No.

In the Supreme Court of the United States

JEREMIAH HOGAN, SIARA JEAN HARRINGTON, AND J.H.,
Petitioners,

v.

LINCOLN MEDICAL PARTNERS, INC., MAINEHEALTH, INC., AND ANDREW RUSS, M.D.
Respondents.

On Petition for a Writ of Certiorari to the Maine Supreme Judicial Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In the Fall of 2021, during the COVID-19 pandemic, a "vaccine clinic" was being conducted at a school in Maine where the minor child of Petitioners was enrolled as a student. Without the consent of the parent Petitioners, Respondents administered a vaccine to the minor child. Petitioners filed suit in state court asserting state and constitutional tort claims against Respondents. The suit was dismissed and the Maine Judicial Supreme Court ruled that 42 U.S.C. § 247d-6d preempts state actions asserting battery and constitutional injuries resulting from injections of minors without parental consent when a federally declared "countermeasure" is the injection at issue.

QUESTION: Is 42 U.S.C. § 247d-6d, when read to grant immunity against all state-law claims in favor of parties who administer a vaccine to a child when the parents of that child have not consented thereto, constitutional?

LIST OF PARTIES

Petitioners are Jeremiah Hogan, Siara Jean Harrington, and their minor child J.H., and they are individuals and citizens of Maine.

Respondents are Andrew Russ, M.D., a citizen and physician licensed by the State of Maine; and Lincoln Health Medical Partners, Inc. and MaineHealth, Inc., corporations organized under the laws of Maine.

CORPORATE DISCLOSURE STATEMENT

Petitioners are individuals.

LIST OF DIRECTLY RELATED CASES

Jeremiah Hogan et al. v. Lincoln Medical Partners et al., No. Lin-24-209, Maine Supreme Judicial Court. Judgment entered March 4, 2025.

Siara Jean Harrington, et al. v. Andrew Russ, M.D., et al., No. CV-23-13, Lincoln County Superior Court. Judgment entered April 16, 2024.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Jeremiah Hogan, Siara Jean Harrington, and their minor child, J.H., respectfully petition for a writ of *certiorari* to review a final judgment of the Maine Supreme Judicial Court.

OPINIONS BELOW

The opinion of the Maine Supreme Judicial Court, *Hogan v. Lincoln Med. Partners*, 2025 ME 22, 331 A.3d 463 (2025), is reproduced at Appendix A. The Lincoln County Superior Court's order dismissing Petitioners' state claims is reproduced at Appendix B.

JURISDICTION

The Maine Supreme Judicial Court opinion was entered on March 4, 2025. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTION, Amendment X

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.

U.S. CONSTITUTION, Amendment XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of the State of Maine,
Art. I, Declaration of Rights, § 20

Trial by jury. In all civil suits, and in all controversies concerning property, the parties shall have a right to trial by jury, except in cases where it has heretofore been otherwise practiced; the party claiming the right may be heard by himself or herself and with counsel, or either, at the election of the party.

Federal Statutes **42 U.S.C. § 247d–6d** and **42 U.S.C. § 247d-6e** are set forth in Appendix C.

STATEMENT OF THE CASE

In October 2021, Respondents Lincoln Medical Partners, Inc., Mainehealth, Inc., and one of their physicians, Dr. Andrew Russ, scheduled a vaccine clinic to vaccinate students attending an elementary school located in Waldoboro, Maine. Parents of the students were provided registration and consent

forms required to be signed by them and submitted to Respondents to authorize them to vaccinate their children who attended that school. Petitioners' son J.H., a then-five-year-old minor who suffers from a learning disability that requires speech therapy, refused to sign any consent forms that would have permitted Respondents to vaccinate their son.

A few days before the scheduled clinic, Respondents again notified student parents that the vaccine clinic would be conducted on November 12, 2021, and the parents were again requested to sign consent forms to permit their children to be vaccinated. Parent Petitioners again refused to give consent, mindful of their son's existing disability. On November 12, Petitioners sent their young son to school with the distinct impression that he would *not* be vaccinated since they had not signed and delivered any consent forms. Nonetheless, Respondent Dr. Russ administered the Pfizer-BioNTech COVID-19 vaccine to their son.

Pursuant to existing Maine state law regarding the filing of medical malpractice suits, on May 3, 2023, Petitioners timely instituted suit against the Respondents, asserting a variety of state common-law claims: professional negligence, battery, false imprisonment, intentional and negligent inflictions of emotional distress, tortious interference with parental rights, and negligent supervision. In response, Respondents moved to dismiss Petitioners' complaint, arguing that the Public Readiness and Emergency Preparedness Act ("PREP Act"), 42 U.S.C. § 247d-6d *et seq*., preempted state law and provided them with immunity against state claims.

According to § 247d-6d(a)(1), "a covered person shall be immune from suit and liability under Federal and State law" as a result of the

"administration to or the use by an individual of a covered countermeasure" during a health emergency declared by the Secretary of Health and Human Services ("HHS"). Moreover, § 247d-6d(b)(8) preempts any and all state laws that would conflict with administration of this health emergency. Based on this statutory authority as well as similar PREP Act cases of recent vintage, the trial court found that the Respondents were "covered persons" who were exempt from any liability to the Petitioners because their claims had been preempted.[1] The trial court dismissed Petitioners' claims on April 16, 2024.

Petitioners timely appealed this adverse decision to the Maine Supreme Judicial Court, arguing that their common-law causes of action were not subject to § 247d-6d(a) and, moreover, this federal law was unconstitutional as violative of due process. Petitioners further argued that they had a constitutional right to bodily integrity which was abridged by § 247d-6d, in addition to this deprivation of due process.

Notwithstanding the allegations of the Petitioners' claims and their substantive legal arguments, the Maine Supreme Judicial Court affirmed the trial court's dismissal of Petitioners' claims on March 4, 2025. After analysis of the relevant provisions of the PREP Act, it held that the claims of the parent Petitioners as well as those of their minor child were preempted:

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[1] In dismissing the Petitioners' complaint, the trial court relied upon a North Carolina Court of Appeals decision, *Happel v. Guilford Cty. Bd. of Educ.*, 899 S.E.2d 387 (N.C. App. 2024), among others. That case was recently reversed by the Supreme Court of North Carolina in *Happel v. Guilford Cty. Bd. of Educ.*, 913 S.E.2d 174 (N.C. 2025).

