

CHURCHES VS. CASINOS: THE CONSTITUTION IS NOT SUSPENDED IN TIMES OF CRISIS

HEARING

BEFORE THE

SELECT SUBCOMMITTEE ON THE
CORONAVIRUS PANDEMIC

OF THE

COMMITTEE ON OVERSIGHT AND
ACCOUNTABILITY

U.S. HOUSE OF REPRESENTATIVES

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*Written opening statements and the written statements of the witnesses are
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Documents entered into the record during this hearing are listed below.

- * Report, NYU, “False Accusation: The Unfounded Claim That Social Media Companies Censor Conservatives”; submitted by Rep. Raskin.
- * Statement from Americans United for Separation of Church and State; submitted by Rep. Ruiz.
- * Statement from National Council of Jewish Women; submitted by Rep. Ruiz.

Documents are available at: docs.house.gov.

CHURCHES VS. CASINOS: THE CONSTITUTION IS NOT SUSPENDED IN TIMES OF CRISIS

WEDNESDAY, JUNE 21, 2023

HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY
SELECT SUBCOMMITTEE ON THE CORONAVIRUS PANDEMIC
Washington, D.C.

The Subcommittee met, pursuant to notice, at 10:04 a.m., in room 2154, Rayburn House Office Building, Hon. Brad R. Wenstrup [Chairman of the Subcommittee] presiding.

Present: Representatives Wenstrup, Malliotakis, Lesko, Joyce, Greene, McCormick, Comer (ex-officio), Ruiz, Dingell, Mfume, Ross, Robert Garcia, Bera, Tokuda, and Raskin (ex-officio).

Also present: Representative Moskowitz.

Dr. WENSTRUP. The Select Subcommittee on the Coronavirus Pandemic will come to order.

I want to welcome everyone today.

Without objection, the Chair may declare a recess at any time.

I also ask for unanimous consent for Mr. Gosar of Arizona and Mr. Moskowitz of Florida to participate in this hearing for the purposes of questions.

OPENING STATEMENT OF CHAIRMAN BRAD WENSTRUP REPRESENTATIVE FROM OHIO

I now recognize myself for the purpose of making an opening statement.

Today the Select Subcommittee is holding a hearing to examine the constitutionality of actions taken by Federal, state, and local governments and agencies in responding to the COVID-19 pandemic.

In the earliest stages of the pandemic, people, including our public health authorities, were scared, understandably. There simply was no data about the novel virus, and many public health experts feared the worst.

Accordingly, many countries, including our own, seemingly began to “blindly” issue restrictive mandates. We were told to shut down society. We were told “15 days to slow the spread.” By late April 2020, 42 states, collectively governing approximately 316 million people, mandated stay-at-home orders.

These state and local orders effectively mandated social distancing, restricting communal gatherings of families, friends, and neighbors. They closed businesses deemed “nonessential” from

operating. They closed churches, restricting parishioners and congregants from attending religious services. And they closed the schools, restricting the ability for our children to gain an education. They rushed to impose and enforce seemingly arbitrary and unnecessary orders.

In Michigan, Governor Whitmer told residents that they could not travel to their in-state vacation homes and ordered stores to stop selling “nonessential” items, such as seeds, soils, plants, and other gardening supplies.

In Rhode Island, the Governor ordered mandatory quarantining for out-of-state New Yorkers. The Governor set up police checkpoints on I-95 to stop vehicles with New York license plates and sent the National Guard door to door to search for fleeing New Yorkers in order to enforce the mandate.

In California, Los Angeles County sheriff’s deputies arrested a man paddleboarding by himself for violating Governor Newsom’s stay-at-home order, an order that included shutting down all the state’s beaches—and an order that Governor Newsom would violent himself on occasion.

At this time, public health experts did not know if any of these directives would have any impact whatsoever on slowing the spread. However, they knew these orders would be significantly burdensome to the daily lives of all Americans. They should have known that many of these orders likely infringed on people’s constitutional rights and civil liberties.

These concerns prompted then Attorney General Barr to warn that “the Constitution is not suspended in times of crisis.”

Unfortunately, Federal, state, and local governments and agencies continued to enact restrictive policies that arguably ignored constitutionally granted individual rights and liberties.

When little information was known about the virus at the beginning, it was hard to determine what was “reasonable” or “necessary” in responding to this unprecedented novel virus. But, as data changes, so must our decision making.

This, however, was rarely the case during the pandemic. Time and time again, in the face of new evidence questioning the usefulness of specific COVID-19 measures, including lockdowns, social distancing, school closures, and masking requirements, governments refused to adapt or provide an explanation as to why their directives were necessary.

Instead, the temporary “15 days to flatten the curve” too easily became “1,151 days to infringe on individual liberties”—or so perceived by many, many Americans.

The 15 days to slow the spread was meant to provide hospitals and communities a one-shot opportunity to prepare for a never seen before influx that could cause them to be overwhelmed. Instead, it turned into a seemingly endless cycle of government overreach.

Associate Justice of the Supreme Court Neil Gorsuch identified this problem early on in the pandemic. To Justice Gorsuch, “Government actors have been moving the goalpost on pandemic-related sacrifices for months, adopting new benchmarks that always seem to put restoration of liberty just around the corner.”

The rights guaranteed to every American under the Constitution should never be put on hold. Patrick Henry, a Founding Father, once said that, “The Constitution is not an instrument for the government to restrain the people, it is an instrument for the people to restrain the government—lest it come to dominate our lives and our interests.”

Nonetheless, the government pushed the Constitution to its limits. These actions, to Justice Gorsuch, represented “the greatest intrusions on civil liberties in the peacetime history of this country.”

These intrusions were not limited to the actions of state and local governments. In spring 2020, the Federal Government restricted international travel and later issued an eviction moratorium—the latter which was ultimately held unconstitutional by the Court.

Most notably, President Biden announced an executive order to mandate vaccination for Medicare and Medicaid providers, Federal contractors, employers with a hundred or more employees, and Federal employees, among others.

These mandates were unscientific, did not consider previous infection, and were, most of all, unconstitutional. The President never had the authority to issue such a directive.

Finally, the Biden Administration strong-armed big tech companies to shut down healthy debate in the name of “science.”

We are holding this hearing today to look back, to help prepare for a future pandemic, determine what went wrong, and to recommend how to do it better, to make sure that individual civil liberties are protected even during times of crisis.

It is clear that our response to the pandemic failed to protect individual liberties time and time again.

Benjamin Franklin stated, “Those who would give up essential liberty, to purchase a little temporary safety, deserve neither liberty nor safety.”

I would like to ask for unanimous consent to add Justice Gorsuch’s opinion in *Arizona v. Mayorkas* to the record.

Thank you.

I look forward to a strong, on-topic discussion today.

And I would now like to recognize Ranking Member Ruiz for the purpose of making an opening statement.

**OPENING STATEMENT OF RANKING MEMBER RAUL RUIZ
REPRESENTATIVE FROM CALIFORNIA**

Dr. RUIZ. Thank you, Mr. Chairman.

And thank you to our witnesses for being here today.

Three years ago, the world was rocked by a deadly novel airborne virus that has claimed the lives of 1.1 million of our fellow Americans, sent hundreds of thousands to the hospital, and touched every aspect of American life.

As we battled this lethal threat, healthcare workers, public health experts, local officials, and faith leaders worked together to protect the health and safety of their communities.

And because our knowledge of the virus was extremely limited in the early days of the pandemic, we had to act quickly and rely on the public health practices that we knew would help prevent transmissions—that public health officials knew would help—practices like social distancing and masking.

So, in a moment of crisis, state and local officials across the country enacted these policies with the sole focus on saving lives and reducing harm.

Look, I am a Christian, a father, a husband, and a physician. I understood and felt the pain that many across our country did when they had to stay home from church, when they could not take their children to school, and when they watched the caseload, hospitalization rate, and death toll tick up and up every single day.

And so now that we are on the other side of this pandemic, thanks to President Biden's leadership in getting the country back on track, I am focused on making sure we will not have to go through what we did last time around when, not if, another pandemic arises.

So I want to make sure our churches, mosques, and synagogues can remain safe for in-person worship. I want to make sure our kids can go to school and stay in school. I want to make sure our economy remains afloat, that we save lives, and prevent future harms.

So how do we go about this work? I can tell you, it is not by re-litigating the past, trying to rewrite history, or by undermining trust in essential public health tools, like vaccines, or by making conspiratorial accusations without evidence for the purposes of political gain.

No, it is by having an honest conversation here today about what really happened. It is by providing the full context of how public health guidelines were developed utilizing risk-based assessments that looked at where and how people gather to ensure social distancing and masking measures were implemented neutrally.

It is by learning from the Trump Administration's mistakes in failing to secure Personal Protective Equipment (PPE), scale up testing, taking this pandemic seriously, with urgency, and implement contact tracing that led to the pause of in-person worship, the disruption of in-person learning, and the loss of so many American lives.

And it is by taking the politics out of public health that allowed Trump White House officials to meddle in public health guidance, drive a wedge between peoples of different faiths, and pressure state officials to prematurely resume in-person worship.

Rather, to do right by every American, religious or not, Republican, Democrat, or Independent, we must focus on developing forward-looking policy solutions that will help save lives in a future pandemic and prevent the societal upheaval we all experienced in its early days.

Now is the time to rebuild our public health infrastructure, not knock it down. So rather than undercutting the lifesaving measures that have put us on the right track, like Democrats' American Rescue Plan, the Biden Administration's vaccine rollout, and the Centers for Disease Control and Prevention (CDC)'s enhanced emergency response, we should build on policies to better protect the American people's health. We should invest in our public health infrastructure and revitalize our workforce so that our hospitals and healthcare systems are better equipped to respond in the future.

There is much work to be done, and I hope that today's discussion focuses on these objectives.

I yield back.

Dr. WENSTRUP. Our witnesses today are Attorney General Andrew Bailey.

Andrew Bailey is the attorney general for the State of Missouri. Andrew's a combat veteran, having served as an armored cavalry officer in Iraq.

Thank you.

Following his service, Andrew obtained his JD from the University of Missouri and became a prosecutor. He served as an assistant attorney general in the Missouri Attorney General's Office and later as an assistant prosecuting attorney for the Warren County Prosecuting Attorney's Office, and as general counsel for the Missouri Department of Corrections. He also served as a deputy counsel and general counsel for the Missouri Governor's Office.

Solicitor General Elizabeth Murrill.

Elizabeth Murrill is the solicitor general for the Louisiana Department of Justice. She has more than 30 years of experience working in state and Federal Government. She obtained her JD from LSU in 1991. She has argued five cases before the U.S. Supreme Court and has been the lead counsel in hundreds more Federal and state cases.

Misha Tseytlin.

Misha Tseytlin is a partner and head of the appellate and supreme court practice as the national law firm of Troutman Pepper Hamilton Sanders LLP. Misha is the leading appellate attorney with an accomplished track record before the U.S. Supreme Court, Federal courts of appeal, and state courts. He is a nationally recognized authority on administrative law and political law issues.

Micah Schwartzman.

Micah Schwartzman is the Hardy Cross Dillard professor of law, the Roy L. and Rosamond Woodruff Morgan professor of law, and the director of the Karsh Center for Law and Democracy at the University of Virginia School of Law, a scholar who focuses on law and religion, jurisprudence, political philosophy, and constitutional law. Mr. Schwartzman joined the UVA Law faculty in 2007.

I want to thank you all for being here today.

Pursuant to Committee on Oversight and Accountability Rule 9(g), the witnesses will please stand and raise their right hands.

Do you solemnly swear or affirm that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Thank you.

Let the record show that the witnesses answered in the affirmative.

The Select Subcommittee certainly appreciates you being here today, and we look forward to your testimonies.

Let me remind the witnesses that we have read your written statements, and they will appear in full in the hearing record. Please limit your oral statement to 5 minutes.

As a reminder, please press the button on the microphone in front of you so that it is on and the Members can hear you when it is your turn to speak.

And when you begin to speak, the light in front of you will turn green. After 4 minutes, the light will turn yellow. When the red light comes on, your 5 minutes has expired, and we would ask that you please wrap up.

I now recognize Attorney General Bailey to give an opening statement.

**STATEMENT OF ANDREW BAILEY
ATTORNEY GENERAL, STATE OF MISSOURI**

Mr. BAILEY. Chairman Wenstrup, Ranking Member Ruiz, and distinguished Members of the Subcommittee, thank you for the opportunity to appear before you here this morning.

In May of last year, Missouri partnered with the State of Louisiana and private plaintiffs to file a landmark lawsuit against dozens of officials in the Federal Government to stop the biggest violation of the First Amendment in this Nation's history.

My office obtained more than 20,000 pages of evidence detailing extraordinary censorship efforts by a variety of officials within the Federal Government.

My office also deposed key witnesses, including Dr. Anthony Fauci and officials from the FBI, State Department, Department of Homeland Security, Office of the Surgeon General, and the CDC.

The evidence that we have uncovered only begins to scratch the surface of these First Amendment violations. Ultimately, the lawsuit is about obtaining truth and accountability.

Last month, a Federal judge heard oral argument on a motion for preliminary injunction filed by plaintiffs in this case. The judge expressed skepticism over many of the Federal Government's responses to queries posed by the court, even likening the situation to George Orwell's novel "1984."

Concerns have been noted by the U.S. Supreme Court. Justice Gorsuch recently opined that "Federal officials may have pressured social media companies to suppress information about pandemic policies with which they disagreed." The 20,000-plus pages of documents my office has uncovered revealed that Justice Gorsuch's suspicions are in fact a sobering reality.

