



Written by [Steve Byas](#) on September 10, 2021

Biden's Draconian COVID Executive Orders Are Unconstitutional

"President Biden and his Administration will continue to use every tool necessary to protect the American people from Covid-19," the White House announced Thursday in a blizzard of executive orders, some of which claim presidential powers unheard of in American history, far beyond those claimed by U.S. presidents during wartime and depressions.

According to the White House press release, Biden is "implementing a six-pronged, comprehensive national strategy that employs the same science-based approach that was used to successfully combat previous variants of COVID-19 earlier this year."



AP Images

The "six-pronged approach" includes the following:

- Vaccinating the Unvaccinated
- Further Protecting the Vaccinated
- Keeping Schools Safely Open
- Increasing Testing & Requiring Masking
- Protecting Our Economic Recovery
- Improving Care for those with COVID-19

As the White House release said, the various COVID vaccines have been available to every individual age 16 and older since April 19, and to those age 12 or older since May. Some companies, such as Tyson Foods and United Airlines, are being praised by the White House for forcing their employees to get vaccinated. All of this has resulted in more than 175 million Americans being "fully vaccinated." Still, nearly 80 million Americans who are eligible to be vaccinated have not even gotten one shot.

One can logically guess that, as easily available as the vaccine has been to get, if any American has not yet gotten the vaccine, it means that individual has opted not to get the vaccine for whatever reason. But the White House vows to change that and "reduce the number of unvaccinated Americans by using regulatory powers and other actions to substantially increase the number of Americans covered by vaccination *requirements*." (Emphasis added.) In other words, using the direct or indirect pressure of the federal government, more Americans will be compelled to get a shot, to the point that "these requirements will become dominant in the workplace."

How? President Biden is issuing an executive order requiring all private employers who have more than 100 employees to ensure that their workers are vaccinated or tested weekly.

Clearly, this is unprecedented. There is no provision in the U.S. Constitution giving the federal government the legal authority to require businesses to require their employees to get a vaccine. And, if



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even there were, this would be a *legislative* or law-making function, a power that the president does not have. Certainly, a president can issue executive orders to members of the executive branch to implement a law, but executive orders cannot be used to *make* law.

If Biden, or any other president, can simply make law via an executive order, telling individual citizens or business owners what to do, with not even a figment of Constitutional authority or executing a law passed by Congress, exactly what can a president *not* do?

Biden also is requiring vaccinations for all federal workers. While Biden does have some authority to issue orders to those who are in the employ of the federal government, that authority is limited to the execution of laws passed by Congress. Under the reasoning that the president can order federal employees to get a vaccination, simply because they work for the federal government, this would allow a president to, for example, order the government's employees to exercise a certain amount each day. Some might argue that this is a poor analogy because the vaccine is designed to protect others, rather than primarily to protect the person getting the shot. But if that is the criteria, could the president also order federal workers not to drink alcohol, because if they drank too much and then drove an automobile, they might kill a fellow American in an automobile accident? Perhaps the president could order an individual American citizen to refrain from supporting certain candidates for public office, because, in his opinion, those politicians might be dangerous to others in U.S. society. Or — as it has been put in totalitarian societies — because they are “enemies of the people.”

In a related order, Biden is going to require that millions of contractors who do business with the federal government also get vaccinated.

COVID vaccinations will be required for the 17 million healthcare workers at hospitals that receive Medicare and Medicaid patients; in other words, virtually all American hospitals. This well illustrates that the acceptance of federal funds, in any form, can lead to federal control in ways not even dreamed of when those programs were first created. One can not imagine President Lyndon Johnson trying to sell the passage of Medicare in 1965 by adding that any hospital that received payment through the program would then have to take orders from the president on what shots their doctors, nurses, pharmacists, and other staff would have to get. It is hard to imagine even the Caesars issuing such decrees.

“A top priority for the Biden Administration since Day One has been to reopen schools safely and keep them open,” the White House statement adds. How is this to be accomplished? The White House statement suggests “getting all staff and eligible students vaccinated, implementing universal indoor masking, maintaining physical distancing,” and “performing regular screening for students and school staff.”

To make sure this happens, the Biden orders will use the “full legal authority” of the federal Department of Education to protect students’ access to in-person instruction. No doubt this will include threats to withhold federal funds from school districts and states that refuse to comply. Again, this illustrates that with the acceptance of federal dollars comes federal control.

As it will “take time” for the newly vaccinated to get protection from the virus, the White House argues, testing and masking will be required.

And, of course, implementation of the executive orders will be accomplished with federal money — extracted from taxpayers either immediately, or by borrowing money that taxpayers will have to pay back later, with interest.



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Will Americans simply accept these new dictates from Joe Biden, or will this be the bridge too far for his tenure as president?



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