The Fourteenth Amendment Bars States from Mandating Products Immune from Civil Liability and Courts from Shielding Battery

Brian Ward

Federal and state supreme courts are effectively amending the Constitution outside the Article V process in two ways: (1) by interpreting federal immunity statutes to shield battery, thereby denying victims their due process rights, and (2) by upholding state mandates for medical products immune from civil liability, thereby requiring a prospective waiver of the right to sue if compliance with the mandate results in injury. Both approaches conflict with the Due Process Clause, upend two centuries of well-established Supreme Court precedent, and strip Americans of their due process guarantee. Notably, no court has addressed whether Congress may shield battery or whether states may require citizens to surrender their right to due process in exchange for public benefits.

To understand how our Constitution is being rewritten, we must recognize that the right to sue and defend in a court of law is constitutionally protected, and that access to the courts is a fundamental right that legislatures cannot legislate out of existence and that states cannot condition on the waiver of protected property interests.

I. "To no one will we sell, to no one will we deny or delay, right or justice." — Magna Carta, Clause 40 (1215)

The Due Process Clause of the Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.

When an individual is deprived of life, liberty, or property without due process, the Constitution guarantees a due process right to a judicial remedy. The right of access to the courts—to sue and defend—is a liberty interest that the Supreme Court has grounded in multiple constitutional provisions, including Article IV's Privileges and Immunities Clause, the First Amendment's Petition Clause, and the Due Process Clauses of the Fifth and Fourteenth Amendments. See *Christopher v. Harbury*, 536 U.S. 403, 415 n.12 (2002).

The Supreme Court holds that "the right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship." *Chambers v. Baltimore & Ohio R.R. Co.*, 207 U.S. 142, 148 (1907). The right of free speech is meaningless if the government can deny a person a forum in which to enforce it. This is what the Court meant when it described the right to sue as the "right conservative of all other rights"—because that

right secures all others. See *Chappell v. Rich*, 340 F.3d 1279 (11th Cir. 2003) ("Access to the courts is clearly a constitutional right, grounded in the First Amendment, the Article IV Privileges and Immunities Clause, the Fifth Amendment, and/or the Fourteenth Amendment"); *Delew v. Wagner*, 143 F.3d 1219, 1222 (9th Cir. 1998) ("the right of access to the courts is a fundamental right protected by the Constitution"); *Waller v. Hanlon*, 922 F.3d 590 (5th Cir. 2019) ("We have recognized a right of access to the courts, which is founded in the Article IV Privileges and Immunities Clause, the First Amendment Petition Clause, and the Fifth and Fourteenth Amendment Due Process Clauses").

In *Corfield v. Coryell*, 6 F. Cas. 546, 551–52 (C.C.E.D. Pa. 1823) (No. 3,230) (Washington, Circuit Justice), the court recognized the right to sue in state court as among the Article IV privileges of citizenship—the understanding Justice Thomas later traced in explaining what the Privileges or Immunities Clause was ratified to protect under the Fourteenth Amendment. *McDonald v. City of Chicago*, 561 U.S. 742, 819–50 (2010) (Thomas, J., concurring in part and concurring in the judgment).

Therefore, access to a judicial remedy in state and federal courts is both a privilege of citizenship and a fundamental right that states cannot extinguish, directly or indirectly, without due process.

II. Protected Property Interests and the Due Process Clause

"To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." "Property interests, of course, are not created by the Constitution. Rather, they are created, and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law – rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." *Id.* at *Board of Regents v. Roth*, 408 U.S. 564, 576, 577 (1972).

Goldberg v. Kelly, 397 U.S. 254 (1970), and *Roth* establish that protected property interests under the Due Process Clause include public benefits such as welfare assistance, public employment, professional licenses, and the right to attend public schools, provided the interest is created by an independent source of law that gives rise to a legitimate claim of entitlement. Once state or federal law, regulation, executive order, or a third-party benefit under federal contracts creates a legitimate claim of entitlement to a public benefit, that benefit constitutes a protected property interest under the Due Process Clause and cannot be taken without due process of law.

A cause of action—including civil tort claims—is itself a protected property interest under the Due Process Clause. As the Supreme Court explained in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982): "The first question, we believe, was

affirmatively settled by the *Mullane* case itself, where the Court held that a cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause." See also *Tulsa Professional Collection Services, Inc. v. Pope,* 485 U.S. 478 (1988); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985).

