



Swine Flu Seizures

Concern over the H1N1 swine flu has inundated the airwaves and the newspapers since active swine flu was first identified in Mexico in April. And though the panic has waned slightly in recent weeks because this variant of the flu is not living down to its deadly predictions (in fact, it's not even as deadly as the seasonal flu), for many people, if not most people, perception trumps facts and statistics, and so there have been mass mobilizations to combat the contagion.



The campaign has included classes to convince people to avoid unnecessary contact with others; a huge expenditure to develop and produce enough vaccines to give one to every man, woman, and child in the country; radio, TV, and newspaper pieces cajoling Americans to get vaccinated; and, of course, the introduction of new legislation whereby government functionaries can compel the obedience of Americans if they determine it is necessary to act to prevent the spread of the disease. It's this government focus on compelling the populace that is causing anxiety across the country. And there is just cause for concern.

Local, state, and federal officials are claiming the need for all sorts of powers that in the past would have been unthinkable and would have resulted in accusations of attempts to create a police state. The specter of *forced* vaccinations and quarantines to supposedly fight the virus is looming large.

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State Actions

At the state level, one of the more draconian pieces of legislation highlighted by critics is a bill that would allow warrantless arrests and quarantines. The "pandemic and disaster" preparation statute ([S. 2028](#)), passed unanimously by the Massachusetts Senate last April, contains a number of controversial, alarming, and blatantly unconstitutional provisions. Under the statute, if an emergency would be declared by the Governor, local authorities, including the health commissioner, local health authorities, law enforcement, and medical personnel, would be granted broad powers to mobilize forces, vaccinate the population, enter private property with no warrants, and even quarantine people against their will. Some analysts have said it authorizes martial law.

The legislation provides severe penalties — \$1,000 fine per day and possible jail time — for not complying with state orders, while also claiming to shield everyone involved with enforcing the law



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from liability. It purports to give local health authorities the power “to restrict or prohibit assemblages of persons” and gives government agents the authority to “arrest without a warrant any person whom the officer has probable cause to believe has violated an order,” while using “reasonable diligence to enforce such order.” Also, law-enforcement personnel “shall assist” medical workers in the “involuntary transportation” of people to “treatment centers.”

The provision on vaccines does give citizens the authority to refuse, but people who do refuse can be “isolated or quarantined.” This is the case despite the fact that the only person who would suffer from a decision not to get a vaccine is the one who did the refusing — if, of course, it is true that everyone who gets the vaccine will be disease-free and does not have to fear being infected, which is the logic behind getting a vaccine in the first place.

The same fate awaits those who are “unable or unwilling to submit to decontamination or procedures necessary for diagnosis.” One part of the legislation requires that owners or occupiers of a property “permit entry into and investigation of the premises,” while another section creates price controls.

Though the bill breezed through the Senate with a 36 to 0 vote, angry constituents forced the state House of Representatives to adopt a [watered-down version](#) that must now be reconciled with the original bill.

“Under this bill, Massachusetts becomes a medical police state. There is no debating it,” wrote *Natural News* editor Michael Adams in an August 30 article entitled “[Wake Up, America: Forced vaccinations, quarantine camps, health care interrogations and mandatory ‘decontaminations.’](#)” where he suggested America was delving into medical fascism. “The citizens of Massachusetts will have no rights, period. The Constitution is ancient history. You are now the property of the State.”

Another strong critic of the Massachusetts legislation, judicial analyst and former federal judge Andrew Napolitano, not only fiercely attacked the constitutionality of the bill [on Fox News](#) but also issued a stark warning about how the public would react if the bill were to become law.

“Look, this is the reason why we have federal judges,” said Napolitano regarding the constitutional issue. “Because federal judges in Massachusetts will have to take this statute and compare it to the Constitution. And the Constitution says the police can’t break into your home, and the police can’t take your children away, and parents decide what medication the children get, not the government.” He also warned that people would resist if the state tried to implement the statute, while the Fox News host on air with him said, “It’s going to hit the fan.”

Also in Massachusetts, local governments are setting up other related systems that have never even been contemplated before. The [Boston Globe reported](#) that the City of Boston is delving into a “novel experiment” to create a registry of everyone who has received the flu vaccine. Each person will be given a bracelet with a unique identifier to make tracking easier. Officials downplayed fears about “Big Brother,” but the potential of such a system has been called “frightening” by critics.

Massachusetts is far from alone in its push to enact statutes to empower itself. One state-level statute called the [Model State Emergency Health Powers Act](#), which was developed by the CDC in collaboration with partners like the World Health Organization (WHO), has been implemented to varying degrees in over 40 states and purports to give public health officials the authority to mandate vaccines and enforce involuntary quarantines in the event of an emergency declaration.

The CDC’s website posts some documents related to the new state laws. The Iowa Department of Public Health instituted a “[Facility Quarantine Order](#).” It’s clear what the order is intended to be used for. In



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the opening paragraph, it says: “The Department has determined that it is necessary to quarantine your movement to a specific facility.” The order is issued pursuant to Iowa code, and if somebody fails to comply, he or she will be detained in a more “restrictive facility,” the order explains.

