



Written by [Steve Byas](#) on September 13, 2021

Dershowitz Predicts Court Will Nix Biden Vaccine Mandates

Harvard Law School professor (emeritus) Alan Dershowitz is predicting that the executive orders of President Joe Biden implementing vaccine mandates against COVID-19 will be blocked by the courts. Dershowitz is a well-known liberal Democrat, but he also believes that the government — especially, in this case, the president — is restricted in its power and authority by the Constitution of the United States.

“No. 1,” Dershowitz said in an interview with Newsmax, “is this something the federal government can do as compared to the states? The states have police power. *The federal doesn’t have police power.* The federal government’s powers have to derive from the text of the Constitution.” (Emphasis added.)



Alan Dershowitz (AP Images)

While not generally understood today — unfortunately — by much of the general public, this is not some novel interpretation by Professor Dershowitz. It was the view of the principal author of the Constitution, James Madison. In *The Federalist*, No. 45, Madison explained, “The powers delegated by the proposed Constitution to the Federal Government, are few and defined. Those which are to remain in the State Governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce.” The *reserved* powers of the states, on the other hand, “will extend to all objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the People, and the internal order, improvement, and prosperity of the State.”

Indeed, it is difficult to imagine a power less meant for the federal government than public health concerns. As Dershowitz noted, the powers of the federal government must “derive from the text of the Constitution.” As Madison said, state power — not federal power — addresses issues which concern the *lives* of the people. One can search in vain to find anywhere in the Constitution’s text that the federal government is delegated (given) the power to mandate businesses or individuals to get vaccinated against COVID, or anything else.

Unfortunately, Dershowitz’s prediction only extends to the *president* lacking such authority, arguing that forcing anyone to get vaccinated is “generally relegated to the legislature in our system of government, so I think the courts will focus on that issue first and say that the president may not have the authority to do this without congressional authorization.”

Some, however, might argue this is an “emergency,” but Dershowitz strikes the assertion down expertly. “You can’t say it’s an emergency. This problem has existed since the first day of the Biden



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administration, and it will continue to exist on the last day of the Biden administration because we're not going to see an end of COVID. We're going to see COVID become like the flu. Seasonal different variations, different vaccinations, so it shouldn't be done under the rubric of emergency. It should be done under the rubric of ordinary congressional power."

But the president does not have the power to make law via executive orders, and Dershowitz predicted that this will result in a "big payday for lawyers" with expectations that a blizzard of lawsuits will be filed on behalf of businesses and individuals. Several states have already announced their intentions to fight the mandates in court, as well as the Republican National Committee. "There will be individuals who will be fired, and they'll sue immediately. There will be companies — and I know there are some already who said we refuse to obey this mandate — and we've had companies and states indicate they're going to file suit," Dershowitz said.

Under Dershowitz's reasoning, the first actions will be taken against the illegality of Biden taking these actions without any legislative backing. Sadly, millions of Americans are under the mistaken understanding that Congress makes laws, federal courts make laws, and presidents can make laws, using "executive orders." But Article I of the Constitution explicitly states that *all* power to make federal laws based on the enumerated powers given to the federal government in the Constitution is held by Congress. Nothing is said about either the courts or the president making law. This is basic civics — our federal government is divided into three branches, called the principle of separation of powers.

Biden either does not understand basic civics, or he has decided to ignore the clear wording of the Constitution. Executive orders are a legitimate power of the president, because the Constitution grants him all *executive* power to enforce the law. Executive orders, however, are not orders to the general public. President Biden has no more authority to tell a private citizen what to do than I do. Executive orders are to the other individuals found in the executive branch of the federal government, ordering them to enforce the law. These orders are intended to enforce *existing law*, and were never intended to be used by the president to create *new law*.

If Joe Biden can tell a private citizen to stick a needle in his arm, one must ask, just what can Joe Biden not do?

Dershowitz, however, did predict that the courts would allow *Congress* to pass laws mandating vaccines on businesses and individuals. "I think the courts will say the federal government does have the power because this is a national issue across the state lines. It's not limited to states. It's contagious."

I cannot find anywhere in the Constitution that gives even Congress such power, but the truth is that Biden does not have the votes in Congress for them to pass any such mandates. Members of Congress know that they would face angry constituents were they to brazenly pass any such unconstitutional mandates.

Hopefully, the American people will refuse to allow an American president to assume a power that not even the Caesars had.



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