The government's strategy to suppress speech in violation of the First Amendment is threefold.

First, officials attempt to harm big tech companies by threatening to remove their legal protections or by issuing statements deeply harmful to the company's public image.

Second, backed by previous threats, officials communicate behind doors with tech, flagging specific speech that officials dislike and badgering the companies to suppress that speech.

Third, once officials have threatened tech companies and flagged specific content, the implicit promise arrives. If tech companies censor when asked, the government will back down from their public statements to harm the companies. As former White House Press Secretary Jen Psaki has boasted from the White House podium, "They certainly understand what our asks are."

And the censorship activities have grown so widespread that the Department of Homeland Security last year worked to create a Disinformation Governance Board to coordinate efforts to censor between government agencies.

Following these efforts, the Court has characterized Department of Homeland Security (DHS) as the nerve center of a federally directed censorship enterprise, as we saw in coordination between officials at DHS and the FBI in their attempt to silence the Hunter Biden laptop story in the weeks leading up to the 2020 election.

Big tech companies have shown themselves eager to censor in recent years. It is also clear from the evidence that much of the speech affected would not have been removed but for the government's express involvement.

The judicially misconstrued section 230 of the Communications Decency Act has made it much easier for the government to create its vast censorship network by granting certain companies far more protection than Congress ever contemplated.

The incorrectly interpreted section 230 has enabled social media companies to consolidate control into the hands of a few enormously powerful actors.

This consolidation reduces the pressure not to censor that would otherwise exist in a competitive market while also making it much easier for Federal officials to exercise pressure over the social media field.

The Federal Government itself recognizes the legal problems with its actions. In an attempt to make it harder to detect their blatant legal violations, officials have begun outsourcing their censorship activities to pseudo-private organizations.

Emails obtained reveal that officials believe this structure will help them evade liability under the First Amendment.

But any Federal attempt to censor speech is still unconstitutional. The government cannot do by indirect means what it would be prohibited from doing directly.

The evidence also shows that the Federal censorship enterprise targets conservative voices. Last month, Biden's lawyers conceded in open court nearly all content suppressed by the Federal Government is conservative. This is not about truth. It is always been about power.

Perhaps most troubling, Biden lawyers recently shared with a judge that they have no plans to discontinue their censorship network. That admission makes this case one of the most important First Amendment cases in our Nation's history.

The freedom of speech enshrined in the First Amendment is the bedrock of this great Nation. It is one of the fundamental rights guaranteed to all Americans.

With this lawsuit, we are fighting to protect our liberties from all government interference. No government official has the right to tell us what to think, what to say, or what to hear.

That is why this case is so important. The question of our time is whether Americans will enjoy the legacy of free speech handed down to us by the Founding generation or whether government will control what we say, what we hear, and how we debate the veracity of claims and arguments.

We are locked in a pitched battle for the very character of our Nation. If we do not prevail over the government officials who seek to control speech, millions of Americans will be left with what Justice Gorsuch has described as "a shell of a democracy with civil liberties just as hollow."

Thank you.

Dr. WENSTRUP. Thank you.

I now recognize Solicitor General Murrill to give an opening statement.

**STATEMENT OF ELIZABETH MURRILL
SOLICITOR GENERAL, STATE OF LOUISIANA**

Ms. MURRILL. Good morning. Thank you, Mr. Chairman and Members of the Committee, for inviting me to speak with you today.

As the solicitor general for the State of Louisiana, I am grateful for the opportunity to discuss the constitutional issues that were involved with the government's response to COVID-19, especially regarding the policies that were invasive, arbitrary, and exceeded the government's constitutional authority.

Looking back, it is very clear that the people responsible for upholding and enforcing the Constitution utterly failed. The role of each of the three branches of government at the state and Federal levels was distorted and the Constitution was set aside without any meaningful resistance from Congress, from state legislatures, or the judiciary.

That is why our constitutional structure, which is supposed to prevent any person or branch of government from exercising autocratic power, was repeatedly violated.

This caused massive damage to our people, especially children; our economy, especially small businesses; and the very foundations of our government structure.

These failures carried an enormous cost. Let us go through a few of them, many of which—most of which—we challenged or we participated in challenging.

Governors suspended laws without any legislative approval over and over again, made completely irrational decisions, and claimed autocratic power to justify bad decisions. So did the President.

Police officers enforced crimes that were made up through executive orders never created by the legislatures or Congress.

The President issued invasive, unprecedented vaccine mandates that impacted nearly 100 million people, and billions of dollars in contracts, to try and force people to make a decision that was inherently theirs, based on very, very new emerging science and research that was actually, now we know, to be inhibited by the government in terms of allowing full debate of that science.

In one case that still shocks the conscience, a pastor in Louisiana was subjected to criminal prosecution for two years for the purported crime of violating the Governor's executive order, even though our laws limit in black and white the power of the Governor to create new criminal laws.

Reverend Tony Spell was extremely vocal in his opposition to the Governor's orders, which limited the number of people who could gather for worship, but not to go to Lowe's or to the food court at the mall.

He invited people to church for worship, and for that he was placed under surveillance and then arrested. He was issued six criminal misdemeanor citations, which would have subjected him,

consecutively, to six months in prison for each violation, potentially, plus fines.

He was right. These orders could never be criminally enforced under Louisiana law, and they prohibited the Governor from creating new crimes by executive order even in a disaster. But somehow all of government failed him, and he had to defend himself against a criminal prosecution by the government for two years.

The Louisiana attorney general early in the pandemic advised police departments to exercise extreme caution when enforcing these orders because they could be subjected to violating people's constitutional rights and sued.

Pastor Spell was ultimately vindicated by the Louisiana Supreme Court, which agreed that his constitutional rights to freely exercise his religion and freedom of speech had been violated.

What was shocking was that a prosecutor admitted that Spell was targeted for the sin of being unrepentant about criticizing the government. That continues to shock me today.

Other notable examples were Governor Kathy Hochul, who told people that God wanted them to be vaccinated and that "there are people out there who are not listening to God and what God wants and you know who they are"

Governor Beshear in Kentucky joined a Louisville mayor who banned drive-in church services and encouraged people to snitch on each other who had participated. The Sixth Circuit did issue an injunction in that case.

Small businesses were shut down, and the government still has significant protection from the damage that it wrought through these unconstitutional actions.

We fought these mandates. We would continue to fight these mandates. We will continue to fight for the rule of law and for the meaningful enforcement of our constitutional protections. But we are happy to be here today to urge this body to take meaningful action to prevent this from ever happening again.

Dr. WENSTRUP. Thank you.

I now recognize Mr. Tseytlin to give an opening statement.

**STATEMENT OF MISHA TSEYTLIN
PARTNER, TROUTMAN PEPPER HAMILTON SANDERS LLP
FORMER SOLICITOR GENERAL, STATE OF WISCONSIN**

Mr. TSEYTLIN. Chairman Wenstrup, Ranking Member Ruiz, and Members of the Subcommittee, I am grateful for the opportunity to testify today.

Over a two year period, I had the honor of representing brave ordinary citizens against the unprecedented assault on our civil rights that began in spring 2020.

I would like to begin today by briefly telling you some of my clients' stories, and then end with some thoughts on what reforms Congress could consider to address some of the problems I saw when doing some of this work.

Christopher McDonald is a severely disabled individual who had been packaging parts at a facility in Illinois under a state program for the disabled. When COVID-19 hit, Governor Pritzker's underlings shut down this program so now able-bodied citizens began doing the work that Chris had been doing for 20 years.

When I learned about Chris' plight through a friend, I reached out to several disability rights organizations, thinking, naively as it turned out, that protecting against this kind of discrimination is what these organizations are there for. But they did not want to fight a powerful Governor in a climate of fear.

So we brought a lawsuit under the Americans with Disabilities Act. Faced with having to defend against a Federal lawsuit, state officials, who had repeatedly denied Chris' requests to return to his job, including incessantly telling him that they just could not trust disabled people to keep their masks on, gave in and allowed him to return to work within nine days of us bringing our lawsuit. And they, in fact, reopened the program a month early because of the lawsuit.

St. Ambrose is a small Catholic secondary school in Wisconsin which spent tens of thousands of dollars to comply with Dane County's school reopening plan throughout the summer of 2020. Yet, as the school year approached, the county became worried that parents of public school kids were choosing in-person private schooling, costing the county per-pupil matching state funding.

So Dane County abruptly ordered all of these private schools closed for third grade and older just three days before the first day of class. We brought suit and won, allowing these kids to have a full year of in-person instruction when so many kids missed out on that opportunity.

I also represented religious minorities targeted by COVID-19 restrictions. In a series of incendiary press conferences, Governor Cuomo singled out the Orthodox Jewish community as being at fault for the spread of COVID in Brooklyn.

While the Governor's bullying conduct is now well known, at the time he was wildly popular and many were too scared to fight him. We sued on behalf of Orthodox Jewish synagogues and won at the U.S. Supreme Court.

Finally, the Mix Up is a small restaurant in Amery, Wisconsin, serving delicious roasted chicken. When Governor Evers attempted to impose additional crushing capacity limits on Wisconsin's small businesses, which would have put the Mix Up out of business, the Mix Up joined a lawsuit filed by the powerful Tavern League of Wisconsin.

But under pressure of Governor Evers, the Tavern League declined to pursue its case beyond the trial court, despite my pleading with them. The Mix Up's owners bravely told us they wanted to keep fighting, and they won at the Wisconsin Supreme Court and got relief that benefited all the Tavern League's members.

While I was proud to represent successfully all of these clients and more, the sad truth is my clients are the exception, not the rule. Many tens of millions of Americans lost the small businesses that were their life's work, could not worship in person for months, and had their kids' education stolen from them, and so much else.

This happened in part because many of the ordinary folks lacked legal assistance to fight back in a climate of widespread fear.

To avoid this from reoccurring again, I propose two areas of potential reform that Congress can consider.

First, attorney's fees, which is another way of saying when the state violates your constitutional rights, the state should have to pay, not the ordinary citizen.

While I am grateful that my firm stood behind me in bringing these cases, including several of them pro bono, most other big firms, as well as powerful organizations that should have brought that Americans with Disabilities Act (ADA) lawsuit on behalf of Chris, or well-funded groups like the Tavern League, refused to stand firm against the broadest attack against civil liberties in our lifetime.

During my efforts to encourage other attorneys to take on these types of cases, I came to believe that incentives are needed to permit individual lawyers, who are not subject to the pressures of big firms and do not have the big firm money behind them, to bring these lawsuits and so that the government would have to pay, not the ordinary citizen.

While section 1988 provides for attorney's fees for prevailing parties in actions brought against the state and local officials for the violations of some Federal rights, it is, unfortunately, inadequate.

For example, a party is not prevailing if the state simply changes its practices when faced with a lawsuit, including after preliminary proceedings in the case make it clear that the state is going to lose, and attorney's fees are simply not available in far too many cases where the illegal actions are taken by Federal officials, such as in the case of the contractor vaccine mandate, which is another case I litigated successfully and I am happy to talk about with you this morning.

Dr. WENSTRUP. Thank you.

I now recognize Mr. Schwartzman to give an opening statement.

**STATEMENT OF MICAH SCHWARTZMAN (MINORITY WITNESS)
HARDY CROSS DILLARD PROFESSOR OF LAW
DIRECTOR, KARSH CENTER FOR LAW AND DEMOCRACY
UNIVERSITY OF VIRGINIA SCHOOL OF LAW**

Mr. SCHWARTZMAN. Chairman Wenstrup, Ranking Member Ruiz, and distinguished Members of the Subcommittee, thank you for inviting me to appear before you to testify about religious freedom during the COVID-19 pandemic.

My name is Micah Schwartzman. I am a law professor at the University of Virginia School of Law for the past 15 years. I have taught courses and written extensively about constitutional law and the First Amendment.

Although I am here today as a legal expert on matters of religious freedom, I also want to say a few words about my religious background.

I come from a rabbinic family. My grandfather, Sylvan Schwartzman, was a rabbi who taught Jewish education at the Hebrew Union College, a seminary in Cincinnati, Ohio. My father, Rabbi Joel Schwartzman, was a military chaplain who served for more than 20 years in the United States Air Force, retiring as a full colonel. My sister, Ilana, is a rabbi who leads a congregation in northern New Jersey.

And for my part, I am currently the president of the board of my synagogue, Congregation Beth Israel, in Charlottesville, Virginia. I

am also the father of three children, who were ten, seven, and five years old when the pandemic swept across our country.

I mention my religious and family background because I know how difficult the pandemic was for families and communities of faith. The burdens we experienced were unprecedented.

I was part of my congregation's senior leadership in the spring of 2020 when we made the agonizing decision to close our temple's building, which meant shutting down our preschool and kindergarten with more than a hundred children, including one of my own.

We made that decision for a simple reason, which was to save lives. My father has reminded me of the Talmudic saying, that "one who saves a human life is as though they have saved an entire world." In the Jewish tradition, the principle of *pikuach nefesh*, the saving of a life, overrides all other commandments.

When the novel coronavirus overwhelmed hospital systems in Europe, and when it threatened to do same in our country, faith communities of all denominations, including my own, made painful choices to comply with stay-at-home orders, capacity limits, social distancing rules, and mask requirements.

We did it to save lives. That was in accordance with the rule of law and with our religious obligations.

Turning now to the legal issues. In my view, the public health regulations that burdened religious groups during the pandemic were justified under the First Amendment and related Federal and state statutes protecting religious liberty, and there are three main reasons why.

