

**THE DICHOTOMY OF SOCIAL ISOLATION
IN A GLOBAL PANDEMIC:
WHEN THE POWER TO PROTECT ACTUALLY HARMS**

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I. INTRODUCTION

The COVID-19 pandemic is a global public health crisis.² As of December 1, 2020, there have been over sixty-three million cases worldwide, with more than 1.4 million deaths directly related to COVID-19.³ The United States has suffered more than thirteen million cases and over 270,000 deaths thus far.⁴ To mitigate the spread of the virus, governors across the United States issued various executive orders mandating stay-at-home quarantines.⁵ Many of these executive orders have been renewed or extended repeatedly as the pandemic continues.⁶ Although isolation does decrease the spread of the virus, it also causes an accelerated decline in the mental and physical health of elderly nursing home residents.⁷ This topic is relevant because more than fifty-four million United States citizens are aged 65 and older.⁸ Furthermore, over 40% of all COVID-19 related United States deaths have occurred in nursing home residents.⁹

There is no question that the government orders which mandated stay-at-home provisions, forced mask-wearing, prohibited travel, and suspension of all non-essential businesses and public gatherings, were essential in containing the spread of COVID-19.¹⁰ However, on first impression, social distancing focuses too narrowly on controlling viral spread rather than considering the effects on vulnerable populations, such as the elderly in nursing homes.¹¹ The draconian nature of quarantine has resulted in collateral damage in the form of an accelerated decline in nursing home resident's mental and physical health.¹² While the purpose of these restrictions may have been to prevent viral spread to this vulnerable population, the isolation has also caused a disproportionate impact on marginalized populations, such as the elderly.¹³

Nine months since the emergence of the COVID-19 virus and the pandemic shows no sign of abating, with a reported average of more than one hundred forty thousand new COVID-19 cases daily and an increase of seventy-six percent from the previous two weeks.¹⁴ Social distancing and isolation remain first-line measures to thwart the viral spread and the resulting loneliness so

² CDC, *Coronavirus Disease, Global COVID-19*, (July 28, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/global-covid-19/index.html>.

³ *Coronavirus Resource Ctr.*, JOHNS HOPKINS UNIV. & MED. (Sept. 28, 2020), <https://coronavirus.jhu.edu/>.

⁴ *Id.*

⁵ Council of State Governments, *Covid-19 Resources for State Leaders*, Executive Orders, CSG (Oct 10, 2020), <https://web.csg.org/covid19/executive-orders/>.

⁶ *Id.*

⁷ Emily Paulin, *Is Extended Isolation Killing Older Adults in Long-Term Care?* Family Caregiving, AARP (Sept. 3, 2020), <https://www.aarp.org/caregiving/health/info-2020/covid-isolation-killing-nursing-home-residents.html>.

⁸ U.S. Census Bureau, *People*, Quick Facts (2020), <https://www.census.gov/quickfacts/fact/table/US/PST045219>.

⁹ Health Affairs, *In New York State Unionized Nursing Homes, Lower COVID-19 Mortality*, HEALTH AFF. BLOG (Sept. 10, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200910.227190/full/>.

¹⁰ Ill. Exec. Order No. 2020-32 (Apr. 30, 2020), <https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-32.aspx>.

¹¹ Sandro Galea & Katherine Keyes, *Understanding the COVID-19 Pandemic Through the Lens of Population Health Science*, 00 AM. J. EPIDEMIOLOGY, 2, 1-6, (July 6, 2020), <https://doi.org/10.1093/aje/kwaa142>.

¹² Paulin, *supra* note 7.

¹³ Jade Conner et al., *Health Risks and Outcomes that disproportionately affect women during the COVID-19 pandemic: A review*, 266 SOC. SCI. & MED. 1, 1-7 (2020), <https://pubmed.ncbi.nlm.nih.gov/32950924>.