> We interpret the PREP Act's immunity provision based on its plain language and conclude that all defendants are immune from Hogan's "claims for loss caused by, arising out of, relating to, or resulting from the administration" of the vaccine to the child. 42 U.S.C.A. § 247d-6d(a)(1). This interpretation is consistent with other state appellate courts' construction of the immunity provision when parents alleged torts arising from a lack of consent to vaccinate children.
>
> Accepting the allegations of the notice of claim as true, the provider's failure to obtain parental consent in this individual instance does not make the administered vaccine — approved for emergency use under [21 U.S.C.] § 360bbb-3 — any less of a "covered countermeasure" under § 247d-6d(i)(1)(C).

In reference to Petitioners' argument that their constitutional due process rights had been violated, the court relegated addressing this issue to a footnote:

> [I]n the context of COVID-19, courts across the country have concluded that *Jacobson* established that there is no fundamental right to refuse vaccination." *Williams v. Brown*, 567 F. Supp. 3d 1213, 1226 (D. Or. 2021); see also *Norris v. Stanley*, 567 F. Supp. 3d 818, 821 (W.D. Mich. 2021) ("Plaintiff is absolutely correct that she possesses those rights [to privacy and bodily integrity], but there is no fundamental right to decline a vaccination.").

Because the Maine Supreme Judicial Court erred in both respects, this petition is submitted.

Withholding of consent finds reasonable basis in the sordid history of pharmaceutical manufacturers

Petitioners had good reason to suspect the designers and manufacturers of the COVID-19 "vaccines" Lincoln Health, MaineHealth, and Dr. Russ intended to inject into their son, and accordingly withheld parental consent for such vaccination.

When developing vaccines, Pfizer has engaged in harmful conduct resulting in lawsuits. In Nigeria in 1996, its vaccine experiments resulted in death and other severe injuries to a number of Nigerian children. Pfizer was sued and the Second Circuit described its injurious conduct in *Abdullahi v. Pfizer, Inc.*, 562 F.3d 163, 169 (2d Cir. 2009):

> [I]n April 1996, Pfizer dispatched three of its American physicians to work with four Nigerian doctors to experiment with Trovan on children who were patients in Nigeria's Infectious Disease Hospital ("IDH") in Kano, Nigeria. Working in concert with Nigerian government officials, the team allegedly recruited two hundred sick children who sought treatment at the IDH and gave half of the children Trovan and the other half Ceftriaxone, an FDA-approved antibiotic the safety and efficacy of which was well-established. Appellants contend that Pfizer knew that Trovan had never previously been tested on children in the form being used and that animal tests showed that Trovan had life-threatening side effects, including joint

> disease, abnormal cartilage growth, liver damage, and a degenerative bone condition. Pfizer purportedly gave the children who were in the Ceftriaxone control group a deliberately low dose in order to misrepresent the effectiveness of Trovan in relation to Ceftriaxone. After approximately two weeks, Pfizer allegedly concluded the experiment and left without administering follow-up care. According to the appellants, the tests caused the deaths of eleven children, five of whom had taken Trovan and six of whom had taken the lowered dose of Ceftriaxone, and left many others blind, deaf, paralyzed, or brain-damaged.

This case was later settled.[2]

In 2002, Pharmacia & Upjohn Company, a Pfizer subsidiary, developed the drug "Bextra," and started vigorously promoting its sale. The start of this sales program was described as follows in the sentencing memorandum of the AUSA who brought criminal charges against Pfizer:

> Bextra was officially launched at a national meeting for sales representatives in Atlanta, Georgia, from April 9–12, 2002. During this meeting, the sales force was given a vivid message of how to promote Bextra for the "power" position. They were inundated with displays of music, light shows, acrobats and dancers. The marketing managers led the entire audience in thrusting their fists into the air (the marketing symbol of Bextra) and

[2] *See* https://www.law.com/almID/1202482854504/. All internet sites referenced in this petition were last visited May 19, 2025.

> pounding them against their upraised hands in unison to symbolize the power of Bextra and to "Power Up" the sales force. Ultimately, simulated large steel doors crash down on the stage, and the Bextra fist symbol crashed through the doors. The events from the launch demonstrates the sales frenzy that accompanied Bextra, as the company strove to make the drug reach "blockbuster" (billion dollar a year sales) status.[3]

Condensing this sordid story, Pharmacia sales representatives promoted Bextra using false and misleading claims, eventually leading to civil actions filed by the United States as well as federal criminal charges in several districts. These civil and criminal charges[4] were ultimately settled by Pfizer, and the Justice Department press release summarized that conclusion:

> American pharmaceutical giant Pfizer Inc. and its subsidiary Pharmacia & Upjohn Company Inc. (hereinafter together "Pfizer") have agreed to pay $2.3 billion, the largest health care fraud settlement in the history of the Department of Justice, to resolve criminal and civil liability arising from the illegal promotion of certain pharmaceutical products, the Justice Department announced today.
>
> Pharmacia & Upjohn Company has

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[3] *See* https://www.cbsnews.com/news/doj-blames-pfizer-management-for-bextra-mess-the-goal-was-to-avoid-getting-caught/

[4] *See* https://archives.fbi.gov/archives/boston/press-releases/2009/bs091509b.htm

> agreed to plead guilty[5] to a felony violation of the Food, Drug and Cosmetic Act for **misbranding** Bextra with the intent to defraud or mislead. ... The company will pay a criminal fine of $1.195 billion, the largest criminal fine ever imposed in the United States for any matter. Pharmacia & Upjohn will also forfeit $105 million, for a total criminal resolution of $1.3 billion.[6]

It is reported that since 2000, Pfizer has paid $11,261,560,400 in penalties.[7] Pfizer has been prosecuted a number of times for "misbranding" its drugs in violation of 21 U.S.C. § 352, as has its competitor, Johnson and Johnson, which has paid $25,197,250,170 in penalties since 2000.[8] It cannot be doubted that "vaccine hesitancy" is attributable in great part to the sordid history of these pharmaceutical companies.