Therefore, governments cannot deprive a citizen of a protected property interest—including access to state tort remedies and any public benefit—without some form of hearing, and any such deprivation cannot result from arbitrary or capricious action. "We have described 'the root requirement' of the Due Process Clause as being 'that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest.'"*Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542 (1985). See *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972); *Perry v. Sindermann*, 408 U.S. 593 (1972); *Mathews v. Eldridge*, 424 U.S. 319 (1976).

III. The Fourteenth Amendment Prohibits States from Conditioning Public Benefits on the Use of Liability-Shielded Products or Participation in Protected Activities

The threshold inquiry in any due process challenge—whether framed as procedural or substantive—is whether the plaintiff has been deprived of a protected liberty or property interest. *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 59 (1999).

For drugs, biologics, and medical devices, two federal statutes extinguish an individual's ability to pursue traditional state-court tort remedies and a jury trial for covered injuries: the Public Readiness and Emergency Preparedness (PREP) Act and the National Childhood Vaccine Injury Act of 1986. Under the PREP Act, covered claims are wholly barred in state courts and may be pursued only in the U.S. District Court for the District of Columbia, and only for the sole claim of willful misconduct. Mandating the use of such products and enforcing that mandate therefore deprives a citizen of a protected property interest (e.g., public education, employment, unemployment assistance, or the use of a professional license) and of the liberty interest in suing in a court of law if injured. Enforcing a refusal to waive that right constitutes an unconstitutional condition and an unlawful exercise of the state's police powers. The Supreme Court has made abundantly clear that a "legitimate interest" sufficient to satisfy any level of review is, by this Court's own terms, limited to "interests the State has the authority to implement." *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 441–42 (1985).

The Court in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905) held that "A local enactment or regulation, even if based on the acknowledged police powers of a State, must always yield in case of conflict with the exercise by the General Government of any power it possesses under the Constitution, or with any right which that

instrument gives or secures." *Id.* at 25. *Jacobson* referenced its earlier decision in *Railroad Co. v. Husen*, 95 U.S. 465 (1877), where it vacated a state law designed to stem the spread of the Spanish Flu because it infringed upon the federal domain.

Denying an injured person the right to a judicial remedy under those Acts is limited to activities in which the parties consented to participate.

The Supreme Court has made clear that any waiver of constitutional rights "must be freely given and shown by 'clear and compelling' evidence." *Janus v. AFSCME*, 585 U.S. 878, 892 (2018) (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)). A valid waiver must be "the product of a free and deliberate choice rather than intimidation, coercion, or deception." *Berghuis v. Thompkins*, 560 U.S. 370, 382–83 (2010). The Supreme Courts of Nevada,[1] Maine,[2] Vermont,[3] North Carolina,[4] and Georgia have applied the PREP Act to bar claims arising from the administration of covered countermeasures where consent was knowingly withheld or not obtained. An Ohio trial court has similarly held that the National Childhood Vaccine Injury Act shields battery claims. [5] These rulings represent novel doctrines that upend two centuries of Supreme Court precedent holding that rights cannot be taken without due process of law.

Because the Constitution guarantees that no person shall be deprived of life, liberty, or property without due process of law, and because Supreme Court precedent requires that any waiver of a protected right be knowing, voluntary, and free of coercion, battery can never be shielded from judicial remedy by an Act of Congress. Administration of a product or participation in an activity against a person's will—or without valid consent—cannot be immunized in a manner that extinguishes the victim's right to seek a judicial remedy. Any other conclusion would mean that Congress could abolish rights enumerated in the Constitution and those declared fundamental by the Supreme Court by ordinary statute without complying with Article V. Applying immunity statutes to bar such claims effectively amends the Constitution through judicial implication because the Constitution guarantees victims of battery the right to sue for deprivation of their life, liberty, and property.

A defendant might argue that a no-fault alternative to suit is available for injuries, which alternative satisfies the Due Process Clause. The full response to that argument requires more space than is allotted here, but under *SEC v. Jarkesy*, 603 U.S. 197 (2024), the Court held that claims analogous to common-law causes of action

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[1] *De Becker v. UHS of Delaware, Inc.,* 140 Nev. Adv. Op. 58 (Sept. 19, 2024) (No. 85968)

[2] *Hogan v. Lincoln Medical Partners*, 2025 ME 22, 331 A.3d 463 (Me. 2025)

[3] *Politella v. Windham Southeast School District* (2024 Vt. 43)

[4] Happel v. Guilford County Board of Education, 387 N.C. 186 (2025)

[5] *Sowders v. Summa Health System*, No. CV-2025-06-2826 (Ohio Ct. Com. Pl. Summit Cnty. Dec. 11, 2025)

seeking legal remedies must be tried to a jury in an Article III court, not by an internal agency process, to satisfy the Seventh Amendment. However, the Due Process Clause guarantees that individuals cannot be forced into an unwanted legal condition that extinguishes their constitutional rights outside of due process; battery can never supply the consent that due process requires.

