

Biden's Vaccine Mandate – Who's Fighting Back, and How?

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Backlash against Biden's sweeping COVID vaccine mandate has been swift, and experts say the mandate is unlikely to hold up in court.

by [Joseph Mercola](#)

sourced from [Children's Health Defense](#)

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Story at-a-glance:

- In his presidential campaign, [Joe Biden](#) promised he would not impose [vaccine mandates](#). Sept. 9, Biden issued an executive order mandating all U.S. companies with 100 or more employees to require [COVID](#) vaccination or weekly testing, or face federal fines of up to \$14,000 per violation.
- Biden is also requiring all federal employees and federal contractors to get the shots. Postal workers and members of Congress and their staff just happen to have been made exempt from this requirement.
- No exceptions for persons who have already had COVID and recovered, and therefore have antibodies to the virus, have been issued. Several lawsuits are underway by people who have [natural immunity](#) and don't need or benefit from the mandated COVID shots.
- The Republican National Committee has announced they will sue the Biden administration for issuing an unconstitutional mandate.
- While the [U.S. Food and Drug Administration](#) (FDA) has granted full approval to [Comirnaty](#), that product is not

yet available. The only [Pfizer](#) shot currently available, called BNT162b2, remains under emergency use authorization, and the two differ widely in their legal liabilities.

Sept. 9, in a sweeping [executive order](#), president [Joe Biden mandated](#) all U.S. companies with 100 or more employees to require [COVID](#) vaccination or weekly testing, or face federal fines of up to \$14,000 per violation. Biden also ordered businesses to give time off to employees to receive the injections.

Biden is also requiring all federal employees and federal contractors to get the shots. For unspecified reasons, postal workers and members of Congress and their staff are exempt from the vaccine mandate.

Biden did not make any exceptions for persons who have already had COVID and recovered, and therefore have antibodies to the virus.

He also said he'd use his "[power as president](#)" against any governor unwilling to follow the order "to get them out of the way." Biden may be biting off more than he can chew, however, because as of Sept. 11, 2021, [28 states](#) were already pushing back against federal vaccine mandates.

The backlash was swift. The Republican National Committee quickly announced they would sue the Biden administration for issuing an "unconstitutional mandate." GOP Chairwoman Ronna McDaniel issued a [statement](#):

"Joe Biden told Americans when he was elected that he would not impose vaccine mandates. He lied. Now small businesses, workers, and families across the country will pay the price.

"Like many Americans, I am pro-vaccine and anti-mandate. Many small businesses and workers do not have the money or legal

resources to fight Biden's unconstitutional actions and authoritarian decrees, but when his decree goes into effect, the RNC will sue the administration to protect Americans and their liberties."

Nebraska Republican Sen. Ben Sasse [told the Daily Caller](#):

"President Biden is so desperate to distract from his shameful, incompetent Afghanistan exit that he is saying crazy things and pushing constitutionally flawed executive orders.

"This is a cynical attempt to pick a fight and distract from the President's morally disgraceful decision to leave Americans behind Taliban lines on the 20th anniversary of 9/11. This isn't how you beat COVID, but it is how you run a distraction campaign – it's gross and the American people shouldn't fall for it."

In a series of [tweets](#), South Dakota Gov. Kristi Noem [stated](#):

"South Dakota will stand up to defend freedom @JoeBiden see you in court," and "My legal team is standing by ready to file our lawsuit the minute Joe Biden files his unconstitutional rule. This gross example of federal intrusion will not stand."

Georgia Gov. Brian Kemp also issued a statement saying he intends to "pursue every legal option available" to halt Biden's "blatantly unlawful overreach," as did Arizona Gov. Doug Ducey, who in a tweet [stated](#):

"This is exactly the kind of big government overreach we have tried so hard to prevent in Arizona – now the Biden-Harris administration is hammering down on private businesses and individual freedoms in an unprecedented and dangerous way. This will never stand up in court.

"This dictatorial approach is wrong, un-American and will do far more harm than good. How many workers will be displaced? How many kids kept out of classrooms? How many businesses

fined? The vaccine is and should be a choice. We must and will push back.”

Florida governments face fines if following Biden’s order

In Florida, Gov. Ron DeSantis countered Biden’s edict with one of his own. Any local government that makes COVID vaccination a requirement for employment [will be fined](#) \$5,000 per violation. During a Sept.13 press conference, DeSantis said:

“We are gonna stand for the men and women who are serving us. We are going to protect Florida jobs. We are not gonna to let people be fired because of a vaccine mandate.