Overview of the PREP Act and COVID-19

The Public Health Service Act and its amendments span some 1751 pages in the 2022 version of the U.S. Code. See 42 U.S.C. §§ 201–300mm-62. However, the U.S. Constitution does not grant to Congress any power or authority to regulate health matters within the jurisdiction of the States as such power is a part of the "police power" constitutionally reserved to the States. "Inspection

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[5] *See* agreement, https://www.justice.gov/archive/usao/pae /News /2009/sep/pfizer_settlementagreement.pdf

[6] *See* https://www.justice.gov/opa/pr/justice-department-announces-largest-health-care-fraud-settlement-its-history

[7] *See* https://violationtracker.goodjobsfirst.org/parent/pfizer

[8] *See* https://violationtracker.goodjobsfirst.org/parent/johnson-and-johnson

laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a State .... are component parts" of this police power. See *Gibbons v Ogden*, 22 U.S. 1, 203 (1824).

By means of the PREP Act, the Secretary of the U.S. Department of Health and Human Services (HHS) may issue a declaration of a public health emergency to protect "covered persons" from liability for any claims relating to recommended activities involving "covered countermeasures" such as medical devices, drugs or vaccines authorized for emergency use. Once such a declaration has been issued, such covered person "shall be immune from suit and liability under Federal and State law" regarding any harm or loss caused to another person as a result. 42 U.S.C. § 247d–6d(a)(1). A person injured by any covered countermeasure cannot sue a covered person for injuries related to the implementation of the countermeasure and is instead relegated to making an administrative claim — in the case of death or serious physical injury — for compensation under the "Countermeasures Injury Compensation Program." 42 U.S.C. § 247d–6e. Only if a serious injury or death resulting from the administration of a countermeasure is caused by "willful misconduct" may the injured party file a suit for damages, and only in the U.S. district court in Washington, D.C. *See* § 247d–6d(d).

The PREP Act was implemented in response to the COVID-19 pandemic:

> On February 4, 2020, the [HHS] Secretary determined pursuant to his authority under

> section 564 of the FD&C Act[9] that there [was] a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad and that involves a novel (new) coronavirus (nCoV) first detected in Wuhan City, Hubei Province, China in 2019 (2019-nCoV).

85 Fed. Reg. 7316 (February 7, 2020).

Thereafter, vaccine manufacturers such as Pfizer, Inc., Johnson and Johnson, and Moderna, Inc., commenced research at "warp speed" on vaccines to treat COVID-19, and these efforts were reaching fruition by early December, 2020.

On December 3, 2020, the HHS Secretary granted immunity for covered countermeasures to vaccine manufacturers that he might thereafter authorize to produce and distribute a vaccine. 85 Fed. Reg. 79190 (Dec. 9, 2020). On December 11, 2020, the Pfizer-BioNTech COVID-19 Vaccine was granted Emergency Use Authorization ("EUA"), 86 Fed. Reg. 5200 (Jan. 19, 2021). Petitioners' minor son was vaccinated against his parents will with Pfizer's vaccine.

REASONS FOR GRANTING THE WRIT

In this case, the son of the parent Petitioners was administered, without their consent, a Pfizer vaccine at school on November 12, 2021. At a minimum, such action constitutes a common-law battery, a cause of action recognized in every State in

[9] Food, Drug and Cosmetic Act codified at 21 U.S.C. § 301, *et seq*.

this country. Under Maine's common law of torts, a defendant is liable for "assault and battery" if the defendant, without permission or privilege, unlawfully touches the person of another "with the intention of bringing about a harmful or offensive contact." *Wilson v. State*, 268 A.2d 484, 486-87 (Me. 1970). In such a suit filed in a state court in Maine, the plaintiff is entitled to a jury trial, pursuant to Section 20 of Article I, Declaration of Rights, of the Maine Constitution.

The PREP Act, if read and applied as the Maine Judicial Supreme Court did in Petitioners' case, unconstitutionally deprives parties injured by the administration of countermeasures approved by the Secretary from filing any lawsuit for the recovery of damages in a state court where they live. Instead, injured parties have only an administrative claim for compensation for death or serious injury directly resulting from the use of the countermeasure. And if such death or serious injury results from "willful misconduct" by the "covered person," the only lawsuit allowed must be filed in the U.S. district court in Washington, D.C.

I. PREP Act immunity provisions exceed the enumerated powers of Congress.

There are serious constitutional problems with Maine's reading of the PREP Act, § 247d–6d. First, Congress lacks the constitutional authority to mandate or authorize any vaccine requirement or any immunity pertaining to vaccine administration within the territorial jurisdictions of the States since such a power is one falling within the police powers reserved to the States under the Tenth Amendment. Second, the Act lacks any express connection with

the power of Congress to regulate interstate commerce. Even if some interstate commerce connection were construed to be implied by the law, the act of giving an unwanted vaccine to a student in an elementary school in Maine simply has no substantial effect on interstate commerce. Moreover, a party subjected to a battery in Maine possesses a common law chose in action for battery against the tortfeasor, and would have a state constitutional right to a jury trial. If the federal law is interpreted without consideration of the reservation of the police power to the states, then not only does this federal law preempt the state law of Maine, it withdraws the right to a jury trial for any action that could be brought against the tort-feasor (excluding a lawsuit that might be filed in the district court in Washington, D.C.). Finally, this section violates principles against Congressional "commandeering" because it arguably requires state courts to dismiss valid state lawsuits which are perfectly proper and valid under state law, denying the people remedies at law for tortious interference with their rights.

II. Legislative history and abnormal adoption of the PREP Act.

On June 10, 2005, a supplemental appropriations act funding the Department of Defense for 2006 was offered in the House of Representatives and it contained none of the PREP Act. This act, *sans* the PREP Act, passed the House on June 20. By October 7, the Senate adopted this bill but with some amendments not relevant here. By December 18, a conference report for both houses was agreed upon and published. But by December 19 when the House was considering this amended bill, new provisions

appeared therein in the last 15 pages of this appropriations act, these pages being designated as the PREP Act. In debate, Representative John Conyers observed that "this language [the PREP Act] was added to the Department of Defense Appropriations Conference Report in the middle of the night, long after the conferees approved the bill." 151 Cong. Rec. 168, E2649 (2005). After this newly revised bill was adopted by the House and during debates in the Senate, several Senators also noted the magical insertion of these provisions. Former President Biden, when he was a Senator, stated that "I'm told it was inserted in the dead of night, after conferees had already signed the conference report!" 151 Cong. Rec. 167, S14242 (2005). Senator Robert Byrd observed that it "was not until the dead of night on this past Sunday, after signatures had already been collected on the conference report, that the Republican majority slipped these provisions into the bill before the Senate today." 151 Cong. Rec. 167, S14242 (2005). Senator Hillary Clinton asserted that "I believe that the American people are ill-served by Congress when controversial and potentially harmful provisions can simply be inserted without undergoing the open deliberations and debate that are fundamental to the democratic process and are designed to protect our citizens from special interests and back-room dealings." 151 Cong. Rec. 167, S14243 (2005).

