



Written by [Bob Adelman](#) on November 5, 2021

A Dozen States Suing OSHA's Mandate Overreach; DOL Claims It's "Not a Mandate"

Almost immediately after OSHA issued its long-awaited "emergency temporary standard" (ETS) on COVID vaccine mandates affecting millions of American workers, two things happened: 1) [a dozen states began filing lawsuits](#) challenging the constitutionality of the mandate; and 2) Labor Secretary Marty Walsh, who oversees OSHA, said, "[It's not a mandate.](#)"

Florida Governor Ron DeSantis led off by declaring on Thursday that it was filing a lawsuit challenging the mandate, calling it "unlawful" and unconstitutional:



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We started [at the beginning of the pandemic in 2020] with 15 days to slow the spread, and now its "get jabbed or lose your job."

We're supposed to be a government of laws, not a government of men. This OSHA rule is 500 pages [from] a government bureaucracy ... that is being run by executive edict [and] not a government bound by constitutional constraints.

The State of Florida will immediately challenge the OSHA rule in court because it's inconsistent with the Constitution and not legally authorized through Congressional statutes.

There is no federal police power and the federal government cannot unilaterally impose medical policy under the guise of workplace regulation.

Individuals should make informed choices about their own healthcare. It is important to stand up for people's individual ability to make decisions for themselves.

Walsh begged to differ. On CNN, he told Wolf Blitzer:

This is not a mandate ... it's a process of getting people vaccinated. And if people choose not to be vaccinated, they get tested. It's that simple....

This is not a mandate. It really is about how do we get the American workforce safe.

Those 500 pages reveal that Walsh is caviling. A summary of the new OSHA mandate declares that:

Employers will be required to determine the vaccination status of each employee and keep records showing each employee's vaccination status for the federal bureaucrats;

Employees will be required to provide "prompt notice" when they test positive for COVID-19, and then employers must "remove" the employee from the company workplace



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and not allow them to return until they have met certain criteria;

For those employees refusing to be vaccinated they must, at their own expense, be tested for the virus on at least a weekly basis, and they must wear a mask indoors or while driving with another employee on company business.

All of this is unconstitutional, says Rick Esenberg, president and general counsel at the Wisconsin Institute for Law & Liberty (which represents two private businesses suing OSHA):

This new rule is illegal and unconstitutional. It circumvents the normal legal process ... to claim emergency power to impose a mandate on American business.

At this writing, at least a dozen states are filing, or have filed, lawsuits challenging OSHA on those same grounds — Alabama, Arizona, Arkansas, Indiana, Iowa, Louisiana, Missouri, Montana, South Dakota, Ohio, Kentucky, and Tennessee.

Said Arizona Attorney General Mark Brnovich: “When faceless government bureaucrats dictate what you must inject into your body, that’s the furthest thing in the world from a safe workplace. The government doesn’t get to be your nanny, and it’s certainly not your doctor.”

Indiana Governor Eric Holcomb agrees:

This is an overreach of the government’s role in serving and protecting Hoosiers.... This federal government approach is unprecedented.

Iowa Governor Kim Reynolds added:

Biden’s plan pits Americans against Americans ... forcing them to choose between making a living or standing up for their personal beliefs.

Missouri Attorney General Eric Schmitt expanded:

The federal government does not have the authority to unilaterally force private employers to mandate their employees get vaccinated or foot the bill for weekly testing.

To review: Article I, Section 1 of the U.S. Constitution clearly states that “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.” Ergo, OSHA itself is unconstitutional and therefore anything it promulgates in the form of an “emergency temporary standard” is also unconstitutional.

Nowhere among the few enumerated powers granted the federal government in Article I, Section 8 can one find anything to do with mandates, healthcare, or vaccinations.

And just to be sure that the federal government doesn’t attempt to overreach, there’s the 10th Amendment:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the States respectively, or to the people.



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It is healthy to see an awakening by so many states and their citizens about how important those limitations and restrictions on federal power are. For years and decades, most citizens just assumed that the Constitution would restrain the federal government, thus allowing them the freedom to get on with their lives, enjoying their liberties, and pursuing their individual definitions of happiness. With the Biden incursions threatening all of these freedoms, the Constitution is now enjoying a resurgence of interest and respect as it remains the final bulwark against tyranny in the name of fighting a virus.

A quote ascribed to the first president of the United States, George Washington, provides the warning:

Government is not reason, it is not eloquence — it is force. Like fire it is a dangerous servant and a fearful master; never for a moment should it be left to irresponsible action.

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