, DPA, and the SA. Neither Congress nor any State challenge the validity of these statutes. Under *Youngstown Sheet* and its progeny, the President's authority is presently "at its maximum."[25] Indeed, the power of the Executive Branch during a pandemic is arguably plenary. A review of the breadth of each Congressional

grant of authority to the Executive Branch, and Congress' strict elimination of judicial review in time of pandemic, illuminates the analysis.

The most expansive Congressional grant of Executive Branch authority is the Public Health Service Act.[26] The Executive Branch's Secretary of Health and Human Services (HHS), Alex Azar, specifically invoked the PHSA 42 U.S.C. 247d on March 10, 2020 under a Declaration relating to COVID-19 preparedness and countermeasures.[27] And, President Trump's March 13, 2020 Executive Order also cites the PHSA as an enabling authority. The Centers for Disease Control and Prevention, Food and Drug Administration, and National Institutes of Health all fall under the Executive Branch's Department of Health and Human Services. The Federal Emergency Management Agency (FEMA) falls under the Executive Branch's Department of Homeland Security.

Significantly, the PHSA precisely restricts the level of judicial review of decisions made by the HHS Secretary during a pandemic - - regarding federal countermeasures. Moreover, the PHSA sets forth a Congressional intent to preempt any alternative State plan that runs counter to the federal countermeasures plan.

Specifically, "[d]uring the effective period of a declaration [under the PHSA] ..., or at any time with respect to conduct undertaken in accordance with such declaration, no State or political subdivision of a State may establish, enforce, or continue in effect with respect to a covered countermeasure any provision of law or legal requirement that –

(A) is different from, or is in conflict with, any requirement applicable under this section; and

(B) relates to the design, development, clinical testing or investigation, formulation,

> manufacture, distribution, sale, donation, purchase, marketing, promotion, packaging, labeling, licensing, use, any other aspect of safety or efficacy, or the prescribing, dispensing, or administration by qualified persons of the covered countermeasure, or to any matter included in a requirement applicable to the covered countermeasure under this section or any other provision of this chapter, or under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.]."[28]

Congress, exerting its enumerated power under Article III §1 of the Constitution - - to establish all "inferior [federal] Courts," including the kinds of cases they may hear - - provided, in times of a pandemic, that the decisions of the Executive Branch made pursuant to the PHSA are entirely insulated from judicial review. Explicitly, Congress established that, "[n]o court of the United States, or of any State, shall have subject matter jurisdiction to review, whether by mandamus or otherwise, any action by the Secretary under this [PHSA] subsection."[29] At least as to the decisions of the Executive Branch in developing and executing countermeasures during a pandemic, the Executive Branch's power is plausibly plenary.

Although, one could thinly argue that a challenge to the Supreme Court would remain. The Supreme Court, ultimately, has the option of refusing to hear the case claiming that it is "non-justiciable" as a "political question" - - meaning, it involves a dispute, the resolution of which is reserved for a coordinate branch of government (i.e. Legislative or Executive). Therefore, invoking prudential considerations of separation of powers, the Supreme Court would likely not reach the merits of any constitutional challenge in the narrow context of the PHSA.[30]

Collaborating and coordinating with the several States is integral in the time of a pandemic. The current President relied on the "major disaster" category of the Stafford Act to

declare all fifty States a "major disaster."

"The Stafford Act is the principle federal emergency-response statute in the United States. * * * While a powerful tool for the Executive Branch, the scope of the Stafford Act is narrow, and the key 'provisions are triggered only by severe, natural, or manmade disasters that exhaust local and state resources.' ... The Stafford Act attempts to strike a balance between honoring states' prerogatives in addressing local and state events, and providing a federal coordination scheme when emergency events are too severe for local or state authorities to handle."[31]

"[E]mbedded in the Stafford Act are principles of federalism and dual sovereignty. With rare exception, the management of a disaster is reserved to the affected state, unless and until the state actively seeks federal assistance. * * * In other words, the Stafford Act is state-centric in form, but its practical effect is to strengthen federal involvement following emergencies."[32]

The intent of Congress, "by [the Stafford Act], [is] to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters...."[33] Ultimately, the purpose of the Stafford Act is to provide a means for States to seek assistance from the federal government, in times like a pandemic, when their resources and State government systems have been overwhelmed and can no longer meet the needs of the State in combating the pandemic. Notwithstanding, the relief provided under the Stafford Act is to supplement - - not supplant - - the State's primary obligation, under the principles of federalism and the 10th Amendment (to provide for the health, safety, and general welfare of its citizenry).[34] Nevertheless, the fervent participation of both States and federal government is essential - -

without which the disaster may never be ameliorated.

