



## Is Biden's Vaccine Mandate Necessary? Or Do We Vaccinate "Because He Said So"?

Mandates are rarely a good idea. It's not even good parenting to order children about with a "because I said so." Better to persuade, cajole, give choices. That's what reasonable parents do. But there are times, especially during emergencies - when time is of the essence - that better parenting (and governing) requires an imperative, and "because I said so" becomes the proper, prudent -- and sometimes life-saving -- approach.

Barbara Billauer

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For Biden's vaccine mandate to survive judicial muster, it must both prevent *grave danger* in the workplace (as I wrote) and be shown to be *necessary*, meaning that reasonable alternatives must be unavailable. These standards must be proven by substantial evidence (not scientific certainty) such that a reasonable person would support OSHA's position. The default position favors OSHA, as courts admonish that deference must be given to OSHA's determination.

Have we reached the point where we are running out of time? If grave danger is looming, and a segment of the population throws a tantrum, does a mandate become necessary? If that situation exists and no reasonable protection can be afforded by alternatives in a timely fashion – then the necessity standard has been met. "Because I say so" is *only* invoked-because we have no other *effective* alternative.

**As of September 2021:**

- **“The United States ranks lowest among developed nations in fully vaccinating its population, far below Singapore's 83% full vaccination rate ...[and] the 74% full vaccination rates in both Italy and France.... Vermont, the most vaccinated US state with 69% of people fully vaccinated, sits behind Singapore, Italy, France, China, and Canada.”**
- *The U.S. death rate was eight times higher than the rest of the high-income world.*

***Alternatives***

Many who oppose the Biden mandate, banner-wave their vaccination support, only objecting to the compulsory part. That argument is specious when compulsion may be the only way to prevent the virus from overtaking the country. The mandate opponents claim persuasion and voluntary choice are better. Undoubtedly. But not in an emergency.

The opponents claim mandating vaccination might backfire – they don't specify how.

They claim alternatives exist. What are they? Masking? It is hard to believe that those opposing vaccine mandates would now support mask-mandating – most have exhausted their credibility-capital opposing masks claiming there is no scientific evidence establishing its effectiveness.

### **Herd Immunity**

Those opposing vaccine mandates claim we have sufficient numbers already immunized to achieve herd immunity, and mandating vaccination is unnecessary.

**“Herd immunity cannot be achieved through herd mentality—individual choice, not forcible mandates, is the only path forward.... But the federal government should not, and indeed cannot, exercise the full breadth of its levers of powers to achieve that desirable goal.”**

Josh Blackman, Professor, South Texas College of Law

That response is inaccurate and dangerous.

Ethically speaking, this approach is just plain wrong.-The implicit moral theory of public-health emergencies is that the utilitarian benefit of saving many lives at the population level justifies some curtailment of individual rights.

Legally speaking, this approach is equally wrong, assuming grave danger and necessity is proven as I've written.

Practically speaking, proponents of achieving herd immunity via persuasion are living in an alternative universe. As of August 2021, about 100 million eligible Americans remained unvaccinated. Two months later, even as deaths surged and greater efforts were spent on vaccine persuasion, only seven million more took the jab.

**“Between July and September, the full vaccination rate in the United States grew by around 4 percent, while in the same period Japan lifted its level by 25 percent.”**

The vaccine refuseniks are entrenched, segregated by age, education, and, most critically, political persuasion. The turtle-like slowness of vaccine uptake in recent weeks is telling. Proposed “proper” persuasion methods proliferate in the literature (and have been for a while – to wit, during the 2018-2019 measles epidemic– to little avail. Many target the need to overcome blocks without recognizing psychological obstacles such as commitment bias – meaning those who've sounded in against vaccination will be essentially unable to be won over in short order – if at all!

Even if some vaccine resisters can be won over quickly enough, the question is, how many?