¹⁴ New York Times, *Covid in the U.S.: Latest Map and Case Count*, N.Y. TIMES (Nov. 14, 2020), <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

common among the elderly continues to predict poor prognosis for their overall health.¹⁵ Furthermore, the COVID-19 pandemic will continue to compound the usual risks for elderly loneliness, with the added risk of virus-related morbidity and mortality, related to the all too common comorbidities associated with the elderly.¹⁶

This article will argue that unless governors take a dimensional approach to combat public health crises, like pandemics, they will continue to cause collateral damage and casualties.¹⁷ Although focusing on the number of cases and death rates may seem like the best approach, it limits the ability to understand and mitigate the consequences of these actions.¹⁸ The causes of the global pandemic are far more remote than the COVID-19 virus merely infecting the body.¹⁹ The course of the pandemic was predetermined by many factors such as politics, nationwide mistrust in government, and chronic underfunding for public health resources.²⁰ Addressing the chronic underfunding for public health could have curtailed the viral spread from the beginning.²¹ The "viral suppression at all costs" mentality came at the expense of vulnerable populations, like the elderly.²²

Governors should employ an age-risk stratification which strives to balance the goal of reducing risk of viral morbidity and mortality while preserving the overall health in the most vulnerable populations, like elderly nursing home residents.²³ To accomplish this, executive orders must include failure to thrive ("FTT") provisions, which permit an exception to the visitation ban, allowing for a permanently designated family member to be the sole visitor for a nursing home resident and not only at end-of-life situations.²⁴ Furthermore, executive orders must include face-to-face contact ("FTFC") requirements, which provides for in-person contact between nursing home residents and their family members including outdoor visits, window visits, vehicle parades, limited indoor visits, and personal visitors for failure to thrive.²⁵

This article will discuss the collateral damage caused by executive orders on nursing home residents. First, this article discusses the effects of isolation on the accelerated decline in nursing home residents and examines the disproportionate effect of healthcare on the elderly. Next, this article analyzes how executive orders have essentially turned nursing homes into golden prisons for their residents. Third, it addresses how access to FTFC enabled by technology can be used to

¹⁵ A.H. Jansson et.al., *Loneliness in Nursing Homes and Assisted Living Facilities: Prevalence, Associated Factors and Prognosis*, 3, J. NURSING HOME RES. 43, 43-49 (2017), <https://www.jnursinghomeresearch.com/919-loneliness-in-nursing-homes-and-assisted-living-facilities-prevalence-associated-factors-and-prognosis.html>.

¹⁶ CMS, *CMS Announces New Measures to Protect Nursing Home Residents from COVID-19*, Newsroom, Nursing Facilities, Safety (Mar. 13, 2020), <https://www.cms.gov/newsroom/press-releases/cms-announces-new-measures-protect-nursing-home-residents-covid-19>.

¹⁷ Galea & Keyes, *supra* note 11 at 2.

¹⁸ *Id.*

¹⁹ *Id.* at 3.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 4.

²³ *Id.* at 2.

²⁴ Sarah R. Champagne, *The Crushing Isolation Of Nursing Homes During The Pandemic*, Tex. Trib. (Aug. 14, 2020), <https://www.keranews.org/news/2020-08-14/the-crushing-isolation-of-nursing-homes-during-the-pandemic>.

²⁵ TEX. STAT. tit. 26 TAC, § 551.47. (Aug. 14, 2020), <https://www.sos.texas.gov/texreg/archive/August282020/Emergency%20Rules/26.HEALTH%20AND%20HUMAN%20SERVICES.html>.

aid and promote nursing home residents' health. Lastly, this article proposes that governors should be required to include FTT clauses in any executive order that mandates extreme social isolation for the elderly. Additionally, executive orders should require nursing homes to provide their residents with a minimum amount of FTFC with others each day.

II. EFFECTS OF ISOLATION ON ACCELERATED DECLINE IN ELDERLY HEALTH

By and large, people are social by nature, and maintaining healthy social relationships can help them live longer, high-quality lives.²⁶ However, evidence has shown that older adults are at increased risk for loneliness and social isolation because they are more likely to face circumstances such as loss of family or friends, solitary living, hearing loss, and chronic illness.²⁷ Nearly 25% of adults older than 65 suffer from social isolation.²⁸ Social isolation coupled with loneliness puts them in jeopardy of developing dementia and other serious medical conditions.²⁹ Furthermore, the effects of social isolation rival those of high blood pressure, obesity, cigarette smoking, and physical immobility.³⁰

