



Written by [Veronika Kyrylenko](#) on December 6, 2021

## Oklahoma Sues Biden Admin Over Vax Mandate for National Guard and Federal Employees

The state of Oklahoma is taking the Biden administration to court over the COVID vaccine mandate for federal employees and the National Guard, which the president issued “without any semblance of a congressional authorization,” according to the state.

Oklahoma filed the [lawsuit](#) against President Joe Biden and his top administration officials on December 2, asking the court to stop the vaccine mandate due to its unlawful and unconstitutional nature.

According to Oklahoma’s lawsuit,



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- The vaccine mandate is unlawful under [5 U.S.C. § 3301](#), since “nothing about ‘efficiency’ in any part of the federal bureaucracy enables the President to issue a vaccine mandate.”
- The vaccine mandate is unlawful under [5 U.S.C. § 3302](#), since the president “is just jumping the gun and ordering every federal employee [and member of the National Guard] — regardless whether they are naturally or otherwise immunized from Coronavirus, unlikely to get or transmit Coronavirus, or otherwise unwilling to get the vaccine — to get vaccinated.”
- The vaccine mandate is unlawful under [5 U.S.C. § 7301](#), since “nothing about [President Biden’s] [EO 14043](#) concerns the ‘conduct’ of federal employees. Instead, that Executive Order concerns a vaccination directive, which is a *status*. Conduct and status frequently, and in this context, are diametrically opposed to one another.”
- The vaccine mandate is unlawful under the Administrative Procedure Act ([APA](#)) as an agency action not in accordance with law and in excess of authority (it exceeds the authority Congress has afforded the Executive Branch”) as well as one that is “arbitrary and capricious.”
- The vaccine mandate is unconstitutional because the Constitution does not confer the federal government the authority to issue this vaccine mandate under its federalism provisions or Article II: “Does the President have the unilateral executive power granted in Article II of the Constitution to issue a vaccine mandate like the one at issue here?—was settled in the Steel Seizure Cases. See [Youngstown Sheet & Tube Co. v. Sawyer](#), 343 U.S. 579 (1952). If that power exists at all, it must come from the U.S. Constitution Article II, Section 1.” Furthermore, “The President has no unilateral power under Article II to issue a vaccine mandate any more than he has the authority to seize private property.”
- The vaccine mandate is unconstitutional under the Constitution’s separation of powers and the non-delegation principle: “U.S. Constitution Article I, Section 1, and Article II, Section 1, do not permit Congress to delegate the momentous question of vaccine mandate to the Executive.” Such a mandate is “[a] question of great political and economic significance and involves matters that go to the heart of Congress’ explicit constitutional power to make certain rules concerning the military, to human dignity,



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to the individual's bodily integrity, and to the individual's right to refuse treatment.... The federal government, it is clear, is without power to invade the police powers of the States concerning health, safety, and morals."

- The vaccine mandate is unconstitutional under the [Fifth Amendment's](#) Due Process Clause and violates rights to due process and bodily integrity, as well as the right to refuse medical treatment: "In a landmark opinion more than three decades ago, the Court held that "a competent person has a constitutionally protected liberty interest [under due process] in refusing unwanted medical treatment." *Cruzan by Cruzan v. Dir., Mo. Dep't of Health*, 497 U.S. 261, 278 (1990). Even effective medical treatment could be rejected by an individual if she did not want it. That determination went to the core of the individual's autonomy and her bodily integrity."

Oklahoma did not mince words on that crucial matter: "Forcing individuals to take vaccinations they do not want demeans and degrades them to a sub-human level by stripping them of their free will on a matter essential to their human dignity."

The mandate also infringes on people's property interest in their own federal employment when they have a "legitimate claim of entitlement to it." Per the suit, "Under federal law, federal employment as a career official generally is an enduring one, thus conferring expectations of longevity and durability on its holders.... Certainly, requirements to vaccinate are not supposed to get in the way of continuing to thus serve."

- The vaccine mandate is unconstitutional under the Constitution's separation of powers and the [Take Care Clause](#) since the president "is trying to establish a wholly unlawful regime. He is not enforcing the law in the slightest."

The lawsuit asks the Court to grant a Temporary Restraining Order (TRO) and/or preliminary injunction to the mandate, and also to block the Biden administration from withholding federal funding from the Oklahoma National Guard or its Guard members.

Attorney General John O'Connor, who filed the suit, said in a [statement](#) that Biden's mandate is "unlawful and does not reflect the Land of the Free." Calling the Oklahoma Guardsmen and federal employees "true patriots," he added: "Biden's COVID-19 vaccine mandate ensures that many Oklahoma National Guard members will simply quit instead of getting a vaccine, a situation that will irreparably harm Oklahomans' safety and security."

Last week, Defense Secretary Lloyd Austin formally rejected a request by Oklahoma Governor Kevin Stitt that his state's National Guard be exempt from a Pentagon COVID-19 vaccination mandate. Austin warned that "Failure to do so may lead to a prohibition on the member's participation in drills and training" and "jeopardize the member's status in the National Guard."





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