



Written by [Luis Miguel](#) on January 5, 2022

Abbott to Sue Biden to Stop Vax Mandate for National Guard

Texas Governor Greg Abbott said Tuesday that he will be [suing the Biden administration](#) to prevent the Pentagon's mandatory vaccination for his state's national guard.

In a [letter](#) addressed to Major General Tracy Norris, current adjutant general of the Texas National Guard, Abbott censured the federal government for putting the Lone Star State's guardsmen in a "difficult position."

"As the commander-in-chief of Texas's militia, I have issued a straightforward order to every member of the Texas National Guard within my chain of command: Do not punish any guardsman for choosing not to receive a COVID-19 vaccine," Abbott wrote.

"Although my order has been in effect for months now, President Biden has muddied the waters with a vaccine mandate from the U.S. Department of Defense," he added.

Abbott's lawsuit comes weeks after he formally told Defense Secretary Lloyd Austin that he would not impose the vaccine requirement for members of the Guard in his state.

Although Austin mandated vaccinations for the military in August, each service has the responsibility of implementing the mandate for its own members.

In accordance with the directive from Austin, members of the Air National Guard had until December 31 to comply after the Air Force extended an earlier deadline. Army National Guard members, meanwhile, have until June 30 to take the vaccine.

Abbott in October gave Norris the order not to punish guardsmen who chose not to receive the vaccine.

Abbott's lawsuit takes place just one week after Oklahoma Governor Kevin Stitt, a Republican, lost a similar case to block the mandate for National Guard members.

Stitt was the first GOP governor to launch such a suit after Austin denied his request to exempt his state's Guard members from the mandate. U.S. District Judge Stephen Friot said in a ruling last week that the claims found in Stitt's suit were "without merit."

Five other Republican governors have called on Austin to back off from the vaccine mandate.

In his letter, Abbott asserts he holds authority over the Guard under Title 32 of the U.S. Code, which establishes that the National Guard remains under state control until they are activated for federal duty.

Title 10 of the U.S. Code allows the president of the United States to mobilize the Guard, putting them under federal authority. But Austin argues guardsmen are federally funded when they receive training



AP Images
Greg Abbott



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or education and thus must still follow the mandate.

“The federal courts have the power to decide whether President Biden violates the U.S. Constitution’s Second Militia Clause by undermining my commander-in-chief power, instead of federalizing Texas’s guardsmen to use his own commander-in-chief power,” wrote Abbott in the suit.

“Win or lose, President Biden must be held accountable for his unconscionable willingness to hollow out the Texas National Guard,” he added.

On Monday, Judge Reed O’Connor of the Northern District Court of Texas granted a [temporary injunction](#) against the Navy continuing its blanket denial of religious exemptions for the COVID-19 vaccine.

Mike Berry, general counsel for First Liberty Institute, is assisting the 35 Navy Special Warfare service members.

“Punishing SEALs for simply asking for a religious accommodation is purely vindictive and punitive,” Berry said. “We’re pleased that the court has acted to protect our brave warriors before more damage is done to our national security.”

The ruling against Oklahoma by Judge Stephen Friot shows the consequences of taking the “golden ticket” that is federal money — and of compromising in one’s adherence to the Constitution.

State governors and lawmakers should have realized long ago that allowing their state guards to become federalized into the National Guard — in exchange for the promise of federal funding for that guard — would put them at the mercy of Washington, D.C.

Article II, Section 2 of the Constitution states: “The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States.”

Contrary to popular belief, [the National Guard is not the militia](#), as the Framers understood the militia to not be a standing military force, but the citizenry itself when it takes up arms to protect the nation.

One way to fend off tyrannical incursions by Biden, Austin, and others is for states to create or strengthen already-existing defense forces. Texas is one of 21 states that currently has its own state defense force not subject to federal activation. The Lone Star State would do well to bolster that force and offer incentives for guardsmen and U.S. military members to transfer to the Texas State Guard.

In Florida, Governor Ron DeSantis recently [proposed bringing back](#) the Florida Guard, which was disbanded in 1947.

Lawmakers would also do well to pass [Defend the Guard legislation](#), which would prohibit National Guard soldiers from a state from being deployed in any war that was not declared by Congress as required by the Constitution. More than 30 state legislatures have introduced the bill already, and the movement is growing.

Finally, Republican governors are going to have to show courage and be willing to say “no” to unconstitutional mandates, even if activist judges rule against them in court.



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