**“Herd immunity is only relevant if we have a transmission-blocking vaccine. If we don't, then the only way to get herd immunity in the population is to give everyone the vaccine.”**

Shweta Bansal, mathematical biologist at Georgetown University

The level of herd immunity needed such that mandated vaccination is unnecessary (and I include both natural and vaccine-derived immunity as relevant) is unknown. Some experts now believe, for several reasons, it will be impossible to achieve COVID herd immunity no matter how many are vaccinated -- for many reasons:

- Some can't be vaccinated due to medical contraindications, valid religious reasons, or ADA-approved disabilities.
- Vaccines are showing waning effectiveness after about six months
- Although vaccines reduce the risk of severe COVID-19 by perhaps 90% (saving public health resources, thus fulfilling the OSHA mandate), some vaccines record less protection. But even after three jabs, about 5% of recipients aren't fully protected.
- The virus will continue to mutate; we can't be sure how effective the vaccine will continue to be.

Because it is impossible to quantify these factors exactly, it is crucial to secure as much coverage in the populations as possible.

Those opposing mandates ignore this reality, claiming that an 80% vaccination rate could be obtained by persuasion alone. Consider this study by the CATO Institute conducted in September, eight months after the vaccine became available.

- 33% of those surveyed weren't vaccinated - even with one shot.
- 17% wouldn't vaccinate under any circumstances
- 8% would vaccinate only if mandated.
- 74% of the unvaccinated wouldn't accept vaccines even if their health insurance premiums surged as high as \$12,000 per year.
- 12% are dilly-dallying, planning, delaying, or waiting for more information before they decide. How many more than the 6.39 billion global doses of vaccine are needed to help them decide?

Since July, those figures weren't much changed when the Kaiser Family Foundation (KFF) did a similar study. Evidently, those waiting for more data didn't get what they wanted in the ensuing three months.

Cato interprets their study as suggesting “persuasion—not mandates—is the best way to boost vaccination rates,” a rather disingenuous reading of the data in the current context. Perhaps they are right - in a perfect world, where the wealth, power, and effectiveness of the anti-vaxx industry are not continually chipping away at whatever progress the “persuasives” might be making - and time is not of the essence to control the virus before it overtakes hospitals' capacities.

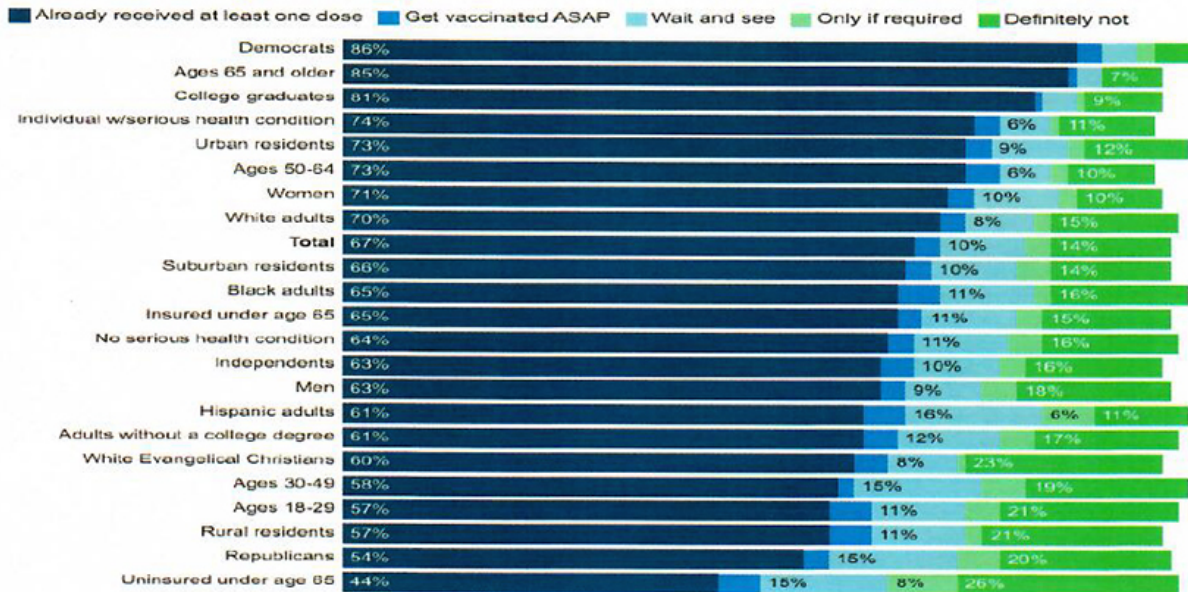
There is another, to my mind, more likely and accurate interpretation of the survey.