“You don’t just cast aside people who have been serving faithfully over this issue, over what’s basically a personal choice on their individual health. We cannot let these folks be cast aside. We cannot allow their jobs to be destroyed.”

I was going to include DeSantis’ speech in this article, but it has since been deleted for “violating YouTube’s community guidelines.” Imagine that, that they would actually remove a legally elected governor’s opinion on this topic because it violates their authoritarian tyranny.

Biden is clearly out of legal bounds

Biden’s executive order is unlikely to stand up in court, seeing how federal law prohibits the mandating of emergency use products, which by definition are experimental. As noted in a May [report by The Defender](#):

“The bottom line is this: mandating products authorized for [Emergency Use Authorization](#) status (EUA) violates federal law as detailed in the following legal notifications.

“All COVID vaccines, COVID PCR and antigen tests, and masks are merely EUA-authorized, not approved or licensed, by the federal government. Long-term safety and efficacy have not

been proven.

“EUA products are by definition experimental, which requires people be given the right to refuse them. Under the Nuremberg Code, the foundation of ethical medicine, no one may be coerced to participate in a medical experiment. Consent of the individual is ‘absolutely essential.’

“Earlier this year, Mary Holland, Children’s Health Defense president and general counsel, and attorney Greg Glaser stated that federal law prohibits employers from mandating EUA COVID vaccines (or EUA COVID-19 tests or masks). [Holland and Glaser wrote:](#)

“‘If a vaccine has been issued EUA by the FDA, it is not fully licensed and must be voluntary. A private party, such as an employer, school or hospital cannot circumvent the EUA law, which prohibits mandates. Indeed, the EUA law preventing mandates is so explicit that there is only one precedent case regarding an attempt to mandate an EUA vaccine.’”

If you’re like most, you’re probably thinking, “Well, Biden’s executive order came after the U.S. Food and Drug Administration gave full approval to the Pfizer/BioNTech COVID shot Comirnaty, so the vaccine is not under EUA.” You’d be partially right. But mostly wrong.

The difference between Pfizer’s BNT162b2 shot and Comirnaty

The [FDA](#) did indeed give full approval to Comirnaty, but that product is not predicted to be available for over a year. The only Pfizer shot currently available, called BNT162b2, remains under EUA. We have the FDA to thank for this unusual and befuddling situation, but the key take-home is that while approval has been granted to Comirnaty, that product is not obtainable.

The FDA wants BNT162b2 to be viewed as interchangeable with

Comirnaty, but from a legal standpoint they clearly are not identical. BNT162b2, being under EUA, is indemnified against financial liability, whereas Comirnaty, once it becomes available, will not have that liability shield (unless Pfizer/BioNTech manage to get liability shielding for that product before its release).

In other words, if you're injured by the BNT162b2, your only recourse is to apply for compensation from the [Countermeasures Injury Compensation Act](#) (CICP). Compensation from CICP is very limited and hard to get. In its 15-year history, it has [paid out](#) just [29 claims](#), fewer than 1 in 10.

You only qualify if your injury requires hospitalization and results in significant disability and/or death, and even if you meet the eligibility criteria, it requires you to use up your private health insurance before it kicks in to pay the difference.

There's no reimbursement for pain and suffering, only lost wages and unpaid medical bills. This means a retired person cannot qualify even if they die or end up in a wheelchair. Salary compensation is of limited duration, and capped at \$50,000 a year, and the CICP's decision cannot be appealed.

If normal circumstances apply to Comirnaty, were you to be injured by that injection, you'd be able to sue for damages under the national [Vaccine Injury Compensation Plan](#), so from a legal perspective, there's a rather significant difference between these two products.

Legal notifications you can use

If your employer or school requires you to get a COVID shot, consider using the legal notifications provided by the [Children's Health Defense](#) legal team. The notices inform employers and educational institutions that they are violating federal law.

Three separate notices are available for download from the [Children's Health Defense Legal Resources page](#) – one for mask mandates, one for PCR testing and a third for vaccines. There, you can also find information on how to request a religious exemption for COVID-19 vaccine mandates in the workplace.

Vaccine mandate heralds communist-style social credit system

In a Sept. 13, episode of Fox News' Fox & Friends, co-host Rachel Campos-Duffy warned that vaccine mandates are “the beginning of the communist-style social credit system,” [adding](#):

“[Dr. Anthony Fauci](#) is now saying that if you don't have the vaccine, you shouldn't be able to have air travel. I mean, this happens in China. In China ... if you don't agree with the government, you can't get on a train. They block you. They have a way to do that, and this is the beginning of that system where if you're a dissident, if you don't agree with the party in power, you will be punished.”

