



Vermont Is Prioritizing 'BIPOC' Households for Vaccines. That's Almost Certainly Unconstitutional.

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Anyone 16 or older and identifying as BIPOC can get a vaccine in Vermont now. Whites under the age of 50 will have to wait a little longer.

Vermont is prioritizing people of color for vaccine eligibility over the state's white residents, provoking no small amount of controversy and constitutional concerns.

On Thursday, Vermont Gov. Phil Scott (R) announced on Twitter that anyone aged 16 or older who identifies as black, indigenous, or a person of color (BIPOC), or lives in a household with someone who does, can get a COVID-19 vaccine.

That would seem to disadvantage the state residents who are white and don't live with anyone identifying as BIPOC. The state currently restricts vaccine eligibility for those people to those 50 years and older, unless they qualify for a vaccine by virtue of being a health care worker, employed in public safety, having a high-risk health condition, or being a parent or caregiver of someone with a high-risk health condition.

Mark Levine, the state's health commissioner, told *VTDigger* that people of color are being prioritized for the vaccine because of their higher rates of COVID-19 and lower rates of vaccination.

All Vermonters 16 or older, white or not, should be able to register for a vaccine appointment by April 19, said Levine.

Some 34 percent of Vermont's population has received at least one vaccine dose, making it the ninth most vaccinated state in the country. It ranks middle of the pack in how many of its allocated vaccines it's actually administered.

The prioritization of vaccine eligibility along explicitly racial lines is unconstitutional, argues Cato Institute legal expert Walter Olson in a December 2020 op-ed for *The Detroit News* written in response to the Department of Veterans Affairs opening up vaccines to black, Asian, Native American, and Hispanic veterans.

"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.

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.

All these problems identified with the V.A.'s policy would also apply to Vermont's vaccination racial preferences.

In November, the Centers for Disease Control and Prevention's (CDC) Advisory Committee on Immunization Practices voted to prioritize essential workers over the elderly for vaccine distribution, in part, on the grounds that the elderly skew white, reports *The Washington Free Beacon*.

The fact that we have COVID-19 vaccines that are both safe and effective is a true miracle of modern medicine. Getting them in as many arms as possible should be public policy goal number one. That is only undermined when public health officials at any level of government start creating arbitrary, likely unconstitutional categories for who can get a vaccine next.