

The Four Biggest Problems with Biden's Vaccine Order

Back in December of 2020, then [President-elect Biden said that he would not make vaccines against COVID-19 mandatory](#), nor did he think they should be mandatory. Given the [new vaccine mandate](#) by the White House, set to affect nearly 100 million Americans by some estimates, one reasonably conclude that Biden misled the people. However, Biden's actions will likely increase vaccine hesitancy, lead to further distrust of the government, and can expect multiple legal challenges – as well as civil disobedience. These outcomes can all be expected due to four distinct challenges to the mandate.

1. Disregard for Congress and the Constitution

First, Biden's executive order is just that – an executive order. Congress, the legislative branch, and thus the entire concept of representative government, has been bypassed by President Biden. The White House has no legislative authority to [create an emergency rule under OSHA](#) and it says as much in the U.S. Constitution. [Article 1, Section 1](#) states very plainly, in a single sentence: "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." Nowhere in that sentence are legislative authorities granted to the Executive branch. Likewise, the President does not reserve such powers – powers which belong to the states or to the people, as outlined by the [Tenth Amendment in the Bill of Rights](#).

2. Faulty Legal Precedent

Second, proponents of the White House's actions have cited a legal precedent – the 1905 Supreme Court Case [*Jacobson v. Massachusetts*](#), specifically – which is unlikely to hold up to any serious scrutiny. In that case, a Massachusetts law passed by a legislature and adhering to the principles of the separation of powers (unlike an executive order authored by the President) allowed local town health boards (not federal agencies run by unelected bureaucrats) to establish mandatory vaccines if it was deemed necessary by local, municipal, elected officials. Those who did not comply were [prosecuted with a simple fine of five dollars](#). A challenge was raised to the law, and the Supreme Court – the Fuller Court specifically – upheld it.

However, when compared to Biden's new mandate, one can readily see legal issues. Apart from the legislative process that the Massachusetts law first underwent as outlined above, [Biden's executive order places the burden not on the people, but on private companies](#), effectively turning employer against employee. Certainly, in an employer-employee relationship, and even more so in a government-as-employer setting, vaccine requirements have a clearly established basis. What is not clearly established, if established at all, is the federal government pre-arranging the medical requirements upon which an employment relationship may commence between private individuals.

Furthermore, the appeal to *Jacobson v. Massachusetts* ought to enrage many Americans, especially women and minorities. *Jacobson* was decided under [Chief Justice Fuller, who presided over *Plessy v. Ferguson* \(1896\)](#), when racial segregation was codified under federal law. That decision has now been overturned, but remains held in absolute contempt, and rightly so. In addition, *Jacobson* was decided nearly 15 years before [women received the right to vote](#) at the federal level, and was

also later [cited as precedent – even served as the basis – for the decision of *Buck v. Bell* \(1927\)](#) when SCOTUS allowed for compulsory sterilization of women deemed mentally unfit for motherhood.

3. Ongoing Concerns Surround the Vaccine

Third, and speaking of women, there are still ongoing concerns about the safety of the COVID vaccines. Although the [CDC has said there is little-to-no risk](#), and the [FDA has fully approved the vaccine](#), there have been recent reports that the vaccines have been affecting women's menstrual cycles, raising serious concerns about reproductive health. As recently as early September, in fact, the [National Institutes of Health has approved 1.67 million dollars to investigate those claims](#). The NIH appears to be taking these reports very seriously – unlike the White House, the CDC, and the FDA.

Given the recent tensions and [commentary from the Biden Administration in opposition to Texas' new 6-week abortion law](#), we might assume that the Biden Administration would be a little more supportive of both bodily autonomy and reproductive health. However, that does not seem to be the case. Furthermore, we might hope that supporters of the Biden Administration would never dream of giving so much deference to a SCOTUS decision made under a Chief Justice who helped codify segregation, and was later used as the basis for forced sterilization. But that does not seem to be the case either.

4. No Exception for Natural Immunity

Fourth and finally, Biden's mandate makes no exception for natural immunity against COVID, [now believed to be more effective than vaccines](#). Todd Zywicki, a professor at the

Antonin Scalia Law School, has already [successfully fought George Mason University's vaccine mandate](#) after filing a lawsuit against the mandate on the basis of natural immunity. Requiring vaccines for those already immune is unnecessary and a violation of medical ethics, and Zywicki's previous efforts will likely serve as a basis for legal challenges going forward.

It is astounding, truly, to watch the White House bypass the legislative process, ignore representative government, and disrespect the separation of powers. It is enraging to watch supporters of the Biden Administration cite a Supreme Court decision made under the same Chief Justice who presided over *Plessy v. Ferguson*, years before women had the right to vote, and later used to support forced sterilization.

It is horrific that vaccines be mandated before a new investigation into their safety for women is concluded. And it is unconscionable that such an executive order would make no provision for those possessing natural immunity. Surely, this cannot stand.

—


This article was originally published on FEE.org. Read the [original article](#). 

Image Credit:

Flickr-LBJ Library (cropped), Public Domain