Are we rushing toward a social credit system where behavior is either rewarded or punished based on the whims of those in charge of the system? Biden's refusal to make exceptions for those with [natural immunity](#), who by no stretch of the imagination actually need or benefit from a COVID shot, seems to indicate we're definitely heading that way.

Giving people with natural immunity a health [passport](#) won't work for the [technocratic elite](#) because the naturally immune aren't on a vaccine subscription. The whole point of having a vaccine passport is that you lose your freedom every time a new booster rolls out. You either get the booster or lose your freedom.

People with natural immunity can't be roped into this control

scheme. What are they going to force the naturally immune to do in order to keep a valid passport? They can't make money off natural immunity, and they can't use it to control.

In a Sept. 13, [letter to Biden](#), Consumer Brands Association CEO Geoff Freeman listed 19 of 50 questions received from its member companies. Among those questions is whether Biden's executive order includes religious or medical exemptions, including exemption due to natural immunity.

As [reported](#) by Newsweek, details of Biden's plan will be ironed out by the U.S. Occupational Safety and Health Administration (OSHA), but in the meantime, Freeman called on the Biden administration to address some of the most pressing questions.

OSHA lets employers off the hook for vaccine injuries

Speaking of OSHA, in May the agency quietly [revoked](#) the [requirement](#) for employers who mandate the vaccine to record side effects as a work-related event. By doing so, OSHA relieved itself and employers from having to pay out workers' comp if an employee is injured by a mandated COVID shot. OSHA tried to justify its decision, stating:

"OSHA does not wish to have any appearance of discouraging workers from receiving COVID-19 vaccination, and also does not wish to disincentivize employers' vaccination efforts.

"As a result, OSHA will not enforce 29 CFR 1904's recording requirements to require any employers to record worker side effects from COVID-19 vaccination through May 2022. We will reevaluate the agency's position at that time to determine the best course of action moving forward."

People with natural immunity turn to the law

In the days ahead, our justice system is bound to clog up with lawsuits against employers, schools and governments alike. Law professor [Todd Zywicki](#) recently [sued](#) George Mason University

in Virginia over their vaccine mandate, as he has natural immunity. Zywicki discussed his lawsuit in an Aug. 6, [Wall Street Journal commentary](#).

His lawsuit pointed out that people with natural immunity have an increased risk of adverse reactions to the COVID shot – according to one [study](#) up to 4.4 times the risk of clinically significant side effects – and that the requirement [violates](#) due process rights, the right to refuse unwanted medical treatment, and is noncompliant with the Emergency Use Authorization.

Aug. 17 George Mason University caved before the case went to trial and granted Zywicki a [medical exemption](#). Unfortunately, the school did not revise its general policy.

A number of other lawsuits have also been [filed](#), including one by more than a dozen students and Children’s Health Defense [against Rutgers University](#) in New Jersey, and one by six Oregon workers who are [suing the state](#) on grounds that they already have natural immunity.

We filed a lawsuit in federal court Monday along with 18 students against Rutgers University its board of governors, Rutgers President Jonathan Holloway + others over university’s decision to mandate COVID vaccines for students attending school in fall. <https://t.co/6D5WNQ6sds>

– Robert F. Kennedy Jr (@RobertKennedyJr) [August 17, 2021](#)

The plaintiffs include two corrections officers, an EMT, a medical office manager, a school bus driver and a special agent in charge of an Oregon Department of Justice investigatory unit.

Jason Dudash, director of the Oregon chapter of the Freedom Foundation, which is representing the state employees, accused Oregon Gov. Kate Brown of becoming “power-hungry amid the

pandemic.” “The courts must establish a more logical, science-based approach,” [he said](#).

Military service members sue over vaccine mandate

Military service members with natural immunity are also suing the Department of Defense, the FDA and the Department of Health and Human Services. As [reported by The Defender](#):

“The lead plaintiffs in the lawsuit, Staff Sergeant Daniel Robert and Staff Sergeant Holli Mulvihill, allege U.S. Sec. of Defense Lloyd Austin ignored the DOD’s own regulations and created an entirely new definition of ‘full immunity’ as being achievable only by vaccination.

“According to the lawsuit, the military’s existing laws and regulations unequivocally provide the exemption the plaintiffs seek under Army Regulation 40-562 (‘AR 40-562’), which provides documented survivors of an infection a presumptive medical exemption from vaccination because of the natural immunity acquired as a result of having survived the infection ...

“Dr. Admiral Brett Giroir, HHS assistant secretary, stated in an interview Aug. 24 with Fox News: ‘So natural immunity, it’s very important ... There are still no data to suggest vaccine immunity is better than natural immunity. I think both are highly protective.’