Both houses of Congress have rules that distinguish "legislation" from "appropriations." *See* House Rule XXI and Senate Rule XVI.[10] The rules of

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[10] House Rule XXI, *Restrictions on Certain Bills*, https://budgetcounsel.com/laws-and-rules/%C2%A7371-house-rule-xxi-restrictions-on-certain-bills/ and Senate Rule XVI, *Appropriations and Amendments to General Appropriations Bills*,

both Houses "prohibit 'legislation' from being added to an appropriation bill." *Andrus v. Sierra Club*, 442 U.S. 347, 359-360 (1979). Moreover, appropriations laws do not normally change substantive law:

> When voting on appropriations measures, legislators are entitled to operate under the assumption that the funds will be devoted to purposes which are lawful, and not for any purpose forbidden. Without such an assurance, every appropriations measure would be pregnant with prospects of altering substantive legislation, repealing by implication any prior statute which might prohibit the expenditure. Not only would this lead to the absurd result of requiring Members to review exhaustively the background of every authorization before voting on an appropriation, but it would flout the very rules the Congress carefully adopted to avoid this need.

TVA v. Hill, 437 U.S. 153, 190-91 (1978). Or as more succinctly stated in *E.D.F. v. Froehlke*, 473 F.2d 346, 353-54 (8th Cir. 1972): "[a]n appropriation act cannot serve as a vehicle to change that [statutory] requirement."

It cannot be contested that Pub.L. 109-148 was an appropriations act, with the exception of the PREP Act appended thereto in the last 15 pages inserted at the last minute. Consequently, there are no Congressional or Committee Reports related to the PREP Act provisions in the legislative history of

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https://budgetcounsel.com/laws-and-rules/%C2%A7416-rule-16-appropriations-and-amendments-to-general-appropriations-bills/

this act. Thus no congressional review or debate was had concerning the meaning and constitutional import of the provisions therein.

III. Confusion and conflict in state courts needs resolution.

So far, state courts that have decided the application of the PREP Act to lawsuits involving the administration of unconsented vaccines have rendered conflicting decisions. For example, the case of *M.T. v. Walmart Stores, Inc.*, 528 P.3d 1067 (Kan. App. 2023), involved a vaccine given to a child at a pharmacy without parental consent. The Kansas court held that the PREP Act provided the pharmacy with immunity. In contrast, the court in *Happel v. Guilford Cty. Bd. of Educ.*, 913 S.E.2d 174 (N.C. 2025) recently concluded that the PREP Act did *not* provide immunity against constitutional torts. Both cases decided the reach and scope of the PREP Act, and this conflict should be resolved by this Court.

The apparent last-minute covert insertion of the PREP Act into an appropriations bill in violation of congressional rules removed its provisions from any debate or refinement in the ordinary course. This may, in part, be why the application of PREP Act immunity has been confused among the courts which have dealt with defendants' assertions of immunity under the Act.

Certainly, the grant of immunity appears broad at first blush in 42 U.S.C. § 247d-6d(a)(1): "a covered person shall be immune from suit and liability under Federal and State law with respect to all claims for loss caused by, arising out of, relating to, or resulting from the administration to or the use by an individual of a covered countermeasure ..." In

defining the *scope* of this immunity, however, at § 247d-6d(a)(2)(B), the losses "caused by, arising out of, relating to, or resulting from" administration or use of a countermeasure of paragraph (1) are clarified as losses that have a "causal relationship" with the administration or use of a countermeasure:

> The immunity under paragraph (1) applies to any claim for loss that has a *causal relationship* with the administration to or use by an individual of a covered countermeasure, including a *causal relationship* with the ... administration ... or use of such countermeasure. (emphasis added).

The causal relationship required is further illuminated by the substitute Congress has provided for claims with respect to "covered countermeasures" in § 247d-6e, which establishes a fund for "purposes of providing ... compensation to eligible individuals for covered injuries [serious physical injury or death, *see* § 247d-6e(e)(3)] *directly caused by the administration or use of a covered countermeasure* pursuant to [the HHS declaration required by § 2474-6d]." (emphasis added).

Because most state-law claims are "not completely preempted by the PREP Act," *see, e.g., Solomon v. St. Joseph Hospital*, 62 F.4th 54, 61 (2nd Cir. 2023), federal courts have no subject matter jurisdiction under that Act to hear state-law claims removed to those courts. Nevertheless, the causal relationship between actual administration or use of a countermeasure and losses claimed as a necessary prerequisite to federal jurisdiction over a claim has

been recognized by several courts.[11] *See, e.g., Manyweather v. Woodlawn Manor, Inc.,* 40 F.4th 237, 245–46 (5th Cir. 2022) (remanding suit containing state-law claims for negligence against nursing home to state court and rejecting defendants' contention that the PREP Act transformed state-law claims into federal questions); *Pirotte v. HCP Prairie Vill. KS OPCO LLC,* 580 F. Supp. 3d 1012, 1021 ((D.Kan. 2022) (recognizing that the PREP Act does not completely pre-empt all state actions tangentially related to the implementation of countermeasures; where injuries asserted are not "directly caused by the administration or use of a covered counter-measure, then the claim falls outside the scope of the federal remedy," and such "federal cause of action cannot serve as a basis for complete preemption of plaintiff's state law claim.").