Studies have found that social isolation significantly increases a person's risk of early death from all causes; a risk that may surpass those of smoking, obesity, and physical inactivity.³¹ Social isolation and lack of meaningful relationships has been linked to a 50% increased risk of dementia, a 32% increased risk of stroke, and a 29% increased risk of heart disease.³² In patients with a history of heart failure, loneliness is linked to a 57% increased risk of emergency room visits, a 68% increased risk of hospitalization, and a near quadruple increased risk of death.³³ Furthermore, loneliness has also been linked to higher rates of depression, anxiety, and suicide.³⁴

²⁶ See CDC, *Loneliness and Social Isolation Linked to Serious Health Conditions*, Alzheimer's Disease and Healthy Aging (Oct. 10, 2020), <https://www.cdc.gov/aging/publications/features/lonely-older-adults.html>, (explaining that humans are social by nature; that high-quality social relationships can enable them to live longer, healthier lives; the health risks of loneliness, the populations most at risk for loneliness, the link between loneliness and social isolation with serious health conditions in older adults, and a list of information and resources available).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ See Nat'l Acad. Sci., Eng'g, and Med., *Social Isolation and Loneliness in Older Adults: Opportunities for the Health Care System*, NAT'L ACAD. SCI., 42 (2020), <https://www.nap.edu/read/25663/chapter/1> (explaining that humans are social by nature and that high-quality social relationships are vital for their health and well-being. Also, this report provides a comprehensive review of risk factors for social isolation and loneliness, mechanisms by which social isolation and loneliness impact mortality, morbidity, and health, factors that affect those mechanisms, and ways to measure social isolation and loneliness. Furthermore, this report discusses the role of the health care system in addressing all these issues, which clinical interventions show the most promising outcomes, and ways to better educate and train the health care workforce).

³¹ CDC, *supra* note 26.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

There are 1.3 million nursing home residents in the United States.³⁵ Prior to the COVID-19 pandemic, the prevalence of social isolation and loneliness were already considered a "public health crisis," with 43% of United States adults over age 60 having described feeling lonely.³⁶ A large proportion of nursing home residents have experienced an increase in anxiety, depression, irritability, and dementia-related behaviors.³⁷ The severe confinement measures seem to be making this crisis in long-term care facilities worse.³⁸ Thousands of nursing home residents have been confined to their buildings and in some cases, their rooms since March 2020.³⁹ Although some states recently eased their COVID-19 restrictions, allowing limited family visitations; more states are reimplementing shelter-in-place orders due to the third COVID-19 surge across the United States.⁴⁰ Also, many states still restrict *all* visitors except during end-of-life compassionate care situations.⁴¹

Failure to thrive ("FTT") in the elderly population is not a distinct disease, but rather a multifactorial syndrome manifesting in a progressive decline in vitality, progressive apathy, and a loss of willingness to eat and drink that culminates in death.⁴² The incidence of FTT increases as people age and affects 25–40% of nursing home residents.⁴³ It manifests as decreased appetite, inactivity, poor nutrition, and a significant weight loss of more than 5% of baseline.⁴⁴ FTT is not a normal corollary of aging, an indicator of dementia, an expected consequence of chronic disease, or a standard indicator of the late stage of terminal illnesses.⁴⁵ Rather, the syndrome correlates with an underlying mental, physical, or psychosocial condition.⁴⁶

³⁵ Ashley Abramson, *Protecting nursing home residents during COVID-19. Nursing homes have become hotbeds for COVID-19 — as well as for loneliness, fear, and stress for residents, their families and staff.*, AM. PSYCHOL. ASS'N. (Apr. 30, 2020), <https://www.apa.org/topics/covid-19/nursing-home-residents>.

³⁶ Paulin, *supra* note 7.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Jack Healy et al., 'A Slow Killer': Nursing Home Residents Wither in Isolation Forced by the Virus, N.Y. TIMES (October 30, 2020), <https://www.nytimes.com/2020/10/30/us/nursing-homes-isolation-virus.html>.

⁴⁰ USA Today, *Coronavirus reopening, Map of COVID-19 case trends, reopening status and mobility*, USA TODAY (Nov. 15, 2020), <https://www.usatoday.com/storytelling/coronavirus-reopening-america-map/#restrictions>.

⁴¹ Andrew Soergel, *Track the Status of Nursing Home Visits in Your State*, AARP (Nov. 9, 2020), <https://www.aarp.org/caregiving/health/info-2020/nursing-home-visits-by-state.html>.