Are constitutional guarantees suspended in the time of a pandemic?

In the age of pandemic, the first casualty will always be liberty to some degree. How does a government provide for the common good and safety of its citizens while preserving the fundamental constitutional principles of liberty, justice, due process and equal protection? The longer the deprivation of a the citizens' constitutional guarantees persists, the greater the likelihood the citizens will challenge the scope of the State's actions. "Society [,however,] based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy."[35]

Presuming State Constitutional authority or that the Legislative Branch of each State properly empowered its Governor to issue pointed Executive Orders in times of a public health emergency, the Supreme Court has generally held, that, "While this court should guard with firmness every right appertaining to life, liberty or property as secured to the individual by the Supreme Law of the Land, it is of the last importance that it should not invade the domain of local authority except when it is plainly necessary to do so in order to enforce that law."[36] Specifically, the Supreme Court has held it constitutional for a State to quarantine, against his will, an apparently healthy American Citizen who had traveled aboard a ship where there were cases of "yellow fever or Asiatic cholera," and also upheld a Massachusetts mandatory vaccination law during an outbreak of small pox.[37] The State's power in a public health crisis, however, is not absolute.

Excepting the Free Exercise of Religion discussed below, the Supreme Court generally applies a mere rational basis test in reviewing State government actions in the time of a public

health emergency - - extending significant deference to the medical and other experts analyzing the crisis on the ground.[38] To strike down a State regulation in such time, the challenger must prove there is a "palpable invasion of rights secured by the fundamental law" of the Constitution, "beyond all question," by proving that the "means prescribed by the State," "to stamp out the disease," [have] no real or substantial relation to the protection of the public health and the public safety."[39] If so proven, "... it is [then] the duty of the courts to so adjudge, and thereby give effect to the Constitution."[40]

Myriad fundamental constitutional guarantees are at risk during a public health crisis. The most prevalent are the First Amendment guarantees of the Free Exercise of Religion and the "right of the people peaceably to assemble" - - both being applied to the States through the doctrine of incorporation under the 14th Amendment to the Constitution.[41] Challenges of State violations of a citizen's constitutional "due process" and "equal protection" guarantees are also at the forefront now.[42] However, "in every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand."[43]

Still, even in the time of a public health crisis, "the police power of a State, whether exercised by the legislature or by a local body acting under its authority, may be exerted in such circumstances or by regulations **so arbitrary and oppressive in particular cases as to justify the interference of the courts** to prevent wrong and oppression."[44] The inquiry is one of degree. How much is too much? How long is too long? The Supreme Court has not held that restraints against individual constitutional guarantees may be imposed until the pandemic is totally

eradicated or a definitive cure or vaccine is found.

To date, notwithstanding Rhode Island being so near to the East Coast epicenter of the COVID-19 pandemic, Governor Gina M. Raimondo marshalled significant cooperation from the community (i.e. religious leaders, business owners, and representative delegations of various industries), along with the voluntary participation of the majority of Rhode Island's citizens. There are, however, other States whose restrictions may be reasonably challenged as "arbitrary and capricious," or "wrong and oppressive." [45]

For example, to allow a citizen to ride in a canoe but not a power boat, to buy groceries but be denied purchasing garden seeds in the same store, to prohibit simple activity on one's own property, to restrict the Second Amendment, to fine religious service participants in a "drive-through" religious service, and the establishment of a curfew, are executive orders which a citizen may justifiably call in to question. Protests are inevitable and generally protected by the Constitution.

However, much like a person does not have the constitutional right to randomly yell, "Fire!" in a crowded theater, a State may be within its authority to restrict protest gatherings that do not comport with the un-challenged restrictions advancing protection of the public health and safety of the citizens at large. Because, "[r]eal liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or property, regardless of the injury that may be done to others."[46]

What about the religious institutions?

Few religious leaders formally challenged various State's determination that "religious organizations" are "non-essential" to the citizens of their State. Notwithstanding, the first law

suits filed in this pandemic involve claims of deprivation of the First Amendment guarantee[47] of the "Free Exercise of Religion."[48] These cases fall into two general categories: (1) the exclusion of religious organizations from the State's designation of "essential" businesses; and, (2) a State's different treatment of religious organizations, which were designated as "essential" businesses, as compared to other secular "essential" businesses in the same State. The present cases fall within the second category.