First, state officials generally acted in good faith and without discriminatory intent. They had to move quickly in the face of great uncertainty and often under catastrophic conditions. It is easy to forget how dire things were three years ago.

When the Supreme Court decided its first COVID-related free exercise case on May 29th, 2020, Chief Justice Roberts noted, quote, "There is no known cure, no effective treatment, and no vaccine," unquote. On the day the Chief Justice made that statement, nearly 1,100 Americans died from COVID, which had at that point already claimed 100,000 lives. And that was only the beginning of the pandemic, which is now responsible for more than 1.1 million deaths in the United States.

Tragically, faith communities were particularly susceptible to spreading COVID, gathering indoors in large groups, talking and singing together for many hours, and sharing meals. All of these important activities created serious risks, especially for the elderly.

At the outset of the pandemic, houses of worship were the sources of COVID clusters in more than a dozen states, and there are too many heartbreaking stories to recount of clergy who lost their lives to the pandemic.

When considering the proper balance between protecting religious freedom and saving lives, it is crucial to remember these tragic facts. State and local officials could not have responsibly ignored them.

Second, most COVID public health regulations were and remain neutral and generally applicable, which is the main constitutional standard for the Free Exercise Clause of the First Amendment.

To be sure, public health officials were far from perfect, but rules about capacity limits, social distancing, and masking were applied equally to religious groups and to their secular counterparts.

In terms of risk levels, unfortunately, churches were not like many retail businesses. It was much more dangerous to congregate with others and sing with them than it was to pick up your groceries or drop off your dry cleaning or visit the bike shop.

When officials did single out religion, it was often to provide special accommodations, for example, giving houses of worship more favorable treatment than secular venues, like theaters, concert halls, sports arenas, which created comparable risks.

In a few highly controversial cases the Supreme Court required religious exemptions from stringent social gathering restrictions, but the Court also rejected claims for exemptions from capacity limits and restrictions on certain high-risk activities, like singing and chanting during indoor services. Nor did the Court grant religious exemptions from orders that temporarily stopped in-person learning.

With respect to vaccines, Federal courts have rejected free exercise challenges to mandates for healthcare workers. And while the Supreme Court was asked to overrule those decisions on repeated occasions, it has refused to do so.

Third, and finally, even when public health regulations place distinctive burdens on religious practices, they can still be permitted under the First Amendment.

Like all other fundamental rights, religious freedom has limits, especially when exemptions impose harms on other people. As Justice Robert Jackson once said, the Bill of Rights is not a suicide pact.

Under current law, particularly when the government has a compelling interest, such as preventing the spread of a deadly pandemic, it can impose reasonable restrictions on even the most cherished and important of our individual liberties, as long as it does so evenhandedly.

Thank you again for giving me this opportunity to appear before you, and I look forward to your questions.

Dr. WENSTRUP. Thank you.

I now recognize myself for questions.

Let me start by saying that I served in a public health capacity. I was on the Board of Health in Cincinnati, very local, and when we addressed issues they were very thought-provoking when we saw scourges of health events taking place.

But we looked at data. We looked at data and we looked and took consideration of a patient's rights and their civil rights. And that was a key component to how we addressed issues. And it is how it should be addressed.

The United States' response to COVID-19 just failed in so many serious respects. Many policy directives that were issued by Federal, state, local just seemed misguided, and actively harmful, and often just ignored available data and research.

And that is a huge component of this conversation in my mind, is did we do the right thing, did we look and say: Do the benefits outweigh the risk? Did we protect people and their rights at the same time?

Yes, there was a lot of fear. You know, when people have fear, that is one of the greatest times that they need their religion, that they lean on their religion, and it helps them physically and mentally. It is a benefit far greater than a risk for so many people.

And the confusion over whether you could go to one place or another weighed heavily on people's minds. I cannot talk to my rabbi. I cannot talk to my priest. I cannot go see them. But I can go here and I can go there. This does not make sense. That is not scientific. And that is the problem that we have.

And the bedside manner, to me, coming from public health across America, was horrible. I remember in Ohio right away the health director saying this is extremely lethal, hundreds of thousands are going to die. And I said, we need this warning. It is lethal because we know people are dying. But you have no idea of the rate, of the mortality rate, because no one was being tested. No idea.

But we started to learn this group is vulnerable, this group does not seem to be. That did not seem to matter in many, many cases.

Mr. Tseytlin, I have concern whether it is really ever appropriate or not for the government to infringe on fundamental rights guaranteed under the Constitution, and I would like to get your opinion on that, if it is ever appropriate. And I think that is an important part of this discussion.

Mr. TSEYTLIN. Thank you, Chairman.

The U.S. Supreme Court has held that when the government wants to restrict fundamental rights, it must satisfy the highest burden of proof, which is known as strict scrutiny, which means the government has to have a compelling state interest and that the means that it uses are narrowly tailored to achieving that interest. Absent that very stringent showing, fundamental rights are not to be infringed by government regulation.

Dr. WENSTRUP. So, historically, it is the highest burden of proof that you would refer to?

Mr. TSEYTLIN. That is right.

Dr. WENSTRUP. Thank you.

Look, there were many directives that seemed unnecessary and arbitrary and were not applied equally. We have heard you talk about it. We will hear more about it, I am sure. Stay-at-home orders kept children—the population that was least susceptible to COVID-19—kept them from attending school. So arbitrarily, what we were saying is that education is not an essential service.

Well, you can say things, that lockdowns save lives or this and that, and school closures save lives, but not when it led to an increase in suicides amongst those that experienced the depression and that that followed it. We have to look at all of this. This has to be part of the conversation.

And you cannot just arbitrarily save lives without looking at all the data. Did it save lives, or did it take more lives? Maybe some of those suicides would not have occurred if they were in school, if we were not locked down so long.

I am opening that up for questions. I am not sitting here with all the answers. That is what this Committee is supposed to do, is to ask the questions and try and give guidance.

The right to peacefully assemble seemed to be protected for some, but not for others. Specifically, those that were most against

COVID-19 policies, they got restricted, and the same holds true for the right to free speech.

So, Attorney General, I just want to say, look, opinions are opinions. They are not necessarily misinformation or disinformation, they are just opinions.

And you said and referenced it. Did the Biden White House attempt to strong-arm big tech companies to censor free speech?

Mr. BAILEY. Unequivocally, yes.

It is in times of national emergency when we must be most vigilant to protect our fundamental rights, the rights given to us by God and codified and enshrined in the United States Constitution. And contrary to that principle, the Biden Administration coerced and colluded with big tech social media to silence Americans' voices in relation to the pandemic.

Dr. WENSTRUP. So let me go down the line with each of you. Do you think it is problematic that the White House pressured big tech companies to censor speech?

Mr. Bailey?

Mr. BAILEY. Yes.

Dr. WENSTRUP. Ms. Murrill?

Ms. MURRILL. Yes.

Dr. WENSTRUP. Mr. Tseytlin?

Mr. TSEYTLIN. I have not litigated that issue, and I am not prepared to speak on it.

Dr. WENSTRUP. Fair enough.

Mr. Schwartzman?

Mr. SCHWARTZMAN. Yes. I think these are unverified allegations, that litigation is in early stages, and I would not want to make—draw that conclusion at this point.

Dr. WENSTRUP. Well, I think they are going beyond allegations at this point, Mr. Schwartzman.

These acts arguably weaponized the government against a dissenting party. And as Justice Gorsuch stated in *Mayorkas*, all these instances represent the greatest intrusions in the peacetime history of this country.

And I think these acts require a serious review of public health emergency declarations. And while quick unilateral action by an executive is necessary and appropriate in times of crisis—I do get that, I understand it, I support it—but there is no reason why this authority should be without checks and balances.

And there is no reason why the executive should be able to implement directives, mandates under the guise of an undefined crisis. This is not what Congress intended when it passed the act to allow these things.

Justice Gorsuch wrote his opinion that maybe after nearly half a century, and in light of what we as a Nation all experienced, maybe it is a time for another look at these powers. Congress must review and modernize the outdated act in order that it prioritize constitutional rights and liberties. And I think that is a responsibility of this Subcommittee.

And I yield back.

I now recognize the Ranking Member for any questions he may have.

Dr. RUIZ. Yes. Thank you.

Somehow I thought I joined the Select Committee on COVID and not the Select Committee on the Weaponization of Government, but I see that there is a consistent partisan thread line across all the different ones that is continuing to be pushed throughout the different committees, including this one, to my chagrin and disappointment, because I am here to do serious work to really make sure that we prevent school closures, that we prevent church closures, that we focus on science that has helped save lives.

And that is what I was very much hoping that we could get accomplished in this, and not these accusations that somehow some groups were targeted versus other, when in fact these public health measures were scientifically risk-based. Putting aside the political theatrics and the ideologies, they were scientific risk based, and we will get into that.

So as a deadly novel airborne virus took hold across the United States, public health officials across the Nation acted swiftly to safeguard the health of their communities. Operating off imperfect and constantly changing information about the virus and its transmission, officials analyzed risk and implemented policies to slow the spread of COVID-19.

Professor Schwartzman, during times of crisis like the COVID-19 pandemic, how does the Constitution balance Americans' individual liberties with government's imperative to safeguard public health?

Mr. SCHWARTZMAN. Our constitutional tradition going back decades grants local officials wide discretion and latitude to make public health decisions, especially state officials who have plenary police power to promote the health and safety of their citizens.

They have to conform with the requirements, of course, of fundamental rights, including the First Amendment. But as long as the public health regulations are neutral and generally applicable, which is the prevailing standard under the First Amendment, they can regulate even in ways that might sometimes burden those rights. And that, I think, generally speaking, is what we saw during the pandemic.

Dr. RUIZ. So because we lacked vaccines and therapeutics to protect people from COVID-19, officials resorted to the limited set of public health tools that we knew based on our previous histories with airborne infections and pandemics and scientific studies could save lives, policies like limiting in-person gathering or social distancing and requiring masking.

Look, I have said it in the past, it is based on risk mitigation. The airborne virus spreads from airborne droplets, mostly from the mouth. The louder you speak, the more you spit when you speak, the further the virus can propagate to the next person. It enters through your mouth, nose, eyes, mucosa, and you get infected.

And then the virus load increases. You become symptomatic; maybe not. But you have enough viral load where you then spread it through your mouth to other people. The virus can linger in the air after a few minutes, and that is how this virus transmits.

And so these policies did work to reduce the spread or the rate of the spread of COVID-19 and saved lives. It is basic science, preventing that spread from one mouth to another person's mouth is very important.

Look, I have heard statements here and claims that it is almost like we are trying to rewrite history, that there was arbitration or these guidelines were unscientific.

So, look, in the defense of public health and the scientific approach and for what really happened, there are studies. For example, a study published in the Journal of Infectious Diseases compared the length of time it took for COVID-19 cases to double in states with stay-at-home orders versus states without them.

Look, I am not saying we want stay-at-home orders. We need to do a better job at being able to protect ourselves during these deadly pandemics so we do not need them. But we did not have that information now, and we are squandering the opportunity to figure it out.

So in this case, an increase in the doubling time is good. It means that the virus is spreading more slowly from person to person. This study found that states implementing stay-at-home orders during March and April 2020 increased the time it took for the number of COVID-19 cases in their communities to double by 269 percent.

In comparison, states that did not limit in-person gatherings in this way only increased their doubling time from COVID-19 cases by only 60 percent after the initial outbreak.

With a similar goal of reducing the spread of COVID-19, many communities also instituted policies requiring masking, which has been shown to reduce the odds of testing positive by as much as 83 percent.

Professor Schwartzman, is there a legal precedent for state and local governments to enact these kinds of policies to protect their constituents during emerging public health crisis?

Mr. SCHWARTZMAN. Yes. Most Federal courts that have reviewed COVID public health regulations found that states had a compelling interest in protecting their citizens against the pandemic and preventing the spread on contagion of this disease. They recognized the authority of state and local officials to enact public health regulations, especially when those were neutral and generally applicable and they applied widely to various types of industries, activities, businesses, and so on.

Dr. RUIZ. Thank you.

When President Biden took office and the Administration worked swiftly to ensure that as many Americans got the vaccines, okay, that was the key, to resume, to keep people safe when they gathered, to get people back in churches, get people back in schools, get people back in jobs.

So as many Americans got the vaccines as possible, including by requiring it for healthcare workers and Federal employees, these policies contributed to a 91 percent reduction in COVID-19 deaths and a 95 percent reduction in COVID-19 hospitalizations across the United States. It helped.

Professor Schwartzman, what does legal precedent tell us about the merit of these kinds of commonsense vaccination policies?

Mr. SCHWARTZMAN. Again, our precedents support public health regulations that are related to achieving these interests in preventing contagion and in protecting citizens' lives during the pandemic.

Dr. RUIZ. Look, you know, the data is there. The science is there. They were not arbitrary.

And, look, we talk about fear, and when you create a narrative that makes it seem like the government is after you or certain people were discriminated against and it was not risk based, or certain people were targeted, you are creating suspicion and paranoia, and you are radicalizing a group of people who are then going to do anything possible to protect their own safety.

I mean, this kind of partisan rhetoric needs to stop if we want America to get back on the right track. So while overcoming the COVID-19 pandemic required sacrifices from each of us, the policies implemented to keep people safe were not intended to infringe upon any person's individual liberties, nor were they designed with the goal of targeting or discriminating against any particular community.

So risk-based mitigation efforts, scientifically based, to reduce a lethal airborne virus from spreading and killing people. And we need to do a better job at mitigating that spread so we do not have to shut down schools, so we do not have to close churches.