⁴² Russell Robertson & Marcos Montagnini, *Geriatric Failure to Thrive*, 70 AM. FAM. PHYS 343, 343 (July 14, 2004), <https://www.aafp.org/afp/2004/0715/p343.html>.

⁴³ *Id.*

⁴⁴ Nadia Ali, *Failure to Thrive in Elderly*, Neurology, Medscape (Aug. 28, 2020), <https://emedicine.medscape.com/article/2096163-overview>.

⁴⁵ Robertson & Montagnini, *supra* note 42.

⁴⁶ Ali, *supra* note 44.

III. WHEN EXECUTIVE ORDERS TURN NURSING HOMES INTO GOLDEN PRISONS

The effects of COVID-19 are not proportionate throughout the United States.⁴⁷ The pandemic has affected different populations differently and exposed the United States' health system inequalities.⁴⁸ The nation's chronic underfunding of public health infrastructure and overall indifference to the welfare of congregate populations has left the elderly trapped in their long-term care facility, in a place that was supposed to keep them safe.⁴⁹ Governors should have taken into account that nursing home residents, predisposed to chronic comorbidities, were at even greater risk because they were unable to physically distance because they had nowhere to go.⁵⁰ These residents were left to fend off the virus as best they could.⁵¹ However, they could not, as evidenced by the 42% of overall COVID-19 deaths attributed to nursing home residents.⁵²

The COVID-19 pandemic has compounded the typical risks of loneliness with an increased risk for virus-related complications in the elderly, due to their tendency to have multiple health problems.⁵³ Aggressive recommendations from the Centers for Disease Control and Prevention ("CDC") called for the immediate cancellation of all group activities, communal dining, and the restriction of *all* visitors, with an exception, only provided for end-of-life situations.⁵⁴ Nursing homes have been presented with the dichotomy of protecting their medically-fragile residents from the virus at the expense of isolating them from FTFC with others.⁵⁵

Without daily social stimulation, like communal meals and group activities, nursing home residents lose their connections and feel like they are in a prison.⁵⁶ The United Nations ("UN") defines solitary confinement as isolation from others, except for guards, for at least twenty-two hours a day.⁵⁷ Likewise, a nursing home resident in quarantine may only experience FTFC when

⁴⁷ Aaron van Dorn et al., *Covid-19 exacerbating inequalities in the US*, 395 LANCET 1243, 1243-1244 (Apr. 18, 2020), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30893-X/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30893-X/fulltext).

⁴⁸ See van Dorn, *supra* note 47. (explaining that African American and other communities of color having been especially affected by the COVID-10 pandemic; that across the country, COVID-19 deaths are disproportionately high among African Americans compared with the overall population (i.e. in Milwaukee, three quarters of all COVID-19 related deaths are African American, and in St Louis, all but three people who have died from COVID-19 were African American); that pre-existing racial and health inequalities already present in US society are being exacerbated by the pandemic; that existing structural factors prevent communities of color from practicing social distancing; that minority populations in the US disproportionately make up "essential workers" such as retail grocery workers, public transit employees, and health-care workers and custodial staff. Therefore, these front-line workers, disproportionately black and brown, are typically not afforded the privilege of 'staying at home', leading to increased exposure, morbidity and mortality).

⁴⁹ Galea & Keyes, *supra* note 11 at 4.

⁵⁰ *Id.* at 3.

⁵¹ *Id.*

⁵² Gregg Girvan, *Nursing Home & Assisted Living Facilities Account for 42% of COVID-19 Deaths*, FOUND. RES. ON EQUAL OPPORTUNITY (FREOPP) (May 7, 2020), <https://freopp.org/the-covid-19-nursing-home-crisis-by-the-numbers-3a47433c3f70>.

⁵³ CMS, *supra* note 16.

⁵⁴ *Id.*

⁵⁵ Paulin, *supra* note 7.