In support of one of the suits, the Justice Department recently argued that, "The Court should apply heightened scrutiny under the Free Exercise Clause if it determines, after applying appropriate deference to local officials, that the church has been treated by the city [or State] in a non-neutral and generally non-applicable manner."[49] They also argued that, "if the Court determines that the city's [or State's] prohibition is not in fact the result of a neutral and generally applicable law or rule, then the Court may sustain it only if the city [or State] establishes that its action is the least restrictive means of achieving a compelling governmental interest."[50]

Further, most States have enacted so-called Religious Freedom Restoration Act (RFRA) statutes. These statutes, generally, set forth the limitation on governmental (State or municipality) regulations that interfere with the free exercise of religion. There is also a federal Religious Freedom Restoration Act.[51] These statutes stand on their own, and provide additional relief outside the original First Amendment "free exercise clause" guarantee.

Moreover, these statutes set forth the standard of judicial review for challenges, by religious institutions, to state laws or "orders" encroaching on the free exercise of religion. RFRA laws impose the highest level of judicial review known as "strict scrutiny." For example,

Rhode Island's Religious Freedom Restoration Act provides that the State regulation must be "generally" applicable and "does not intentionally discriminate against religion," AND, "the governmental authority [must prove] that application of the restriction ... is essential to further a compelling governmental interest, and is the least restrictive means of furthering that compelling governmental interest."[52]

When States treat secular and non-secular institutions equally, the Supreme Court has upheld public health laws and regulations which may go against individual religious beliefs.[53] But, targeted unequal treatment of any religious organization is forbidden.[54]

When will it end?

Constitutional rights are not extinguished in a pandemic. However, "... the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint."[55] The State may place reasonable restrictions on those rights - - provided they are not arbitrary, capricious, or oppressive, and are substantiated by facts and science. Even so, those reasonable restrictions cannot be overreaching or indefinite.

Particular freedoms, like the free exercise of religion, may enjoy a higher level of judicial scrutiny - - and, challenges to the "non-essential" designation of religious organizations are likely ripe for judicial review. The federal and State governments are meant to work in concert in the time of pandemic - - with State's carrying the greater burden to provide for its citizens, while being subject to federal guidelines and preemption. The federal government provides assistance to overwhelmed States. One truth emerges in time of pandemic - - the government established by the framers of the Constitution is sufficiently instituted to provide for the protection of liberty

and the preservation of the people of these United States.

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1. *Jacobson v. Massachusetts*, 197 U.S. 11, 26 (1905).

2. *The Federalist Papers,* No. 46 (J. Madison).

3. *Marbury v. Madison*, 1 Cranch 137 (1803).

4. See, *The Federalist Papers,* No. 9 (A. Hamilton).

5. *U.S. Const., art. I; U.S. Const., art. III, §§1, 2.*

6. *Marbury v. Madison*, 1 Cranch 137 (1803).

7. *The Federalist Papers,* No. 10 (J. Madison).

8. *The Federalist Papers,* No. 45 (J. Madison).

9. See, e.g., *United States v. Comstock*, 560 U.S. 126, 130 S.Ct. 1949, 176 L.Ed.2d 878 (2010).

10. *National Federation of Independent Business v. Sebelius*, 132 S.Ct. 2566, 567 U.S. 519, 183 L.Ed.2d 450, 80 U.S.L.W. 4579, 23 Fla.L.Weekly Fed. S 480, (2012); See, e.g., *United States v. Morrison*, 529 U.S. 598, 618-619, 120 S.Ct. 1740, 146 L.Ed.2d 658 (2000).

11. See, *New York v. United States*, 505 U.S. 144, 181, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992) (internal quotation marks omitted).

12. *The Federalist No. 45*, at 293 (J. Madison).

13. *National Federation of Independent Business v. Sebelius*, 132 S.Ct. 2566, 567 U.S. 519, 183 L.Ed.2d 450, 80 U.S.L.W. 4579, 23 Fla.L.Weekly Fed. S 480, (2012), citing, *Bond v. United States*, 564 U.S. 211, 222, 564 U.S. 211, 131 S.Ct. 2355, 2364, 180 L.Ed.2d 269, 280 (2011)).

14. *Medellin v. Texas*, 128 S.Ct. 1346, 552 U.S. 491, (2008) citing, *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952).

15. *Youngstown Sheet & Tube Co. V. Sawyer*, 343 U.S. 579 (1952); *U.S. Const., art. II, §3*.