In deciding whether or not state law has been completely preempted under federal law, a number of federal district courts have concluded that the PREP Act does not preempt state law medical malpractice and negligence claims when those claims arise from

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[11] Compounding the issue of direct causality from "administration or use," the HHS Secretary promulgated a Fourth Amendment to the March 2020 PREP Act declaration for COVID-19 on December 3, 2020, stating that "[w]here there are limited Covered Countermeasures, *not* administering a Covered Countermeasure to one individual in order to administer it to another individual can constitute 'relating to ... the administration to ... an individual' under 42 U.S.C 247d-6d." Further, "[p]rioritization or purposeful allocation of a Covered Countermeasure, particularly if done in accordance with a public health authority's directive, can fall within the PREP Act and this Declaration's liability protections." 85 Fed. Reg. 79197. These restatements of federal law would arguably render immunity even for a *refusal* by "covered persons" to administer a "covered countermeasure" to an individual.

independent legal duties or the "proper standards of general medical [] care, not the administration or use of certain drugs, biological products, or devices, *i.e.*, the countermeasures covered under the PREP Act." *Dupervil v. Alliance Health Operations*, 516 F. Supp. 3d 238, 257 (E.D.N.Y. 2021); *see al*so *Estate of Maglioli v. Andover Subacute Rehabilitation Center I*, 478 F. Supp. 3d 518, 529 (D.N.J. 2020). ("Nothing in the language of the [PREP] Act suggests that it was intended to more broadly displace state-law causes of action for, *e.g.,* malpractice or substandard care — even if proper care possibly would have entailed administration of [] countermeasures.") To be covered under the PREP Act, there must be "a causal connection between the injury and the use or administration of covered countermeasures." *Dupervil* at 256 (*quoting Brown v. Big Blue Healthcare, Inc.*, 480 F. Supp. 3d 1196, 1205-06 (D. Kan. 2020).

It is state courts that must decide if a plaintiff's claims fall within the PREP Act's immunity provision. If the answer is no, there is no federal law left to apply and the case proceeds under state law. *Solomon* at n.4. In Solomon's case, the claims hinged on whether his injury resulted from the use of the countermeasure, or from the hospital's failure to uphold a legal duty and proper standards of medical care *separate* from the use of that countermeasure.

Whether a claim asserts causality of injury directly from the use or administration of a countermeasure or from the breach of an independent legal duty apart from the countermeasure itself is not only critical to jurisdiction, but to the determination of the question of immunity under the PREP Act. The Supreme Judicial Court of Maine

here, as well as the Supreme Court of Vermont in *Politella v. Windham Southeast School District*, 2024 VT 43 (2024), did not undertake any analysis of this factor.

Further, as applicable here against Respondent Dr. Russ, a licensed medical practitioner, no court appears to have yet taken into account the definition of a "covered person" under § 247d-6d(i)(2), which provides evidence that Congress did not intend to preempt state laws: "[t]he term "covered person", when used with respect to the administration or use of a covered countermeasure, means- ... (iv) a *qualified person* who prescribed, administered, or dispensed such countermeasure." (emphasis added). A "qualified person" is further defined at § 247d-6d(i)(8), "when used with respect to the administration or use of a covered countermeasure," to mean "a licensed health professional or other individual *who is authorized to prescribe, administer, or dispense such countermeasures under the law of the State* in which the countermeasure was prescribed, administered, or dispensed ..." (emphasis added.) At the heart of this definition, which precedes any declarations of immunity, is a person who is authorized by state law to administer countermeasures. Generally, state laws and constitutions do *not* authorize administering drugs to minors without parental consent, so immunity can only extend to persons who acted within the already existing *lawful authority* they enjoy under state law.

To sum, there is a split in the state courts interpreting the immunity provisions of the PREP Act, and there has been a lack of substantive or detailed analysis by those state courts of those provisions. Recently, the Supreme Court of North Carolina concluded that the PREP Act does *not*

immunize state actors who forcibly vaccinate a child without his or his parents' consent against claims of constitutional injury, such as the right to bodily integrity and the right of parents to consent on their child's behalf. *Happel v. Guilford Cty. Bd. of Educ.*, 913 S.E.2d 174, 198 (N.C. 2025). The Vermont Supreme Court in *Politella, supra*, which likewise decided a case of forcible vaccination without parental consent, did *not* distinguish constitutional claims from other state tort claims, as the *Happel* court did. Similarly, the Maine Supreme Court, in Petitioners' case of forcible vaccination without parental consent, failed to distinguish constitutional claims from other state tort claims, nor to engage in any analysis of the causality of injuries which arise from breaches of independent legal duties (unrelated to countermeasures).

For these reasons, this Court should accept this writ, hear this case and conclude that the offending parts of § 247d–6d — particularly if the Maine Supreme Judicial Court was correct in construing that law — are unconstitutional.

IV. Congress lacks constitutional authority to impose medical immunity or "counter-measure" requirements on the states.

In the United States, the state governments rather than the federal government possess the "police power," and included within this power of the States is the power to regulate, administer and enforce public health laws. "Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a State .... are component parts" of the States' police power. *Gibbons v Ogden*, 22 U.S. 1, 203 (1824). "[T]he

power of States to enact and enforce quarantine laws for the safety and the protection of the health of their inhabitants ... is beyond question." *Compagnie Francaise de Navigation a Vapeur v. Louisiana State Board of Health*, 186 U.S. 380, 387 (1902). "Within state limits, [federal attempts to exercise such police powers] can have no constitutional operation." *United States v. DeWitt*, 76 U.S. 41, 45 (1870). It is the States rather than the federal government that have the constitutional authority and power to impose or authorize vaccine requirements within their jurisdictions. *Jacobson v. Massachusetts*, 197 U.S. 11, 24-25 (1905).

Similarly, the federal government is ***without*** constitutional authority to regulate the practice of medicine[12] within the various States of the United States. See *Linder v. United States*, 268 U.S. 5, 18 (1925) ("Obviously, direct control of medical practice in the states is beyond the power of the federal government."); *Lambert v. Yellowley*, 272 U.S. 581, 598 (1926) ("Congress, therefore, cannot directly restrict the professional judgment of the physician or interfere with its free exercise in the treatment of disease. Whatever power exists in that respect belongs to the states exclusively."); *Du Vall v. Board of Medical Examiners*, 49 Ariz. 329, 335 (1937) ("the states have not delegated to the United States the power to ... regulate the practice of medicine");

[12] In Maine, the practice of medicine is defined as "diagnosing, relieving in any degree or curing, or professing or attempting to diagnose, relieve or cure a human disease, ailment, defect or complaint, whether physical or mental, or of physical and mental origin, by attendance or by advice, or by prescribing or furnishing a drug, medicine, appliance, manipulation, method or a therapeutic agent whatsoever or in any other manner." 32 M.R.S. § 3270.

Ghadiali v. Delaware State Medical Society, 48 F.Supp. 789 (D. Del. 1943) (the practice of medicine is a state concern); *United States v. Evers*, 453 F. Supp. 1141, 1150 (M.D. Ala. 1978); *Metrolina Fam. Prac. Group v. Sullivan*, 767 F. Supp. 1314, 1321 (W.D.N.C. 1989); *Conant v. Walters*, 309 F.3d 629, 639 (9th Cir. 2002) ("principles of federalism that have left states as the primary regulators of professional conduct"); and *Oregon v. Ashcroft*, 368 F.3d 1118, 1124 (9th Cir. 2004).