This was not an attack on faith. It was said that not talking to a rabbi or pastors, or you can go here or there, but these were designed to do that. They were not.

My strength during the pandemic was reading Psalms and Proverbs in three different translations to gather wisdom and being able to speak to my pastors on the phone or through FaceTime. But I missed the fellowship. I missed that. I missed the gatherings that give me my strength.

So let us work on the scientific approach to have better equipment, better tools, so that we can continue to worship in groups and not fear for killing our neighbor who we should be loving and protecting by preventing the spread of airborne droplets to them.

With that, I yield back.

Dr. WENSTRUP. I am just going to take a moment to address one of the things the Ranking Member referred to at the beginning about the purpose of this Subcommittee. And I will share with him the investigative functions of this Committee.

Number three of the nine listed is the implementation or effectiveness of any Federal law or regulation applied, enacted, or under consideration to address the coronavirus pandemic and prepare for future pandemics. So that is what we are about, amongst many other things.

And I will tell my friend—and we are friends—that I am more than happy, if he has some topics that he wants to discuss further in the future, I am more than happy to have those discussions with you personally and through Committee.

And with that, I now recognize Ms. Malliotakis from New York for 5 minutes of questions.

Ms. MALLIOTAKIS. Thank you, Mr. Chairman.

Stay-at-home orders and lockdowns, that were arguably necessary at the beginning of the pandemic due to the lack of information surrounding this novel virus, they quickly became less and less justifiable.

As the significant collateral damage they caused economically, educationally, religiously, and to the physical and mental health

became more apparent, and as many public health experts began to question their efficacy, these orders became increasingly problematic. To make matters worse, political favoritism and unequal application enforcement reenforced the hypocrisy behind these executive rules.

As noted by Justice Neil Gorsuch, they closed businesses, schools, and churches, quote, “even as they allowed casinos and other favored businesses to carry on.”

Of course, it was not just casinos, but bars, liquor stores, marijuana dispensaries, and many more were allowed to stay open, most without restrictions. And this was particularly the case in the city that I represent, New York City.

Perhaps the most egregious, we had Black Lives Matter (BLM) protestors and riots in the summer of 2020, where thousands gathered in close contact, resulted in billions of dollars in damages, complete lawlessness on some nights in cities across the country.

And these protests were not only permitted, but they were encouraged by many of the same officials that shut down schools and places of worship and had condemned activists who held outdoor protests against lockdowns in April and May 2020. This is not science. This is hypocrisy.

Governor Andrew Cuomo not only arbitrarily restricted places of worship using color-coded, zone-based restrictions, capping attendance in red zones at just ten occupants, but singled out and threatened the Orthodox Jewish community, saying, quote, “If you are not willing to live with these rules, then I am going to close the synagogues,” unquote. He blamed them for spiking cases in a city of eight million, calling it an “ultra,” quote, “ultra Orthodox cluster,” unquote.

A guy named Heshy Tischler is a high-profile Orthodox Jewish activist. He was arrested in October 2020 on charges related to inciting a riot following an anti-lockdown protest in the Orthodox Jewish community. Again, this is months following all those riots, all those protests, windows being smashed, police cars being put on fire.

And let us not talk about what happened to those individuals, because all those charges have been dropped, by the way, and some of them are even profiting, they are getting paid by the city of New York for their inconveniences of being arrested for those riots.

The Supreme Court would ultimately strike down these restrictions, finding that they violated the First Amendment’s protection of the free exercise of religion.

Mr. Tseytlin, I know that you were involved in this case. Can you speak to the hypocrisy of Governor Cuomo and Mayor Bill de Blasio’s treatment of religious groups compared to other secular groups and the protestors?

MR. TSEYTLIN. Thank you.

So when we were litigating that case, we heard some of the same stuff in the legal papers from the State of New York that we just heard from the Ranking Member: This is science based, et cetera, et cetera.

Yet they had exclusions for essential businesses and essential gatherings that were not based even on their own claims that it was risk based. And we asked them: What are essential gath-

erings? Why are other gatherings more essential than religious worship? They could not tell us.

We said: What are even essential gatherings? They could not even tell us what this category of essential gatherings was that was favored over religious worship.

But yet, when the Buffalo Bills made the playoffs, Governor Cuomo decided that the fans could attend the Buffalo Bills playoff game in certainly much closer quarters than he was allowing the religious institutions to gather. So I guess we learned that attending a football game is more essential than worshipping.

And so, what we then learned through public reporting, which would have been part of discovery in the case if the Governor of New York had not just given in and given us everything we asked for at the end of the lawsuit, was that the decisions about the color-coded systems, they were not being made by public health officials.

When a bunch of public health officials quit Governor Cuomo's regime, they told the press, well, the Governor was essentially picking those zones by himself based upon the fear and based upon his perception that the Orthodox Jews were causing the problems.

When we were at the U.S. Supreme Court fighting against these restrictions, we had groups—we had Muslim American groups came in support, filed an amicus brief in support of us that said this targeting of religious minorities, blaming them for the pandemic, is the kind of thing that we have seen throughout history. And that was what Governor Cuomo was doing to the Orthodox Jewish community that led to these unconstitutional restrictions, which the U.S. Supreme Court struck down.

Ms. MALLIOTAKIS. So in my last ten seconds, in your opinion, he was basing these decisions on his political preferences, right, or what he thought was important versus what is equal treatment under the law and science?

Mr. TSEYTLIN. He was targeting the Orthodox Jewish community in his statements and in the way he gerrymandered the districts, and we now know he was not listening to his public health officials who, when they quit, said so.

Ms. MALLIOTAKIS. Thank you.

Dr. WENSTRUP. I now recognize Ms. Ross from North Carolina for 5 minutes of questions.

Ms. ROSS. Thank you, Mr. Chairman. And thank you to all the witnesses for being here.

My colleagues on the other side of the aisle have been using today's hearing to distort commonsense measures implemented during the pandemic to protect public health and reduce the threat of COVID-19, which, by the way, is still with us. Both of my parents have COVID right now.

They characterize these measures as government overreach and infringement on the individual liberties afforded to every person in the United States. And so I would like to spend my time correcting the record on how they are distorting the facts.

Though the title of today's hearing, through this title my colleagues have suggested that public health officials systematically and intentionally acted in defiance of the Constitution during the pandemic. This simply is not the case. In fact, the overwhelming

majority of pandemic-era public health policies, be they suspensions of in-person gatherings or vaccination and masking requirements, have been upheld by the courts.

On free speech grounds, they have been upheld for meeting the standard of viewpoint neutrality. And on free exercise grounds, they have been upheld for satisfying the neutral and general applicability standard put forward by Justice Antonin Scalia.

Professor Schwartzman, could you remind us again of the meaning of these legal standards?

Mr. SCHWARTZMAN. Yes. The phrase “neutral and generally applicable,” which is the standard for free exercise under the First Amendment, comes from a decision that was written by Justice Scalia on behalf of the Supreme Court in 1990 called *Employment Division v. Smith*, a case involving a Native American challenge to a prohibition on the use of peyote. And what it means is that the government is not permitted to target religious actors for special burdens. It cannot persecute them. It cannot act with the purpose of discriminating.

But as long as the law is neutral, it is not based on religious hostility, and is generally applicable, it applies to a wider range of actors, not only those who are religious, it is subject to a deferential standard of review. That means that the Supreme Court will not mandate religious exemptions from those kinds of laws, which is what characterizes most public health regulations.

Ms. ROSS. Thank you.

And in your testimony you talked about how First Amendment activities, including speech and religious activities, can be regulated to safeguard Americans’ public health. And as such, public health policies that meet these standards were upheld by the Court and were not infringing on the Constitution. Is that correct?

Mr. SCHWARTZMAN. That is correct. In many cases, the Supreme Court allowed public health regulations to stand. Those included some capacity limits. The Supreme Court has been asked to intervene on multiple occasions to invalidate vaccine mandates on religious liberty grounds. It has refused to do so. It also let stand an order that required state actors and public schools and private schools as well not to have in-person learning over a temporary time period, the winter of 2020. All of those orders the Supreme Court allowed to remain in place ostensibly because they are neutral and generally applicable.

Ms. ROSS. Thank you.

The suggestion that Democrats take for granted the Constitution and the rights it affords every person is dangerous, and it is misleading. In fact, it is false. It undermines confidence in our institutions during times of crisis and erodes faith in our American system of government.

I would also like to note that churches were not specifically targeted through public health measures or synagogues as we have heard implemented by the Biden Administration, and these measures did not prevent people of faith from worship. I was able to worship virtually. The faith community I participate in had outdoor services and we had parking spaces that were reserved, and people got out their lawn chairs, and we worshipped together outside safely. Many religious institutions found innovative ways to enable

their members to continue to practice their faith, be it through virtual, outdoor, or hybrid options. And many are using them today particularly for people who we pray for as sick and shut-in, who can now turn on YouTube or Facebook Live and participate with their congregations, even with emojis.

So Professor Schwartzman, with my remaining five seconds I would like to give you just a moment to correct the record on anything that you might want to share with the Committee?

Mr. SCHWARTZMAN. Thanks.

I just want to agree with you that religious communities had to be creative in responding to the pandemic. I do not mean to minimize the burdens on them; they were really serious burdens, but they also acted with a sense that conforming with public health regulations was important, and often consistent with their own religious obligations to save lives.

Ms. ROSS. Thank you, and I yield back.

Dr. WENSTRUP. I now recognize Mrs. Lesko from Arizona for 5 minutes of questions.

Mrs. LESKO. Thank you, Mr. Chairman.

You know I do not even recognize the America that I grew up in anymore. I know my Democratic colleagues think we are making up stuff, but there were serious violations that happened that were upheld by the U.S. Supreme Court. The government did violate constitutional rights by censoring opposing viewpoints, mandated vaccines, shut down churches, shut down some businesses while keeping others open, and right now, our Department of Justice seems to be targeting conservatives and not others with unequal justice.

Fighting back against these injustices, quite frankly, is the main reason that I continue to stay in Congress, I think it is very important.

I am going to read first what Supreme Court Justice Gorsuch said, and then I am going to ask a question of Ms. Murrill. In the Arizona v. Mayorkas case Justice Gorsuch wrote, "Governors and local leaders imposed lockdown orders forcing people to remain in their homes. They shuttered businesses and schools, public and private. They closed churches, even as they allowed casinos and other favored businesses to carry on. They threatened violators, not just with civil penalties, but with criminal sanctions, too. They surveilled church parking lots, recorded license plates, and issued notices warning that attendance at even outdoor services satisfying all state social distancing and hygiene requirements could amount to criminal conduct."

"Federal executive officials entered the act, too. They used a workplace safety agency to issue a vaccination mandate for most working Americans. They threatened to fire noncompliant employees and warned that service members who refused to vaccinate might face dishonorable discharge and confinement."

"Justice Gorsuch also wrote in the Calvary Chapel Dayton Valley v. Sisolak case: 'There is no world in which the Constitution permits Nevada to favor Caesars Palace over Calvary Chapel.'"

So my question to Ms. Murrill: Do you think—well, first of all, Mr. Schwartzman said earlier that he thought that the government actions were just. I may be paraphrasing.

Ms. Murrill do you think it is just for the government to keep casinos like Caesars Palace open, but shut down, or severely restrict churches?

Ms. MURRILL. Absolutely not, and you know, I think it is we have had a lot of testimony this morning talking about the broad justification for some of these mandates, and remember, this went on for three years. It did not just stop and start and stop in the beginning, and they did not evolve downward in terms of less restrictions; they got broad—they were broader and broader and broader. And so, it was never neutral to say that you can—10 people can gather in a checkout line at Lowe's, but they cannot stand together at church that is not neutral, that is arbitrary. And if ten people stood in the line at Lowe's and held their hands together and prayed, that actually would not have violated the executive order I do not think.

And I would like to make——

Mrs. LESKO. Thank you. I have one more question to ask.

Ms. MURRILL [continuing]. To the good professor's responses——

Mrs. LESKO. Yes

Ms. MURRILL [continuing]. There is a legal limit on what the U.S. Supreme Court and the Federal courts can do with regard to state law, and that drove a lot of the decisionmaking. So it is simply not accurate to say that everything was—that got the big checkbook of approval——

Mrs. LESKO. Thank you. I have one more question. I am running out of time. Sorry.

I am going to read some emails that came from your lawsuit, Mr. Bailey, in *Missouri v. Biden*. One of them is from the White House, and it says: "Wanted to flag below tweet, and I am wondering if we can get moving on the process for having it removed ASAP. And then, if we can keep an eye out for tweets that fall in this same genre, that would be great."

Then there was another tweet. White House e-mailing Facebook pushing them to censor Tucker Carlson.

It says: Since we have been on the phone the top posts about vaccines today is Tucker Carlson saying they do not work. Yesterday was Tomi Lahren saying she will not take one. This is exactly why I want you to know what reduction actually looks like. If reduction means pumping out more vaccine hesitant audience with Tucker Carlson saying it does not work, then I am not sure it is reduction.

So they are kind of threatening Facebook in that case.

Mr. Schwartzman, in his testimony, believes that coordination between the White House and social media are unverified allegations.

Do you think they are unverified allegations?

Mr. BAILEY. Absolutely not. The emails that you are describing are the tip of the iceberg that establish not only coordination, but coercion and collusion from the very top of the White House across a spectrum of Federal bureaucratic agencies to establish a vast censorship enterprise that has gone beyond COVID. COVID was the Trojan Horse. That is the excuse to get the enemy behind the wall, and it is now spreading.