⁵⁶ *Id.*

⁵⁷ UN, *Solitary confinement should be banned in most cases, UN expert says*, UN NEWS (Oct. 18, 2011), <https://news.un.org/en/story/2011/10/392012-solitary-confinement-should-be-banned-most-cases-un-expert-says>.

a staff member delivers meals or comes to take their temperature.⁵⁸ According to the UN, indefinite and prolonged solitary confinement in excess of 15 days is considered torture.⁵⁹ The UN further reported that after only a few days of social isolation, long-term mental damage is caused.⁶⁰

The only similarity that solitary confinement should share with a stay-at-home order is the physical separation from other people.⁶¹ The minimum size requirement for a government nursing home residential room is 150 square feet, barely twelve feet by twelve feet.⁶² This is hardly bigger than a typical nine feet by twelve feet jail cell found in any United States prison.⁶³ Additionally, prisons are required to ensure that inmates spend no more than ten continuous hours in their small space.⁶⁴ However, some nursing home residents are confined to their rooms all day, every day.⁶⁵ Even solitary confinement inmates are allowed one to two hours each day of fresh air and the ability to walk outdoors.⁶⁶

By way of comparison, the "Stay-at-Home" Order issued in Mid-March, by Texas Governor, Greg Abbott, remained in effect for an astounding 145 days.⁶⁷ However, the State of Texas understood that prolonged isolation can lead to mental and physical decline in the elderly.⁶⁸ Therefore, Texas instituted new state rules that allow for a "failure to thrive" exception to the isolation order.⁶⁹ Under this rule, if a resident's physical or mental health is declining and they are failing to thrive, a physician can diagnose the condition and a permanently designated visitor be allowed to visit with the resident.⁷⁰

⁵⁸ Rachel Chason & Rebecca Tan, *Isolated and at Risk. Twelve nursing home and assisted-living residents share what life has been like since the pandemic began.* WASH. POST (May 28, 2020), <https://www.washingtonpost.com/graphics/2020/local/social-issues/coronavirus/nursing-homes-patients-voices-covid-19/>.

⁵⁹ UN, *supra* note 57.

⁶⁰ *Id.*

⁶¹ David H. Cloud et al., *Medical Isolation and Solitary Confinement: Balancing Health and Humanity in US Jails and Prisons During COVID-19*, 35 J. GEN. INTERNAL MED. 2738, 2739 (2020).

⁶² 38 C.R.F. § 59.140 (2012).

⁶³ U.S. General Accounting Office (GAO), *Federal Prisons, Revised Design Standards Could Save Expansion Funds*, Report to Congressional Requesters 3, 1-18 (Mar. 1991), <https://www.gao.gov/products/GGD-91-54>.

⁶⁴ *Id.*

⁶⁵ Abramson, *supra* note 35.

⁶⁶ Juleyka Lantigua-Williams, *More Prisons Are Phasing Out the 'Box'. A new study offers data on the continued use of solitary confinement, and a corrections leader weighs in on the practice's future*, THE ATLANTIC (Dec. 1, 2016), https://www.theatlantic.com/politics/archive/2016/12/more-prisons-are-phasing-out-the-box/509225/?gclid=CjwKCAjww5r8BRB6EiwArcckC8ZoGdGkmpssLh4Wdq7ij-niMfyLlJbhfRKT19ELmC_YHguYLjALcBoC1-wQAvD_BwE.

⁶⁷ Champagne, *supra* note 24.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

IV. WHEN MANDATES ACTUALLY HARM THE CITIZENS THEY AIM TO PROTECT

The COVID-19 pandemic has resulted in a series of both federal and state executive orders.⁷¹ These have included strict and mandatory stay-at-home quarantine orders, forced mask-wearing mandates, and restricted access to elective surgeries.⁷² Presumably, all laws are thought by their makers to be justified by a concern for the welfare of the people.⁷³ However, protecting the public should involve not merely stopping viral spread, but also protecting the physical and mental health of a society's citizens.⁷⁴ Freedom to travel is a basic right protected under the United States Constitution.⁷⁵ However, both state and federal governments have asserted that the public health crisis necessitated that drastic restrictions be placed upon their citizens' civil liberties of freedom of movement in order to protect them.⁷⁶

American jurisprudence has long relied on the doctrine of *parens patriae*, in order to uphold executive orders that at first blush, serve to protect the public at large, but may actually cause harm to individual citizens.⁷⁷ The powers of this doctrine stemmed from the King of England's capacity as "father of his country" and therefore, passed to the states after the Revolutionary War.⁷⁸ While courts initially sided with Governors' broad executive authority during the beginning of the COVID-19 crisis, more courts are holding that Governors are exceeding their authority under their state constitution.⁷⁹ For example, most recently, the Michigan Supreme Court denied Governor Whitmer's request to extend her executive orders.⁸⁰ Many state constitutions only allow a governor to issue an executive order with an effect of thirty days unless extended by the legislature through resolution.⁸¹ Therefore, governors must ensure that their executive orders do not cause more harm than good to vulnerable populations and require nursing homes to provide their residents with a minimum amount of FTFC with others each day.

