



JAMA Forum

COVID-19 Vaccine Mandates—A Wider Freedom

Lawrence O. Gostin, JD

President Biden has required COVID-19 vaccinations [across much of the US workforce](#), reaching nearly [100 million workers](#). Opponents call it unconstitutional, a violation of personal freedom, and even “un-American.” The truth is that vaccine mandates are lawful and deeply entrenched in US history and values. They constitute a “wider freedom” so that everyone in society can feel safer where they work, learn, worship, and live.

Author affiliations and article information are listed at the end of this article.

Vaccine Mandates Integral to US Culture and Tradition

Vaccine mandates are very much part of US culture and tradition [dating back to the colonial era](#), even before Edward Jenner’s 1796 discovery of cowpox vaccinia. George Washington required smallpox inoculations for the Continental Army in 1777, [writing](#) that “we should have more to dread from [smallpox], than from the sword of the enemy.” He condemned a Virginia law restricting inoculations, [saying](#) he would rather move for a law to compel inoculation of all children “under severe penalties.” Massachusetts enacted the first law mandating immunization in 1809, and by the time the US Supreme Court upheld its constitutionality in *Jacobson v Massachusetts* (1905), municipal and state smallpox vaccination mandates were prevalent across the US.

States began requiring childhood vaccinations as a condition of school entry by the mid-19th century and by 1963, [20 states had school vaccine mandates](#). Although the US Centers for Disease Control and Prevention (CDC) has a [recommended schedule](#) for child and adolescent immunization, it does not set vaccination requirements for schools. The [CDC points out](#) that each state makes its own decisions about which vaccines are required for school attendance in that state. [All school immunization laws grant medical exemptions, 44 states grant religious exemptions, and 15 states allow philosophical exemptions](#). Although vaccines are not routinely required for adults in most settings, they are often mandated for military service members, new immigrants seeking permanent US residence, college and university students, and health care workers. Previous epidemics like the [2018-2019 measles outbreak in New York City](#) were quashed by emergency vaccine mandates for adults in affected zones. Even before President Biden’s COVID-19 vaccine mandate announcement, several cities and states, businesses, and institutions of higher education had issued their own COVID-19 vaccine mandates.¹

COVID-19 vaccine mandates, therefore, should not be viewed as an aberration but as the continuation of a long tradition in the US to prevent or mitigate infectious disease outbreaks and epidemics. The CDC recognizes vaccinations as among the [top public health achievements of the 20th century](#).

Vaccine Mandates Lawful

Cities and states have broad “police powers” to [require vaccinations](#), upheld twice by the US Supreme Court in 1905 and 1922. The Pfizer-BioNTech COVID-19 vaccine is [fully licensed for individuals aged 16 years or older](#) and has received Emergency Use Authorization for children aged 12 to 15 years. (It is likely that vaccines will soon be authorized for children aged ≥ 5 years.) The police powers of cities and states enable them to require eligible individuals to be vaccinated against SARS-CoV-2 for school attendance, as the [Los Angeles Unified School District](#) recently did covering

Open Access. This is an open access article distributed under the terms of the CC-BY License.

more than 600 000 students. New York City's "Key to NYC" program requires proof of COVID-19 vaccination for indoor activities such as dining, fitness, and entertainment. The courts have upheld *Jacobson v Massachusetts* for more than a century, affording municipalities and states wide discretion in exercising public health powers, including mandatory vaccinations.²

Unlike cities and states, the federal government does not have broad public health powers. The president has only limited public health powers and could not, for example, issue a nationwide vaccine mandate. President Biden's 3 vaccine requirements, however, have strong legal support. First, President Biden ordered all federal workers and contractors to be vaccinated. There is no option to be tested for COVID-19 instead of being vaccinated. As head of the federal workforce, Biden has the power to set evidence-based safety standards, including mandating masks and vaccines. The Equal Employment Opportunity Commission and the Department of Justice both advised that governments and businesses can require COVID-19 vaccines as a condition of employment, so long as they provide religious and medical exemptions. Courts also have upheld COVID-19 vaccine mandates for employees as well as college students.

