



## Texas Governor to Businesses: Choose Your Destroyer

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When fictional Mafia caporegime Feech La Manna finished his racketeering prison sentence, he returned home to “get in the game.” Partly that meant shaking down the local businesses for a street tax, long a staple of mob coercion. A man named Sal Vitro operated a lawnmowing business in the area, and Feech demanded he pay up. The problem was Sal already did pay — to Pauly Walnuts, a different capo. So which mobster should he obey? Violence and theft are the penalties for non-compliance. This is the position private business owners in Texas face regarding vaccine regulations.

Texas businesses do not have Tony Soprano to settle the dispute, however. Thanks to Republican Governor Greg Abbott, they will now be forced to break one law to obey another. It’s remarkable how one’s relationship to the government can mimic the one between a victim and the Mafia. The government controls the local area with violence. If you step out of line, you will hear about it. The two most important things are that you pay up, and you don’t challenge its authority. The same is true where criminal organizations thrive: Italian American Mafia in New Jersey or Crips in Compton.

The Delaware Don?

President Joe Biden has said he will order all large businesses to mandate vaccinations or weekly testing for employees. Per the Associated Press: “His will is to be enacted through a forthcoming rule from the Occupational Safety and Health Administration that carries penalties of \$14,000 per violation, an administration official said.” Biden just acted, not like a man constrained by limiting principles but like a modern-day mob Don, who implemented a rule based on his whim. He and Abbott are birds of a feather in that regard. *The Texas Tribune* reported:

“Texas Gov. Greg Abbott on Monday issued another executive order cracking down on COVID-19 vaccine mandates — this time banning any entity in Texas, including private businesses, from requiring vaccinations for employees or customers.”

Abbott joins Biden in issuing edicts to private businesses without authorizing legislation or grant of power from the people. No federal legislation gives the president the power to do anything like this, and no Texas law gives Abbott authority for his order. So imagine the predicament of the Texas large business owner. The state fine is only \$1,000, but there is a jail sentence of six months, too! Walter Olson of the Cato Institute's Constitutional Studies section said of Abbott's order: "This is just as much a slap in the face to business freedom as Biden's intended OSHA mandate."

### Texas Two-Step For Businesses

Since Biden's regulations haven't been released, there is nothing to enjoin. However, those fights will come soon, and the federal courts will decide if his order is legal. Abbott's administration will no doubt have to win twice — in state and federal court. The Constitution's Supremacy Clause provides that federal law wins in any conflict between it and a state law:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding."

But what if the Texas law somehow passes through court challenges intact, and the federal courts void the federal mandate? Any attorney would be cautious against confidently advising a path forward for large companies in the Lone Star State. In August, Abbott's spokesperson was quoted as saying, "Private businesses don't need government running their business." Agreed. Hopefully, the end of this story looks better than it did for poor Sal Vitro, with another hand in his pocket and more lawns to cut on the arm.