16. 50 U.S.C. §34 1601 et seq.

17. Presidential Proclamation, Proclamation of Declaring a national Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (Mar. 13, 2020).

https://www.whitehouse.gov,presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/

18. 50 U.S.C. ch. 34 §1601 et seq.

19. 42 U.S.C. 247d.

20. 50 U.S.C. App. 2061 et seq.

21. 42 U.S.C. ch. 68 §5121 et seq.

22. 343 U.S. 579, 585 (1952).

23. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952).

24. *Medellin v. Texas*, 128 S.Ct. 1346, 552 U.S. 491, 525 (2008).

25. Notably, in *Youngstown Sheet*, the President did not rely on any congressional authority in his attempt to seize the steel mills to intervene in a labor dispute. Here, however, we have no labor dispute but a national emergency in the form of a pandemic. The President has rightly claimed the specific grant of Congressional authority to the Executive Branch under the Defense Production Act of 1950 to deal with and mitigate the pandemic.

26. 42 U.S.C. 247d.

27. "Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19.", Federal Register Doc. 2020-05484 Filed 3-12-20; 4:15 p.m.

28. 42 U.S.C. § 247d-6d(b)(7) - Targeted liability protections for pandemic and epidemic products and security countermeasures.

29. 42 U.S.C. § 247d-6d(b)(7) - Targeted liability protections for pandemic and epidemic products and security countermeasures.

30. *Baker v. Carr*, 369 U.S. 186 (1962).

31. 96 Nebraska L. Rev. 509. Networking Emergency Response: Empowering FEMA in the Age of Convergence and Cyber Critical Infrastructure.

32. 41 Wake Forest L. Rev. 835. REGULATING THE BUSINESS OF INSURANCE: FEDERALISM IN AN AGE OF DIFFICULT RISK.

33. 42 U.S.C. ch. 68 § 5121

34. Generally, "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," - - said inherent powers being restricted only to the extent the State action infringes on some other part of the U.S. Constitution's rights or guarantees to the people. *U.S. Const., amend. X.*

35. *Jacobson v. Massachusetts*, 197 U.S. 11, 26 (1905).

36. *Jacobson v. Massachusetts*, 197 U.S. 11, 38 (1905).

37. *Jacobson v. Massachusetts*, 197 U.S. 11, 29 (1905).

38. *Jacobson v. Massachusetts*, 197 U.S. 11 (1905).

39. *Jacobson v. Massachusetts*, 197 U.S. 11, 31 (1905).

40. *Id*.

41. Constitutional challenges invoking the 4th Amendment to the U.S. Constitution and "Privileges and Immunities" Clause of the 14th Amendment to the U.S. Constitution are outside the scope of this article.

42. *U.S. Const. art. 14.*

43. *Jacobson v. Massachusetts*, 197 U.S. 11, 29 (1905).

44. *Jacobson v. Massachusetts*, 197 U.S. 11, 38 (1905) (emphasis supplied).

45. *Jacobson v. Massachusetts*, 197 U.S. 11, 38 (1905) .

46. *Jacobson v. Massachusetts*, 197 U.S. 11, 26 (1905).

47. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...." *U.S. Const., amend. I.*

48. See, Temple Baptist Church, et al. v. City of Greenville, Case No. 4:20-cv-64-DMB-JMV (U.S. District Court for the Northern District of Mississippi); First Baptist Church, et al. v. Governor Laura Kelly, Case No. 6:-CV-01102 (U.S. District Court For the District of Kansas).

49. "The United States' Statement of Interest In Support of Plaintiffs," Temple Baptist Church, et al. v. City of Greenville, Case No. 4:20-cv-64-DMB-JMV (U.S. District Court for the Northern District of Mississippi).

50. Temple Baptist Church, et al. v. City of Greenville, Case No. 4:20-cv-64-DMB-JMV (U.S. District Court for the Northern District of Mississippi) at p. 8, citing, *Church of the Lukumi Babalu Aye*, 508 U.S. 520, 546 (1993).

51. 42 U.S.C. ch. 21B §2000bb et seq. "Religious Freedom Restoration."

52. R.I. Gen. Laws § 42-80.1-3. Religious Freedom Protected.

53. *Jacobson v. Massachusetts*, 197 U.S. 11, 29 (1905) .

54. See, *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S.Ct. 2012, 2019 (2017).

55. *Jacobson v. Massachusetts*, 197 U.S. 11, 26 (1905).

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