

# The Oklahoma National Guard Refused the Vax Mandate. The Pentagon Is Not Pleased.

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*In a surprising development, Republican governor Kevin Stitt has refused to implement the Biden administration’s vaccine mandate. This has placed the governor directly at odds with Pentagon brass and with the White House as it aggressively attempts to enforce its latest vaccine mandate for all military personnel. The Washington Post [sums up the situation](#):*

Gov. Kevin Stitt (R) last week removed the state’s adjutant general, who had directed troops to comply with the vaccine mandate, and replaced him with a new commanding general who promptly issued the order rejecting it. In his memo, Brig. Gen. Thomas Mancino, the state’s new National Guard commander, said personnel could sidestep the policy with no repercussions unless they are put on federal duty.

The legal situation is complicated. As originally imagined by early Americans, the state militias are supposed to be independent military units unless called into national service during wartime. Moreover, state governors have at times exercised a *de facto* veto over federal control of state troops.

Since the National Defense Act of 1933, however, National Guard units have been deemed members of both the state’s National Guard and the federal military. Moreover, over time, the federal government has gradually eroded the authority of state governors in controlling the deployment and use of state troops. By 1990, governors had lost virtually all of their independence.

National Guard troops in each state *nominally* remain under the command of the respective governors unless activated by the US president. Thus, it appears that Governor Stitt is attempting to take advantage of these few remaining powers in order to refuse mandating vaccines for state troops.

Not surprisingly, this has led to resistance from the Pentagon—and if past experience is any indicator—the Pentagon will not hold back in devising ways to punish Oklahoma and its National Guard chain of command unless it quickly falls into line.

## Who's In Charge of Oklahoma's Troops?

Over the weekend, Oklahoma's adjutant general [issued a statement](#) on the state's guard vaccine policy:

Under Title 32, Congress established a dual framework for the National Guard. The states receive federal funding in return for being made available to the federal government when called to active duty by the President.

Under Title 32, the Oklahoma National Guard is a state-controlled and federally-funded entity and takes orders from the Governor and his designated chain of command. When mobilized by the President, under Title 10, the Oklahoma National Guard takes all orders from the President and his designated chain of command.

Failing to follow the Governor's lawful orders while on Title 32 would be both illegal, unethical, and against our sworn oaths. Nothing in this order prevents anyone from taking the vaccine. Also, nothing in his order eliminates the Federal Requirement. The Governor is hoping for Federal Relief from Secretary of Defense Lloyd Austin and in the interim has granted state relief from this requirement.

Until a Guardsman is activated under Title 10, they follow the lawful commands of the Governor of the State of Oklahoma, who has not mandated the COVID-19 vaccine for Oklahoma Guard Members. Once activated to [T]itle 10 status, Guardsmen are subject to all Title 10 laws and mandates until returning to Title 32 status.

If you [Oklahoma guard members] are not mobilized on Title 10 orders, the only entity that can give you a "lawful" order—that is an order backed by the authority of law—is the Governor and his designated State chain of command. That "law" is Title 32 U.S. code. This is easily seen by the fact that the UCMJ [Uniform Code of Military Justice] does not apply to you in Title 32 status. Instead, you are governed by the Oklahoma Code of Military Justice (OCMJ).

It is notable that in response to this (accurate) legal interpretation from the governor, the Pentagon has done little other than just insist repeatedly that it has authority to force compliance. No specific legal authority is quoted or invoked.

Yet the Pentagon has plenty of tricks up its sleeve when it comes to getting compliance from state National Guard units. During the 1980s, for instance, Ohio governor Richard Celeste refused to send National Guard troops to Honduras to assist with the Pentagon's various interventions in Central American regimes.

## How the Pentagon Threatens "Disobedient" State Governors

The Pentagon immediately made plans to remove military resources from Ohio in an effort to embarrass the governor. The idea was that the Ohio economy would suffer as military spending in the state was withdrawn. The governor soon caved to the Pentagon's orders. Thus, the Pentagon has grown accustomed to immediate and unquestioning obedience from state governors, although this is directly contrary to the very idea of state-controlled military units.

[We saw a similar response from the Pentagon in 2019](#) when the legislature of West Virginia

contemplated limiting Pentagon control of West Virginia's troops. Specifically, some West Virginia lawmakers considered a bill limiting the state's National Guard deployments to only military operations conducted during a period of congressionally declared war. The Pentagon immediately threatened to use the cudgel of federal spending in West Virginia if the bill was adopted.

It is likely the Pentagon will do the same in Oklahoma should the governor persist in refusing to enforce the vaccine mandate. On Wednesday, for example, the Pentagon reportedly claimed that if Oklahoma does not comply, it will no longer be "maintaining national recognition" and the guard will become just a state militia. This is likely a step on the way to removing all federal spending from the state's guard in the manner used in the past as a means of turning the screws on state government.

BREAKING: Defense official reportedly says, if the Oklahoma National Guard doesn't comply with COVID vaccine requirements, they will no longer be "maintaining national recognition," thus, state will no longer have a Nat Guard, but rather a militia - VOA's Pentagon correspondent

— Insider Paper (@TheInsiderPaper) [November 17, 2021](#)

Moreover, the Pentagon has hinted it will force compliance by going after individual guard members on a "[case-by-case basis](#)." Given that these troops are under the command of the state government, however, "[it is unclear who will hold them accountable to the rule and what punishments](#), if any, will be handed down."

Unfortunately, military spending is so centralized in the federal government that it will be difficult for Oklahoma—or any other state—to refuse Pentagon orders in anything beyond the short term. Moreover, thanks to generations of militarist hysteria over communists and terrorists, the US military establishment has greatly centralized military command authority in Washington overall.

Yet this news is good news overall. Combined with the US military's turn toward "woke" politics, this latest episode around vaccine mandates will further help to undermine support for military institutions among conservatives—the very group that has for so many decades offered untrammelled obedience and deference in favor of the Pentagon's agenda.

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*Ryan McMaken is a senior editor at the Mises Institute. Send him your article submissions for the Mises Wire and Power and Market, but read [article guidelines](#) first.*

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