This time and the nature of these violations call for the necessity of a wall of separation to be erected between tech and state in

order to reserve our First Amendment right to free fair and open debate.

Mrs. LESKO. Thank you.

And I yield back.

Dr. WENSTRUP. I now recognize Mr. Mfume from Maryland for 5 minutes of questions.

Mr. MFUME. Thank you very much, Chair Wenstrup, and to the Ranking Member Ruiz for having this hearing. And I want to thank our witnesses for being here.

A couple of quick things. First an observation. I just believe that the title of this hearing is a bit narrow in scope, perhaps even misleading, to say churches versus synagogues. But in the district that I represent, there are churches, there are mosques, and there are synagogues, versus casinos, I should say.

So if we really are trying to draw a juxtaposition here and the assumption here is that only churches are affected and, therefore, only Christians were affected, so perhaps next time around, we would want to—if we believe in this, we would want to say churches, mosques, and synagogues.

And let us keep a force also the 1.1 million people who are not here, who died as a result of COVID. Oftentimes these hearings and these discussions talk about a lot. We do not oftentimes talk about them and their families. And I think, as I have said at every hearing, we have got to do that. We also, as I have said at every one of these hearings, have to realize and recognize, I think, that we were dealing with a public health emergency. And nobody had answers, and everybody was trying to figure out what was right, what was wrong, how do we protect each other and one another. I mean, I remember a time during the pandemic where people were washing their groceries that were left on their doorstep by a delivery person believing that there were germs on the Cheerios box that would infect their family.

So, you know, it just behooves us to remember how strange those times were, and how we did not know and why it was so very important that we found a way, until we did know, to protect people and as many people as possible. It is good to be a Monday morning quarterback, but the game of life is not played that way. And there are real winners and real losers, and the 1.1 million that died and their families are losers.

So I do not know if we ought to be blaming anybody and using the Constitution as a shield to suggest that in an emergency we should not do everything that we possibly could to get out of it.

Now, there is a lot of anger and a lot of angst that I hear over and over again. I hope this does not devolve into the Andrew Cuomo show, because that is not what we are about here. And, you know, I do not have an issue with Mr. Cuomo. He was not my Governor. But if you do, that is fine.

But the issue here is how do we find a way to talk about what we did and why it made sense at the time and not to condemn.

Some of my colleagues have suggested that public health measures implemented during COVID-19 deliberately placed a disproportionate burden on communities of faith, hindering their ability to freely practice their religion. And while there are variances of that theme throughout the country, one thing is clear, that

churches, synagogues, and mosques found a way to get around any restrictions that might exist to be able to worship. Was it corporate worship with 1,000 people in the same room? No.

But I just find it a little offensive to suggest that as a Christian, I did not worship, my church did not worship, my family did not worship. I have got friends who are Jewish and friends who are Muslim who tell me the same thing, that they either found a way to do it virtually or, like we did, we would meet outside as you heard from my colleague during the cool months, and then when it got cold, we would worship in our homes with our family members and our neighbors.

So if you really are trying to practice your faith, you are really not going to let a pandemic and the restrictions that are imposed at that time stop you from doing it. I just—maybe I am a different kind of person, but I have seen what is happening and what continues to happen, and how religions are practicing worship, and are doing so even now that the pandemic has come to a conclusion.

So if you look at the Journal of Infectious Diseases, they compare the COVID-19 spread in states with and without stay-at-home orders and found out, as we all know, that states with stay-at-home policies were more successful in slowing the spread of the disease in the weeks and months following the initial outbreak than those that did not.

There are some lessons to be learned here. And I understand the anger and the frustration, but we are in real time when this was taking place, and this is real time now. So I have always had a hesitancy of pointing backward and saying, “This is to blame, you are the blame, that is the blame,” when the key was how do we find a way to save lives? How do we protect our families and families around us, and how do we use the most sensible policies at the time to be able to do that, policies that clearly now have shown to save lives? We just did not save that 1.1 million Americans that are no longer with us.

I yield back, Mr. Chairman.

Dr. WENSTRUP. I would like to take the opportunity to appreciate your discussion on the title of this hearing because, clearly, more than one religious faith was negatively affected through this process.

I now recognize the Chairman of the full Committee, Mr. Comer from Kentucky, for 5 minutes of questions.

Chairman COMER. Thank you, Mr. Chairman. I want to thank our witnesses for being here today.

We have heard about radical policies enacted by our state and Federal Governments in response to the COVID-19 pandemic. Ms. Murrill brought up the sad fact that in my home state of Kentucky, they banned drive-in church services, encouraged Kentuckians to report those who disobeyed. This hardly sounds like America. Unfortunately, these Orwellian policies and practices appear to have been carried out at the highest levels of our government.

During this Select Subcommittee’s hearing earlier this month, I asked Director Walensky a series of questions about the CDC’s involvement in censoring discourse on social media. Director Walensky testified that she was unable to answer any of my ques-

tions about the CDC's involvement in online censorship due to it being under litigation in the courts.

Attorney General Bailey, I understand you have active litigation against the Biden Administration regarding their participation in online censorship. Is that right?

Mr. BAILEY. Yes, sir.

Chairman COMER. Attorney General, do you believe that CDC and other government officials or agencies worked with Big Tech to censor dissent about COVID vaccines?

Mr. BAILEY. Absolutely.

Chairman COMER. Did they ever recommend or encourage censoring posts suggesting that vaccines prevent the spread of COVID-19?

Mr. BAILEY. There was an active suppression campaign as detailed in email exchanges between, at a minimum, the White House and Big Tech social media corporations from March to May 2021 as recited by one of the other members and offered as evidence in our suit that demonstrate that the target of the suppression was anyone that questioned the effectiveness of the vaccine.

Chairman COMER. So did they ever recommend or encourage censoring individuals that dissented public views about vaccines?

Mr. BAILEY. Absolutely.

Chairman COMER. Do you believe that CDC or other government officials work with private companies to influence the censorship of information about the origins of COVID-19?

Mr. BAILEY. Absolutely.

Chairman COMER. Did they ever recommend or encourage censoring posts suggesting that COVID-19 may come from a lab?

Mr. BAILEY. Yes.

Chairman COMER. Wow. Funny that you can answer my question, but Director Walensky could not.

According to documents released by your office, White House officials appear to have colluded directly with social media companies to censor and suppress opposing views related to COVID-19.

One email appears to show White House Digital Director Robert Flaherty telling Google that social media companies having a handle on vaccine hesitancy generally is a concern that he shared at the highest—and I mean highest—levels of the White House.

Attorney General Bailey, do you believe it is constitutionally defensible for the White House to collude with social media companies to censor opposing scientific viewpoints?

Mr. BAILEY. No. That is targeted censorship by the government of core protected political speech.

Chairman COMER. So do you believe the Biden Administration violated the First Amendment?

Mr. BAILEY. Unequivocally, yes.

Chairman COMER. Now, what is most shocking about all of this is that the Biden Administration was censoring facts simply because they disagreed with them. We know the vaccine did not stop catching COVID nor transmitting it, and we know the vaccine has had side effects. And the more we learn, COVID-19 came from that lab in Wuhan. They censored Americans because they did not like what they were saying.

Attorney General Bailey, would you agree with that?

Mr. BAILEY. Yes. And I believe that in Dr. Anthony Fauci's deposition, he accurately characterized the President's position on this matter, and his Administration's position on this matter. Dr. Fauci could be characterized in his deposition as saying that if he disagrees with it, if he does not believe it to be true, then Americans should not have free, fair, and open debate on that topic. And it is a scary world if the government gets to determine what is true rather than the citizens debating those topics and coming to the veracity of the claims on their own through free, fair, and open debate.

Chairman COMER. Unbelievable, unbelievable. History will not be kind to the tactics that the Biden Administration used to censor speech in America simply because they disagreed with people's viewpoints, especially now that history has shown that many of those dissenting voices were actually correct on not just their concern about the vaccine, but also their theory on the origin of COVID-19.

Thank you again for being here and the work you are doing.

Mr. Chairman, I yield back.

Dr. WENSTRUP. I now recognize Mrs. Dingell from Michigan for 5 minutes of questioning.

Mrs. DINGELL. Thank you, Mr. Chairman.

Throughout today's hearing, we have repeatedly heard mischaracterization after mischaracterization about public health tools that were designed to keep communities safe, especially the safe and effective COVID-19 vaccines that helped save lives. And for all of you—this Committee has heard it—there is no one that was more afraid of that vaccine than me. I got Guillain-Barré from a flu shot, and I was scared to death. And you are talking about I did wash my cereal before I brought it in the house. I wore gloves. There are videos of me cleaning my colleagues' seats. I studied and I studied and I studied, and I talked to doctor after doctor after doctor.

So I want to hear, having said that—and what I am really worried about at today's hearing and about everything else is that what is the right of people when you are in a community setting of—I am going to use measles as an example. We are seeing the outbreak of measles again in communities, because people are becoming afraid of having those vaccinations. So what is individual right versus community right? And I think it is becoming more complicated, and these discussions contribute to it.

Right now I want to take a moment to correct the record. When President Biden first unveiled his national strategy for the COVID-19 response and pandemic preparedness in January 2021, more than 3,000 people were dying each day from this virus. At this time, vaccines were the strongest tool we had in our toolbox to prevent more suffering and more death, and they continue to be.

It is because of President Biden's steadfast leadership in standing up—which, by the way, I give credit to President Trump. He started it. And then we got it, and we got a vaccine program in our Nation's history. We got this because of President Trump's work. We got this faster than any we have seen. We stood up the fastest successful vaccine program in our Nation's history that were able

to save another three million American lives and prevent another 18 million hospitalizations.

And while the success of the COVID-19 vaccine rollout was historic, there are lessons we need to learn from this pandemic that we need to apply for the future public health crisis.

But I will also say to you, the primary lesson is how do we ensure people are getting accurate, reliable information so that they can make informed decisions about their health, when over the course of the pandemic, we did see falsehoods about COVID-19 and vaccines flourish online, misinformation and disinformation. The claims that the vaccine will alter your DNA—by the way, I believed it at first. I went and talked to about 100 people. I got as scared as anybody did. And doctors that were really respected said, Debbie, you are crazy. And I probably was, but I looked at it.

And they also said they would make you magnetic. They served to dissuade—and, by the way, I also had a family member that almost died that took hydroxychloroquine. But it dissuaded people from getting vaccines and protecting their health.

So, Professor Schwartzman, I am going to go back to you. I want to get your thoughts. In the United States, freedom of speech is constitutionally protected, right? But does that mean free speech comes without consequences, particularly when it is exercised to recklessly amplify dangerous disinformation as we saw throughout the COVID-19 pandemic?

Mr. SCHWARTZMAN. You have a right to freedom of speech. But, of course, all rights can be abused, and they are abused in this case through misinformation and disinformation as you said. The government also has a right to engage in speech of its own to explain its views, to explain vaccine safety and effectiveness. They can engage in speech, counterspeech to correct that kind of misinformation. And it can communicate messages to private actors who can engage in moderation of their own.

Mrs. DINGELL. So there is a May 2022 Brown University study that found that the sort of abuse of free speech contributed to approximately 319,000 preventable deaths. To combat the spread of this dangerous misinformation, social media companies maintain their own independent system to verify the types of claims that I mentioned earlier. While these processes are far from perfect, they have had the potential to serve an important role in combating the proliferation of dangerous posts and videos, many of which still slip through the cracks.

Professor Schwartzman, the constitutionally protected guarantee of free speech does not apply to private platforms such as those maintained by social media companies. Is that correct?

Mr. SCHWARTZMAN. That is correct. Under existing doctrine, social media companies are not state actors who are bound by the First Amendment. They are given protection for content moderation under Federal law.

Mrs. DINGELL. I have more questions I would like to submit for the record.

Thank you, Mr. Chair, and I yield back.

Dr. WENSTRUP. I now recognize Dr. Joyce for 5 minutes of questions.

Dr. JOYCE. Thank you, Chairman Wenstrup and Ranking Member Ruiz, for holding this hearing. And thank you to all of the witnesses for testifying before our Committee today.

This Select Subcommittee on the Coronavirus Pandemic was convened because Americans deserve answers. They deserve to know the truth behind the COVID pandemic, and they deserve to know that we are looking to hold those accountable for gross mishandlings, erroneous policy decisions, and mass confusion during a time of national uncertainty.

We are tasked with analyzing and scrutinizing these failures, what contributed to the rolling out of these arbitrary policies, and how we could have avoided the millions of tragic outcomes that resulted only from those rollouts. Then, and only then, will we be prepared and better equipped to respond effectively and sensibly amidst other inevitable mass public health emergencies.

States across our country, including my home state of Pennsylvania, imposed erroneous policies and restrictions all in the name of public health. Measures like mandating vaccines to our frontline healthcare workers, members of our Nation's military and our children, these mandates had severe repercussions. I agree with my colleagues that there are lessons that need to be learned, and that is one of the main purposes of this Select Subcommittee.

Let us address COVID in children. Children were subject to the same vaccine mandates for the coronavirus, a virus that we know did not affect young and healthy individuals in the same manner that it did our vulnerable population. These mandates exposed our youth, our children, to potentially harmful side effects of the messenger ribonucleic acid (mRNA) vaccine.

Ms. Murrill, your testimony was riveting. In that testimony you state that these mandates were absolutely unnecessary and likely did far more damage than good.

Can you please expand on this and the impact that it had on your home state?

Ms. MURRILL. Yes. Thank you for that question.