### **Intractable Vaccine Resistance**

The word *“intractable”* describes enduring unresponsiveness to therapy or medical intervention. That’s what’s happening here. A segment of the population is refusing vaccination and won’t be convinced. Not can’t. Won’t.

### Republicans, Rural Residents, Younger Adults, And Uninsured Lag In Vaccine Uptake

Have you personally received at least one dose of the COVID-19 vaccine, or not? As you may know, an FDA-authorized vaccine for COVID-19 is now available for free to all adults in the U.S. Do you think you will...?



NOTE: See typeline for full question wording  
SOURCE: KFF COVID-19 Vaccine Monitor (July 15-27, 2021)

It’s disingenuous or wishful thinking to delude ourselves into thinking that most people who claim they are waiting for more information (eight months after the vaccine was introduced) or those planning to get vaccinated will suddenly succumb to persuasion and get jabbed.

**"God could come down and say to me, 'You must take this vaccine.' And I'd be like, 'Sorry, Charlie'. It's not something that somebody specifically or a specific group has to tell me it's safe. My research has to tell me it's safe. The people that I talk to ... I don't know how to really explain that, but I kind of have to see it for myself."**

Patient-care technician **Karen Roses.**

For every vaccine-persuasion effort, misinformation from social media available 24/7 reinforces the fears or rationales these folks have accumulated, culminating in resistance. Resistant beliefs are stoked by individuals and well-financed groups dedicated to challenging COVID vaccination – and efforts to counter these just aren’t as effective or as pervasive.

Even as the anti-mandate proponents point to a singular success with persuasion here and there, the overall pace of Black or Hispanic vaccination rates declined in more than two-thirds of U.S. states since last month.

It is the height of hubris to think we can, suddenly and effectively, do better than we've done, and certainly not in the short time necessary to prevent viral mutation and overload of our health systems. Persuasion on a large scale necessary to make a difference is not working. Remember that counter-anti-vax efforts aren't new. We've been battling anti-vaxxers in earnest since the 2018-2019 measles epidemic

No viable alternative has been demonstrated to motivate the "undecided" and intractable vaccine-refusers as quickly as sound public health policy requires. "If disease control measures are endlessly postponed while policy is debated, the disease may spread so widely that no measure can contain it."

**"Mandates seem to be the answer from here on out. We have tried education, and we've tried incentives; the only thing left is mandates, and mandates are very, very effective."**

Leana Wen, MD visiting professor of health policy at GWU School of Public Health.

Senior (non-governmental) public health experts are urging mandatory vaccination as the only chance to protect the country. Data indicates that the new regulations will boost American vaccination by twelve million – increasing the proportion of vaccinated Americans to 90%. If this data can withstand legal challenge, it validates the *necessity* aspect of the mandate.

**"As of this writing [October 2021], there are approximately 93 million people in the US who are eligible for COVID-19 vaccines yet aren't vaccinated..... It's time to issue a national vaccine mandate."**

José Ramón Fernández-Peña, President of the American Public Health Association

Will the Supreme Court ignore the opinions of experts and substitute their own judgment? They aren't supposed to. But in the context of COVID, they've done it before.