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COVID-19: A Call for Legal and Institutional Reform

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COVID-19: A CALL FOR LEGAL AND INSTITUTIONAL REFORM*

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COVID-19 is an unprecedented public health crisis in the United States; as of April 2021, there have been over 30 million reported infections and over 550,000 deaths caused by the pandemic.¹ Though COVID-19 has affected lives across the globe, the U.S. infection cases represent twenty-five percent of the world's reported cases,² whereas U.S. population accounts for less than four percent of the world's population.³ The infection and death rates in the United States are among the highest among high-income countries.⁴ By any measure, the United States has not been successful in effectively managing the pandemic and stopping the spread of the virus, even though the United States possesses the most medical, financial, and administrative resources in the world. The inability of relevant institutions to respond to and thus prevent the spread of the disease caused this failure, which justifies the call for a substantial legal and institutional reform.

The reform proposal is comprised of two parts. The first part consists of a legal adjustment that *requires* the federal government, which has the financial and technical resources to respond to the pandemic, to ensure timely public access to testing and treatment with no out-of-pocket cost to the public.⁵ The legal mandate is necessary to

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1. United States COVID-19 Cases and Deaths by State of *COVID Data Tracker*, Ctrs. for Disease Control & Prevention, https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days [<https://perma.cc/8T8N-KXM7>] (Apr. 5, 2021, 1:31 PM).

2. *COVID-19 Coronavirus Pandemic*, WORLDOMETER, <https://www.worldometers.info/coronavirus/> [<https://perma.cc/2GTF-HPFW>] (Mar. 17, 2021, 8:28 PM GMT).

3. *Countries in the World by Population (2021)*, WORLDOMETER, <https://www.worldometers.info/world-population/population-by-country/> [<https://perma.cc/N7VE-25YQ>].

4. *COVID-19 Coronavirus Pandemic*, *supra* note 2.

5. See Yong-Shik Lee & Hye Seong Mun, Proposal for Amendment of Families First Coronavirus

compel the government to take action, which failed to ensure this crucial step to control the pandemic. The proposed legal reform should also require the government to ensure timely and mandatory contact-tracing and immediate quarantine of those infected with COVID-19, including asymptomatic and mildly symptomatic patients, and provide for their treatment in isolation (i.e., provide treatment in public facilities isolated from outside physical contact, such as the Community Treatment Centers in South Korea). The law should also mandate that individuals who have not tested positive but have been in close proximity to those infected, and who have been identified through contact tracing as being at risk of exposure, should also be placed in self-quarantine under government monitoring. Finally, the law should require the government to promptly release all information necessary to prevent further spread of the pandemic to the public, including information on the availability of vaccines and some of the information obtained through contact tracing, such as the time and location of recent visits made by those infected with the disease, so that the public may take appropriate precaution.

The second part of the proposal requires the government to set up a bipartisan institutional control center, such as a national Commission headed by a politically independent agency in charge of controlling infectious diseases. The politicization of the COVID-19 response in the United States, as demonstrated by, for example, political disputes over mask wearing in the face of the rapidly spreading pandemic, substantially impeded efforts to stop the spread of the disease. The Trump administration also downplayed the seriousness of the disease for political reasons and largely left COVID19 responses to state and local governments that did not have sufficient resources to handle the unprecedented crisis. An institutional reform is therefore necessary to reduce adverse political influence in future pandemic responses. The proposed Commission should be comprised of representatives from

Response Act (FFCRA) to Ensure Patients' Immediate Access to COVID-19 Medicines (Nov. 25, 2020) (unpublished proposal) (on file with the Georgia State University Law Review); *see also* Yong-Shik Lee, Managing COVID-19, Legal and Institutional Issues 28–31 (Nov. 3, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3724655.

federal, state, and select local governments,⁶ as well as representatives of the private sector (e.g., medical equipment suppliers, pharmaceutical companies, healthcare providers, and public health experts), to ensure bipartisan support across the nation. The proposal would charge the Commission to coordinate among federal, state, and local authorities, and between the public and private sectors in the development and implementation of policies and specific measures to combat the pandemic.⁷

Vaccinations have recently begun, which has raised an expectation to control the pandemic in the coming months, but the unprecedented loss of life is irreparable. Many lives could have been saved had better legal and institutional responses been in place, as demonstrated by other, more successful countries like South Korea, which has had only a small fraction of infection cases and deaths compared to the United States due to their superior legal and institutional response to the pandemic.⁸ Successful cases must be referenced and incorporated into the reform. The proposed legal and institutional reform will improve the readiness of the United States to respond to the current and future pandemics.

6. These select local governments should include the city governments of major metropolitan areas, such as New York, Los Angeles, Chicago, Atlanta, Philadelphia, Houston, Washington, D.C., and Boston.

7. See Lee, *supra* note 5, at 36–38 (discussing the governance and role of the proposed commission).

8. See generally *id.*