You know, I have both my official experience and my personal experience with the mandates. And on the official side, we saw rapidly expanding mandates that we believed and that we issued opinions about saying that they violated state law, the State Constitution and the Federal Constitution.

On the individual side, my son received the Pfizer vaccine when he was 17. And after the second dose of the vaccine, he landed in pediatric ICU for a week with myocarditis, pericarditis and spent a week in the hospital as a result of an adverse effect of this vaccine.

And I have heard testimony here today about studying and studying and studying. I, too, studied the information that was available. The problem was all the information was not available because government was censoring the information that was available. And so people's decisionmaking was impacted by that, and we made decisions that put us and our children at risk.

My child now has a permanent annual visit with a cardiologist, and it was a \$100,000 medical bill. This could have been stopped by conducting simple blood tests on minors and conducting accurate research instead of trying to implement and defend the gov-

ernment's decision to vaccinate minors when the research did not support that.

Dr. JOYCE. Transitioning to the fact that many states forced businesses who they deemed were, quote, "nonessential" to shut their doors, these nonessential businesses, the mom-and-pop shops that line many main streets in any town throughout the United States were forced to close. And, unfortunately, some of them never reopened.

These small businesses are essential. They are essential to the communities that they serve, to the livelihoods of the people and families who own them, and to those who are employed by them.

In fact, according to U.S. Bureau of Labor statistics, more than 30 percent of small businesses in my home state of Pennsylvania closed their doors due to a government mandate, and all the while allowing large corporations, like Target, to keep their lights on, their doors open, and their registers flush with cash.

Ms. Murrill, this hearing is about examining the constitutionality of Federal, state, and local government actions in their response to the COVID-19. Is there any sound justification for any of these three levels of governments to prioritize a multibillion-dollar company, like Target, over the small businesses that are the backbone of so many communities?

Ms. MURRILL. None. And it does enormous damage to our country to destroy those small businesses, and leave standing only these big box businesses where you have taken out really what is the backbone of our communities, the small businesses that operate across the country.

Dr. JOYCE. I agree. And I think that is the purpose of the Select Subcommittee, to shine a light on these problems that have been created by these mandates.

Mr. Chairman, my time has elapsed, and I yield back.

Dr. WENSTRUP. I now recognize the Ranking Member of the Full Committee, Mr. Raskin, for 5 minutes of questions.

Mr. RASKIN. Thank you, Mr. Chairman.

Professor Schwartzman, if public health authorities flag dangerous medical misinformation or disinformation online for private tech companies, which have their own independent processes for assessing and addressing misleading content online, does that constitute a violation of the First Amendment?

Mr. SCHWARTZMAN. Under existing doctrine, it does not. The government is entitled to engage in speech of its own, to take its own viewpoint and to communicate that viewpoint to private actors, including social media companies. I do not know of any court or jury that is reached a final decision to contradict that conclusion.

Mr. RASKIN. Well, does not that accord with common sense? The police can speak to the public, the fire department can speak to the public, the water department can speak to the public. Is there something that would uniquely disable public health authorities from speaking to the public?

Mr. SCHWARTZMAN. No, that is correct. Representatives of our government are elected to speak to the public about all of these views.

Mr. RASKIN. All right. Some of my colleagues have decried censorship during the pandemic, but posts and videos pushing un-

founded, scientifically unfounded claims about COVID continue to rack up views online. For example, Media Matters found that just 18 videos with lies about COVID-19 were viewed 20 million times. These are not just extreme opinions. They are falsehoods.

No credible study has substantiated GOP claims that their viewpoints are being censored online. In fact, in an October 2021 internal report from Twitter found that in six out of seven countries studied tweets posted by accounts from the political right receive more algorithmic amplification than tweets from the political left.

In fact, a comprehensive report completed by NYU Center for Business and Human Rights found that by many measures, conservative voices often are dominant in online political debates. For example, outlets like Fox News and Breitbart received the most interactions on Facebook posts, more than any other media outlet on the platform.

Mr. Chairman, I request unanimous consent to enter this report into the record.

Dr. WENSTRUP. Without objection.

Mr. RASKIN. Look, my friends, real government censorship in America is coming from the right. GOP-run legislatures are passing laws to stop teaching about slavery, reconstruction, Jim Crow laws, White supremacy in our history. And right-wing groups are working all over the country to censor books like "The Handmaid's Tale," "1984," "Beloved," even my book "We the Students," which was sponsored by the Supreme Court Historical Society, has been removed by the Texas State Board of Education.

According to the American Library Association, last year alone saw the highest number of attempted book bans since ALA began compiling data about censorship in libraries more than 20 years ago. The more than 1,200 attempted bans last year constitute more than twice the already record-breaking number of attempted bans in 2021.

Now, do these attempts to remove books from the library or to censor curriculum or to punish teachers for teaching about a forbidden or taboo subject, do all of these actually raise serious First Amendment problems, Professor Schwartzman?

Mr. SCHWARTZMAN. They do. To the extent that the government is engaging in message-based or viewpoint discrimination and coercing private actors to conform with the government's view, they do raise serious First Amendment concerns.

Mr. RASKIN. All right. Well, why do you think the language of censorship is being used to describe totally normal activity by public health authorities to get the word out about a pandemic by people who are themselves implicated in trying to censor books and curricula and teachers?

Mr. SCHWARTZMAN. I think what is going on is an attempt to use the word "censorship" to suggest that the government is engaging in coercion of private actors when, in fact, what is happened is that social media companies and others are forming independent judgments about content moderation. And yet, on the other side, as the examples you have given suggest, we see serious efforts to curtail private speech.

Mr. RASKIN. All right. I wanted, at least, start to get into the whole question of free exercise of religion. The Supreme Court in

the Oregon v. Smith case laid out the general test, which is if you have a neutral universally applicable law that incidentally burdens religion, that does not violate free exercise. But if you have a law that deliberately sets out to oppress religion or violates someone's right of worship, that does. That is the Church of the Lukumi Babalu Aye case, right?

Okay. So if I get another moment, Mr. Chairman, I would like to talk about whether we are talking about incidental burdens or deliberate efforts to restrict people's religious expression.

Thank you for your indulgence. I yield back.

Dr. WENSTRUP. Go ahead and answer his question.

Mr. SCHWARTZMAN. I would just say yes, that correctly describes the constitutional test, and what we are talking about, in most of these cases, are incidental burdens on religion, and not direct targeting.

Dr. WENSTRUP. I now recognize Dr. McCormick from Georgia for 5 minutes of questions.

Dr. MCCORMICK. Thank you, Mr. Chairman.

You know, I cannot speak to everybody's experiences during this pandemic, but I can only speak to my own, specifically, as an emergency medicine physician who served during the entire pandemic, somebody who was censored, somebody who is censored on multiple platforms for having my own opinion in medicine as a professional. I consider myself an expert since I have treated thousands of COVID patients, and I have studied the literature, studied the science. Nevertheless, somebody on the other side of the universe of foreign application have been able to censor me, and I thought that was very unfair.

I want to talk about the constitutionality of that a little bit. And since you guys are the experts, you will be able to give me insight on to that. It is interesting—by the way, I would also note that almost everything that I said that I was censored for has turned out to be true, even by the admission of people that we have interviewed during these hearings. So I just want to add that as an interesting caveat of what we are censored for, because it turns out that opinions are necessary by medical professionals in order to determine what is true as we debate the science, if you will.

With that said, specifically in Big Tech companies, and constitutionally and protected speech, Mr. Bailey, would you mind elaborating on some of the specific findings so far from the Missouri v. Biden case that would just apply to the constitutionality of what I just addressed?

Mr. BAILEY. Absolutely. First let me say that there are numerous examples where President Biden himself, Vice President Kamala Harris, other officials with the White House, including former press secretary Jen Psaki, have explicitly called for the repeal of Section 230 of the Communications Decency Act, which is a boon to social media corporations, an enormous financial benefit to these corporations if the corporations do not enhance their censorship policies. Then agents, acting on behalf of the Federal Government, go to social media, make more specific targeted requests of censorship. It is a relationship of coercion and collusion. It is not Big Tech acting on their own, that would be bad enough. But in this instance, as we have demonstrated through more than 1,400 numbered para-

graphs of specific allegations backed up by evidence and documents that are available in our lawsuit. It is targeted, it is specific, and it is at the behest of the Federal Government. And as Ron Flaherty, the Director of Digital Communications at the White House, opined, it goes all the way to the very top of the White House. It has grown so far that they need to establish additional bureaucratic structure to manage it.

But the remedy for disfavored speech in this Nation has always been counterspeech, as you point out, not government censorship. In fact, government censorship is counterproductive to the public's pursuit of truth. The founders knew that. That is why they included it as the very First Amendment in the United States Constitution.

And I would also point out, as I stated, that it is in times of crisis and emergency when we must be most vigilant in protecting those sacred and foundational rights.

Dr. MCCORMICK. Thank you for your testimony. I could not agree with you more wholeheartedly, especially, once again, seeing how unfair and biased the censorship has been as far as my experience has gone, especially since the evolution of this, the opinions, and the science throughout history has shown that a lot of times a dissenting opinion ends up being the truth.

As I mentioned before when I was censored about things that sometimes turned out to be true, can you also elaborate on the constitutionality of the forced mandates of masks by Federal, state, and local governments, Mr. Bailey?

Mr. BAILEY. Absolutely. Free speech is about not only speaking, but acting a certain way as well, and we have got to be vigilant in protecting that. And when we see forced mask mandates that are not backed up by science or evidence, when we see the suppression of conversations about the effectiveness of masks, those undermine the rule of law, and they reduce the credibility of the outcome of the conversation because it is an unfair debate. It is a one-sided debate. And when the government uses its heavy hand to suppress that speech, people cease to trust the outcomes, and it undermines the rule of law and faith and confidence in the government.

Dr. MCCORMICK. So you consider it unconstitutional?

Mr. BAILEY. In many instances. I would need more facts and specifics.

Dr. MCCORMICK. And specifically I would like to point out that maybe it has some constitutionality, but in the same sense that this is why it is very important that we pick the right government officials that actually lay down these laws and guidelines. That is why elections matter.

Beginning in 2000—I am almost out of time, so I will have to submit my last question online, because I want to respect the time for the hearing.

Thank you.

With that, I yield.

Dr. WENSTRUP. I now recognize Mr. Moskowitz from Florida for 5 minutes.

Mr. MOSKOWITZ. Thank you, Mr. Chairman. And thank you to the Committee for letting me waive on.

In a previous life, before I got here, I was the director of emergency management for the State of Florida and handled the first 18 months of the COVID response for Governor DeSantis. And I worked with both administrations. I worked with the Trump Administration all the way until he lost the election, and then I worked with the Biden Administration in the rollout of the vaccine.

I can tell you what both administrations did extremely well. I can tell you what both administrations did extremely poorly. But what I cannot, for the life of me, understand, is that every time we talk about COVID, we talk like it started on Joe Biden's inauguration day, like COVID-19 started on January 15.

Mr. Schwartzman, just to remind everybody who is watching, who was President when COVID came from China and infiltrated the country?

Mr. SCHWARTZMAN. President Trump.

Mr. MOSKOWITZ. Okay. And so I know we forget that when we ask the questions about what government did and government's response and was it proper. There were two administrations that had a response.

And so let us dive into that. You know, do we forget that the Trump Administration was so unprepared for the pandemic that they literally had to change the expiration dates on PPE, masks, gowns, gloves, things that had expired that they told doctors and nurses, Oh, yes, yes. Do not worry about the expiration date. We will have the CDC just change—the FDA just change the expiration date.

And, in fact, we had to turn to the country, China, that allowed the virus to come here for almost all of our supplies. So the country that allowed the virus to come here that killed over a million Americans, we had to turn to them for our entire response. It is probably why Trump said, I do not know, things like: China has been working very hard to contain the coronavirus. The United States greatly appreciates their efforts and transparency. It will all work out well. In particular and on behalf of the American people, I would like to thank President Xi.

By the way, I will only do that once because I did this in a previous committee. He does that for like a whole month, like 20 times.

You know, I want to bring up something else because I found it an interesting conversation. We have a First Amendment in this country, which is what we can do, but I want to ask Mr. Bailey a question of what we should do.

Mr. Bailey, we can debate things in this country, but I want to ask a should question, and I am going to use an extreme example. Okay. So I am not trying to set you up.

Do you think we should debate whether the Holocaust happened in this country? I know we can debate it. Do you think we should debate it?

Mr. BAILEY. I think we should fight to protect core political speech in this Nation, even disfavored speech, and the best remedy is counterspeech, not government censorship.

Mr. MOSKOWITZ. So you agree with me that we can debate it. I agree we can. I am not disagreeing. Do you think we should? Do you think we should debate whether the Holocaust happened,

whether six million Jews were killed, ten million people? Do you think we should debate whether Hitler was a bad guy? Should we debate that?

Mr. BAILEY. That is not an issue in the lawsuit that we filed that I am here to talk about, and I will stand by my answer.

Mr. MOSKOWITZ. Okay. My point—and I understand why you did not want to answer, because I know your answer. No, we should not debate it. You do not want to say that because it shows that there is a distinction of whether we can debate things under our rights versus whether we should debate them, because should debating them could cause a lot of harm, and that is what happened in COVID. We can debate things in this country, but there was a whether we should debate them and whether the “should” would cause tremendous harm.

I want to turn to something else. Donald Trump said this: My Administration is recommending that all Americans, including the young and healthy, work to engage in schooling at home, avoid gatherings in groups of ten or more, avoid discretionary travel, avoid eating and drinking at bars and restaurants and public food courts.