Second, President Biden ordered all health care facilities to require COVID-19 vaccinations as a condition of receiving certain Medicaid or Medicare funding. The Supreme Court has ruled that the federal government can set reasonable conditions for the receipt of federal funds. In *South Dakota v Dole* (1987), the Supreme Court upheld a law requiring states to adopt a minimum drinking age of 21 years as a condition of receiving certain federal highway funds. So-called conditional spending must be reasonable. For example, the Supreme Court struck down a requirement in the Affordable Care Act for states to expand Medicaid as a condition of receiving all Medicaid funding, ruling that the amount of funding at stake made the contingency unduly coercive.

President Biden's third, and most controversial, vaccine mandate requires businesses with 100 or more employees to either mandate COVID-19 vaccinations or institute weekly testing and other risk mitigation measures. Opponents have called it an "overreach" and unconstitutional, but President Biden is acting at the height of his presidential powers. He is not making a unilateral executive decision but is rather acting through specific congressional authorization. In 1970, Congress enacted the Occupational Safety and Health Act precisely because of a weak patchwork of state worker safety regulations. It empowered the Department of Labor to set uniform national workplace safety standards, including emergency temporary standards in response to workplace hazards. Exposure to SARS-CoV-2 can be just as hazardous as workplace injury risks. The Occupational Safety and Health Administration (OSHA) has already set emergency temporary standards for COVID-19 exposures in health care settings. Previously, OSHA set bloodborne pathogen standards that included hepatitis B vaccinations. OSHA is currently devising emergency temporary standards for COVID-19 vaccination or weekly testing, which is expected to be issued soon.

Two Freedoms

Freedom holds deep ethical and legal value in the US. There are at least 2 types of freedom—freedom from personal restraint and a wider freedom to engage in daily life without significant risk of exposure to safety hazards. Vaccine mandates are justified under both notions of freedom. Certainly, competent adults have the right to bodily integrity and to make their own health care decisions. Yet, the right of informed consent has clear limits. No one has the right to expose others to a potentially serious infectious disease. Even though breakthrough SARS-CoV-2 infections after vaccination do occur, vaccinated individuals pose transmission risks for much shorter periods compared with unvaccinated individuals. Thus, a fully vaccinated workforce, especially if layered with other risk mitigation measures such as wearing a mask and improved ventilation, creates a far safer environment for everyone.

In his annual address to Congress in 1941, Franklin D. Roosevelt identified "Four Freedoms"—for speech and worship, as well as freedom from want and from fear. By freedom from fear, he meant

that the public has the right to engage in daily social and economic life without fear of avoidable harms. It is unknown how much COVID-19 vaccination coverage is needed to contain SARS-CoV-2, but it probably requires [rates exceeding 80% of the population](#). It is important to remember that everyone in society is interconnected. Our individual choice to not get vaccinated poses avoidable risks to the people we interact with and those with whom they interact. The higher the vaccination coverage, the safer we all are.

Highly vaccinated populations create a wider freedom to return more safely to the ordinary activities people value—such as going to work, school, cafés or restaurants, the theater, or sporting events, as well as traveling. COVID-19 vaccines are a remarkable scientific tool that enables society to live in greater freedom and with less fear. Using every tool—including mandates—to achieve high vaccination coverage enhances freedom.

ARTICLE INFORMATION

Open Access: This is an open access article distributed under the terms of the [CC-BY License](#). © 2021 Gostin LO. *JAMA Health Forum*.

Corresponding Author: Lawrence O. Gostin, JD, Georgetown University Law Center, 600 New Jersey Ave NW, Washington, DC 20001 (gostin@georgetown.edu).

Author Affiliation: O'Neill Institute for National and Global Health Law, Georgetown University Law Center, Washington, DC.

Conflict of Interest Disclosures: None reported.

REFERENCES

1. Gostin LO, Shaw J, Salmon DA. Mandatory SARS-CoV-2 vaccinations in K-12 schools, colleges/universities, and businesses. *JAMA*. 2021;326(1):25-26. doi:[10.1001/jama.2021.9342](https://doi.org/10.1001/jama.2021.9342)
2. Gostin LO. *Jacobson v Massachusetts* at 100 years: police power and civil liberties in tension. *Am J Public Health*. 2005;95(4):576-581. doi:[10.2105/AJPH.2004.055152](https://doi.org/10.2105/AJPH.2004.055152)