



## **A Legal Debate Has Followed Biden's Vaccine Mandates**

Prominent Republicans are threatening to sue over the Biden administration's efforts to use federal power and incentives to mandate vaccines for large employers and healthcare workers.

Carrie Johnson

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LEILA FADEL, HOST:

Republican state officials are threatening to sue over President Biden's vaccine mandates. Americans' resistance to the vaccine has frustrated the White House, which is taking more aggressive steps to confront the coronavirus pandemic. We asked NPR's Carrie Johnson to check in on the legal side of this political debate. She's here now to talk about what she found.

Hey there, Carrie.

CARRIE JOHNSON, BYLINE: Hi, Leila.

FADEL: So let's start with the big question. President Biden has not imposed a nationwide vaccine mandate even though 1 in 500 Americans have died of the coronavirus. Why not?

JOHNSON: Big question. And it's because historically, under the American system of government, that's a power reserved for the states. Lindsay Wiley is a law professor at American University. Here she is talking on the NPR Politics Podcast recently.

LINDSAY WILEY: The federal government doesn't have what we call plenary power to protect the public's health, safety and welfare. Instead, anytime the federal government acts, it has to point to a nexus to one of its constitutionally enumerated powers, like the power to regulate interstate commerce.

JOHNSON: So the White House has limits on its power here, but it can act if there's some connection to federal interest like facilities that get federal money. President Biden is requiring workers at nursing homes get the shots if those places want to keep receiving funding from Medicare and Medicaid.

FADEL: OK. And the Pentagon has required service members to get vaccinated, and other federal workers and contractors are required to be vaccinated, too. What's the legal path the Biden plan says they have with the private sector?

JOHNSON: Well, this is probably the trickiest part of what the president wants to do. Biden says the Occupational Safety and Health Administration, or OSHA, is developing an emergency rule that would apply to businesses with 100 or more workers, and that would cover about 80 million Americans. Their goal is to make sure people at these big companies are fully vaccinated or able to produce a negative test result at least once a week before they come to work. Now, under this emergency authority, the Biden administration would have to show that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards and that the emergency rule is necessary to protect workers from that kind of danger.

FADEL: OK. So OSHA is still working on that rule, but you found there's already a legal threat.

JOHNSON: Yes. About two dozen Republican state attorneys general have written to the White House, signaling a lawsuit could be on the way very soon. I spoke with Ohio Attorney General Dave Yost. Here's what he said.

DAVE YOST: The use - misuse, really - of the OSHA statutes to try to reach a general health issue simply is far beyond the scope of the statute.

JOHNSON: Dave Yost says courts have been pretty skeptical when the federal government tries to use these kinds of emergency powers. And he says OSHA deals with work hazards on the job, not any kind of hazard a person could encounter out in the world like coronavirus, he says.

FADEL: So, Carrie, it seems like we're going to be talking about this again. What comes next?

JOHNSON: Well, the Republican state officials are holding fire for now until they see exactly what kind of language comes out of the Biden administration. But they tell me legal action is pretty certain after that. Experts are divided about how courts might handle this kind of case. They do agree on one thing. These issues are likely to make their way to the Supreme Court. Ilya Shapiro is a fellow at the libertarian Cato Institute. He told me this reminds him of the years-long fight over the Affordable Care Act, also known as Obamacare. And, of course, Leila, this all matters because if any of these cases goes far in the courts, it could really reshape the tools the U.S. has to fight the next pandemic.

FADEL: NPR's Carrie Johnson, thank you.

JOHNSON: My pleasure.