That was his slow-the-spread recommendations, no more than groups of ten. He extended those recommendations to April 30. Well, you know what came before that? Easter. It was Donald Trump who recommended to all of the Governors in this country to not be open for Easter because you could not gather in groups of ten or more.

So the first one to close the churches, to affect religion was not Joe Biden. It was Donald Trump, when he recommended to the Governors to not allow people to gather in places of ten or more.

And so, what I do not understand is we should be talking about how this stuff never happens again. I agree with you, there are things that happened that should never happen again. But the way we make sure they do not happen again is by preparing, is by fixing the supply chain issues, by making sure we are ready to face the next pandemic. We should be doing it on a bipartisan basis rather than just continuing to be aggrieved.

I yield back.

Dr. WENSTRUP. I now recognize Ms. Greene from Georgia for 5 minutes of questions.

Ms. GREENE. Thank you, Mr. Chairman.

I would like to remind my colleagues across the aisle that President Trump said 15 days to slow the spread. 15 days is quite different from six months, one year, a year and a half, and even more. 15 days; big difference. And then he said reopen.

So just want to make sure that everybody is clear on that. We cannot rewrite history—

Mr. MOSKOWITZ. Would the gentlelady yield?

Ms. GREENE. No, absolutely not.

We want history to remain truthful.

Mr. Schwartzman, I listened to your testimony, and you said like all fundamental rights, religious freedom has limits, especially when exemptions impose serious harms on other people. As Justice Robert Jackson once said, according to you, the Bill of Rights is not a suicide pact. You said under current law, particularly when the

government has a compelling interest, such as permitting the spread of a deadly pandemic, it can impose restrictions on even the most cherished and important of our individual liberties as long as it does so evenhandedly.

Mr. Schwartzman, casinos were mandated to cap at 50 percent capacity, but yet churches were capped at 50 people, did not even matter how many people were in their congregation.

Do you consider that evenhandedly?

Mr. SCHWARTZMAN. I am not a public health official—

Ms. GREENE. That is a “yes” or “no,” Mr. Schwartzman.

Mr. SCHWARTZMAN. Well, I think that is a question that you would have to ask Nevada state officials. And the Supreme Court when it decided Calvary Chapel on July 24, 2020—

Ms. GREENE. Mr. Schwartzman, I am asking you. I am asking you do you consider, in your opinion, that evenhandedly?

Mr. SCHWARTZMAN. The Court recognized I think that 1,100 people in the United States died the day that the Supreme Court made that decision, and it was for local officials to respond to those conditions on the ground as they saw fit and—

Ms. GREENE. Mr. Schwartzman, shutdowns that supposedly prevent the spread of a virus caused suicides to increase in every single age group, of all ages, but especially the highest in teenagers.

So do you consider that evenhandedly?

Mr. SCHWARTZMAN. I would say when the Supreme Court decided the New York case, 2,200 people died that day. When it decided the school closing case in December, 3,500 people died that day.

Ms. GREENE. So, Mr. Schwartzman, you believe that teenagers should commit suicide because people with comorbidities, such as obesity, and people at very high risk of dying from COVID-19 is okay as long as the Supreme Court says so?

Let us move on.

Mr. SCHWARTZMAN. Absolutely not.

Ms. GREENE. Liquor stores and marijuana dispensaries stayed opened, stayed open, liquor stores and dispensaries, but gyms had to close. And obesity was one of the leading comorbidities. That is not evenhandedly. That is actually wrong that they shut down gyms.

Let us talk about was it right to put COVID patients in with our grandparents and parents in nursing homes, actually murdering them. Do you consider that evenhandedly?

Mr. SCHWARTZMAN. With respect. The risks of the various kinds of activities that you are describing varied greatly in public health officials, used scientific assessments and data to distinguish those kinds of activities and to regulate accordingly.

Ms. GREENE. So you are talking about, like, Dr. Richard Levine, the man that calls himself supposedly Rachel Levine, when he pulled his own mother out of nursing homes in Pennsylvania, but in his job he was able to create the order to keep COVID patients in the nursing homes instead of sending them to hospitals. He pulled his own mother out. So officials like him were the experts.

So do you consider that evenhandedly?

Mr. SCHWARTZMAN. I am not familiar with that case.

Ms. GREENE. Well, you should be familiar with it. It is pretty bad. He is our Deputy Secretary of Health and he should not be.

Governments coordinated with social media to censor COVID misinformation, especially like mine when I put up the fact that there were an exorbitant amount of reports on the Vaccine Adverse Event Reporting System (VAERS) reporting system over the COVID vaccine, but yet, there were very little about other vaccines. And then the government coordinated with social media companies to make sure people like me had our accounts suspended while they allow porn to proliferate, anyone is allowed to attack Donald Trump, anyone is allowed to say anything else as long as they stuck with the talking points of COVID and did not spread COVID misinformation.

I am sure you have a Supreme Court case to quote on that. Do you consider that fair that the government coordinated with social media companies to censor the First Amendment rights of Americans?

Mr. SCHWARTZMAN. In fact, there is no Supreme Court decision on this question. And there are, as far as I know, no Federal court decisions that have found any kind of final judgment or based on any kind of jury verdict any kind of collusion on the grounds that you are describing.

Ms. GREENE. You are so misinformed. There is actually plenty of proof that the government colluded with social media to censor people, and I am one of them right here, and I was a sitting United States Member of Congress.

I want you to know the Bill of Rights is not a suicide pact. It is important because it protects our rights.

I yield back. Thank you, Mr. Chairman.

Dr. WENSTRUP. I now recognize Mr. Garcia from California for 5 minutes of questions.

Mr. GARCIA. Thank you, Mr. Chairman.

Well, first, in reference to what we just heard, that was incredibly appalling, transphobic, jokes about suicide. And, of course, these attacks on religion and on the response today have been really, really hard to hear and hard to see.

And I know we have been talking a lot about religion and our rights as Americans, and so, I think we should probably review that a little bit and actually talk about what actually somebody and a Member of the Subcommittee has actually said about religion.

Ms. GREENE. Point of personal privilege.

Mr. GARCIA. I just want to—I am just—

Ms. GREENE. He is attacking my character.

Mr. GARCIA. I have not attacked anyone's—I have not said anyone's name actually, so I am not attacking anyone's character.

But let us go ahead and read some of these quotes that a Member of this Subcommittee has actually said. These are public quotes about religion. Let us go through those. I will start with the first one—personally, by the way, I am Catholic. I am proud to be Catholic, and I take this quote as very offensive. The quote goes: "Satan's controlling the church. The church is not doing its job." This comment was made just in 2020 by a Member of this Subcommittee.

Here is another recent quote, the Politico report ahead of the 2020 elections. The same Member of the Subcommittee said that

Muslims, quote, “do not belong in our government.” I also find that very offensive.

This same representative of the Subcommittee has mocked and vilified Muslim Members of Congress saying they represent—and I quote—“an invasion of our government and accuse them of being terrorist sympathizers because of their religion.”

This same Member of the Subcommittee claimed that Jewish bankers were starting wildfires with lasers from space. And the same Member compared vaccine requirements to the Holocaust.

And so these attacks being made by this Member I find pretty disgusting comparatively looking at the record of what this Member has actually said.

But we have been talking about the pandemic, or that is what I thought we were going to talk about today. So let us talk about the pandemic and focus on the President who was actually there when the closures first started. And that was, of course, former President Donald Trump.

Now, Donald Trump has also made numerous bigoted statements about Muslims, Jewish people, and many others. We have all seen those press reports. I will not go through them in my short time today. But this hearing is about COVID, and so let us talk about what actually the President did.

And really briefly, Mr. Schwartzman, will you concur that when the closures first started, including at religious institutions, that the President was actually Donald Trump?

Mr. SCHWARTZMAN. Yes, of course.

Mr. GARCIA. And let us talk about some of the highlights. Out of the gate, Donald Trump and his Administration stumbled. They got testing wrong early on due to the Administration opted, as we know, to use its COVID testing protocol that contained design issues that set us back in our early testing. Tests were nowhere to be found. On PPE, Trump put his son-in-law, Jared Kushner, in charge of the supply chain task force. I mean, come on. He put together a group of volunteers that knew nothing and none had experience about supply chains or distribution experience at all. That is the task force that the President put together. Huge failures on PPE and getting access across the country to cities like mine where I was mayor of. In fact, Republican Governor Larry Hogan said at the time—and I quote—“Waiting around for the President to run the Nation’s response was hopeless”.

And so we have got to be honest with the American people about what Trump actually did during that time and some of the things that Donald Trump said. In fact, some of them are right here on this board. He said that we had it totally under control, quote. Quote, “One day it is like a miracle, it will disappear,” end quote. Another quote, “It is going away.” And another one, “It will go away and we are going to have a great victory.”

That was the mood and the statements made by the President that actually ordered many of these closures that all of you as witnesses are discussing today and that my Republican colleagues seem to love to forget that it was actually President Donald Trump that was there that actually led all of these closures that began happening.

So I think that if we really want to get to the bottom of what the pandemic closures were about, I think President Trump should be the one actually addressing these questions at this hearing.

So I just want to say, finally, that the direct result of this incompetence that happened in that Administration, which, by the way, President Biden helped fix, cost as many as 200,000 lives that were lost needlessly in those first few months during the pandemic.

And so, we want to talk about religious discrimination. We want to talk about preparedness for the pandemic, but we refuse to talk about the failures of the Trump Administration and how it cost lives in this country. That is what started this mess. That is what we should be talking about.

And with that, Mr. Chairman, I yield back.

Dr. WENSTRUP. I now recognize Ms. Tokuda for 5 minutes of questions.

Ms. TOKUDA. Thank you, Mr. Chair. I would like to yield my time to Mr. Raskin.

Mr. RASKIN. I thank the gentlelady for yielding.

I appreciate the comments of Mr. Garcia, who reminds us that the closures began under the Trump Administration—at the same time, actually, that President Trump was aggressively defending the Chinese Government and praising President Xi for his wonderful and speedy response to the coronavirus. And we have more than 20 statements in which President Trump praised the Chinese Government and their cooperation and his effective work with China.

But back to you, Professor Schwartzman.

We established that in the *Oregon v. Smith* case the Supreme Court upheld the ban on peyote use even though it did selectively burden the religious practice of adherents of the Native American religion, because it was a general ban that applied to everybody. It only really hurt one religion, but it was something that applied to everybody.

And the Court—Justice Scalia actually said that the test of a free exercise violation is whether it is part of a neutral, universally applicable law or whether it is adopted for the purposes of interfering with someone's worship and religious practice.

The counterpoint case is the *Church of Lukumi Babalu Aye* case where there was an ordinance in Florida that was gerrymandered to target the Santeria religion and their live slaughter of animals, saying, well, if slaughter of animals is bad it should apply across the board, including in supermarkets, on farms, and so on, but this is just targeted at this particular church.

So in order to clarify what is going on with COVID-19, we need to look at what the character of the different laws are. If a law said that people could not gather in groups of more than 15 and it applied to theaters, coliseums, weddings, funerals, church and synagogue and mosque services, political rallies, newspaper floors, factory floors, football and baseball games, would that violate the free exercise of religion?

Mr. SCHWARTZMAN. I think, as the Supreme Court interpreted the First Amendment in *Employment Division of Oregon v. Smith*, the peyote case that you mentioned, and in *Lukumi*, a law of that

kind would not violate the First Amendment because it would meet neutral and generally applicable.

Mr. RASKIN. Okay. And if a jurisdiction adopted a law that was just targeted at churches, saying that you cannot gather in groups of more than 15 in churches or synagogues or mosques, but it does not talk about football games, baseball games, factory floors, theaters, coliseums, other public events, would that violate the free exercise of religion?

Mr. SCHWARTZMAN. Yes. That would clearly fall under the standard that the Court adopted in *Lukumi* and it would be discriminatory.

Mr. RASKIN. Okay. So viewed charitably, at its very best, the purpose of this hearing is just to underscore what the Constitution already dictates, which is that governments in their pursuit of public health cannot selectively target churches for regulation, but have to make neutral, universally applicable public health regulations. Is that right?

Mr. SCHWARTZMAN. That is correct.

Mr. RASKIN. Okay. And if there are any that appear to be selectively targeted at religion, those have been struck down or should be struck down. Would you agree with that?

Mr. SCHWARTZMAN. I would.

Mr. RASKIN. Okay. So what are we really doing here? Well, we are here to state a truism about the Constitution, and then somehow to try to impugn the Biden Administration, which, as my colleagues have pointed out, inherited the nightmare and catastrophe of COVID-19 from Donald Trump.

His own COVID-19 adviser, Deborah Birx, has said we have lost hundreds of thousands of people in our country because of the reckless mismanagement of the pandemic when it first started by Donald Trump, who was living in absolute fairytale world, saying that it would disappear by Easter, it would magically go away overnight, everybody should just take hydroxychloroquine, inject yourself with bleach.

I mean, it is hard to recapture the lunacy of that period. But that is how it all began. And I am just amazed that our colleagues would think even to have a hearing and bring this up when it stands as such an embarrassment and debacle and disgrace in terms of the last Presidential Administration.

And it is the Biden Administration which finally got in control of COVID-19 and has allowed us to take off the masks and end the distancing and send the kids back to school, which the whole country, of course, wanted. But they would prefer to polarize it and divide the country over these matters.

I yield back to the Chairman.

Dr. WENSTRUP. I would now like to yield to Ranking Member Ruiz for a closing statement if he would like.

Dr. RUIZ. Yes. Thank you.

