

Twilight's Last Gleaming. Biden's So-called Vaccine Mandates. Judge Napolitano

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“This is not about freedom or personal choice.” — President Joseph R. Biden, Sept. 9, 2021

It was scandalous and infuriating to hear President Joseph R. Biden argue last week that his so-called vaccine mandates somehow have nothing to do with freedom or personal choice. In saying that, he has rejected our history, our values and the Constitution he swore to uphold.

He made his ignorant statement while outlining his plan to have the Department of Labor issue emergency regulations requiring every employer in America of 100 or more persons to compel all its employees to receive a vaccine against COVID-19, or the employer will be fined.

He claims the authority to issue these orders under the 1970 Occupational Safety and Health Act, or OSHA. Though it has been around for 51 years, OSHA is profoundly unconstitutional, as it purports to authorize federal bureaucrats to regulate private workplace property unavailable to the public.

Congress enacted this legislation relying on its Commerce Clause power in the Constitution. But the Commerce Clause — according to James Madison, who wrote it — only empowers Congress to keep commerce regular; it does not empower Congress to regulate the conditions of production of goods and services intended for commerce.

However, notwithstanding the plain language of the Commerce Clause — “Congress shall have power ... to regulate Commerce ... among the several States” — the Supreme Court, since the era of President Franklin D. Roosevelt, has given Congress a blank check authorizing it to regulate anything that affects commerce. Congress has used this clause to justify its vast expansions of federal power more than it has used any other clause in the Constitution.

Nevertheless, there is no authority for federal workplace regulation in the Constitution, as it

was reserved to the states by the 10th Amendment. That amendment declares that the states kept for themselves that which they did not delegate to the feds.

OSHA has regulated everything from the number of legs on a swivel chair to the brightness of lightbulbs to the number of lobsters that may commercially be drawn from the sea. And the states have supinely accepted those regulations.

It is no surprise that the president, wanting to tell people how to live, would look to OSHA to accomplish his goals. Unfortunately for Biden, the Supreme Court has ruled in *Roe v. Wade* and elsewhere that personal medical privacy and — with respect to declining medications — absolute bodily autonomy trump governmental interests.

Of course, Biden has ignorantly praised *Roe*, not for its protection of the inviolability of the human body, but for its wretched authorization of abortion. *Roe*'s failure to recognize fetal personhood is its catastrophic flaw.

Yet, even a stopped clock is correct twice a day. And on this point — you, not the government, control your body — *Roe* is correct. Professor Murray N. Rothbard has demonstrated conclusively that we each own our bodies. It follows from this that we each can determine what goes into our bodies.

And the Ninth Amendment underscores that we have many personal rights not enumerated in the Constitution or the Bill of Rights and the government is required to respect them. After the right to life, ownership and control of your own body are foremost among those unenumerated rights.

The president, like all of us, is subject to the laws of nature and is obliged to recognize the natural law. It posits that our rights come from our humanity, and not from the government. It was with the natural law in mind that Madison authored the Ninth Amendment and its protection of unenumerated rights.

If self-ownership is not among those rights, then nothing is. If the government owns our bodies, or somehow can trump our personal ownership of them, then we have no rights.

Every state permits a sick person to reject medication. Biden not only rejects that right, but he rejects the right of healthy persons to decline an experimental vaccine.

What's going on here?

Freedom in America has been milked dry by Leviathan since the Woodrow Wilson years. Leviathan is a continually growing government that recognizes no limitations on its own power. OSHA is but one of hundreds of examples of the do-gooder, nanny-state federal government that has assumed for itself — from nowhere but our complacency — the power to tell us how to live.

Government is essentially the negation of liberty. Liberty is the default position because we are born with our rights. Some liberty should be negated, like the liberty to harm another's person and property. It should be negated from all — including the government. Government is a thief in the night when it takes — rather than protects — liberty or property.

Does the government work for us, or do we work for the government?

Such a question would have been laughable 100 years ago. But today, the government treats us as if we work for it because we have permitted it to do so. We supinely let the federal government right any wrong, regulate any behavior, tax any event, start any war, kill any foe, seize any property and crush any liberty as if our rights came from it, and as if the Constitution had no meaning or authority.

This is the same government that can't deliver the mail, fill potholes, stop robocalls, spend within its means, abide by the laws that it has written or follow the Constitution — and Biden wants it to force vaccinate us!

All modern presidents have misunderstood their obligations under the Constitution. From Wilson to Biden, they have argued that their first job is to keep us safe. That obligation is self-assumed. Their first job under the Constitution is to keep us free. Even if the government keeps us safe but unfree, we have the duty to alter or abolish it. The alternative is the twilight of freedom and the coming age of voluntary servitude.

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