⁷¹ Cheryl K. Chumley, *Executive Orders are not Laws*, WASH. TIMES, (May 5, 2020), <https://www.washingtontimes.com/news/2020/may/5/executive-orders-are-not-laws/>.

⁷² American College Of Surgeons, *COVID-19: Executive Orders by State on Dental, Medical, and Surgical Procedures*, ACS: COVID-19 and Surgery, ACS (June 8, 2020), <https://www.facs.org/covid-19/legislative-regulatory/executive-orders>.

⁷³ Davidus, *Salus populi suprema lex (Or someone always knows what's best for you)*, MEDIUM (Oct. 8, 2015), <https://medium.com/the-jurisprude/salus-populi-suprema-lex-f6360fd10f1#:~:text=Presumably%20all%20laws%20made%20by%20parliaments%20are%20thought,%E2%80%94%20not%20a%20legal%20criterion%20of%20constitutional%20validity>.

⁷⁴ Maria Nicola et al. *The socio-economic implications of the coronavirus pandemic (COVID-19): A review*. 78 INT'L. J. SURGERY 186, 188 (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7162753/>.

⁷⁵ *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969).

⁷⁶ Jorge Galva, et al., *Public Health Strategy and the Police Powers of the State*, 120 PUB. HEALTH REP. 20, 20 (2005), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2569983/>.

⁷⁷ *Hawaii v. Standard Oil Co. of Cal*, 405 U.S. 251, 257 (1972).

⁷⁸ *Id.*

⁷⁹ Alex Ebert, *Pennsylvania Covid Restrictions Unconstitutional, Judge Says*, BLOOMBERG LAW (Sept. 14, 2020), <https://news.bloomberglaw.com/health-law-and-business/pennsylvania-covid-restrictions-unconstitutional-judge-says?context=article-related>.

⁸⁰ Jennifer Henderson & Steve Almasy, *Michigan Supreme Court rules against governor again, ending Covid-19 executive orders*, CNN (Oct. 12, 2020), <https://www.cnn.com/2020/10/12/politics/michigan-supreme-court-whitmer-covid-emergency/index.html>.

⁸¹ Pam Greenberg, *Legislative Oversight of Emergency Executive Powers*, NAT'L CONF. ST. LEGIS. (NCSL) (Oct. 7, 2020), <https://www.ncsl.org/research/about-state-legislatures/legislative-oversight-of-executive-orders.aspx>.

V. EXECUTIVE ORDERS AND PROVISIONS FOR FACE-TO-FACE CONTACT

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security ("CARES") Act and President Donald Trump signed it into law.⁸² It released two trillion dollars in federal funding to battle the spread of COVID-19 in the United States and lessened the burdens felt by Americans due to the suspension of businesses and stay-at-home orders.⁸³ The CARES Act injected massive amounts of money to various sectors within the United States.⁸⁴ Specifically, it designated \$14 billion to farmers, \$337 billion to small businesses with another \$500 billion to small businesses that retained their staff, \$100 billion for healthcare, and "\$1,200 for every adult American with an income less than \$75,000."⁸⁵ However, nowhere does the CARES Act specify any particular amount designated for one of the largest and most vulnerable populations in our country; it shamelessly forgot the elderly nursing home residents.⁸⁶

VI. HOW FACE-TO-FACE CONTACT CAN PROMOTE HEALTH

Face-to-face human contact decreases feelings of loneliness and the risk of depression.⁸⁷ Studies have shown that engaging in FTFC, a mere three times each week can decrease symptoms of depression.⁸⁸ Social isolation may contribute to FTT because eating alone may be unappealing.⁸⁹ FTFC can help prevent a loss of interest in daily life activities which adversely affects a person's eating and sleeping habits.⁹⁰ Loneliness causes the stress hormone Cortisol to increase, resulting in immune system compromise.⁹¹ FTFC can strengthen the immune system by decreasing cortisol.⁹² Although phone calls are an easy communication method, they do not provide the same level of support as FTFC.⁹³ Providing access to FTFC through tablets and other touch technology ("TT") can promote nursing home residents' health outcomes.⁹⁴ Therefore, nursing home residents confined by quarantine should have access to resources that can make their separation psychologically bearable—for example, television, tablets, radio, reading materials, and means of communicating with loved ones—since they are enduring isolation in favor of the greater good, not as a punishment.⁹⁵

⁸² Nicola, *supra* note 74 at 188.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Christopher Bergland, *Face-to-Face Social Contact Reduces Risk of Depression*, PSYCHOL. TODAY (October 5, 2015), <https://www.psychologytoday.com/us/blog/the-athletes-way/201510/face-face-social-contact-reduces-risk-depression>.