Over the course—by the way, amazing. What did you get, a single, two RBIs, what inning was it, in the congressional Baseball Game?

Dr. WENSTRUP. Were you watching the game?

Dr. RUIZ. I was watching the game. I saw those runs coming in.

Dr. WENSTRUP. It did go over your head, did not it?

Dr. RUIZ. Bring some levity into this. All right.

So over the course of today's hearing—he is a good ballplayer, by the way—over the course of today's hearing we have heard many accusations about the intent, like motivation, and implications of lifesaving public health measures during the COVID-19 pandemic, from social distancing to masking to vaccine recommendations. It is like we are stuck in the mud.

At end of the day, these measures were implemented to save lives during a deadly pandemic—a deadly pandemic—that ultimately claimed over one million lives in the United States, millions more hospitalized, and so many still suffering from long COVID symptoms.

When the COVID-19 pandemic took hold we were up against an impossible enemy, one that would not just one day, quote, unquote, “go away like a miracle,” as President Trump said. No, this was an enemy that we needed to work together to defeat.

And let us just be clear. Another pandemic can and will come, and we may see another public health threat like COVID-19 in our lifetimes. And every day that this Select Subcommittee turns a blind eye to this future threat or focuses on priorities with little impact, that we hold hearings that relitigate the past, again doubting vaccines or social distancing or masks, and that we promote harmful messages that undermine our public health, then we endanger the people we are sworn to serve and represent.

So let us just be clear about the facts. Public health policies were applied neutrally, based on risk, not with the goal of targeting people of faith. They are not coming after you or of a certain ideology. There was no weaponization other than trying to defeat a virus. Masks are effective at preventing transmission from an airborne virus, preventing the droplets from one person's mouth escaping into the air and infecting another person. It is not just common sense, the data shows it.

And vaccines, for people without any contradictions, are safe. And there are people with contraindications that the FDA has determined through their studies that should not be taking a vaccine.

I implore this Select Subcommittee to turn things around. I really do. Stop elevating harmful messages and please just focus on the public health to prevent and prepare for the next pandemic.

Look, let me just reiterate, social distancing is a risk-mitigating, science-based factor. Data proves that people who are further apart are safer from the spread of this airborne virus.

When we create a narrative that the social distancing was somehow targeting people of faith versus others, then it is going to create a defensive reaction and doubts on whether or not this is based on real science and it is a partisan political witch hunt against people that are being targeted, when in fact it is risk based, applied neutrally.

People will then not want to abide by social distancing or use common sense and disregard these, and therefore they put themselves at risk and others at risk.

Masks. Again, masks block airborne droplets from escaping somebody's mouth. And if everybody wears it, the amount of airborne droplets from people's mouths decrease, and therefore you have decreased transmission and the spread of a virus.

If we start to cast blame on masks or doubt that they work, a simple mask, a simple tool, then people will not want to wear masks, putting others at risk if they are carriers of this virus.

Saying things like the vaccines just do not work, we know now, like, there is some data showing that vaccines do not work. In fact, every single piece of data has shown and real-life experience has shown that vaccines help prevent the spread of this virus. It helps decrease death. It has helped decrease hospitalizations. And for some people it prevents getting the virus, and for some people it prevents spreading the virus, in fact a lot of people.

So by casting blame and speaking about these—focusing on these dangers of the virus, or saying they do not work, people are going to be less inclined to take the vaccine when we know that they work.

So that is why, when we are stuck in this mud of whether social distancing was arbitrary, or that it is not scientific, or that it does not work, or masks the same, or that propagating fear on a vaccine in a mass level, then you are actively discouraging the actual tools that will help prevent not only their lives, but the lives of other people—prevent people from getting sick or dying and preventing other people from getting the virus and dying.

So you see, during a pandemic it is not easy to simply say it is my right and I am not going to participate and I am willing to take the high risk of getting infected when getting infected could possibly infect somebody else and can kill somebody else if you are reckless and having the virus, being sick, knowing it could be COVID, going into a crowded area and spreading it to everybody else. What about those individuals who are taking a science-based approach and trying to mitigate their harm?

So I implore this Committee to seek answers to these following topics.

What are the best practices or preventative measures that kept schools and children safe?

What were those phased, layered mitigation practices that the CDC recommended that actually worked so that we can equip our schools now for the next airborne pandemic so that we do not have to shut down schools?

Next question. What are the best practices in preventing droplets from a person's mouth carrying viruses and spreading it in the air?

Are there technologies that we can use?

Is there a certain amount of precautions that we can do so that we do not have—we have another mitigation effort, so we do not have to close schools or businesses or places of worship?

A next question that we can focus on in this Committee that is of high impact to prevent a next pandemic and mitigate the harm: the vaccines.

Beyond debating whether the vaccines are good or bad or harmful—because the science now shows that this vaccine worked and it helped us get back into schools, into jobs, and reopen our communities, we did not have to do social distancing when you have your vaccine.

So this is the question. What did the Trump Administration do well in the Warp Speed project to develop the vaccines as quickly as they did, so that we can replicate it in the next pandemic?

And what did the Biden Administration do well in the largest vaccination campaign in history that got us back in schools, back in churches, so that we—and do we have the infrastructure in place to do it again and replicate it and maybe learn from it and do better at it?

How about another question. So let us assume that the virus leaked from a lab. It is a possibility. Right now, the data is inconclusive. Some say yes. Some say it is animal transmission.

Do we have the appropriate international incentives, guidelines, safety standards, and agency agreements internationally for inspections, transparency, in order to prevent a lab leak of this magnitude from happening anywhere in the world? What are the ramifications? What are the accountabilities?

Another question, because I was asked if we have any. Let us say this was an animal transmission. Now, do we have the appropriate international agreements and infrastructure set up to identify the highest-risk locations of where animals can transmit viruses to humans, have screenings, appropriate screenings and testings?

Do we have an international group of agreements where we can work collaboratively to rapidly contain a virus of this magnitude so it does not spread from that host area, including our own country?

What did we learn about travel?

What did we learn about being able to identify an early virus and prevent it from moving that we could do better?

You see, these are questions of high impact. These are questions of high priority that directly lead to the question: How can we prevent the next pandemic? How can we mitigate the harm of the pandemic? And how can we refine our basic public health tools that work, but mitigate some of its harm?

That is where I am hoping we can get to, but we are one quarter past this Congress, and we have been focusing on these more partisan questions and making partisan accusations of partisanship, of somehow social distancing was a tool to suppress religion because they are—somehow people of faith are political foes of the Biden Administration, which is an extreme, woefully inaccurate, partisan game, narrative here, that was mentioned, not exactly in those words, but that were mentioned.

So with that, I appreciate my friend, his grace in giving me so [inaudible]. I yield back.

Dr. WENSTRUP. I thank the Ranking Member, and I thank you for the suggestions and trying to create the tone that I think that we need for this Committee. This Committee should investigate and gather facts and be able to make recommendations, possibly suggest legislation, but establish protocol and a process.

I have said since the beginning, this is an after-action review, lessons learned, and develop a path forward, in hopes that, if there is another pandemic, that we might be able to predict it, prepare for it, protect ourselves from it, and maybe prevent it.

And I understand, we have all agreed, we all know at the beginning, we are erring on the side of caution. I am supportive of that. But it does not mean we do not look back in retrospect. And some of that may involve some litigation. More of it may just involve, well, how can we do better?

We should be looking at things if the country of origin is lying about what is going on, lying to us, lying to the WHO, we need to investigate how we engage with the WHO and these other countries.

Today is about freedom and constitutionality and inconsistencies. And there were clear inconsistencies on what was going on around the country, different rules on gathering.

As I look at what I heard today, government does not collect many taxes from churches, but they do from NFL games and they do from casinos. Is that the reason for the decision being made? I think it is important that we question that. There may be an underlying motive to allow this thing to happen and this other not to happen.

We have to take a look at overall health, not just COVID. That was the problem from the very beginning in our country as we addressed this pandemic. Everything was about the virus. Every day it was about the virus. It was not about the effects, the other effects that came from lockdowns, and other people's health.

I had a sheriff call me and tell me that a guy just 71 years old was scheduled to have his painful hernia surgery, and it was canceled. It was canceled. He committed suicide he was in so much pain. There were no cases in that county at the time.

We have to take a look at these things, these inconsistencies that lead to greater harmful effects and violations of our civil rights and constitutional rights. If we are doing things that enhance suicide and depression, especially among a group that is at low to no risk of COVID, that is not good public health. We have to look back and say, "Did we make a mistake?" and admit to it if we did and be better the next time. The next pandemic may not look anything like this, so our process has to be clear.

And I will say that direct and indirect censorship is un-American. Debating hypothesis and debating opinions is American. Censorship is what I grew up learning what the USSR was about, not what America's about.

If opinions of any of these Members on either side of the aisle were taken down because you put them on your website, and I may disagree with my friend on some opinion in this process, but he puts it up on his website, I should not have the ability to take his opinion down just because I do not like it or just because I want to propose a different narrative. That is what our government is about, debating anyway, and we should have that opportunity.

Here is my opinion on the mandates. It increased hesitancy amongst Americans. That is my opinion. Because Americans, for one, do not do very well with, "Because I told you so." They are pretty resistant to that. Just ask your kids once they hit about five years old.

But I will tell you, I have been promoting all the time, what happened to the doctor-patient relationship? And from the very beginning I said America should be hearing from the doctors treating COVID patients, not politicians and not people in the lab. And that is where I think we went awry.

We had a little get-together Frank Luntz put together. These were all vaccine-hesitant people. When we sat and talked to them about the vaccine, and I talked about potential side effects, I talked

about the efficacy, I talked about who is most vulnerable and why, and I talked about how you can still get COVID even if you get the vaccine but you are less likely to get sick, this is what the trial showed, but that does not mean you will never get COVID, to a person they all said, “I just want to be educated, not indoctrinated, and now I am less hesitant to get it.” We did not conduct ourselves that way, and a mandate certainly does not do that.

If you want to make a guideline, say the guideline is go and talk to your doctor about what is best for your particular health, because we know certain people were vulnerable, other people were not. You may have allergies. Mrs. Dingell talked about that. She got Guillain-Barré. She was a perfect example. When she talked to her doctor, she felt at ease. We did not do that as a government. And that, to me, is one of our biggest problems.

We talked today about supply chain. If you would have told me when I was a surgeon in Iraq that my protective equipment and my pharmaceuticals relied on an adversary, China, I would say, “How did our military get here?” Bad enough the civilian side did that.

We are not independent when it comes to our health anymore. We are dependent on China for our medicines down to the active pharmaceutical ingredients. And, by the way, that was not just under one administration. That was under Republican Administrations and Democrat Administrations where we let our supply chain get out the door.

Look, it was important that the Select Subcommittee on the Coronavirus hear from notable public officials. We are grateful that you testified before us today regarding potentially unconstitutional actions taken by Federal, state, and local authorities, and some of them were unconstitutional as deemed by the Supreme Court.

I would like to thank all of you for being here today. You were not here just for a lecture from the two of us, I do not think. I do want to thank you for that.

And we heard concerning testimony about government overreach and some defense of it today. We heard about the lengths that states had to go to so they could defend the individual liberties of its citizens from mandates that stripped them of their rights and silenced their dissents. We are allowed to contest our government. It is what our Founders had in mind.

Let us not be deceived. There has been an attempt to censor speech, speech you do not like, challenge to your message, that counters your narrative. It is documented. We need to address this. We need to address this as a Congress, not just this Committee, but as a Congress in general.

The power of the people nor their representatives should be usurped during a crisis, and what should have united us as a country became politics and divided us tremendously.

This Committee has a responsibility to the American people to speak up for those whose First Amendment rights were stripped and any other rights that they feel were taken away from them during this pandemic, especially—especially—when things that were imposed were contrary to the science and to the data. It is our responsibility to look at that.

So we need to investigate these matters, and it deserves the highest standard of review, because it is no small thing for the government to impose on individual liberties, not in the United States of America. Maybe somewhere else, but not here, because most of the people in this country came to this country because they wanted to get away from governments that did just that. And that is our history.

Churches, synagogues, mosques were shuttered, citizens encouraged to tell on their neighbors if they were found to participate in religious services. This is wrong. Religious freedom is the ability to practice your sincerely held beliefs and how you see fit to worship. It is not a guideline for how you may practice as outlined by the government.

And, by the way, I will say this as a Catholic, “virtually” you cannot receive the sacraments that are very near and dear to you in the Catholic faith. You cannot do that virtually.

Houses of worship were closed. Casinos were open. Liquor stores. We have heard it all today. We have discussed so much of this.

We have concerns that the Occupational Safety and Health Administration (OSHA) exceeded its authorities. But it is in times of national emergencies when we must be vigilant in protecting our God-given rights that are enshrined in our Constitution. As Benjamin Franklin responded when asked on what sort of government the delegates had created at the Constitutional Convention, he said, “a republic, if you can keep it.”

We need to keep it. It is worked better than any other government ever known to mankind.

The Select Subcommittee on the Coronavirus Pandemic will continue to investigate the implementation or effectiveness of any Federal law or regulation applied, enacted, or under consideration to address the coronavirus pandemic and prepare for future pandemics. I think this hearing was an essential step in doing so. I thank you all for your participation today.

With that, and without objection, all Members will have five legislative days within which to submit materials and to submit additional written questions for the witnesses, which will be forwarded to the witness for their response.

If there is no further business, without objection, the Select Subcommittee stands adjourned.

[Whereupon, at 12:33 p.m., the Subcommittee was adjourned.]

