



## **Who Needs the 14th Amendment? Vermont's Blatantly Unconstitutional Vaccine Rules Prioritize 'BIPOC' Households**

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If you're age 16 or over in Vermont, you can now sign up to get a Covid vaccine. But there's one small catch: you have to be the "right" color.

Governor Phill Scott, a Republican who voted for Joe Biden, explains.

If you're white and older than 50, you're going to have to wait.

The state health commissioner says it's not race per se that's the determining factor. It's that people of color have higher rates of infection, disease, and death, as well as lower rates of vaccination.

This is statistically true. But the Constitution says that's not enough, says Cato Institute legal expert Walter Olson.

"This runs into the Fourteenth Amendment to the Constitution, which says citizens of all races are entitled to the equal protection of the laws. The Supreme Court has long interpreted this to mean that the government may ordinarily not dole out valuable benefits, or impose harms, based on a citizen's race," writes Olson.

Reason:

It's true that people of color are more likely to be frontline workers or have health conditions that make them more at risk of COVID-19 complications and death. However, directing vaccines to those higher-risk people can, and should, still be done through race-neutral categorization, says Olson.

"Many sensible priority rules do incidentally protect relatively more minority persons — and that's fine, so long as the decision is based on the neutral grounds rather than being a pretext aimed at getting results based on race," he writes.

NRO's Isaac Shorr refers to the policy as "dystopian."

The problem with this vaccine prioritization scheme is not so much practical as it is a matter of principle. Racial preferences in vaccine distribution during a pandemic seem like a lab-made recipe for fomenting racial discord, balkanizing American society, and sowing distrust in our institutions. The fact that shots are being made available to BIPOC only — a strange and seemingly arbitrary category of people with completely different life experiences — isn't likely to have major public-health consequences. It should be expected, however, to have a number of deleterious downstream consequences, in addition to just being *flat-out wrong*.

Oh, dear. He used the “W” word. Mr. Schorr should know by now that there's no such thing as “right” or “wrong” — only what feels good.

Schorr finds several specific things wrong with the policy, including its detrimental impact on national unity and the precedent it establishes to create other race-based policies.

But most Americans know this policy is wrong in their bones.

Last, I suspect that a vast majority of Americans — discounting the denizens of Twitter — instinctually understand this to be an axiomatically regressive and wrong-headed idea. A [Pew Research Center survey](#) conducted in 2019 found that 73 percent of Americans don't believe race should play any kind of factor in college admissions. That includes 62 percent of African Americans, 65 percent of Hispanics, and 63 percent of Democrats. One can only imagine the majorities that would oppose a state-imposed racial-preference system in *medicine*.

Vermont is 90 percent white so it's not likely this policy will have a large impact on minority vaccination rates nationwide. But that doesn't mean the policy should be accepted and the principle of racial preferences abandoned.