⁸⁸ *Id.*

⁸⁹ Claire Samuels, *Loss of Appetite in the Elderly: Why it Happens & How to Get it Back*, A PLACE FOR MOM (Mar. 22, 2020), <https://www.aplaceformom.com/caregiver-resources/articles/appetite-loss>.

⁹⁰ *Id.*

⁹¹ Cleveland Clinic, *What Happens in Your Body When You're Lonely*, HEALTH ESSENTIALS (Feb. 23, 2018), <https://health.clevelandclinic.org/what-happens-in-your-body-when-youre-lonely/>.

⁹² *Id.*

⁹³ Aetonix, *Communicating with An Elderly Loved One? Go Digital*, (2020), <https://aetonix.com/monitoring-home-patients/communicating-elderly-loved-one-go-digital/>.

⁹⁴ *Id.*

⁹⁵ Cloud, *supra* note 61 at 2739.

Providing access to FTFC can be accomplished in a variety of cost-effective manners because of the CARES Act and would not impose an expense on any nursing home. The CARES Act provided a twelve hundred dollar advanced tax credit for individuals.⁹⁶ The stimulus check belongs to the nursing home resident, not the nursing home, and is not considered income nor a Medicaid resource.⁹⁷ Therefore, most nursing home residents should have received the twelve hundred dollar stimulus check under the CARES Act, to be used however they wished.⁹⁸

The money furnished through the CARES Act is more than enough to provide every nursing home resident with a variety of options to ensure and improve socialization, such as a powered air-purifying respirator (PAPR) or foldable plexiglass partition, to allow in-person visits with family; or a touch technology device, such as a tablet to allow for remote interactions. The average cost of a tablet is one-hundred forty dollars.⁹⁹ The average cost of a foldable plexiglass shield is seventy-nine dollars.¹⁰⁰ The average cost of a PAPR is one-hundred eighty dollars.¹⁰¹ Combined, these three devices amount to a mere three hundred ninety-nine dollars, well short of the twelve-hundred dollars each resident should have received. Therefore, there is no reason that nursing homes are unable to provide measures which ensure that their residents have access to FTFC with others during their confinement.

Barriers to using modern technology by elderly populations have been identified as cost, lack of instruction, guidance, knowledge, and confidence.¹⁰² However, despite these barriers, the majority of older adults enjoy using a tablet to gain access to quick information and social inclusion.¹⁰³ Furthermore, tablets offer less complex interfaces than other technology, like laptop computers, and enable older populations to forego keyboards which may be difficult to use with arthritic hands.¹⁰⁴ Interestingly, when using a touch technology device, older people aged 60-72 are able to reach a similar performance level as that of younger people aged 20-39.¹⁰⁵

⁹⁶ Michelle Singletary, *No, the nursing home cannot take your stimulus payment*, WASH. POST (June 22, 2020), <https://www.washingtonpost.com/business/2020/06/22/no-nursing-home-cannot-take-your-stimulus-payment/>.

⁹⁷ Nat'l Ctr.Law & Elder Rts., *Nursing Home Residents, Medicaid, and Stimulus Checks: What You Need to Know*, [https://ncler.acl.gov/getattachment/Resources/Nursing-Home-Residents-and-Stimulus-Checks-\(1\).pdf.aspx?lang=en-US](https://ncler.acl.gov/getattachment/Resources/Nursing-Home-Residents-and-Stimulus-Checks-(1).pdf.aspx?lang=en-US).

⁹⁸ *Id.*

⁹⁹ Amazon, *Tablets*, Amazon (Nov. 15, 2020), <https://www.amazon.com/Tablets/b?ie=UTF8&node=1232597011>.