Here, Respondents requested the parents of minor students to consent to the vaccination of their children. Without obtaining the consent of the parents, Respondent Dr. Russ nonetheless vaccinated their child without authorization. Clearly this student, as well as his parents, are citizens of Maine, as is Dr. Russ, an M.D. licensed in Maine. The administration of an unwanted vaccine constitutes a battery under Maine law, and since Congress has no authority over health measures authorized or prohibited by the States, it seems clear that Congress may not authorize a doctor to vaccinate a student without the consent of his parents under its power to control interstate commerce, or to control that which substantially affects such commerce.

V. Interstate commerce powers do not validate the PREP Act's preemptive grant of immunity

Section 247d-6d is a part of the Public Health Service Act ("PHSA"), codified at 42 U.S.C. § 243 *et seq*. The PHSA, 42 U.S.C. Chapter 6A, is an act whereby the federal government provides ***funding*** to the States to address and possibly resolve various

public health concerns. See 42 U.S.C. § 246. But the mere fact that the federal government provides funding to the States regarding mutual public health concerns does not alter the fact that the federal government lacks, as explained *supra*, constitutional authority to establish vaccine or other health requirements in the States, or to control the practice of medicine in the States. Similarly, the federal government lacks the constitutional authority to impose quarantines ("lockdowns") in the States. But more profoundly, Congress has no constitutional authority to mandate that the Maine legislature change Maine tort law (both common law and statutory) so that such laws are suspended whenever a particular federal official so declares. Most importantly, the federal government has no constitutional power to direct the state courts in Maine to dismiss valid lawsuits filed there on grounds that medical professionals are immunized from injury caused by breaches of legal duties and standards of care when "countermeasures" under § 247d-6d are involved.

A few sections of the PHSA contain express connections to Congress' interstate commerce powers. Section 262(a)(1) thereof, related to the regulation of biological products, declares that "[n]o person shall introduce or deliver for introduction into interstate commerce any biological product." Section 274e makes it a crime for "any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce." Section 289g–2 declares it to be criminal "for any person to knowingly acquire, receive, or otherwise transfer any human fetal tissue for valuable consideration if the transfer affects

interstate commerce." *See also* § 289g-2(b) and (c). Section 300g-6(3) declares that two years after August 6, 1996, it shall be unlawful "(A) for any person to introduce into commerce any pipe, or any pipe or plumbing fitting or fixture, that is not lead free, except for a pipe that is used in manufacturing or industrial processing." See also §§ 300j–4 and 300j–23 related to the shipping in interstate commerce of drinking water coolers. But there is no reference to interstate commerce (or anything affecting it) in § 247d-6d.

This and other federal courts have more than adequately defined interstate commerce. See *Coe v. Errol*, 116 U.S. 517 (1886) (although possibly destined for interstate shipment, logs merely floated downstream to sawmill were not engaged in interstate commerce); *Gulf, Colorado & Santa Fe Ry. Co. v. Texas*, 204 U.S. 403 (1907) (shipment of corn within Texas was not part of interstate commerce); *McCluskey v. Marysville & Northern Ry. Co.*, 243 U.S. 36 (1917) (timber cut and floated to Puget Sound and sold to mills was not a part of interstate commerce); *Southern Pac. Co. v. Arizona*, 249 U.S. 472 (1919) (carnival show traveling entirely in a single state wasn't engaged in interstate commerce); *Arkadelphia Milling Co. v. St. Louis Southern Ry. Co.*, 249 U.S. 134 (1919) (shipment of rough material from forest to mill with no intent to sell beyond mill was not interstate commerce); *Industrial Ass'n. of San Francisco v. United States*, 268 U.S. 64 (1925); *Atlantic Coast Line R. Co. v. Standard Oil Co. of Kentucky*, 275 U.S. 257 (1927) (oil imported into Florida solely for internal distribution was not in interstate commerce); *Levering v. Garrigues Co.*, 289 U.S. 103 (1933) (erection of steel for New York City buildings was activity outside of interstate

commerce); *A.L.A. Schecter Poultry Corp. v. United States*, 295 U.S. 495 (1935) (processing imported chickens for local sale wasn't activity within interstate commerce); *Detroit International Bridge Co. v. Corp. Tax Appeal of Bd. of Michigan*, 294 U.S. 83 (1935) (an international bridge was not engaged in such commerce); *Penn. R. Co. v. Public Utilities Comm. of Ohio*, 298 U.S. 170 (1936) (hauling coal described in this case was not an interstate activity); and *United States v. Yellow Cab*, 332 U.S. 218 (1947) (taxi service was not interstate commerce). See also *City of Atlanta v. Oglethorpe University*, 178 Ga. 379, 173 S.E. 110 (1934) (radio broadcasting in this case was intrastate activity); *Payne v. Woodson*, 47 Ariz. 113, 53 P.2d 1084 (1936) (repairing shoes is intrastate); *Southern Pac. Co. v. Van Hoosear*, 72 F.2d 903 (9th Cir. 1934) (goods shipped from abroad, but left at dock for local sale were not in interstate commerce); *I.C.C. v. Columbus & Greenville Ry. Co.*, 153 F.2d 194 (5th Cir. 1946) (stored cotton wasn't involved with such commerce); *Goldberg v. Faber Industries, Inc.*, 291 F.2d 232, 235 (7th Cir. 1961) (hauling meat scraps to rendering plant was intrastate activity); *Evanston Cab Co. v. City of Chicago*, 325 F.2d 907 (7th Cir. 1963) (cabs at airport were not involved with interstate commerce); *Dower v. United Air Lines, Inc.*, 329 F.2d 684 (9th Cir. 1964) (air transport entirely within state was not interstate commerce); and *Kline v. Wirtz*, 373 F.2d 281 (5th Cir. 1967) (local truckers hauling meat to a processor were not engaged in interstate commerce).