Alabama, to pick a state at random, has one part of the state’s [code](#) that declares: “All cities and towns of this state shall have the power to adopt all necessary ordinances and enforce the same to prevent the introduction or spread of contagious, infectious or pestilential diseases in such cities or towns and, to that end, may provide for a system of compulsory vaccination and enforcement of the same.” Most other states have similar provisions.

In Florida, a [lawsuit](#) has been filed by Carmen Reynolds, a retired Air Force Lieutenant Colonel, seeking an injunction against the forced vaccination provisions in that state. “If we are not sovereign over our own bodies, by what authority does the state claim ownership?” she wondered. “By what authority does the state have the right to injure and possibly kill by forced medication and physically force a sovereign Floridian?” The [statute](#) in question says: “If there is no practical method to quarantine the individual, the State Health Officer may use any means necessary to vaccinate or treat the individual.” The orders are immediately enforceable by a law-enforcement officer.

Grass-roots organizations are also blasting legal legitimacy of the various laws throughout the states. Laura Jackson, the president of the [Liberty Preservation Association of Massachusetts](#), which is leading the charge to defeat the Massachusetts bill, said, “This bill contains language that provides for, among other things, warrantless searches and that language is unacceptable.” The group is urging state legislators to reconsider and warning them that the powers the legislation purports to provide the government are unconstitutional.

But are the critics correct? Are the powers unconstitutional? The most frequently cited justification for all of these seemingly unconstitutional statutes and regulations relating to forced vaccinations is the century-old U.S. Supreme Court case of [Jacobson v. the Commonwealth of Massachusetts](#). While other Supreme Court cases have held that one of the most fundamental rights of individuals is control over their own bodies (think *Roe v. Wade*), this decision was different. The Court upheld a compulsory vaccination law in Massachusetts after a man refused to be vaccinated. He argued that such a program was not in accordance with the Constitution; however, the High Court disagreed, claiming that the state has a compelling interest in ensuring public safety.

But what does the Constitution say about imposing mandatory vaccinations or quarantines on the citizenry via state or federal laws? It does not say anything, which by itself means that there are no such federal powers, since as the Tenth Amendment states: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” Moreover, the Fourth Amendment states: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” And the Fifth Amendment states: “Nor [shall any person] be deprived of life, liberty, or property, without due process of law.”

Of course, the concept of never being deprived of life, liberty, or property without due process of law — with all that entails — has a cherished and long legal tradition that predates the Constitution and stretches back to the Magna Carta of 1215. That tradition was (and is) certainly reflected in state constitutions (including the [Constitution](#) of the Commonwealth of Massachusetts) that defined the



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powers of state governments, and protected the people of the states from abuses by the state governments, even before what is now called the federal government was created. Put simply, the legitimacy of state government actions now being contemplated regarding the swine flu would likely violate states' constitutions.

Yet, the people hoping that the judicial branch will step forward and protect basic rights may be left wanting. "Judges will not stand in the way of emergency actions taken to protect the public from a clear and present danger, and if they do, the state appeals court will overturn their rulings in a matter of hours," explained a [piece](#) written by the Louisiana State University director of the program in law, science, and public health, Edward Richards, and Dr. Katherine Rathbun. "The history of judicial restraint on emergency powers is one of blind obedience to civil and military authority."

Federal and ?Military Actions

The federal government isn't on the people's side either, so no help can be expected from that sector. The Obama administration has recently resurrected the heavily criticized Bush-era proposal to "update" quarantine regulations. In 2005, George W. Bush used an [executive order](#) to add flu that has the "potential" to create a pandemic to a list of quarantinable diseases. The Bush administration wanted to give federal officials the power to mandate a provisional quarantine of up to six days for individuals suspected of harboring diseases that were listed in the executive order. The proposal also mentioned quarantining "a large group of persons," while the U.S. Army advertises jobs for "internment/resettlement specialists" on its [website](#). The federal government's health authorities operate quarantine centers from Anchorage to Miami.

To make the plan implementable, it would force travel companies like cruise lines and airlines to retain more information about Americans. That data would then be subject to review by government officials during a government-defined health emergency. Other portions of the Bush-era proposal that came under fire include a provision that critics say would have forced anyone who was exposed to certain illnesses to obtain a permit from the director of the CDC before traveling across state lines.

Critics notwithstanding, the Obama administration is going ahead with the Bush-era plans. "It's important to public health to move forward with the regulations," said a spokesperson for the Obama administration's CDC, which estimated the cost of keeping track of travel-industry data on its passengers at between \$118 million and \$425 million. "We need to update our quarantine regulations, and this final rule is an important step." Federal officials were hoping to have the new regulations in place by sometime in September, marking the first major changes in quarantine policy in about 30 years.