Notably, since this Nation's founding, no court has shielded criminal acts such as battery from judicial review until recently. This doctrine stems from a corrupt attempt to override the federal Constitution. For this reason, judges cite only recent cases, not historical precedent—of which none exists. No judge has ever held that Congress possesses authority to extinguish Americans' rights through criminal acts. Yet courts are now implying such authority, subjecting the Nation to irreparable harm.

States cannot mandate an indirect waiver of the right to sue by requiring involuntary participation in products or activities shielded from ordinary civil liability.

"Even though a person has no 'right' to a valuable governmental benefit ... there are some reasons upon which the government may not rely. It may not deny a benefit to a person on a basis that infringes his constitutionally protected interests." *Perry v. Sindermann*, 408 U.S. 593, 597 (1972).

In *Frost & Frost Trucking Co. v. Railroad Commission*, 271 U.S. 583, 593, 594 (1926), the Court held that A State cannot "impose conditions which require the relinquishment of constitutional rights. If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all."

A state, municipality, or other government entity may not withhold a protected public benefit—such as access to public school, a professional license, public employment, or unemployment benefits—solely because a person refuses to participate in products and activities shielded from civil liability. The right to seek a judicial remedy for injury is a protected property interest (state tort) and a liberty interest (right to sue and access courts) that cannot be bartered as the price of receiving the benefit. The Supreme Court has long made clear that "Every citizen is entitled to resort to all the courts of the country, and to invoke the protection which all the laws or all those courts may afford him. **A man may not barter away his life or his freedom, or his substantial rights**." *Insurance Company v. Morse,* 87 U.S. 445, 451 (1874).

States may argue that they are merely mandating a product and not requiring any waiver of the right to a judicial remedy, asserting that any immunity is a separate matter conferred by Congress and is therefore irrelevant to the validity of the mandate. That argument fails. The Supreme Court holds that "What the state may not do directly it may not do indirectly." *Bailey v. Alabama*, 219 U.S. 219, 244 (1911). The Court later held that a state cannot use "procedural device[s] [to] produce a result

which the State could not command directly." *Speiser v. Randall,* 357 U.S. 513 (1958). Mandating involuntary participation in federal legislation that prospectively extinguishes a person's right to use state torts if injured by the public health policy is a procedural device to achieve what it cannot command directly—a waiver of due process.

Finally, the Supreme Court has addressed government coercion in waiving constitutional rights, holding that "The option to lose their means of livelihood or to pay the penalty of self-incrimination is the antithesis of free choice" *Garrity v. New Jersey*, 385 U.S. 493, 497 (1967). Most directly, in *Lefkowitz v. Turley*, 414 U.S. 70, 83 (1973), the Court held that "A waiver secured under threat of substantial economic sanction cannot be termed voluntary." If rights can only be waived voluntarily, then governments possess no authority to punish a person refusing to waive such rights. *Frost* made clear that a party facing the loss of public benefits or access to their livelihoods "is given no choice, except a choice between the rock and the whirlpool—an option to forego a privilege which may be vital to his livelihood or submit to a requirement which may constitute an intolerable burden." 271 U.S. at 593, *supra.*

As the Court unambiguously stated: "Policemen, like teachers and lawyers, are not relegated to a watered-down version of constitutional rights. There are rights of constitutional stature whose exercise a State may not condition by the exaction of a price." *Garrity*, 385 U.S. at 500.

Mandates shielding products from civil liability have largely persisted because their constitutionality has gone unchallenged. When properly addressed, it would end all medical mandates in the nation, as we know them. Further, it calls into question whether immunity applies in lawsuits when the injured person was never told by the defendant that participation in the activity/product waived their right to sue. Deception through stealth is prohibited under *Berghuis.* Under *Janus,* the Court affirmed that judges can never presume a waiver of the right to sue simply because a person participated in the protected activity. To waive the right to sue for resulting injuries, the defendant must show the injured victims waived it "knowingly" and "voluntarily."