Can Congress' interstate commerce power regulate activities at a school located in a State? This question was answered in *United States v. Lopez*, 514 U.S. 549, 558 (1995), which concerned a 12th-grade student who carried a concealed handgun into his

high school and was charged with a violation of federal gun laws. This Court concluded that this activity did not have "a substantial relation to interstate commerce." The case of *Jones v. United States*, 529 U.S. 848 (2000), involved a private home not otherwise used for commercial purposes that was damaged when a Molotov cocktail was tossed into it. This Court concluded that the home was not involved in interstate commerce and the perpetrator was not committing an act affecting such commerce. Further, those who choose an inactivity such as the failure to purchase health insurance are not subject to this power of Congress. See *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012). Finally, providing a federal civil remedy for victims of gender-motivated violence certainly is not interstate commerce and does not affect it. See *United States v. Morrison*, 529 U.S. 598 (2000).

Here, two of the Petitioners' decision ***not*** to have their son vaccinated was beyond Congress's interstate commerce power based on *Sebelius*, *supra*. The school where this vaccine was administered was not involved with interstate commerce and it did not affect such commerce based on *Lopez* and *Jones*, *supra*. Dr. Russ was and apparently still is a doctor licensed in Maine and he simply administered the vaccine to the Petitioners' son without any authorization to do so. There is nothing to disprove that this act was anything more than a gratuity, which is outside the interstate commerce power of Congress. See *United States v. Oregon State Medical Society*, 343 U.S. 326, 338 (1952) ("sale of medical services, ... as conducted within the State of Oregon, is not trade or commerce within the meaning of Section 1 of the Sherman Anti-Trust Law, nor is it commerce within the meaning of the constitutional

grant of power to Congress 'To regulate Commerce ... among the several States.'"). *See also United States v. Wang*, 222 F.3d 234 (6th Cir. 2000) (robbery of cash did not have sufficient impact on interstate commerce); and *United States v. Turner*, 272 F.3d 380 (6th Cir. 2001) (robbery of an individual did not affect interstate commerce). Likewise, violations of parental rights and bodily integrity such as battery do not affect interstate commerce.

This Court has concluded that Congressional findings are not required to determine whether any given federal law has an interstate commerce connection. *See Morrison*, 529 U.S. at 612 ("Congress normally is not required to make formal findings as to the substantial burdens that an activity has on interstate commerce.") In this case, there are no Congressional committee reports related to the PREP Act alleging the precise interstate commerce nexus needed to implement section §247d-6d or other provisions of the PREP Act. Further, there are no words in this section which inform whether it applies to interstate commerce or to events that substantially affect such commerce. But regardless, the relevant facts at issue here are the following: (a) the school where this vaccine was given was not engaged in interstate commerce and had no substantial effect on such commerce; (b) Petitioner's son was inside such school when given the vaccine, as was Dr. Russ; (c) the administration of this vaccine did not occur in interstate commerce and certainly had no substantial effect on such commerce. Thus, particularly as applied to the facts of this case, § 247d-6d cannot be justified as a Congressional exercise of the power to regulate interstate commerce or that which substantially affects it, and it is thus unconstitutional.

VI. The constitutional right to court access and a jury trial.

Prior to November 12, 2021, the Petitioners twice refused to give consent to the vaccination of their minor son. On November 12, their son was dropped off at the school he attended. Most likely, he simply walked into the school, where he encountered some adult persons, or even teachers, and then was shuffled to Dr. Russ, who then vaccinated him. But since this shot was not given with consent, the Petitioners possessed a valid cause of action for, at least, assault and battery as well as several other causes of action recognized by the laws and courts of Maine. A party to a lawsuit filed in Maine is entitled to a jury trial. Art. I, § 20 of the Maine Constitution.

However, pursuant to § 247d–6d(a)(1), the Maine Supreme Judicial Court held that the Respondents had immunity from the Petitioners' suit for damages. If, and only if, the claim was for "death or serious injury" based on "willful misconduct," could Petitioners have filed suit in Washington, D.C., but not in Maine. *See* § 247d–6d(e)(1). If the claim was not based on "willful misconduct" as defined by the PREP Act, Petitioners could only make an administrative claim, and again only for death or serious physical injury, pursuant to the "Covered Countermeasure Process Fund." *See* § 247d–6e. Thus, in nearly all cases of injury caused by a covered countermeasure, a party is left with only a hollow administrative claim (which is dependent on appropriations from Congress).

This process of leaving injured parties without a real remedy or access to the courts in their own state, and without the right to a jury trial there, is violative of both substantive and procedural due process. "The

right to sue and defend in the courts is the alternative of force. ... It is one of the highest and most essential privileges of citizenship ... granted and protected by the federal constitution." *Chambers v. Baltimore & Ohio R.R. Co.*, 207 U.S. 142, 148 (1907). "The right of access to the courts is basic to our system of government, and it is well established today that it is one of the fundamental rights protected by the Constitution." *Ryland v. Shapiro*, 708 F.2d 967, 971 (5th Cir. 1983). See also *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 52 (1989) (Congress cannot "conjure away the Seventh Amendment by mandating that traditional legal claims be ... taken to an administrative tribunal.").

The case of *Boddie v. Connecticut*, 401 U.S. 371, 380-81 (1971), concerned a denial of court access by Connecticut to indigent litigants seeking a divorce without paying court costs, and this Court held "the State's refusal to admit these appellants to its courts ... must be regarded as the equivalent of denying them an opportunity to be heard upon their claimed right ... [and thus]... a denial of due process."[13] "When a matter from its nature is the subject of a suit at the common law, Congress may not withdraw it from

[13] See also *Nanni v. Aberdeen Marketplace, Inc.*, 878 F.3d 447, 457 (4th Cir. 2017) ("a citizen's 'right to sue and defend in the courts is one of the highest and most essential privileges of citizenship and is granted and protected by the Federal Constitution.'"); *Bounds v. Smith*, 430 U.S. 817, 821 (1977) ("prisoners have a constitutional right of access to the courts"); and *Jackson v. Procunier*, 789 F.2d 307, 310-11 (5th Cir. 1986) ("'it is by now well established that access to the courts is protected by the First Amendment right to petition for redress of grievances.' ... Consequently, interference with access to the courts may constitute the deprivation of a substantive constitutional right, as well as a potential deprivation of property without due process").

judicial cognizance." *Sec. & Exch. Comm'n v. Jarkesy*, 144 S.Ct. 2117, 2139 (2024).

Clearly, the deprivation of a trial with a jury is a grievous violation of due process, a fundamental right unconstitutionally abridged by § 247d-6d.