Like the state plans, the federal quarantine plans were blasted by civil-liberties groups and other opponents. "The proposals to limit liberty represent a dangerous precedent to constitutional theory, particularly when there is almost no evidence it will matter," said Boston University professor of law and public health Wendy Mariner in a report about the proposed regulations at [Politico.com](#).

Another critic quoted in the Politico article, Christopher Calabrese of the American Civil Liberties Union, said: "The enemy here isn't the American people or sick people. It's an illness.... Police officers with guns cannot make people obey a quarantine." (According to the CDC's website, the Public Health Service Act of 1944 "clearly established the federal government's quarantine authority for the first time." The Public Health Service Act contains eerie provisions, purporting to allow the federal government to "apprehend" and "detain" individuals believed to be "infected" for "such time and in



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such manner as may be reasonably necessary.”)

Adding to the pile of paperwork set to limit people’s freedoms that’s been stacking up, there is also a wide range of executive orders, published in the [Federal Register](#), that claim to grant the President extraordinary authority in the event of an emergency, including mobilizing civilian work brigades, indefinite detainment of individuals, and confiscation of property. But as constitutional attorney Larry Becraft [explains](#) about presidential decrees, “Just because some matter may be addressed in some fearful Executive Order, do not assume that there is statutory authority for the President to so act.” Under the Constitution, all legislative powers are delegated to Congress, executive orders notwithstanding.

Militarizing Swine Flu Preparations

Though the government’s increasingly militarized and draconian preparations are strictly unconstitutional, it doesn’t expect to be told “no” if it tries to lockdown Americans.

In the “[Department of Defense Implementation Plan for Pandemic Influenza](#),” the Assistant Secretary of Defense notes: “When directed by the President, DoD [the Department of Defense] will provide support to civil authorities in the event of a civil disturbance. DoD will augment civilian law enforcement efforts to restore and maintain order.”

In July, [CNN](#) and Fox News reported online that the U.S. military was drawing up plans to help the Department of Homeland Security’s (DHS) Federal Emergency Management Agency (FEMA) deal with a spread of the swine flu.

“The Pentagon is preparing to make troops available if necessary to help the Federal Emergency Management Agency tackle a potential outbreak of the H1N1 virus,” according to a July 29 Fox News article entitled “[Military Poised to Help FEMA Battle Swine Flu Outbreak](#).” A memo about the swine flu recently circulated by the DHS said: “The Department of Justice has established legal federal authorities pertaining to the implementation of a quarantine and enforcement. Under approval from HHS, the Surgeon General has the authority to issue quarantines.” U.S. Representative Ron Paul, also a medical doctor, has called the DHS involvement and the preparations “totally out of control.”

And as early as last year, reports also began to surface that federal troops were preparing for “homeland defense” missions and would be operating on American soil — in what would appear to be a violation of the Posse Comitatus Act, which prohibits the use of military forces in domestic law enforcement. “They may be called upon to help with civil unrest and crowd control,” noted the *Army Times* in a 2008 article entitled “[Brigade homeland tours start Oct. 1](#).” The soldiers will also be responsible for things like knowing how to set up road blocks and the use of “nonlethal” weapons normally reserved for war-zones to subdue Americans.

In another recent alarming militarization development at the state level, National Guard troops were involved in a drill to take over a high school in Maine to deal with potential riots and panic over distribution of treatment for the H1N1 virus, the *Maine Sun Journal* reported. “The National Guardsmen will take on the roles of panicked citizens and military police and practice what they would do, such as using tear gas, in the case of a riot,” said the article, entitled “[National Guard Drill at High School to Prepare for Possible H1N1 Riot](#).” The story also noted that local law enforcement would be involved.

The director of Oxford County’s emergency management agency, Scott Parker, downplayed the significance of the exercise, saying that it was merely about distributing medical supplies in an orderly fashion: “This is just a component of moving the stuff from point A to B,” he assured the populace. He



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told the *Sun Journal* that the plan would only be put in place “if needed.” Apparently concerns about panic and disorder were raised during a conference in April, so the Governor and the Adjutant General of the Maine National Guard decided to formulate a plan to bring in military police.

Ironically, the states are fighting federal plans to use National Guard troops for federal duties because the states don’t want to lose their freedoms and ability to act in their best interests. The National Governors Association wrote a strongly worded [letter](#) to the Department of Defense criticizing the proposals to take control of their units for domestic disasters. “Strong potential exists for confusion in mission execution and the dilution of governors’ control over situations with which they are more familiar and better capable of handling than a federal military commander,” the letter stated.

There has been a great deal of resistance worldwide to government programs relating to swine flu so far. And this push-back is likely to intensify in the event of forced vaccinations and quarantines. In America, distrust of the governments’ campaigns also continues to grow.

Whether or not the swine flu outbreak spreads in the coming months, and whether or not it becomes severe, people should all have the basic fundamental right to refuse the inoculation and decide what medical decisions are right for them. People can educate themselves about the risks of the vaccine and the risks of the virus and make decisions taking these factors into account. Health freedom is as important as freedom of speech or the right to bear arms, so government must allow individuals and families to make informed decisions with their healthcare providers.

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