¹⁰⁰ Amazon, *Foldable Plexiglass Shield*, Amazon (Nov. 15, 2020), https://www.amazon.com/Student-Sneeze-Plexiglass-Acrylic-Shield/dp/B08GYDPL3R/ref=sr_1_10?crd=117B9KA2VHZ63&dchild=1&keywords=foldable+plexiglass+shield&qid=1605487054&sprefix=foldable+plexiglass+%2Caps%2C194&sr=8-10.

¹⁰¹ Amazon, *PAPR*, Amazon, (Nov. 15, 2020), https://www.amazon.com/Efficiency-Respirator-Rechargeable-Electrical-Industrial/dp/B08F45VD9C/ref=sr_1_7?dchild=1&keywords=PAPR&qid=1605486768&sr=8-7.

¹⁰² Eleftheria Vaportzis et al., *Older Adults Perceptions of Technology and Barriers to Interacting with Tablet Computers: A Focus Group Study*, 8 FRONTIERS IN PSYCHOL. 1, 1-11 (Oct. 4, 2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5649151/>.

¹⁰³ *Id.* at 9.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 2.

VII. CONCLUSION

What was thought to be a short-term disease process, isolated to East Asia, has continued, with forecasts of subsequent "waves" mimicking three separate waves of the 1918 Spanish flu.¹⁰⁶ Dr. Anthony S. Fauci, director of the National Institute of Allergy and Infectious Diseases, has recently warned Congress that COVID-19 cases could ultimately reach 100,000 per day.¹⁰⁷ Further, it could be a year or more before an effective vaccine has been created, tested, proven safe, and ready for administration to the world's population.¹⁰⁸ Or it could be never, as is the case with the Human Immunodeficiency virus, Zika virus, Hepatitis C Virus, tuberculosis, malaria, West Nile, and others.¹⁰⁹ Developing natural immunity through exposure to an active disease is the best type of immunity because it can sometimes provide life-long immunity.¹¹⁰ However, according to the Chief of the World Health Organization ("WHO"), Tedros Ghebreyesus, allowing a dangerous virus, like COVID-19, which is not fully understood to progress unchecked, is simply unethical.¹¹¹ Therefore, herd immunity is not a feasible option to combat COVID-19.¹¹²

Because there seems to be no near end in sight and executive orders have far-reaching effects, federal and state governments must consider the effects of their executive orders, not only on society as a whole, but on the individuals that make up that society. In order to do this, they must act in a more holistic approach in assessing not only to the public's health needs as a whole, but incorporating assessments which identify and address the health needs of the most vulnerable populations. Practically, governors should be required to include FTT visitor exceptions within their strict quarantine orders, and require that nursing homes provide a minimum amount of face-to-face contact with others each day to support their health and vitality.

¹⁰⁶ CDC, *Three Waves of Pandemic, Influenza (Flu)*, CDC (May 11, 2018), <https://www.cdc.gov/flu/pandemic-resources/1918-commemoration/three-waves.htm>.

¹⁰⁷ Clare Foran & Jamie Ehrlich, *Fauci warns Congress that new US coronavirus cases could rise to 100,000 a day*, CNN (June 30, 2020), <https://www.cnn.com/2020/06/30/politics/fauci-redford-testimony-senate-coronavirus/index.html>.

¹⁰⁸ Berkeley Lovelace, *Why a coronavirus vaccine might be ready next year – and what could go wrong*, CNBC (May 21, 2020), <https://www.cnbc.com/2020/05/21/coronavirus-vaccine-why-it-may-be-ready-early-next-year-and-what-could-go-wrong.html>.

¹⁰⁹ Donald G. McNeil Jr., *Why Don't We Have Vaccines Against Everything*, N.Y. TIMES (Nov. 19, 2018), <https://www.nytimes.com/2018/11/19/health/vaccines-poverty.html>.

¹¹⁰ CDC, *Vaccines and Immunizations*, CDC (Mar. 10, 2017), <https://www.cdc.gov/vaccines/vac-gen/immunity-types.htm>.

¹¹¹ Antonia Farzaan & Miriam Berger, *Trying to Reach herd immunity to the coronavirus is 'unethical'*, WASH. POST, (Oct. 13, 2020), <https://www.washingtonpost.com/world/2020/10/13/herd-immunity-coronavirus-unethical-who/>.

¹¹² *Id.*