If, under *Janus v. AFSCME*, a public union cannot compel non-consenting members to pay dues because doing so infringes their free-speech rights, then a government mandate requiring use of a medical product that can cause irreparable injury—and that is shielded from ordinary civil liability—raises a stronger constitutional concern. The right of access to a judicial remedy is "one of the highest and most essential privileges of citizenship" and cannot be extinguished by coercion any more than the free-speech right protected in *Janus*. See *Chambers*, supra. If the Court bars compelled financial support of unwanted speech, it likewise cannot permit the compelled surrender of the right to sue and defend in court by withholding protected property interests in education, public employment, welfare, and other public benefits from those who refuse to waive that right.

All COVID-19 mandates issued by governments constituted an unlawful exercise of the police power, as do all current mandates involving medical products shielded from ordinary civil liability. However, as in *SEC v. Jarkesy* and *Janus*, unconstitutional conduct continued unabated until it was challenged. Now is the time to challenge the unconstitutional practice of mandating liability-shielded products and the judicial implication that Congress may extinguish the nation's due process rights through acts of battery.

Shielding battery from judicial review, or punishing citizens for refusing to participate in liability-shielded products, constitutes an unconstitutional condition. See *Sherbert v. Verner*, 374 U.S. 398 (1963) (Denial of unemployment benefits for refusing to work on the Sabbath (for religious reasons) violated free exercise; benefits cannot be conditioned on abandoning religious practice); *Legal Services Corp. v. Velazquez,* 531 U.S. 533 (2001) (Funding condition that restricted legal arguments lawyers could make held unconstitutional); *Agency for International Development v. Alliance for Open Society International, Inc.*, 570 U.S. 205 (2013) (Conditioning federal funding on an organization's adoption of a specific policy viewpoint violated the First Amendment (the government cannot compel speech as a condition of funding)); *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994) (Land-use conditions must have an "essential nexus" and "rough proportionality" to the harm; governments cannot use permitting power to extract unrelated concessions that would otherwise be unconstitutional); *Koontz v. St. Johns River Water Management District*, 570 U.S. 595 (2013) (Extended Nollan/Dolan principles to monetary exactions; the government cannot use the threat of denial to extract concessions that amount to an unconstitutional condition); *Speiser v. Randall,* 357 U.S. 513 (1958) (Tax exemption conditioned on signing a loyalty oath held unconstitutional).

Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982) — A state-created cause of action is a protected property interest; the state cannot extinguish it through arbitrary procedures that deny a meaningful opportunity to be heard.

Sample Argument

Refusing a Liability-Shielded Product Without Losing Public Employment

The Fourteenth Amendment forbids a State to "deprive any person of life, liberty, or property, without due process of law." Public employment secured by state law is a protected property interest. *Board of Regents v. Roth,* 408 U.S. 564 (1972). So is a state-created cause of action. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982). Since *Corfield v. Coryell,* the right to sue has been understood as a privilege of citizenship, "one of the highest and most essential." *Chambers v. Baltimore & Ohio R.R. Co.,* 207 U.S. 142, 148 (1907). Under *Christopher v. Harbury*, 536 U.S. 403, 415

n.12 (2002), the Supreme Court has recognized access to the courts as a fundamental right.

The PREP Act and the VICP bar state-court suits arising from injuries caused by covered products. A State that requires the use of such a product as a condition of employment is demanding that its employees give up their remedy in advance.

The State may not "deny a benefit to a person on a basis that infringes his constitutionally protected interests." *Perry v. Sindermann*, 408 U.S. 593, 597 (1972). What it cannot command directly, it cannot accomplish indirectly. *Bailey v. Alabama*, 219 U.S. 219, 244 (1911). A waiver must be freely given; *Janus v. AFSCME*, 585 U.S. 878, 892 (2018), and one "secured under threat of substantial economic sanction cannot be termed voluntary." *Lefkowitz v. Turley*, 414 U.S. 70, 83 (1973).

Forcing public employees to choose between their livelihood and their right to a day in court is "a choice between the rock and the whirlpool." *Frost & Frost Trucking Co. v. R.R. Comm'n*, 271 U.S. 583, 593 (1926). The City of Los Angeles terminated police and firefighters solely because they refused to accept a PREP Act–covered product and thereby refused to surrender their right to sue in state court if that product injured them. That is an unconstitutional condition, and the resulting damages are enforceable under 42 U.S.C. § 1983.

End of Sample Argument

The argument above supports injunctive relief, executive orders ending such mandates, and § 1983 enforcement relating to any public benefit. Federal and state courts have effectively placed this nation under a post-constitutional form of tyranny by voiding due process rights—either by shielding battery from judicial remedy or by punishing those who refuse to surrender that right. It is time to reclaim that right before it is too late.

Brian Ward can be reached at CovidPenalty.com or https://x.com/GodsRiddles