VII. The constitutional rights to parental control and bodily integrity.

Minor son Petitioner J.H. has a constitutional right to bodily integrity, and his Petitioner parents have the legal right to protect his rights by means of the lawsuit they filed. If the PREP Act purports to authorize "covered persons" to administer vaccines in violation of state law, even to those who object thereto, then the PREP Act abridges both the constitutional right to bodily integrity and the fundamental liberty interest of the parents in the welfare and health of their child.

This Court has taken the opportunity to recognize these constitutional rights a number of times. "The protections of substantive due process have for the most part been accorded to matters relating to marriage, family, procreation, and the right to bodily integrity." *Albright v. Oliver*, 510 U.S. 266, 272 (1994). The "'liberty' specially protected by the Due Process Clause [of the Fourteenth Amendment] includes the right[] ... to bodily integrity." See *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). This Court has "never retreated ... from [its] recognition that any compelled intrusion into the human body implicates significant, constitutionally protected privacy interests." *Missouri vs McNeely*, 569 U.S. 141, 148 (2013).

Parents generally share in their child's rights. *Parham v. J.R.*, 442 U.S. 584, 600 (1979) ("[S]ince

[the child's] interest is inextricably linked with the parents' interest in and obligation for the welfare and health of the child, the private interest at stake is a combination of the child's and parents' concerns."). And parental rights are a "fundamental liberty interest" under the Fourteenth Amendment. *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

The PREP Act creates a machinery for the abridgement of these constitutional rights. The Maine Supreme Judicial Court, and other state supreme courts, with the exception of the Supreme Court of North Carolina, have ignored these federally protected rights in deciding the PREP Act preempts state law protecting the rights of persons against common law battery and tortious interference with parental rights.

VIII. The unconstitutional "commandeering" of the courts of the states.

Section 247d-6d(a)(1) provides immunity "from suit and liability under Federal and State law with respect to all claims for loss," and (b)(7) provides 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 subsection." As a result, an injured party with a claim for an injury (caused by a "covered person" administering a "covered counter-measure") involving other than death or serious injury caused by willful misconduct, cannot sue even federal officials involved with the public health emergency.

Here, Petitioners sued Respondents in a state court in Maine and had available to them a trial by jury. No state law in Maine authorized dismissal by

its judges of this perfectly valid lawsuit; instead, this suit was dismissed based solely on the authority of § 247d-6d, which "commandeers" the dismissal of state cases like this one. Federal commandeering of the state judicial apparatus is unconstitutional.

The constitutional impediment to the federal government, known as the "anticommandeering doctrine," is a constitutional doctrine particularly developed within the last several decades. This principle recognizes that Congressional efforts to "commandeer the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program" is unconstitutional. See *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264, 288 (1981).

This principle gained constitutional stature in *New York v. United States*, 505 U.S. 144, 166 (1992). Here, Congress was attempting to solve a problem related to the disposal of nuclear waste and the act in question compelled New York to take title to the nuclear waste produced within its borders and accept responsibility for it. This Court held such attempt as blatantly unconstitutional:

> [E]ven where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts. ... [T]he Commerce Clause, for example, authorizes Congress to regulate interstate commerce directly; it does not authorize Congress to regulate state governments' regulation of interstate commerce.
>
> Moreover, "[t]he Federal Government may not

compel the States to enact or administer a federal regulatory program," *Id.* at 188.

This principle is manifest in *Printz v. United States*, 521 U.S. 898 (1997), which concerned a federal law requiring state officials such as sheriffs to engage in acts required by the Brady Handgun Violence Prevention Act. In finding unconstitutional those parts of the Act that mandated actions by state officials, this Court declared that "the Federal Government may not compel the States to implement, by legislation or executive action, federal regulatory programs." *Id.* at 925. "[C]onspicuously absent from the list of powers given to Congress is the power to issue direct orders to the governments of the States. The anticommandeering doctrine simply represents the recognition of this limit on congressional authority." *Murphy v. NCAA*, 584 U.S. 453, 471 (2018). "[T]here is simply no way to understand the provision prohibiting state authorization as anything other than a direct command to the States. And that is exactly what the anticommandeering rule does not allow." *Id.* at 480.[14]

The PREP Act does not affect state court cases that do not involve an injury caused by the use of a covered countermeasure by a covered person during a declared emergency. For example, state suits involving nursing homes where patients were injured or harmed by something other than a "covered countermeasure" (such as poor or negligent care) have not been preempted. *See Maglioli v. Alliance HC Holdings LLC*, 16 F.4th 393, 400 n.2 (3rd Cir. 2021); *Mitchell v. Advanced HCS, L.L.C.*, 28 F.4th 580 (5th Cir. 2022); *Saldana v. Glenhaven*

[14] See also *Galarza v. Szalczyk*, 745 F.3d 634, 643 (3rd Cir. 2014); and *United States v. California*, 921 F.3d 865, 889 (9th Cir. 2019).

Healthcare LLC, 27 F.4th 679 (9th Cir. 2022); *Martin v. Petersen Health Operations, LLC*, 37 F.4th 1210 (7th Cir. 2022); *Hudak v. Elmcroft of Sagamore Hills*, 58 F.4th 845, 853 (6th Cir. 2023) (The PREP Act "does not completely preempt claims that do not allege willful misconduct related to the administration or use of covered COVID-19 countermeasures."); and *Solomon v. St. Joseph Hospital*, 62 F.4th 54 (2nd Cir. 2023) (claims for malpractice, negligence, and gross negligence do not fall within the scope of the PREP Act's exclusive federal cause of action). Contrary to the limits on immunity recognized in these federal court decisions, the PREP Act has been broadly applied by many state courts to dismiss a large number of otherwise meritorious cases filed in those courts.

There are many threats to liberty and due process within the PREP Act. There are constitutional missteps with the apparent attempt by Congress to impose laws regarding health (especially vaccines) not otherwise connected to its interstate commerce power. There are very real problems with preempting state lawsuits filed in state courts for violations of "bodily integrity," and directing state judges to dismiss those lawsuits pending in their courts that somehow relate to injuries suffered after some federal official declares that an emergency exists. Certainly, such federal statutory machinery violates Petitioners' and all similar plaintiffs' due process rights, both substantive and procedural. And most assuredly, this federal scheme undoubtedly violates a state plaintiff's bodily integrity.

For the reasons noted above, this court should grant *certiorari* herein, reverse the decision of the Maine Supreme Judicial Court and remand this case back to the courts in Maine for further proceedings.

CONCLUSION

The petition for a writ of *certiorari* should be granted.

Respectfully submitted,

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