Yet on the same day, Austin issued a memo mandating the entire Armed Forces be vaccinated, in which he wrote: ‘Those with previous COVID-19 infection are not considered fully vaccinated.’

“In that memo, plaintiffs allege Austin created a new term and concept, which contradicts the plain language of DOD’s own regulations, long-standing immunology practice, medical ethics and the overwhelming weight of scientific evidence regarding this specific virus.

“Plaintiffs claim Austin, who is not a doctor, changed the DOD’s own regulation without providing ‘a scintilla of evidence to support it.’ They also allege Austin made the regulation change without going through the required rulemaking process, in violation of the Administrative Procedures Act review.”

The lawsuit also points out that Pfizer’s Phase 3 trials, which is the phase in which long-term side effects are detected, won’t be completed until 2023. Moreover, the lawsuit highlights the fact that Pfizer unblinded the two cohorts in the middle of the trial and eliminated the control group by offering the real “vaccine” to all controls.

In so doing, Pfizer turned the study from a placebo-controlled blinded trial into an open observational study, and the FDA allowed it. Observational studies carry nowhere near the same weight as placebo-controlled trials, as you don’t have anything to compare the treatment group against. It’s very easy to overlook even severe injuries when you have no control group.

Fauci warns there will be ‘many more vaccine mandates’

As we approach the two-year mark of this pandemic, it’s time for our judicial system to kick in and protect the public. The emergency powers granted to governors are not supposed to last forever, and the rights afforded us by the U.S. Constitution were never intended to be suspended and tossed aside in times of medical crises. It’s time this rampant lawlessness got reined in.

Whether or not that will happen remains to be seen. What we can be sure of is that if our legal system fails to do its duty, the beacon of freedom in this world will be lost. As [reported by CNN](#), Fauci is out there warning that “if more people aren’t persuaded to get vaccinated by messaging from health officials and ‘trusted political messengers,’ additional mandates from schools and businesses may be

necessary.”

The technocratic elite will take it all the way because they are fighting for the Great Reset. And the Great Reset won't work if people are free. They need leverage over the population, which is precisely what vaccine passports are all about.

Jacobson v. Massachusetts: A ruling with tragic consequences

In closing, those who support the mandating of experimental COVID shots will typically point to the 1905 Jacobson v. Massachusetts case, which is often interpreted as giving government the right to force vaccinate everyone for the common good. However, as [noted by Alex Berenson](#) in a recent blog post, we ought to really look at the time at which that verdict was given.

In the years surrounding the 1905 Jacobson v. Massachusetts verdict, the U.S. Supreme Court also ruled in favor of racial discrimination, corporate monopoly, child labor and making questioning government a jailable offense. That same year, in 1905, they ruled workers have no rights. In 1923, they ruled minimum wage laws are illegal and in 1927 they OK'd forced sterilization based on the Jacobson ruling.

Most of these rulings have since been overturned, and for obvious reasons. Most people don't agree with racial discrimination, monopolies and child labor anymore. Most agree that minimum wage laws are a good thing, and that questioning government is an unassailable right that is necessary for democracy to work. The 1905 Jacobson v. Massachusetts case is no different. It was made in and for a different time, when individual and human rights were routinely quashed.

As [noted by](#) National Vaccine Information Center president Barbara Loe Fisher in “How Fear of a Virus Changed Our World”:

“Using bad logic and bad science while leaning heavily on the pseudo-ethic of utilitarianism, state governments were given the green light to legally require vaccination based on a ‘common belief’ that vaccination is safe and effective, rather than proven fact.

“Piously waving the greater good flag to justify throwing civil liberties out the door, the court majority ruled that citizens do not have a legal right to be free at all times because there are ‘manifold restraints to which every person is necessarily subjected for the common good’ ...

“But the justices also warned that mandatory vaccination laws should not be forced on a person whose physical condition would make vaccination ‘cruel and inhuman to the last degree.’ They said:

‘‘We are not to be understood as holding that the statute was intended to be applied in such a case or, if it was so intended, that the judiciary would not be competent to interfere and protect the health and life of the individual concerned. ‘All laws,’ this Court has said, ‘should receive a sensible construction’ ...

“During this time of fear and confusion, the Jacobson ruling also reminds us that it is democratically elected representatives in state legislatures who make public health laws governing people living in different states. That is because what is not defined in the U.S. Constitution as a federal activity is reserved for the states, which is an important check on federal government power.

“Elected lawmakers in your state can choose to mandate a few or many vaccines with or without exemptions, while the federal government has the authority to mandate vaccinations for people entering the U.S. or crossing state borders.”

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